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Local border traffic as a liberalization of the Schengen legal regime in the regional dimension with particular regard to the EU-Ukraine border

Mały ruch graniczny jako liberalizacja reżimu granicznego Schengen w wymiarze regionalnym ze szczególnym uwzględnieniem granicy unijno-ukraińskiej

Abstract: Local border traffic has a legal basis in the Schengen *acquis* and is related to the EU's free movement of persons, which, subject to certain conditions, is also available to third-country nationals. The subject of the article is the legal analysis of the Schengen regime in the context of cross-border cooperation with selected third countries on the external eastern border. The research thesis is proving that local border traffic is an exception to the Schengen regime and at the same time defines the regional dimension of the Schengen area. These analyses will be based on the practical context, which is the operation of the local border traffic on the example of the external eastern border of the European Union, particularly the EU-Ukraine border, which is also the external border of the EU and the Schengen area. In this context, the impact of the liberalized Schengen regime on the movement of people across the EU-Ukraine external border will be examined, which will indicate its phased nature with particular emphasis on the role of local border traffic as a transition phase between visa and visa-free traffic. The article uses comparative statistical data on both forms of liberalization of the Schengen legal regime on the border with Ukraine.¹ At the same time, considering the local border traffic on the EU-Ukraine border, it is worth putting forward a thesis that the local border traffic is increasingly being replaced by visa-free travel. In addition, the LBT became the first step to introduce a visa-free regime, which is further liberalization of the Schengen regime.

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Keywords: local border traffic, Schengen *acquis*, Schengen area, external border, regional, EU – Ukrainian border

Streszczenie: Mały ruch graniczny ma podstawy prawne w *acquis* Schengen i jest związany z unijną swobodą przepływu osób, z której – po spełnieniu określonych warunków – mogą korzystać także obywatele państw trzecich. Przedmiotem artykułu jest analiza prawna reżimu Schengen w kontekście współpracy transgranicznej z wybranymi państwami trzecimi na wschodniej granicy zewnętrznej UE. Tezą badawczą jest wskazanie, że mały ruch graniczny stanowi wyjątek od reżimu Schengen i jednocześnie określa wymiar regionalny strefy. Analizy zostaną oparte na kontekście praktycznym, jakim jest działanie małego ruchu granicznego na przykładzie wschodniej zewnętrznej granicy UE, szczególnie granicy unijno-ukraińskiej, która jest jednocześnie wewnętrzną granicą UE i strefy Schengen. W tym kontekście zostanie zbadany wpływ złagodzonego reżimu Schengen na przepływ osób przez zewnętrzną granicę UE-Ukraina, który pozwoli wskazać jego etapowość, ze szczególnym znaczeniem roli małego ruchu granicznego jako etapu przejściowego pomiędzy ruchem wizowym a bezwizowym. W artykule wykorzystano porównawczo dane statystyczne dotyczące obu form liberalizacji systemu prawnego Schengen na granicy z Ukrainą. Jednocześnie, biorąc pod uwagę mały ruch graniczny na granicy UE-Ukraina, warto postawić tezę, że mały ruch graniczny jest coraz częściej zastępowany przez ruch bezwizowy, a ponadto stał się pierwszym krokiem do wprowadzenia ruchu bezwizowego, co jest dalszą liberalizacją reżimu Schengen.

Słowa kluczowe: mały ruch graniczny, *acquis* Schengen, strefa Schengen, granica zewnętrzna, regionalny, granica unijno-ukraińska

Introduction

By its nature, the Schengen area, is considered in two aspects as strengthening the “area without borders” by abolishing controls at the internal borders and, on the other hand, ensuring its security by strengthening controls at the external borders. The first aspect is inextricably linked to the EU’s free movement of persons, which, subject to certain conditions, is also available to third-country nationals. The relations between the member state and the third country in the border regions overlap here. In fact, the Schengen regime and its uniform rules is a legal phenomenon when it comes to its liberalization by the local border traffic institution (LBT). The circumstances of its use also aroused much political controversy, especially at the Polish border.

