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## **Accession to the Schengen Area – a Further Delay for Romania**

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**Abstract:** In this paper we make a complex presentation of Schengen area means in the European area and we will establish exactly the steps that Romania has to take in its attempt to join this area. Important for us is to argue, with specific examples, why Romania, in the European integration process, has failed to join this space. We shall proceed in showing the paths, according to some experts, towards the accomplishment of this objective. In the first of the paper, we have presented a history about the Schengen Area, which is the Romania's stage in the process of accession and the main reactions of European officials and Romanian politicians on postponing the accession to the Schengen area. We addressed this issue through the method of observation on the Romania's path in its attempt to join the Schengen area, focusing on the reactions of certain political figures and representatives of EU member countries and from our country towards this issue. The result of our observations has a direct impact to the university community, on the way of perceiving the main reasons for which Romania is postponed the accession to the Schengen Area. Our work is well documented and contains the latest reactions of political analysts and European and Romanian politicians in relation to the chosen theme.

**Keywords:** freedom of movement; free borders; integration; verification mechanism

### **1. Introduction**

In the early 80s, it started at European level, a discussion about the importance of the freedom term. In 1984, former German Chancellor Helmut Kohl met President of France, François Mitterrand, at the border crossing "Goldene Brenn" near Saarbrücken. Here they decided to eliminate border controls between Germany and France. None of them had any idea the visionary meaning will have for the future this gesture for a Europe without internal borders without border controls between states. Their vision has resulted in a first phase agreement between Germany, France, the Netherlands, Belgium and Luxembourg, signed in 1985 on ship the "Astrid" on the Mosel River, near the small border towns of Schengen in Luxembourg.

It followed the signing of the Implementing Convention of the Schengen Agreement, on June 19, 1990. In moment of its coming into force in 1995, it has eliminated internal border controls of the signatory states and created a single external border where controls are carried out according to a strict set of rules.

They also established common rules on visas, migration, asylum, and measures relating to police, judicial, and customs cooperation. All these measures, together with the Schengen Agreement, the Convention of implementing the Schengen Agreement, the decisions and declarations adopted by the Schengen Executive Committee established in 1990 and the accession protocols and agreements that followed represent the Schengen acquis. Initially, the Schengen acquis was not part of the Community legislation framework.

This changed however with the Treaty of Amsterdam, on October 2, 1997, entered into force on May 1, 1999. A protocol attached to the Treaty of Amsterdam incorporated the Schengen acquis in the EU

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legislative and institutional framework. From this moment, the Schengen acquis<sup>1</sup> is part of Community law and it was transferred to the new Title IV-Visas, asylum, immigration and other policies related to free movement of persons, of TEU.<sup>2</sup>

## **2. What is Schengen Agreement?**

In the early 80s, it started at European level, a discussion about the importance of the term freedom of movement. After long discussions, France, Luxembourg, Germany, Belgium and the Netherlands decided to create an area without internal frontiers. The agreement between these countries was signed on June 14, 1985, in the village Schengen, in Luxembourg. It followed the signing of the Convention of Implementing the Schengen Agreement, on June 19, 1990. In the coming into force in 1995, there were eliminated the internal border controls of the signatory states and it was created a single external border where the controls are carried out according to a strict set of rules. They also established common rules on visas, migration, asylum, and measures relating to police, judicial and customs cooperation.

Among the most important measures adopted by the Schengen States there were:

- elimination of internal border controls and establishing a set of rules for crossing external borders;
- separation of passenger flows in ports and airports;
- harmonization of rules concerning the conditions for granting visas;
- establishing rules for asylum seekers;
- introduction of rules on the surveillance and cross-border pursuit for police forces in the Schengen states;
- strengthening judicial cooperation through a faster extradition system and implementation of court decisions;
- create Schengen Information System.

Initially, the Schengen Agreement and the Implementing Convention were not part of the Community legislation framework. This changed however with the Treaty of Amsterdam, on October 2, 1997, entered into force on May 1, 1999. A protocol attached to the Treaty of Amsterdam incorporated the Schengen acquis in the EU legislative and institutional framework. From this moment, the Schengen acquis is part of Community law and it was transferred to the new Title IV-Visas, asylum, immigration and other policies related to free movement of persons.

Also, as evolution of institutional order, according to the Amsterdam Treaty, the Council took the place of Schengen Executive Committee, established by the Schengen Agreement and as of May 1, 1999, the Schengen Secretariat was built within the General Secretariat of the Council. Also, new working groups were created in order to assist the Council in its activities.

