



European
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Initiative

Open Society Institute – Sofia

Perspectives for the Schengen Membership of Bulgaria and Romania: Between the Implementation of Criteria and the Changes in the European and International Context

Synthesis report

This is a synthesis report on the conference findings with a commentary on the international conference “Perspectives for the Schengen Membership of Bulgaria and Romania: Between the Implementation of Criteria and the Changes in the European and International Context”, organized by the European Policies Initiative of the Open Society Institute – Sofia on 14 June 2011, Sofia.

There are additional conference and project materials available at www.eupi.eu, including program and presentations.

Main findings

- The European institutions confirmed that Bulgaria and Romania have covered the Schengen criteria but they did not receive a date for accession due to objections by current Schengen members;
- These objections vary: (a) from the inconclusive results in fighting corruption and organized crime in the two countries that may jeopardize the security of the whole Schengen area, (b) to external factors as increased migration pressure on Europe and (c) internal ones, referring to domestic public and political concerns;
- Bulgaria and Romania have few options left and they rely on convincing their counterparts that they take securing the external borders very seriously and have been working hard on additional compensatory measures to thwart potential risks;

- Bulgaria and Romania also hope that the upcoming monitoring report in July 2011 on fighting corruption and organized crime (within the Cooperation and Verification Mechanism - CVM) will dispel fears that Bulgaria and Romania are themselves threats to security in the EU; Despite that Schengen accession and CVM procedures are not connected, the skeptics have made clear that CVM reports would tip the balance in taking decision on Schengen entry;
- The optimistic expectations are that in September 2011 the Council will provide a date for Bulgaria and Romania, but it may not to happen due to the tough opposition by many influential Schengen members;
- There may be a compromise solution of a phased entry of Bulgaria and Romania into Schengen, i.e. opening the airport check points first and after that the land borders.

The conference goal: beyond the Schengen criteria and what next for Bulgaria and Romania

The agenda and the format of the conference was a response to the lack of clarity about the accession of Bulgaria and Romania to Schengen, even after the two countries met the announced technical criteria for membership.

There are changes in the thinking and policy planning in the EU following the critical transformations in its southern neighborhood. The already existing apprehension of illegal migration has been further complicated by the risks of growing migration waves from North Africa to the states of Southern Europe. This even caused tensions among member states, with consequent discussions of possible changes in the Schengen agreement. The continuing destabilization of the North Africa region and the Middle East, especially the crisis in Syria that is closer to the borders of Bulgaria and its neighbors of Greece and Turkey, is infusing more uncertainty about the future of Schengen enlargement and its arrangements.

At this background, the conference goal was to discuss the issue of Schengen beyond the immediate technical membership criteria to include the broader context of the EU and its neighboring regions.

The conference took place on June 14, 2011, after the important debates on Schengen at the European Parliament and the Council on JHA on June 9-10, 2011.

The conference speakers included the interior ministers of Bulgaria and Romania, the deputy interior ministers of the two countries, representatives of OSI-Sofia, which organized the event, and the Romanian Center for European Policies, representative of Europol, the ambassadors of neighboring Greece and Turkey, of key Schengen member states and the Hungarian presidency of the EU.

The civil society role: independent assessment, informing the public and urging reforms

The conference is part of project of the European Policies Initiative of the Open Society Institute – Sofia and its partner the Romanian Center for European Policies to monitor the progress of Bulgaria and Romania in implementing the Schengen criteria. The partners released a series of monitoring reports and initiated public discussions in the months prior the initial date of entry into Schengen (these reports are available on the webs-site of EuPI at www.eupi.eu in the Publications section). The efforts also proved instrumental in increasing considerably the knowledge of the public on the issue as well as contributing to the government planning and implementation process. As a case in point, an OSI-Sofia public opinion poll in March 2010 registered that over 50% of citizens had incorrect idea of Schengen membership, with 23,8% of respondents wrongly stated that Bulgaria was already member of Schengen and some 36% said the expected year of entry is 2012. In comparison, a February 2011 poll found out a much more informed public opinion with about half of the respondent - 55% - saying correctly that Bulgaria is not a member of Schengen and 32% saying that the expected year of entry is 2011. Moreover, the 2011 poll registered that 43% of the respondents said the issue of Schengen is personally important for them.

A note on “the technical criteria” for Schengen: actually there is no such a thing

The increasing usage of “technical criteria” for Schengen creates the impression that somehow there are two sets of criteria for Schengen membership. Actually, there is only one set of criteria, agreed upon at the time of Bulgaria and Romania bid for accession in 2006. As a number of Schengen members raised objections to the entry of Bulgaria and Romania, many of which referred to problems outside of the reach of the existing framework, the proper criteria for membership have increasingly been dubbed “technical” to distinguish them from the often vague array of arguments to deny entry in March 2011.