The subject of the article is the legal analysis of the Schengen regime and its impact on the most important of the EU freedoms, namely the free movement of persons. The article puts forward the research thesis that local border traffic is an exception to the Schengen regime while at the same time it defines the regional dimension of the Schengen area. These considerations will be based on the practical context, which is the operation of the local border traffic through the exam-

ple of the Polish borders, especially those shared with Ukraine, which are at the external border of the EU/Schengen area. The Polish section of EU and Schengen's external border with Ukraine is the longest (535 km) and has the largest number of border crossing points when compared with other EU external land borders, which makes it the most representative border between the EU and Ukraine. In this context, the impact of the Schengen *acquis* on the movement of persons across the EU-Ukraine external border will be examined, which will prove its three-levelness with particular importance on the role of local border traffic as a transition phase between visa and visa-free travel.

1. Schengen *acquis* and local border traffic **1. – regional liberalization of the Schengen regime**

Regulations on local border traffic have a legal basis in the Schengen *acquis*, which is the international term for the Schengen *acquis* that has been incorporated into European Union law. The incorporation of the Schengen *acquis* took place under the Amsterdam Treaty² (AT) and has had far-reaching effects in the long term. By abolishing control at the internal borders of the Schengen area of the member states, the Schengen regime, which defines the principles of border control, was consequently introduced. Furthermore, legal definitions, as well as the principles of the Schengen *acquis*, have become an integral part of EU law, which has led to the uniformity of border concepts in the EU and the Schengen area. The Schengen Borders Code³ (SBC) principles are an extension of those contained in the Convention implementing the Schengen Agreement.⁴ Furthermore, the concept of an “area without borders” refers both to the area of freedom, security and justice (AFSJ), based on the Schengen *acquis* (Article 3 (2) TEU⁵ and

- 2 Treaty of Amsterdam OJ C 340, amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, 10 November 1997.
- 3 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23 March 2016.
- 4 Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22 September 2000.
- 5 Treaty on European Union (consolidated version), OJ C 202, 7 June 2016.

Article 67 (2) TFEU⁶), and to the internal market created by the EU's legal framework (Article 26 (2) TFEU). Considerations on this topic, however, fall outside the scope of this article.

It should be noted that in exceptional cases, the Schengen regime is can be liberalized. The best example of this is the local border traffic institution introduced due to good regional cooperation of a cross-border nature. Such cooperation was developed between the current Schengen member states and third countries even before the introduction of the Schengen regime. It should be noted that the regime, in this aspect, disturbed the movement of people between the Schengen area and third countries, which is why member states with an external border tried to transform this area into a more friendly one.

Local border traffic, as an exception to the Schengen regime, also defines the regional dimension of the Schengen area. This is an exception of positive significance, as it not only liberalizes the principles of free movement of people across external borders but also extends the territorial scope of the Schengen area to some extent. The area of local border traffic gives the external border the character of "openness". Until now, this "openness" has been attributed to internal borders only. It can be stated that local border traffic "opens" "closed" external borders for regional traffic.

In this way, the "area without borders" ceases to have such rigid borders and creates a *sui generis* transition zone. It has a regional dimension in which the benefits of the Schengen area also apply to third-country nationals covered by the LBT.

Additionally, the local border traffic is also an exception to the EU's competence to conclude international agreements, allowing member states with external borders to conclude LBT agreements with third-country neighbors. This is an exception to the general principle that member states transfer competence in the field of *ius contrahendi* to the European Union. The signatories of the local border traffic agreements are states but it is the European Commission (EC) that ultimately decides to approve the terms of the LBT agreement negotiated by its signatories.