*Accession to Schengen Area means the adherence to a place where the internal border controls between Member States were eliminated. This is the big difference between Schengen state statute and the European Union member state, in terms of internal border controls.*<sup>3</sup>

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<sup>1</sup> One of the most important tasks of the Council in incorporating the Schengen Area was to choose those provisions and measures taken by signatory states that constituted a genuine acquis, i.e. a body of laws, and could provide a basis for future cooperation. According to Decisions 1999/435/EC and 1999/436/EC of 20 May 1999 it was adopted a list of elements making up the acquis, setting the appropriate legal basis according to each treaties (Ec Treaty or the Treaty on European Union). Most of these papers were published in the Official Journal. Since then, the Schengen legislation continued to be developed. For example, some articles of the Schengen Convention were replaced by new EU legislative documents (e.g. Schengen Borders Code),

[http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/133020\\_ro.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133020_ro.htm)

<sup>2</sup> <http://www.schengen.mai.gov.ro/index01.htm>

<sup>3</sup> <http://www.schengen.mai.gov.ro/Documente/utile/infoutil/intrebari%20frecvente.pdf>

## 2.1. The Schengen Area Enlargement

The Schengen Area is an area of freedom of movement where controls at national borders of the member states have been abolished and there was created a single external border where controls are carried out according to a strict set of rules.

In the paper titled – *The Schengen exam. In the search of European public area*, Professor Bârgăoanu Alina shows that “*Europe needs a new vision, a social innovation of the sort launched by the EU's founding fathers, that of creating de facto solidarity between Member States and between their peoples. Equally, Europe needs leaders to follow that vision.*”

The Schengen accession is an obligation assumed in the Accession Treaty (Article 4 of the Protocol on the conditions and arrangements referring to the admission of Bulgaria and Romania in the European Union annexed to the Accession Treaty of Romania and Bulgaria), Romania desiring to participate in all forms of cooperation intended to deepen the European integration. Abolition of checks at internal borders of the European Union is one of the most visible and important effects of European integration.

“*Without unnecessarily increase the importance of the subject, we believe that joining the Schengen area was the first exam undergone by Romania after accession in 2007*”.

Membership adherence of the EU's Schengen Member State has an important dimension of training and technical evaluation in terms of full implementation of the Schengen's acquis provisions. The evaluation missions for Romania took place during March 2009 - December 2010 and they have involved the examination by teams of experts from Member States and EU institutions to prepare Romania to fair and full implementation of Schengen acquis, in areas related to police cooperation, data protection, visas, maritime borders, land, air, use of SIS / SIRENE systems. As the successive evaluation missions have concluded, Romania meets all criteria of the legislation governing the accession to the Schengen area and its operation.

At the meeting of Justice and Home Affairs Council on 9 June 2011, in Luxembourg, EU interior ministers welcome the successful completion of technical evaluation process of Romania and Bulgaria and decided that the formal decision on the accession of both countries to the Schengen area to be discussed at the EU Justice and Home Affairs Council in September 2011. A political message of support was delivered and the European Parliament, which gave in June 8, 2011, a majority vote in favor of Romania and Bulgaria ascension to Schengen.

Justice and Home Affairs Council of 22 September 2011 did not end with the decision on Romania's (and Bulgaria) ascension to the Schengen area because of political opposition of Netherlands and Finland. The context presented, however, the picture of support that Romania and Bulgaria benefit from, for joining the Schengen area by a large majority of Member States.

The European Council of December 9<sup>th</sup>, 2011 has reconfirmed the meeting of all conditions for a decision on Romania and Bulgaria ascension to the Schengen area and invited the Council to finalize the process. The issue of accession of Romania (and Bulgaria) to the Schengen area, in two stages (the first stage stopping the internal controls at air and sea borders and then the abolition of checks at internal land borders) was discussed at the European Council in March 2012.

*Ministry of Administration and Interns* - the institution coordinating the process of accession to the Schengen area.

