

## **CHAPTER II**

### **EUROPEAN SINGLE MARKET AND SCHENGEN AGREEMENT**

The second chapter will analyze the history of Schengen Agreement as well as European Single Market which is important to understand the origin of the agreement that joined by both French and Spain and other 24 countries. The author will explore the history of European Single Market, how it is formed and the benefits it gains for the European countries, the author is also going to explore the history of Schengen Agreement including the states member and the security in Schengen areas.

#### **A. European Single Market**

Single Market which is also known as Internal Market is one of the biggest achievement of Europe. It offers new opportunities for people, workers as well as businesses. The Single Market also provides job opportunities, the capital market becomes more integrated and also helps the countries which have shortage of labor as it allows people to mobilize without restriction within the member states while also protecting the worker's social right and a fair European labor market.

European Union (EU) Single Market is a fundamental objective of Treaty of Rome, the article 2 of the Treaty stated that:

*"The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it" (Eur-Lex, 2002)*

The Single Market is created to achieve both economic and political goals as well as to bring the nations together by cooperated one another. The main reasons to creating Single Market program was because of the increasing of oil prices in 1979, European economy had faced many challenges such as the rising number of the unemployment and the losing of the competitiveness against United States of America (USA) and Japan especially in the matter of high-technology sectors, and not only they lose from the market share from the automobiles and machinery industries but they also lose competition in information technology and electronics (Nello, 2005).

In 1985, the Single Market was announced to be part of the goal to achieve competitiveness of European communities. When Jacques Delors became the president of European Commission, he carried out his European Single Market program to the European parliament, in the same year at the European council in Milan, the completing of the Single Market was being presented, it was called for the abolishment of barriers between the member states by the end of 1992.

From the beginning, it was already predicted that one of the main benefits of European Single Market was that by the elimination of the trade barriers, the

member states will reduce their prices and costs with all the competitions they would produce goods with cuts the initial profit and wages as well as unnecessary expenses in their firms. The demand of the lower prices would increase, therefore in order to give the demands from the customers, the distributors would increase the quality of their products while also decrease the price of their normal products. The EU Single Market program was proved as effective to boost the economy competitiveness of EU and the absence of it could cause the less of job fields and the slower growth of the products and services in Europe.

The EU rules on free movement that included in the so called four freedoms which are the free movement of person (or workers), goods, services and capital. The four freedoms create the Single Market. According to Article 3 of the Treaty of European Union, the free movement of persons is viewed as the core of the EU's area of freedom, security and justice: the EU delivers its citizens an area in which free movement of persons is guaranteed with respect to external border controls, asylum, immigration and the prevention of crime with the all the security measures they have such as Schengen Information System and Visa Information system it believed to helps to prevent and cope with criminal issues (ILPA, 2016).

The Single Market was created not only for the liberalization of trade among the participating member states but also necessitates production factors of the free movement of goods such as labor, capital and services. It involves the free establishment of persons or workers and companies in all the territory of the member states, in order to exercise their professional or business activities.

With the four fundamental freedoms which help the Single Market with the

free movement of workers and the non-workers, there is no restrictions for their entrance and residence to another member states and with the freedom of goods there is no restrictions for the trade barriers, with freedom of capital is beneficial for the purpose of businesses and personal. Those four freedom which secret of the successfulness of the Single Market of European Union (Europedia, n.d.).

The Single Market was created in order to help the free trade and free movement in the member countries, hundreds of technical, legal and bureaucratic barriers have been abolished. Therefore, with the open market which access to 500 million consumers creates many competition for goods and services. Thus, it makes the prices down and more innovation that may give consumers more various choice to take as the member countries in which they share the common goal to increase the quality of goods and services with the competitiveness in global market. With all the competitions and freedoms, European Commission ensures that they will still provide the fairness and consumer protection or environmental sustainability.

The Single Market was established in hope that it would achieve two goals, first is to increase the economic prosperity of the member states and later is to make the states get closer to each other and tighten their relations. The Single Market strategy is part of European Commission's plan to gain the best benefit for Single Market. There are many potentials for the Single Market that could not be achieved due to some matters and the need to follow the trend in order to fulfill the demand with the new ideas and business strategies. One of the way the Single Market handling done by European Commission is by guiding and supporting consumers.

European Commission also prevents discrimination towards consumers

based on their nationality and place of residence, they make sure that all consumers will receive the goods and services equally regardless where they came from, and this approach was made to ensure the fairness of the Single Market.