6 Treaty on the Functioning of the European Union (consolidated version), OJ C 202, 7 June 2016.

Local border traffic is not only a form of visa liberalization and territorial development,⁷ but also one of the elements of integrated border management (EU IBM), which is also a form of cooperation with the neighboring countries. Although EU institutions and member states are responsible for EU IBM, in the LBT area, a special role is played by first-line states neighboring directly with third countries. First-line states act on behalf of the entire Union because the state border, as an external border, is no longer just the border of a single state but of the entire EU/Schengen area. Poland is such a country, which, applying the rules of the Schengen regime at its external borders, simultaneously benefits from its liberalization through LBT, currently only used towards Ukraine, although such agreements have been signed with all countries on Poland's external land border. Generally speaking, the neighborhood policy objective is to prevent the EU's external borders from opening up a gulf between the EU and the outside world and ensuring that close relations can develop between the Union and its neighboring countries.⁸

2. Legal definition, scope and principles of the local border traffic – the example of the EU–Ukrainian external border

Local border traffic is a Schengen legal instrument, the introduction of which was preceded by long efforts by EU member states from its largest enlargement in 2004. Preparation for accession to the European Union also required the introduction of an EU visa policy. That period has had a radical impact on cross-border relations with the Eastern European countries, which remained outside the enlarged Union. The introduction of the visa regime for all eastern neighbors of Poland from 1 July 2003 made the Polish government create a more flexible visa regime for Ukrainian citizens. Ukraine has always been a place of transit between the East and West and, currently, Ukraine is an important gateway to the EU. People who are legally in Ukraine try

7 G. Kretinin, D.A. Mironyuk, 'Local Border Traffic as a Form of Visa Liberalization and Territorial Development', *Baltic Region*, no. 4, 2014, pp. 27-41.

8 European Commission, *Territorial Cooperation in Europe. A Historical Perspective*, Luxembourg: Publications Office of the European Union, 2015, p. 49.

to enter the EU.⁹ Local border traffic became an opportunity to liberalize the Schengen regime, at least in the regional dimension, covering a strategic part of the cross-border territories of third countries.

Local border traffic is also called *local* (sectional) or *small*, which reflects its nature. However, its legal definition only appeared in 2006 under the LBT Regulation,¹⁰ which extended the Schengen Agreement principles. It was emphasized that it is in the interest of the enlarged European integration to ensure that the borders with its neighbors are not a barrier to regional cooperation. This is particularly visible at the EU-Ukraine border, which is a very good example of the application of the general rules of the LBT regime in practice. They were confirmed in Poland's negotiations with the European Commission and have been successfully applied for several years.

The local border traffic is a derogation from the general rules governing the border control of persons crossing the external borders of the EU member states which are set out in the SBC. Currently, local border traffic "means the regular crossing of an external land border by border residents in order to stay in a border area, for example for social, cultural or substantiated economic reasons, or for family reasons," for a limited period of time (Art. 3 (3) LBT Regulation). A precise definition did not exist earlier, but the expression of local border traffic was nevertheless used in the Convention implementing the Schengen Agreement. In addition, according to the stance of the EC to secure EU's external borders shall not mean borders closed to economic, social and cultural exchanges, particularly with third countries which are geographically the closest to the external borders.¹¹

One can distinguish the subjective and objective aspects of local border traffic.

The subjective aspect includes people on both sides of the external border who are entitled to move within the LBT after meeting certain

9 O. Kamphuis, *The eastern external border of the EU: a journey through the borderlands of the EU and its neighbours*, Nijmegen 2011, p. 88.

10 Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention, OJL 405, 30 December 2006.

11 Commission Staff Working Paper, *Developing the Acquis on 'Local Border Traffic'*, Brussels, 9 September 2002 SEC (2002) 947, <https://www.eumonitor.nl/9353000/1/j9vvik7m1c3gyxp/vizjgstgtfw#p1> [2019-12-28].

conditions. It includes both EU citizens and third-country nationals who are referred to as *border residents*, i.e. “third-country nationals who have been lawfully resident in the border area of a country neighbouring a member state for a period specified in the bilateral agreements [...]” (Art. 3 (6) LBT Regulation). Furthermore, they must have a *local border traffic permit*, “which means a specific document, [...] entitling border residents to cross an external land border under the local border traffic regime” (Art. 3 (7) LBT Regulation). Such persons are not persons for whom an alert has been issued in the Schengen Information System (SIS) and are not considered to be a threat to the EU’s internal security (Art. 4 LBT Regulation).