Accession to the Schengen area is the primary objective of the *Ministry of Administration and Interns* (MAI) after January 1, 2007. The preparations for achieving this purpose started, under the Ministry of Administration and Interior coordination, along with the launch of the negotiation process on Chapter 24-Justice and Home Affairs on 30 November 2001, which included activities of drafting some strategic policy documents, of institutional construction, the implementation of the provisions of Class I and monitoring the commitments. In this context, a need of utmost importance was a strong and coordinated establishment of mechanisms in order to achieve the objectives and measures for

accession to the Schengen area. *“Joining the Schengen area is considered a measure of true integration, true and deep integration in the EU”*. (Bârgăoanu, 2011, p. 175)

At MIA’s level, as the coordinating institution of the accession process to the Schengen area it was established the framework for a unified approach at all levels (legislative, institutional, financial and training) of the matter. It was also started a process of reflection on the steps that Romania would follow in order to initiate the internal process of Schengen self-evaluation process, so as to determine the current stage of preparation for accession to Schengen.

Statements on the theme of Intermediary Report on the European Commission: Cătălin Predoiu *“The European Commission Report is, overall, positive for Romania, according to two positive technical reports and a positive country report, the one from summer of 2011. Therefore, Romania continues the positive trend in the European Commission reports within the Cooperation and Verification Mechanism. Among the institutions evaluated, the Romanian government is positively appreciated. Also, along with the government, there are also appreciated the General Prosecutor, the National Anticorruption Department and National Integrity Agency. Also the Parliament received positive feedback for enacting justice. It is noted progress in the courts and the Superior Council of Magistracy, with recommendations”*.

*“The main minus noted in the report is related to **“legal system management's ability to respond appropriately to integrity and accountability issues within the system.”** More specifically, it is transmitted a message directly to the Judicial Inspection efficiency, and in this context, we would point out that the Romanian government and Parliament had anticipated and already answered to this concern by adopting the law on disciplinary responsibility of judges. We urge the authorities regarded by the recommendations, particularly the Superior Council of Magistracy, to mobilize more intensely in the future and take appropriate action. Specifically, we need to strictly apply the law on the magistrates’ disciplinary responsibility. Therefore we welcome this report and receive it with openness and maturity.”*<sup>1</sup>

*“During summer we will have an assessment of five years implementation of the Cooperation and Verification Mechanism. This evaluation should prove the irreversibility of reforms. Therefore, **we must continue this trend and demonstrate a very wide political support for reforms, because the irreversibility stands for the continuity of political support for justice and**, as we are in an election year, it is obvious to put more acutely this problem of continuity and irreversibility – at the level of principle. In particular, we think that it is the case that at the level of Superior Council of Magistracy to overcome a previous logic of limited cooperation between groups of ideas, guidance, within the Superior Council of Magistracy and to pass on a logic of total cooperation between these groups in order to push forward the agenda of the Superior Council of Magistrates”*

The Justice Minister Cătălin Predoiu, was satisfied with the European Commission report and declared that from now on the Superior Council of Magistracy should prove its effectiveness. *“The main message that we should convey, in view of the report, is that it is on positive balance for Romania”*, said the Predoiu Minister. The official indicated that between the appreciated institutions positively assessed in the report are the Government, the General Prosecutor, DNA, ANI, and the Parliament. *“Now the weight of reform process was transferred on the shoulders of SCM and on the judiciary system in general,”* Predoiu said.

Liberal MEP Norica Nicolai claims that the EC report does not make an absolutely accurate analysis of the situation of justice in Romania. *“I look forward for an effective justice, a professionally managed one, with evidence to be reviewed, analyzed and evaluated by the courts and then we can talk about a serious report on the state of justice in Romania, and MCV,”* declared Norica Nicolai.

Social Democrat MEP Victor Boștinăru believes that the EC report's conclusions there are partial and they do not explain why the quality of justice in Romania has not improved. *“If it were truly objective,*

<sup>1</sup>[http://www.gov.ro/catalin-predoiu-romania-continua-trendul-pozitiv-in-rapoartele-comisiei-europene-in-cadrul-mecanismului-de-cooperare-si-verificare-alaturi-de\\_\\_11a115898.html](http://www.gov.ro/catalin-predoiu-romania-continua-trendul-pozitiv-in-rapoartele-comisiei-europene-in-cadrul-mecanismului-de-cooperare-si-verificare-alaturi-de__11a115898.html)

*the European Commission should have noted that enormous political pressure, starting even from the president, to the justice there were brought dysfunctions including at the SCM level or other structures,”* said Boștinaru for Agerpres.

