



Sinking or Surviving in EU’s Shifting Sands?

The Refusal to Enlarge Schengen is a Function and a Symptom of EU’s Changing Nature

Marin Lessenski

- ***The opposition to enlarging Schengen is part of the list of stalled large-scale projects that come to define the EU and keep it moving. The EU is reconfiguring as certain states are trying to keep to themselves and their peers and to isolate from members they consider problematic in some aspect – to their financial stability (in the Eurozone) or their security (in the Schengen).***
- ***The EU may be having a major problem as key states do not respect the rules they have written themselves and even if – assumingly – they have a point, the changes should be properly and orderly debated and introduced. The current Schengen situation left the bitter taste of arbitrary decisions.***
- ***Bulgaria and Romania have to more convincingly deal with corruption and crime as their image of problematic countries leave them vulnerable to criticism, but at the same time they have to insist on the obvious fact that the existing Schengen criteria have been met and they are not fairly treated.***

Trench Warfare

Bulgaria and Romania played for either a victory (full membership) or a draw (phased-in membership) for Schengen entry in 2011, but so far they suffer defeat after defeat. The Council of the EU on September 22, 2011 failed again to grant entry of Bulgaria and Romania into Schengen due to the unwavering opposition of the Netherlands and Finland. The two countries were supposed to enter on March 31, 2011 but their membership was delayed by obstructions by a number of EU member states with the promise to reopen the question again in the autumn.

The failure to reach a decision created an impasse as the candidates have met all the necessary criteria, but they are still denied entry. The two Schengen candidates and their opponents have taken to the trenches bombarding each other with arguments and counterarguments. The “peace” mediator (and their advocate as it turned out)– Poland in the strong role of a current EU presidency – is strongly frustrated as it hoped to score a success during its term and was working until the end for a mutually agreeable solution. Now that the positions are more or less clear, the Schengen conundrum of Bulgaria and Romania calls for new reflections and solutions.

Bulgaria and Romania in the shifting sands (rules) of the EU game

Currently, the prevailing explanations tend to focus on situational reasons that are limited in time and influence – such as the sway of a right-wing anti-immigration party on the government in The Hague. But there may be more to it than meets the eye. The unwillingness to enlarge Schengen joins the queue of the key European projects that have been stalled in recent years. Just a look at three such projects – the enlargement of the European Union, the Eurozone and now Schengen – is indicative of the crisis of vision in the EU and reluctance for bold decisions and actions.

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"Bulgaria and Romania were promised in their EU accession treaty that they will be admitted to Schengen when they meet the technical requirements. However, today these promises have been broken," Polish Interior Minister Jerzy Miller

However, this is not simply a matter of certain countries desiring to keep the status quo in uncertain times. There are actually demands by such states to *de facto* challenge the current state of affairs and rules in the EU. For example, not only Eurozone members rule out enlargement in the mid-term, but they are proposals to oust current members from the club. It is the same with the Schengen – not only are current members resisting the acceptance of new members but are also working out new rules that would effectively suspend the Schengen membership of states, which are considered threat to others – and extend the rights of members to isolate themselves from the rest. The economic crises catalyze the problems and expose the rifts more visibly than before. In practice, we may be witnessing a process of reconfiguration of the European Union, where certain states prefer to entrench themselves within the company they prefer and isolate from the rest.

The problem with ex-ante reasoning: the bad and the good news from the September 22 Council

The bad news from September 22 Council is that Bulgaria and Romania neither get the desired full membership neither the compromise option of phased-in entry – opening the airport checkpoints and then the land and seaport ones. The good news is that first, they now know what is the main reason offered for the denied entry and second, that the group opposing their entry has dwindled, with heavyweights such as Germany and France already supporting the compromise solution.

There is a paradox in the fact that the Bulgaria and Romania did not actually know why they were denied entry in March 2011, despite that the European Commission, the European Parliament and the Schengen members admitted they have met all the required Schengen criteria. The explanations offered at the time ranged from the West European apprehension of uncontrolled immigration from the South Mediterranean, the inability of current members to cope with these challenges and to the necessity to reform Schengen first to make it fit for the these challenges.

The explanations about the influence of growingly influential anti-immigration parties or the lack of trust in the reliability of Bulgaria and Romania to protect the common borders were also there, but were not that pronounced. Now, after the September Council, the message from those opposing entry is loud and clear – according to them Bulgaria and Romania have outstanding problems with their law enforcement, rule of law, crime and corruption to the extent that this makes them unfit to protect the Schengen borders.