The objective aspect is determined by the geographical range of the border area, within which LBT principles apply. Such a zone may relate only to external land borders. *Border area* “means an area that extends no more than 30 kilometres from the border. [...] If part of any such district lies between 30 and 50 kilometres from the border line, it shall nevertheless be considered as part of the border area” (Art. 3 (2) LBT Regulation). The space created by the LBT is a cross-border soft space, because as a result of the Schengen regime, and then its regional mitigation, we see a hybrid setting of a few hard elements (in particular, with regard to external border control) and predominating soft elements.¹² Such soft spaces are referred to in the literature as new geographies with boundaries that eschew existing political-territorial borders, the creation of new geographies that transcend existing political-administrative borders. The emergence of new, non-statutory spaces can be found at multiple levels across Europe, in a different circumstances, and with diverse aims and rationales.¹³ From this perspective, local border traffic creates a new geopolitical space, bypassing the existing external border and being non-Schengen regime border space statutes.

Therefore, the most important determinants of the LBT agreement is the range of the border area, and thus the catalogue of persons au-

12 P. Allmendinger, T. Chilla, F. Sielker, ‘Europeanizing territoriality – towards soft spaces?’, *Environment and Planning A*, no. 46 (11), 2014, pp. 2703-2717.

13 ‘Soft Spaces in Europe: Re-negotiating governance, boundaries and borders’ eds. P. Allmendinger, G. Haughton, J. Knieling et al., Regional Studies Association, Regions and Cities, London–New York, 2015, p. 248.

thorised to move within it. Another important factor is the time regarding living in the border area (most LBT agreements require the person to have been resident in the border area for three years), moving within the border area (to 90 days within 180 days)¹⁴ and the duration of the permit (the first permit is issued for two years, the next for five years). The LBT rules allow member states to negotiate bilateral agreements, but while the overall LBT benchmarks are analogous for all such agreements, various factors may determine that they will differ in certain areas. The best examples of this are Poland's agreements with Ukraine, Belarus and Russia. Poland's agreements with Ukraine, Belarus and Russia are the best example of this. They show, on the one hand, how the effective application of LBT rules leads to the liberalization of the Schengen regime, and on the other hand, how political factors that influence LBT agreements complicate the idea of local border traffic.

Agreements with Ukraine¹⁵ are a model application of the principles of LBT, where, owing to the efforts of the states' parties, it was possible not only to develop border regions but, in the long run, to introduce visa-free travel. The local border traffic created a formation of an interdependent borderland, a loosed border regime, and the introduction of a visa-free zone which was a *sui generis* experiment of modifying the Schengen regime.¹⁶

3. The impact of local border traffic on border relations with Ukraine and Russia

It should be noted that the EU-Ukraine relations encompass LBT agreements with Poland, Hungary and Slovakia, with Poland having the longest border with Ukraine. However, this only applies to the areas immediately adjacent to the border area; nonetheless, these local

¹⁴ Short-term visitors to the Schengen states that do not need a visa are not permitted to spend more than 90 days within 180 days in the territory of the Schengen area.

¹⁵ Agreement between the Government of the Republic of Poland and the Cabinet of Ministers of Ukraine on rules on local border traffic, signed in Kiev on 28 March 2008 [Umowa między Rządem Rzeczypospolitej Polskiej a Gabinetem Ministrów Ukrainy o zasadach małego ruchu granicznego, podpisana w Kijowie dnia 28 marca 2008 r., Dz.U. 2009, nr 103, poz. 858, version from 22 January 2016].