### **1. Free Movement of Service**

The Single Market for service is one of the freedom promised in the Single Market. It responsible for more than 70% the Gross Domestic Product (GDP) of EU. The principles that governed the Single Market for services are the freedom to establish a company in another EU country and the freedom to provide or receive services. The principles have been established with the case of law of the European Court of Justice, the case was arranged into EU law in directive services in 2006. The directive includes services activities for 46% GDP of EU in retail, construction, business services and tourism.

Single Market for service is covered in articles 56-62 on Treaty on the Functioning of the European Union (TFEU), Freelancer person, professionals as well as persons who are legally operating in one Member State may carry on an economic activity in a stable and continuous way in another Member State or offer and provide their services in other Member States on a temporary basis while remaining in their country of origin, this entails the eliminating discrimination on the nationalities and, if the freedoms are to be used effectively, the adoption of measures to make it easier to exercise them.

### **2. Free Movement of Goods**

Next, it is the free movement of goods, it is one of European Commission's goals to ensure the free movement of goods. There are about 500 million of

consumers and 21 million small and medium-sized enterprises. The Single Market for goods could produce a small cost of unit, huge range of suppliers and customers and it has better commercial opportunities and accesses for business. The citizens can also get the benefit from the lower prices the market can offer and better innovation in technological development in the meantime it also protects the high standard of safety and environmental protection.

Free movement of goods started in the member states and the goods from other countries that circulates freely within the member states is one of the fundamental principles of the Treaty (Article 28 TFEU). In the beginning, free movement of goods was part of customs union between the Member States, contained of the abolition of customs duties, quantitative restrictions on trade and equivalent measures, and the establishment of a common external tariff for the Community. Following by emphasizing on eliminating all remaining obstacles to free movement of goods in the pursuance of creating the internal market which is an area without internal borders, in which goods could move as freely as in a national market.

### **3. Free Movement of Person (Worker)**

Freedom movement of worker or the freedom of movement for person is the fundamental freedom that covered in Articles 4(2) (a), 20, 26 and 45-48 TFEU. It covers the abolishment of discrimination regarding the nationality of the workers, the languages and place of their residence. They also have the rights to stay for a long time to look for jobs, the citizens also can work in other countries without a work permission to stay in there even when their work has already ended. This free

movement applies to all the member states including Iceland, Norway and Liechtenstein which are part of European Economic Area (EEA)

At the beginning, only people who seek for jobs in other country can enjoy the benefit of free movement. When they have stay long enough they will get all the benefits of the host country, such as health insurance, education and so on. According to Directive 2004/38/EC amended Regulation 1612/68/EEC workers also can bring their family to the host country and enjoy the same benefit (What Is “Freedom of Movement” in the European Union?, 2013).

However, the rights of free movement has been extended to the non-workers although with fewer rights than the workers. All the EU citizens can move anywhere within the Schengen area with up to 3 months or when they want to extend it, they have to show the health insurances and they have to have enough saving so that they will not become the burden of the host countries, the students who come to another countries also can remain in the host countries as long as their studies’ time in there and are able to show the sufficient financial support.

#### **4. Free Movement of Capital**

Free Movement of Capital is the other fundamental rights that covered on the Treaty on the Functioning of the European Union, in Articles 63-66. The free movement of capital was created to a more opened, integrated, competitive and efficient for European financial market. Furthermore, it also has benefits to all the citizens with the open capital they are able to invests, open bank accounts, buys properties. For the both the small and medium-size companies can be able to

investing and owning other companies from other states in Europe and actively participates in the management (European Union Law: Free Movement of Capital, n.d.).

Free movement of capital is an essential contribution to help Europe Single Market as one of four freedoms of movement which is freedom movement of goods, workers, services and capital. The free movement of capital was fully liberalized in EU in 1988 Directive 88/361/EEC and came to effect later on 1990 (Inadim, 2009).

The free movement of goods is one of the essence of European Union which has integrated the economies of Europe. It enables any trader or manufacturer in any part of the member states to export their goods freely to any other Member State in the EU. For example, a French bakers in Paris can export their products to any other Member State without trade being impeded by national tariffs.