Hence, saying that Bulgaria and Romania have covered the Schengen criteria and that they have covered the “technical criteria” is basically one and the same thing. The other – “non-technical criteria” never materialized even as an unofficial list and range from fears that crime and corruption in Bulgaria and Romania will make the whole Schengen space vulnerable, the fears of uncontrolled migration pressure from the North Africa and the Middle East, and least, but not last, the political context in the current EU members with public apprehensive of more immigration and populist parties exploiting these sentiments.

Left in a limbo: the decisions of the European institutions

Schengen accession in March 2011 was the desired goal of Bulgaria and Romania, but the date slipped by because of objections by a number of current members of the Schengen agreement.

The conference was organized after two important decisions of European institutions on Schengen – the vote of the European Parliament on June 4, 2011 and the Council of Ministers on Justice and Home Affairs on June 9-10, 2011. Both institutions confirmed basically the same conclusion – that Bulgaria and Romania have met the Schengen criteria.

But the Council, which is entitled to take final decision as membership requires unanimous vote of all EU members of the Schengen agreement, did not provide a date for accession, limiting itself only to stating “that “the Schengen evaluation process for Bulgaria and Romania has been finalized and that the Council will return to the issue as soon as possible, but no later than September 2011.”

In short, the European institutions admit that Bulgaria and Romania have covered the Schengen criteria but there is no date set for accession. But the council meeting, due to serious doubts of opponents of Schengen enlargement now, failed to bring any clarity how Bulgaria and Romania can overcome the objections of current Schengen members and ensure entry.

Hence, one of the goals of the conference is to try shedding a light on the critics to Bulgaria and Romania so that they don't have to second guess what they have to do to counter the objections.

Which countries are opposing Schengen enlargement now

The opposition to Schengen membership of Bulgaria and Romania now is not widespread among members of the agreement – actually the majority of them are supportive of Bulgaria and Romania. But the small group of opponents is very influential and authoritative – with France, Germany, the Netherlands, Finland (and at least Austria, Denmark, Belgium, Norway can be added too) – having very tough and uncompromising stance. As the decision for Bulgaria and Romania's entry into Schengen should be unanimous, the two countries cannot even think of “out-voting” the group of opponents.

Bulgaria and Romania try to prove they are not a risk

Bulgaria and Romania seem to be frustrated as their efforts in covering the Schengen criteria were recognized, yet there is no clarity what comes next. They do not have any options left and what they are trying now is to convince the countries opposing their entry that they are performing well in three key areas:

- First, that they are reliable partners in protecting the external borders of the EU by adhering to all current Schengen requirements and procedures;
- Second, that they are putting in place additional compensatory measures as extra guarantees;
- Third, that they are also performing well under the so-called Cooperation and Verification Mechanism in fighting organized crime, corruption and reform of judiciary, which was informally linked to the Schengen accession process;

Bulgaria and Romania's actions along the "technical criteria"

Bulgaria and Romania are quite diligent in their efforts to prove that they are capable of protecting the external European borders. Their official representatives presented a series of measures, constituting the integrated border management system that is required by Schengen. This includes protection of the land, maritime (Black Sea and the Danube River) borders and airports and cooperation of border police with other national institutions in emergency situations, the contingency planning for migration flows, training of personal. The two countries did not spare resources and acquired the latest technology as well as based their procedures on the best practices in Europe.

Schengen requirement and compensatory measures

Even at the conception of Schengen it was clear that the enhanced benefits, e.g. of freer travel, will also bring along security risks – in the form of increased opportunities for organized crime and illegal migration. That is why several so-called compensatory mechanisms were integrated into Schengen in order to minimize the risks such as the Schengen Information System that tracks down persons that are unwanted in the Schengen area.

Bulgaria and Romania are working hard to prove that they can make full use of these compensatory measures and even set additional guarantees.

Regional cooperation: national efforts and fences do not suffice

With the entry of Bulgaria and Romania, the Schengen area will be geographically completed as now Greece is "an island" separated from the rest of the Schengen members. But as Greece, Bulgaria and Romania are situated at the external borders of the European Union, national efforts would be futile without robust regional cooperation.

Bulgaria and Romania from the very onset started together their preparations for Schengen through common plans, so the cooperation will continue to be inherent part of their border protection, when they eventually become members of Schengen.

Regional cooperation is on bilateral basis – e.g. between Bulgaria and Romania, Bulgaria and Greece or trilateral, e.g. Bulgaria, Greece and Romania.