¹⁶ I. Sagan, V. Kolosov, D. Studzińska et al., 'The local border traffic zone experiment as an instrument of cross-border integration: the case of Polish-Russian borderland', *Geographia Polonica*, no. 91/1, 2018, pp. 95-112.

border traffic agreements have facilitated cross-border mobility of non-EU citizens, especially in the light of restricted visa policies stemming from the EU and Schengen area enlargement.¹⁷

Poland has the longest border with Ukraine, which plays a significant role among the member states. Being an EU and a Schengen state at the same time, cannot always be reconciled with the interests of good cross-border cooperation with third countries. For this reason, the external eastern border, including the EU-Ukraine border, and the EU-Belarusian and EU-Russian border, is of particular importance and the EC allows the Schengen regime to be liberalized. In addition, breaking down the insulation against Poland's natural partners to the eastern border under local border traffic has become a manifestation of the process of Europeanisation operating in a bottom-up dimension.¹⁸ In various ways, Poland has sought to liberalize the visa policy towards directly neighboring states, especially the ones from the Eastern Partnership. In the case of Poland, there is a geopolitical synergy between various initiatives taken at the European level, such as the Eastern Partnership,¹⁹ the Visegrád Group – a quasi-institutionalized mechanism of European cross-border and cross-regional cooperation and even another initiative, which focuses solely on the EU member states of Central Europe called Three Seas Initiative.²⁰ These activities, more or less, directly led to closer cross-border cooperation with Ukraine and, as a result, the transition from the already relaxed Schengen regime to a visa-free regime. Political factors also had an impact on the LBT, which is particularly evident at the external eastern border. Currently, the only agreement in force is with Ukraine, while the agreement with Belarus has never entered into force, and the

17 M. Szulecka, 'Regulating Movement of the Very Mobile: Selected Legal and Policy Aspects of Ukrainian Migration to EU Countries', in: *Ukrainian Migration to the European Union. Lessons from Migration Studies*, eds. O. Feduk, M. Kindler, SpringerOpen, 2016, pp. 51-71, https://link.springer.com/chapter/10.1007/978-3-319-41776-9_4 [2020-08-11].

18 For more see: M. Cezarz, 'The evolution of Polish Visa Policy after entering the EU and the Schengen Area', in: *How Borderless is Europe? Multi-disciplinary approach to European Studies*, ed. I. Tarrosy, Pecs: Publikon, 2015, pp. 247-263.

19 For more, see: P.-E. Thomann, 'The Three Seas Initiative, a New Project at the Heart of European and Global Geopolitical Rivalries', *Yearbook of the Institute of East-Central Europe*, vol. 17, no. 3, 2019, pp. 41-42.

20 For more, see: G. Soroka, T. Stępniewski, 'The Three Seas Initiative: Geopolitical Determinants and Polish Interests', *Yearbook of the Institute of East-Central Europe*, vol. 17, no. 3, 2019, pp. 16-23.

agreement with Russia has been suspended. The LBT agreement with Ukraine was signed in 2008, but it did not enter into force until 2009. This was due to the fact that the EC had reservations, mainly regarding the range of the border area, despite the efforts of both parties to the agreement to maintain the area within the maximum permissible range of 50 km. In view of the EC's objections, the range of the border area had to be reduced, and thus the number of people originally covered by it decreased significantly (from 1,545 localities to 1,107 in Ukraine and from 1,822 to 1,575 localities in Poland.)²¹ The range of the LBT agreement with Ukraine finally covered the border area in the minimum dimension permitted by the LBT regulation, despite the fact that the regulation allows local administrative districts, that are to be considered as the border area, to be specified by the states concerned in their bilateral agreements.

Despite initial difficulties in establishing the scope of the border area, the local border traffic with Ukraine has had a very positive long-term effect. It has continued to develop in border relations and has even had an impact on further liberalization in the long term. The relations on the EU's external eastern border with Russia, i.e. the Kaliningrad Oblast, are entirely different when considered from a longer-term perspective.

Here, the EC made a significant exception as regards the extent of the border area but, ultimately, under the influence of political factors, the LBT was suspended.

However, under the LBT agreement with Russia, the border area was expanded to include the entire Kaliningrad Oblast, which in the widest places represents up to 205 km distance from the border. In this way, an exception was made to Russia, which *de facto* only became applicable after a change in the legal basis made specifically for this particular situation under regulation amending the LBT regulation regarding the inclusion of the Kaliningrad Oblast²² in the eligible bor-

21 P. Witkowski, 'Cross-Border Cooperation between the European Union and Neighbouring Countries. Practical Facilitations in the Form of Local Border Traffic', *Barometr Regionalny*, no. 12 (1), 2014, pp. 7-14.