Articles 34 and 35 of TFEU have covered the prohibition of discriminatory taxations, abolition of custom duties and the removal of other administrative rules and barriers which hinder the free movement of goods Articles 34 and 35 can be used to strike down national legislation which impedes the free movement of goods (European Union: Free Movement of Goods, 2013).

The treaty of Maastricht which covers the liberalization of free capital movement, came into effect on 1993. The treaty stated that all the restrictions towards capital movement in member states are forbidden (European Commission, 2016).



## **B. Schengen Agreement**

### **1. History of Schengen Agreement**

Schengen Agreement was signed on June 4<sup>th</sup>, 1985 at the river Mosellen in Luxembourg, Schengen has become a symbol represented solidarity and harmony among the states member. Before the Schengen, there were some attempts to create free labor movement, Belgium, Netherlands and Luxembourg in 1948 already created a plan to eliminate the border control in those three countries. In 1952 the Nordic Passport Union was created to allow free movement and abolished border control in Denmark, Sweden, Iceland, Norway and Finland (Davis Dan, 2014).

European Economic Community (EEC) established Rome treaty 1956 as the move towards the free movement as to make a better and stronger integration within the EU countries by allowing the free movement goods, services, capital and workers.

The Schengen Agreement finally created in 1985, the first countries who signed the agreement on June 14<sup>th</sup>, 1985 were Belgium, French, West Germany, Luxembourg and Netherlands, together they began to create European Integration by cooperating to limits border restriction which is the freedom of free movement by eliminates passports and other documents checking between the participant countries as well as a single external border the treaty also covered common agreement on security, police and personal identification data.

On June 19<sup>th</sup>, 1990, Belgium, Germany, French, Luxembourg, Netherlands, the five countries signed the Schengen convention to begin the implementation of the Schengen Agreement in 1985 to gradually abolish the checkings at their borders, the convention also covered the visa policy to travel within the Schengen area.

Soon one by one the other countries decided to join the agreement, Italy in 1990, Portugal in 1991, Spain in 1992, Austria in 1995, Finland, Sweden and Denmark joined in 1996. Although not a member of EU, Norway and Iceland who have been part of Nordic Passport Union in 1952, also joined the Schengen Agreement in 1996.

Schengen Agreement officially became part of EU framework through the treaty of Amsterdam on October 20, 1997. Now, Schengen Agreement has been part of EU framework as the Schengen *acquis communautaire* which means all the members of EU are obligated to implement the compact excluding United Kingdom and Ireland who choose not to join the free movement agreement and prefer to maintain their own national border, the framework also includes Schengen Agreement of 1985, Schengen Convention of 1990, and other Schengen decisions and agreements that included in Schengen agreement implementation.

## 2. Schengen Member States

There are currently 26 states who have joined the Schengen Agreement, the first 15 states who joined the agreements are ; France, Germany, Finland, Sweden, Denmark, Luxembourg, Netherlands, Norway, Portugal, Spain and Sweden. In 2008, the