Bulgaria is cooperating closely not only with Romania, but also with Greece and Turkey, which borders are considered problematic in terms of migration pressure. Bulgaria has specific proposals offered to the Turkish side such as joint border patrols, permission for Bulgarian border helicopters to enter Turkish airspace, trilateral cooperation with Greece, including a joint coordination center on Bulgarian territory, etc. (these proposals are pending official approval). These are actually part of the compensatory measures to assure the wary and skeptic Schengen members. Bulgaria is also working with countries such as Hungary or Germany in enhancing maritime or land borders.

Romania, besides cooperation with Bulgaria, is working with Ukraine, Moldova and of course, Schengen member Hungary to enhance border management cooperation. The country reports no bilateral issues and previous reports on political problems with neighbors (e.g. the alleged border demarcation dispute with Moldova) have proved non-existent.

Turkey and Greece's borders as an issue for Bulgaria and Romania

The delays in Bulgaria and Romania's entry have also often been attributed to the fact that they are close (with Bulgaria being immediate neighbor to Greece and Turkey) Greece, an EU and Schengen member states have vast maritime border and is a major goal of illegal immigration. The country is under considerable pressure, receiving about 130,000 illegal immigrants a year.

Greece, also shares a land border with Turkey and reportedly the Turkish border causes most concerns in the EU as it is on the main land route of immigrants as far as China, Bangladesh and of course Afghanistan, the Middle East, North Africa, etc. After the Greek authorities managed to limit considerably the maritime trafficking routes (including with the Poseidon operation with Frontex), the land border with Greece became the preferred option for migrants. This brought about the controversially perceived decision of Greece to build a 10,5 km wall along the Evros (Maritsa) River as an attempt to stop the flows.

Turkey at the same time has been stopping hundreds of thousands of illegal immigrants to the EU. The country is also developing an integrated border management similar to that of the Schengen countries.

Procedural hurdles: the readmission agreement with Turkey still pending

But there is still the issue of the readmission agreement between the EU and Turkey, which was signed, but not ratified by the Turkish side. It is expected that the issue will be raised again after the June 2011 parliamentary elections in Turkey.

Bulgaria and Romania could only benefit from such an agreement. The lack of such agreement so far caused concerns that Turkey would not be motivated to safeguard the borders with the Union and its neighbors from Schengen will be overburdened if there is a migration pressure. In short, the Schengen members would not be able to transfer back illegal immigrants to the country that failed to apprehend them. Greece has expressed frustration that despite a similar bilateral readmission agreement, Turkey is not fulfilling its obligations. But the Turkish perspective is different as it says it adheres to the obligations. Reportedly, Bulgaria does not have the same problem as with Greece (which also has maritime border), as the Bulgarian-Turkish border is a land one, thus this allows to identify very clearly if an illegal migrant has crossed from Turkey or not.

The organized crime risk: hypothetical only

Europol, in its latest report on Organized Crime Threat Assessment (OCTA) mentions, among others things, the possibility of increased organized crime activities after the entry of Bulgaria and Romania in Schengen as organized crime groups would take advantage of the freedom of movement. At the time of its publishing, this made headlines in the local press and was perceived as yet another argument against the entry of Bulgaria and Romania into Schengen. However, the coverage focused exclusively on the section on Bulgaria and Romania and did not describe the wider context, whereby the two countries are just part of one of the six hubs of increased organized criminal activities in Europe.

But reportedly, as underlined by Europol representative, the OCTA reports are analytical and are based on national reports by the member states. The identified risks are hypothetical and may or may not materialize. Furthermore, national authorities anticipate and make contingency planning on the basis of the reports and analytical scenarios.

The Arab Spring as a security risk?

The Arab Spring with the subsequent destabilization of the region sending waves of migrants to Europe has been suspected to be one of the possible reasons to deny entry of Bulgaria and Romania now. At the same time, the deteriorating situation in Syria is sending tens of thousands of refugees into Turkey, with the concerns that many of them might continue north to the European Union. While it is true that it is Southern Europe that took most of the pressure but this has not caused problems for Bulgaria (as a closer country) or Romania. But so far neither Bulgaria nor Romania are targets of the waves of refugees or migrants and as they are well aware of the concerns in that direction, they've made the respective contingency planning.

What the statistics says: Bulgaria and Romania are unlikely security risks

The numbers of apprehended illegal migrants in both Bulgaria and Romania clearly indicates that there is no extraordinary migration pressure on any of the countries. Bulgaria's statistics say that only 1186 illegal migrants were detained in 2010. Of them, 755 were apprehended at "green border", 431 at the border check points – of which 248 hidden persons and 183 with false documents. Romania's numbers for 2010 are 3785 illegal immigrants for 2010.