22 Regulation (EU) 1342/2011 of the European Parliament and of the Council of 13 December 2011 amending Regulation (EC) no. 1931/2006 as regards the inclusion of the Kaliningrad oblast and certain Polish administrative districts in the eligible border area, OJ L 347, 30 December 2011.

der area. This indicates that local border traffic means not only clear legal rules set out in the LBT regulation but also political factors that modify them in relation to selected third countries. The complexity of the reasons used by the EU raises serious doubts, while the question remains whether this is a compromise in the relations with Russia or rather a concession from the EU. Earlier LBT agreements covered the territorial area from 30 to 50 km from the external border and here the EC used rather the lower limit. It is clearly seen here that political reasons often dictate changes, or lack thereof, in the Schengen area.

This is also confirmed by the fact that the local border traffic with Russia was suspended in July 2016 for the duration of the NATO summit and World Youth Day in Poland. The Polish authorities justified this on security reasons in the context of these events, but to this day the local border traffic with the Kaliningrad Oblast has not been restored. Despite the aspirations of local communities, Poland has not agreed to restore the LBT with Russia, which is explained by the Polish authorities with the “increasing militarization” of the Kaliningrad Oblast.²³ However, the rationality for this justification raises considerable doubts. Furthermore, another confirmation of political influence on the LBT is the lack of functioning of local border traffic with Belarus despite signing the agreement almost ten years ago. The Belarusian side justifies this by not adapting the border infrastructure, but this explanation also raises serious doubts. The above situations clearly show that the LBT, both in its scope and operating principles, is unfortunately determined by political considerations, although it officially refers to legal conditions or the conditions of internal security.

4. The EU-Ukraine local border traffic as a step to visa-free travel

Local border traffic is also a legal instrument constituting the first step to in-depth cooperation which is visa-free travel. In the case of EU-Ukraine relations, this was achieved on 11 June 2017,²⁴ which was

²³ NATOscope (2017), <http://www.monitor-press.com/pl/2-pol/wiadomo-ci/6002-1961.html> [2019-12-12].

²⁴ On 20 April 2016, the European Commission presented a proposal to allow visa-free travel to the Schengen area for Ukrainian citizens. The Council and the European Parliament reached an

described as an important development that will help strengthen the ties between Ukraine and the EU.²⁵ The condition is to hold a biometric passport and meet the other entry conditions set out in the legislation²⁶ while it entitles tourist, family or business stays. The stay under the visa-free regime may not last longer than 90 days during a 180-day period. It allows the entry of all Schengen states, but Poland remains the main EU destination for Ukrainian migrants. The introduction of visa-free travel is undoubtedly a major success for Ukraine and the EU, and especially for those states particularly involved in the liberalization process in an unfavorable political situation. So, the visa regime for Ukrainian citizens travelling to the European Union was eliminated three years ago and has had long-term effects in the area of liberalization of cross-border cooperation and, in particular, in significantly facilitating the movement of Ukrainian citizens to the EU. Visa-free travel has become contributed significantly to Ukrainian citizens getting closer to the EU in the long term.

In this aspect, the LBT emerged as a measure to mitigate and reduce the barrier function of the EU's external border.²⁷ Furthermore, statistics indicate that since the introduction of visa-free travel, each year, there is a progressive upward trend in visa-free travel compared to local border traffic. If one compares the data since the introduction of the LBT with Ukraine, they are as follows:²⁸

1) for 2017:

- movement of people under LBT – 3,933,764,
- visa-free travel – 1,939,955 (with visa-free travel valid from June 11),

2) for 2018:

- movement of people within the LBT – 2,327,871
- visa-free travel – 3,912,573,

agreement on the proposal on 28 February 2017.

25 Council of the EU, 'Visas: Council adopts regulation on visa liberalization for Ukrainian citizens. 11 May 2017', <https://www.consilium.europa.eu/en/press/press-releases/2017/05/11/visa-liberalization-ukraine/> [2020-01-20].