On their part, the “defendants” of Bulgaria and Romania have every right to be frustrated (and feel humiliated) as they were offered ex-ante argumentation for denying them entry in the EU. I.e. the principled reasons and the “trust” the Dutch and Finnish governments are talking about were not part of the Schengen membership criteria. They should have demanded changes to the criteria before Bulgaria and Romania were required to sign to the obligation to join Schengen. Otherwise the very foundations of functioning of the EU on the basis of previously agreed rules is turned on its head and the door to arbitrary decisions and behavior is left wide open.

Tactical maneuvering: what can be done in the short and mid-term?

The “propaganda war” has so far also been won by those opposing membership, as nearly everyone is left with the impression that Bulgaria and Romania have met the “technical” criteria but failed in meeting the “political” ones. The main argument of opponents is also gaining ground – they basically say that Bulgaria and Romania have fundamental problems that the current rules have not provided for and that their membership might “contaminate” Schengen if they fail to meet their obligations as members.

"Imagine you have a door with eight of the best locks of the world. But before that door is standing someone who lets everybody in, then you have a problem,"
 Dutch Immigration Minister Gerd Leers

Inevitably, the comparison with the Eurozone comes to mind – and was indeed used as illustration - where several member states with problems challenge to bring down with them the rest of the members and even the EU itself. But the very same case may offer vindication for Bulgaria and Romania. Shortly after the beginning of the economic crisis in 2008, the media and the analyses pointed to CEE members of the EU as the Europe's – even the global – danger zone. In 2011, the majority of CEE members of the EU are the paragons of financial discipline, while their Western European counterparts are struggling. I.e. the CEE proved better in keeping to the rules the Western Europeans have devised for themselves.

Europe is really changing and is just trying to define the new rules of its functioning, e.g. with the upcoming changes in economic governance or the Schengen arrangements. But the same time, Bulgaria and Romania have a problem at hand and has to find a solution to it. Here are some of the considerations:

- The first precondition is to remove the linkage in the public and political perceptions between Schengen membership and their general problems with crime and corruption. So far they are no feasible, definitive indicators to measure the progress in these areas and leaving this question open means that any decisions will be subjective and arbitrary.
- The Netherlands and Finland may have actually done a favor to Bulgaria and Romania, as they have now in the position of "breaking a promise" of the EU and Bulgaria and Romania can build their case and gather support by other member states on this fact.
- Bulgaria and Romania should use the remaining term of Poland heading up the presidency as it is their strong advocate. The next presidencies starting in 2012 – of Denmark and Cyprus – would not be so eager in advocating for Bulgaria and Romania such as the Hungarian and especially the Polish ones did in 2011. The two Schengen candidates should look for a "diplomatic" solution, including in the realm of public diplomacy, to make a convincing case they will be reliable members of Schengen.
- Putting the blame solely on relatively minor right-wing, anti-immigration party in the Netherlands would be understatement of the complexity of the situation. Moreover, the Netherlands have often been quite strict in its stances (think of Serbia's EU bid and the war crime cooperation) and it is joined by Finland; there are commentaries that the two states actually acting as front men for the critics of Bulgaria and Romania;
- It may be in Bulgaria and Romania's interest to have the reform of the Schengen arrangements as soon as possible. These changes are subject of dispute between the Commission on one hand and several member states on the other hand. But if adopted, they will include more rights for the member states to control their borders – e.g. in re-imposing border checks or suspending membership of underperforming countries. Thus, Schengen members may claim they have compensatory measures and leverage over unexpected, negative developments and sooth public opinion and political opposition. Obstructing the reform as a leverage (as suggested by Bulgaria's first reaction) may unnecessarily antagonize countries such as France, Spain and Italy.

Finally, Bulgaria and Romania are getting the hard way a lesson in EU survival – and it is up to them to sink or adapt to the changing nature of the EU.



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The European Policy Initiative (EuPI) aims at stimulating and assisting new Member States from CEE to develop capacity for constructive co-authorship of common European policies at both government and civil society level. As a new priority area of the European Policies and Civic Participation Program of Open Society Institute – Sofia, EuPI will contribute to improving the capacity of new Member States to effectively impact common European policies through quality research, policy recommendations, networking and advocacy. The initiative operates in the ten new Member States from CEE through a network of experts and policy institutes.

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