### SCHENGEN AGREEMENT MEMBERS AND NONMEMBERS

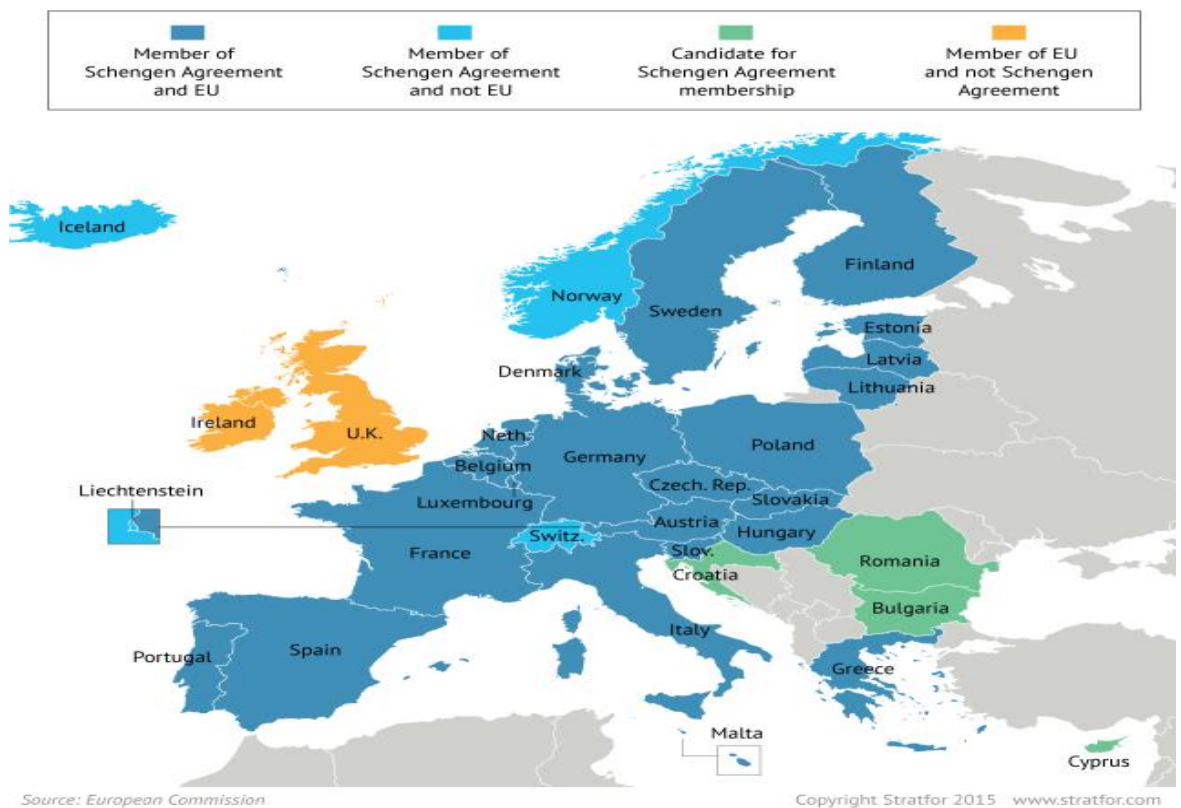


Figure 2 the map of Schengen Agreement members and Nonmembers

Czech Republic, Lithuania, Latvia, Hungary, Estonia, Poland, Slovakia, Slovenia, and Malta fully implemented the Schengen Agreement and followed by Switzerland in 2009 and Liechtenstein on December 19<sup>th</sup>, 2011. Out of all EU states, 22 had already joined the Schengen Agreement, 4 states outside of EU which are Iceland, Norway, Switzerland and Liechtenstein decided to join whereas United Kingdom and Ireland decided not to join but still participated in security

cooperation, while Romania and Bulgaria are currently still in the process of join Schengen Agreement.

### **3. Security in Schengen Border Code Agreement**

The abolition of the border controls as part of the European Single Market also creates the huge risks of the organized crime, terrorism and migration. Therefore, the cooperation among the countries and the border checks are very needed, so it will not harm the internal security of the population, public orders and civil liberties of the member states. In 1993, the Maastricht Treaty created Justice and Home Affairs (JHA) which formerly called TREVI group that stands for the French acronym of Terrorism, Radicalism, Extremism and International Violence.

The JHA is involving the cooperation between judicial immigration, police and customs authorities in order to prevent and combat crimes (Articles 29 and 30 TEU). The cooperation on civil and criminal laws including to fights against terrorism, fight against drugs and illicit arms trade, against racism, against organized crime, prevention on criminal activities against children and human trafficking, immigration, asylum and visa, and also prevention on fraud and corruption.

By the opened border and free movement that allows people and goods to travel anywhere within the member states, and the abolishment of the internal border check, The Schengen convention 1990 created Schengen Information System (SIS). SIS was created to ensure the national security of the member states by allowing the states to store and share information on the criminals, stolen goods, missing persons, or person who has no right to enter Schengen countries. SIS

enables police, migration, justice and the other authorities to share the data on the particular object or person, the system also provides the instruction on what to do with the person or object when they have been found.

In 2003, Eurodac was launched by EU, Iceland and Norway. Eurodac is a system for exchanging information and fingerprints identified for all the asylum-seekers who entered Europe. Therefore, when an individual applied for an asylum anywhere in Europe, their fingerprints will be transmitted on Eurodac central system.

The system will enable member states to identify whether the asylum seekers already applied for asylum in another EU country or if a person was captured for the attempt to enter EU illegally. The database of Eurodac can only be used for the use for asylum-seekers purpose, however under special circumstances to prevent and combat terrorism and serious crimes, under the new regulation the Eurodac data can be accessed by police forces and Europol to compare the fingerprints related to criminal investigations (European Commission, 2016).