### 3. Romania Awaits for Schengen

Schengen Area is the free circulation without customs control within the EU countries. Currently, all EU countries are part of the Schengen area, except Romania and Bulgaria. Netherlands opposed the entry of the two countries in the EU's border-free area, arguing that this step would make the area vulnerable because of the corruption and organized crime. By joining Schengen Area, Romania will become a border country of this area, and it required to ensure a tight control of external borders. In the paper entitled - *Schengen Exam. In search of European public sphere* of Professor Bârgăoanu Alina<sup>1</sup> shows that “*Europe needs a new vision, a social innovation of the sort launched by the EU's founding fathers, that is to create de facto solidarity between Member States and between their peoples. Equally, European leaders need to follow that vision.*”

The new report by the European Commission (EC) on combating corruption in Bucharest has not satisfied Netherlands, which is opposing to the accession to Schengen Area. Netherlands has linked the Romania's accession to the Schengen area to the free movement of monitoring reports, although the EC spokesman Mark Gray said that there is no connection between them.

Dutch Minister of European Affairs, Ben Knapen, told RFI: “*The progress is visible in both countries (Romania and Bulgaria), especially in Romania. It is a step forward, but it has to be done more*”. Dutch official noted that before taking a decision in favor of accession to the Schengen area, the country expects two consecutive reports of EC that would note progress in justice domain in Bucharest. EC report in February in the Cooperation and Verification Mechanism in Justice (CVM) has noticed a major improvement of the situation in combating corruption, but also a series of delays. The next EC report is expected in July.

The National Integrity Agency (NIA) and Anticorruption Directorate (DNA) in Romania continue to advance in some important cases, including to a significant number of well-known politicians and officials, the EC report reveals. The document also mentioned in the conclusions that it was developed a comprehensive national anti-corruption strategy. Meanwhile, in the report, the Commission notes that several times the sentences in high-level corruption are minimum required by law, and in 60 % of cases they are suspended. A recent series of criminal investigations in which there were involved in senior judges raised doubts about the determination and capacity of Superior Council of Magistrates to ensure the integrity and accountability, according to the EC report.

As for Bulgaria, the European Commission Report peeved the Bulgarian Prime Minister, Boyko Borisov, who has accused the opposition politicians and NGOs that transmit their critics in Brussels. The European Commission recommends Bulgaria's several efforts to reform the judiciary system and fight more efficiently against corruption and organized crime. The penalties imposed for cases of high level corruption and fraud of EU funds are not sufficient and it did not lead to convincing results to prevent these phenomena, according to the EC report on combating corruption in Bulgaria.

Bulgaria is likely to remain the only EU country subject to humiliating monitoring from Brussels on justice and home affairs, wrote Wednesday the Sophia's newspaper “*Sega*”. In the report on Bulgaria it is stated that the developments in recent months in this country shows the need for bolder action to implement the Commission's recommendations in a number of areas. The Commission also recommends that the law on illegal asset forfeiture, which is currently discussed in parliament, have a range as wide and is supported by strong institutions, so as to effectively prevent the high-level corruption.

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### **3.1 Reactions of European Political Leaders on Romania Joining the Schengen Area**

Romania and Bulgaria should receive a decision on the accession to the Schengen area in September this year, the EU leaders decided late Thursday at a summit in Brussels. Netherlands agreed to give a horizon of expectation about the two countries in the space without borders, that being its only concession.

According to the draft final statement, obtained by AFP, because of Netherlands opposition, an adherence cannot be considered at this time and it is anticipated a decision on this matter to be made: *“in September 2012”*. From now on, Europe will help Bucharest and Sofia to identify the measures that must be adopted in order to allow their membership at that time, as specified in the document.

The two countries were expecting a negative answer within the Thursday's summit because of opposition from the Dutch, who appreciated that they have not progressed enough to secure the borders and to fight against corruption. But Romania and Bulgaria hoped to gain at least a guarantee of the approval of accession to the Schengen area this summer. Ultimately, the decision was postponed until September.

*“We believe that Bulgaria and Romania have not done what it was necessary. They have registered progress, but not enough to meet the Schengen criteria,”* said at Brussels the Dutch Prime Minister Mark Rutte.

*“With all the problems that we have today with the borders of Greece, it is the question of knowing if Bulgaria and Romania may apply in useful time on the field the prior conditions of the Schengen's criteria,”* Rutte insisted.

European Commission President Jose Barroso said on the same topic that Romania and Bulgaria ascension to Schengen is a matter of “objectivity” and “trust”. *“It is time for all remaining obstacles to be removed. And as soon as possible,”* said Barroso.

The negotiations on the unblocking situation on Schengen were held before the summit between President Traian Basescu, Prime Minister of Bulgaria, Boris Borisov, Dutch Prime Minister Mark Rutte, assisted by the Chairman of the Council, Herman Van Rompuy and Prime Minister Helle Thorning Schmidt representative of the Danish EU Presidency.