26 The rules are also: to have medical and car insurance and to have sufficient funds and be able to justify the aim of traveling.

27 I. Gumenyuk, T. Kuznetsova, L. Osmolovskaya, 'Local border traffic as an efficient tool for developing cross-border cooperation', *Baltic Region*, no. 8/1, 2016, pp. 67-82.

28 On the basis of the data received from the Bug River Border Guard Unit.

3) for 2019:

- movement of people within the LBT – 1,915,430,
- visa-free travel – 5,172,634.

In analyzing the above data, conclusions can be drawn regarding the mutual impact of local border traffic on visa-free travel. The liberalization of the Schengen legal regime on the EU-Ukraine border had a two-stage character; from its regional liberalization through the LBT to the full lifting of the visa requirement as part of visa-free travel. However, the proper functioning of the first stage has made it easier to achieve the second stage in perspective. This translated directly into border traffic on the EU-Ukraine border, where the flow of people under local border traffic decreases very systematically (from less than 4 million to less than 2 million people), while the flow of people in visa-free travel increases systematically (from less than 2 million to over 5 million) only in the last three years. Therefore, it confirms the supplementary thesis on the replacement of local border traffic by a visa-free regime on the EU-Ukraine border.

Conclusions

Determining local border traffic as a liberalization of the Schengen regime in the regional dimension and analyzing it against the background of the EU-Ukraine external border leads to several final conclusions.

Firstly, the LBT as the liberalization of the Schengen regime is an exception to the principles of the Schengen *acquis* incorporated into EU law. In this way, local border traffic extends the Schengen area in subjective and objective terms to include third-country nationals within the border area. Local border traffic extends the scope of the Schengen area in some way to include the simplifications provided by the Schengen *acquis*, part of the border areas of third countries and extending, under certain conditions, the free movement of persons also to third-country nationals within the border area.

Secondly, the LBT is an extension of the Schengen zone in the regional dimension by creating a cross-border soft area, a legal and territorial space that runs somewhat “above” the rules of control at the external borders. In this way, cross-border cooperation allows the application, to a certain range, of the principles of free movement of

persons also within the area of countries directly neighboring the EU/Schengen area.

Thirdly, political factors adversely affect local border traffic. Significant diversification in the case of the Polish-Ukrainian and Polish-Russian agreements may raise serious doubts on the equal treatment of all countries neighboring with European Union member states. Relations between member states and third countries and, more broadly, EU relations with third countries along the eastern external border, have a major impact on the shape and functioning of the LBT agreements.

Fourthly, long-term local border traffic with Ukraine has facilitated the introduction of visa-free travel. Therefore, the LBT leads not only to the liberalization of the Schengen regime regionally and bilaterally, but also supranationally through the visa-free movement for Ukrainian citizens throughout the whole Schengen area. As a result, the positive process of replacing small border traffic by a visa-free travel is deepening.

Finally, one can specify a three-stage impact of the Schengen regime on the movement of people on the EU-Ukraine border:

- stage one – initial stage with visa regime, which is also the most difficult,
- stage two – transitional stage with regional liberalization,
- stage three/final stage – currently the best and strongest liberalization of the Schengen regime.

To sum up this three-stage impact, it should be concluded that Ukraine is not in the Schengen area, but the Schengen *acquis* has a huge impact on the movement of people on the EU-Ukraine border. In addition, because the Polish-Ukrainian border's main function is the EU and Schengen external border, the rules of the Schengen Borders Code have been extended, to some extent, on the EU-Ukraine border. Despite the initial difficulties in the functioning of this border, the Schengen visa regime was gradually mitigated from LBT to visa-free travel.

To summarise, the three-stage impact of the Schengen regime on the movement of people on the EU-Ukraine border means:

- stage one – strengthening the Schengen border regime – no free-travel,

- stage two – liberalization of visa regime at regional level – regional free-travel,
- stage three – full liberalization of border regime – visa-free travel.

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