The other security system in Schengen is Visa Information System (VIS). It was created to share the visa data and information among the member states. As one of Schengen instrument, VIS is established by all the member states of Schengen Agreement. VIS processes all the data that came and analyzes the purpose of an individual identity and the purpose to travel with the biometric system it uses, which is using fingerprints to identify and verify the information. VIS makes it faster and more accurate as well as more secure checking.

By the biometric system, VIS also can help the travelers from identity theft, help the asylum seekers to seek which country within the member states that they

can reside and not only that VIS also helps to enhance the security from terrorism threat since it can detect, prevent and investigate terrors threats (Visa Information System (VIS), 2015 ).

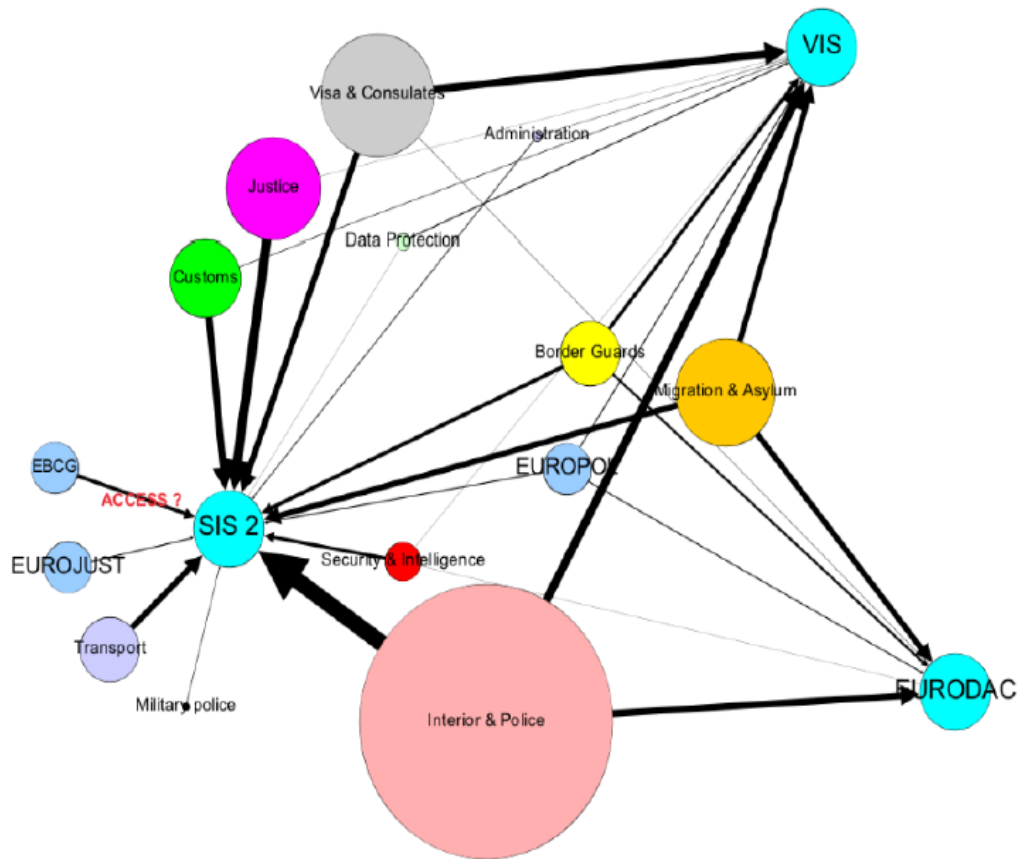


Figure 3 EU agencies in the database network

The graph was distinguished nine different categories of end-users, the categories were based on the list of the authorities who has accessed to the three databases. The categories are: Data protection authorities, Justice (courts, judges, prosecutors), Military Police, General administration, Police and Interior, Asylum and Migration Services, Transport, Security and Intelligent, Visa and Consulates.

In the three clusters on the network on the left, there are three institutions

that only connected to SIS II. They are Transport, Military police and Eurojust. The other cluster is consisted of customs and judicial authorities who have both access to VIS as well as SIS II. For the third cluster, which is dominated by police and ministries of interiors who have access to all three databases which is VIS, SIS II and Eurodac. Security and Intelligent also has the access to all the databases. Migration and Asylum department as well as border guards also have the same position as they have equal access to the three databases. The inter-relations data system was created to deal with criminals and violence practices that happened in the Schengen area zone.