*“It is a strong political will to solve the Schengen issue”*, said the Chairman of the Council.<sup>1</sup> Netherlands is not yet ready, under any circumstances, to accept the accession of Romania and Bulgaria to Schengen. We have to await.<sup>2</sup>

Following a discussion with the European Parliament Martin Schulz, the Dutch Prime Minister Mark Rutte said that Romania and Bulgaria have not yet made enough progress to get the Netherlands' support on joining in Schengen Area. *“We are against the accession of Romania and Bulgaria to Schengen Area. We want absolute guarantees that the Schengen criteria are applied in the two countries. We need positive reports in the MCV (Cooperation and Verification Mechanism - No), confirming that the two countries do whatever is necessary (...). There is a progress, but just not enough”*, said Rutte, according to reality.

This statement comes from the Dutch Premier although Schulz sustained further that the adherence of the two countries, stressing that they have fulfilled the necessary conditions and it is no longer needed other criteria to be imposed.

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<sup>1</sup> <http://www.revista22.ro/articol.php?id=13637>

<sup>2</sup> <http://www.9am.ro/stiri-revista-presei/International/224127/premierul-olandez-suntem-impotriva-aderarii-romaniei-la-schengen.html>

### 3.2 What do Political Analysts Say?

Political analyst Cristian Parvulescu said that delaying the decision until the fall of Romania's accession to the Schengen area was “*completely predictable*”. According to Parvulescu, not only the Netherlands is “reluctant” towards Romania and Bulgaria joining the Schengen area, but other countries as well that “*they were not as open as the Netherlands*”.

“It was absolutely predictable the making of such decision as long as Netherlands found, based on the criteria which it assumed, that there were registered no improvements of Romania and Bulgaria. The Romania’s progress has certainly existed, but it seems that Netherlands was not convinced and expected more than that. (...) Although the Netherlands is the spearheading, I personally believe that other states were not so openly expressed, they are rather wary towards Romania and Bulgaria’s ascension. There is a reaction of adversity towards Eastern countries, a disbelief in the ability of these countries to assume European values”, said the political analyst.

He added that the Netherlands is entitled to block Romania's accession to Schengen, because “*nobody can deny the right of a State, which is provided in the Treaties, to block the accession of another state to the Schengen Area.*” Cristian Parvulescu said that, in his opinion, until now, “*Romania failed to approach Netherlands in a convincing manner*”, adding that the authorities in Bucharest, together with relevant parties including the opposition, should think about mechanisms that would ensure Romania's credibility on medium and long term.

The opposition may and should be involved in the process of accession to Schengen. “*I hope in the fall to find a wise solution, in the interest of all. (...) There can be found mechanisms. It must be negotiated and found a solution acceptable to the Dutch government. We do not have many chances. In vain we rely on the support of most Schengen states, if the Netherlands is not convinced. The situation is not very different from Finland. Romania has to come, beyond the examples you give now to fight corruption, with a mechanism that would that would raise the credibility of Romania on medium and long term. (...) The involvement of opposition, from this point of view, would not be a bad idea. I refer to a common support of the policies that give coherence on medium and long term, it could be an argument for the Dutch government*”, said the political analyst.

Asked if in his opinion, is it possible collaboration between government parties and opposition ones for the accession to Schengen, Cristian Parvulescu replied that “*as long as no one tries, we are unaware that being possible or not*”. “*I believe that the national interests are above party interests or alliances and that we can try. In fact, it is a current political practice. So far no one has thought of such formula. I started from what the Westerns asked to Greece - all major parties to undertake reforms and to give continuity. I believe such solution could be convincing in the case of Romania. (...) If possible, together with the opposition, if something can be done, why not? I know that the opposition has declared in favor of Schengen-related policies, criticizing the Netherlands. Maybe it's time for the Power, together with the opposition, to make a collaboration exercise from this point of view.*”<sup>1</sup> he concluded.

## 4. Conclusion

In conclusion, we agree with the idea that Romania was not yet received the Schengen area primarily because of politicians from Bucharest. All the given motivations over power and opposition have no value in the face of the visible reality: Romania has no political maturity to prepare thoroughly for such difficult exam as joining the Schengen Area.

<sup>1</sup><http://www.ziare.com/politica/schengen/cristian-parvulescu-amanarea-deciziei-privind-aderarea-romaniei-la-schengen-previzibila-1154829>.

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