It is fair to say that the migration pressure now is negligible and even Schengen membership increases the attractiveness of the two countries manifold, they are not likely to face exodus of dramatic proportions.

Implementation of Schengen criteria: a view from the skeptics of Schengen enlargement

While at the end of 2010 there was criticism that Bulgaria and Romania are falling behind the implementation of the Schengen criteria, in June 2010 there is doubt that the requirements have been covered.

However, the main argument is that these Schengen requirements would remain empty shells if the two countries do not show durable, sustainable results in fighting corruption, organized crime and reform the judiciary. E.g. deficits in the overall system of law enforcement and rule of law may end up in cracks in the system of issuing visas or apprehending illegal migration, etc., by corrupt public officers and officials.

The recurring theme of "trust"

Trust - or rather the lack of it - has been often quoted to be the missing ingredient that prevents Bulgaria and Romania from entering the Schengen area. Current Schengen members do not believe Bulgaria and Romania are yet up to the challenge of protecting the common borders of Europe (see the note above). It seems that "trust" takes no only one-time check now, but it needs time to develop.

The Western partner do have a point here, as Schengen means vesting the responsibility of securing the state borders to the countries on the outer rim of the European Union where the common external borders are.

Sustainable, durable achievements

The countries opposing Bulgaria and Romania have taken note of the efforts and progress of the countries, but in order to develop trust, they need proof that there are sustainable, durable achievements to be tested over time. A year of progress (in the case of Bulgaria) seems to be insufficient for the opponents of membership for Bulgaria and Romania.

But no details were provided on how exactly “trust” would be benchmarks or how long it will take to build that trust.

The timing: there may be no preliminary date for entry critics say

Contrary to the more optimistic Bulgarian and Romanian readings of recent events, neither the July report on fighting corruption and organized crime nor the promise by the Council to return to the Schengen enlargement in September are expected to be some breakthrough points. The overall discussion, especially the Finnish position, pointed out that the Schengen members are unlikely to commit to any specific entry date for Bulgaria and Romania. They would like to avoid any pressure and overt expectations on behalf of the candidates that comes with a specific deadline. As the reference to the Finnish example implied, Bulgaria and Romania may be years away from the desired Schengen membership, e.g. as Finland entered Schengen after 6 years after the start of preparations and 3 years after it announced it is ready.

Still doubts on the existing capacity: the challenge of increased migration

There are still doubts on the existing capacity of Bulgaria and Romania by critics to manage unexpected migration pressure in a reasonable way, despite that the country has met the Schengen criteria and is working on additional compensatory measures.

But in reality, such a challenge is only hypothetical and its occurrence or magnitude cannot be predicted. Judging by the current numbers of illegal immigrants to Bulgaria and Romania, the chances of this happening are very slim.

The internal factor: domestic politics and public opinion as players

Western European members of Schengen admittedly are under pressure by public opinion, apprehensive of more immigration and especially the challenge of populist parties that exploit these sentiments. That is why, the governments are trying to take the initiative from the populists (who may demand withdrawal from the EU altogether) and soothe public concerns by preemptive actions.

The changes in the Schengen agreement: closing of borders and the debate on nationalization of policies

Another argument for delaying the entry of Bulgaria and Romania is the current revamping of the Schengen agreement. The changes have been underway following the migration flows to Italy and the spats with France, and the consequent joint motion of the two governments to initiate changes in Schengen. With Schengen itself “on the move”, it poses additional uncertainty to Bulgaria and Romania’s accession, though the changes do not concern at all the membership requirements to the two countries.

The main changes, which gathered consensus so far is strengthening of Frontex, the external borders agency of the EU as well as contingency clause, allowing for national borders to be closed in emergency situations – though with the specific limitations so that right to avoid it misuse. The changes, initiated by France and Italy, reportedly do not represent nationalization of policies but quite the opposite – an attempt to prevent nationalization of Schengen policies by more active role of the European Commission, Frontex and some sort of a governing body for Schengen, composed by the EC, Frontex and the Schengen member states.

The risk of criminals tapping into the Schengen Information System: not likely

As part of the arguments for Bulgaria and Romania's entry into Schengen was the concern that the Schengen Information System might be compromised as criminal groups receive access to the vast data base of SIS.

However, this argument does not hold as for example, Bulgaria already has access to SIS since November 2010 and the concerns did not materialize. Bulgaria uses this as a counter-argument, saying that it intercepted data of 4000 persons on the "unwanted" list for entry into Schengen, but could not take any action against them as it is not formally a member. Romania has a comparable number of using Sirene (similar electronic system within Schengen) for alerting counterparts in other Schengen member states.

Reactions to the criticism: Bulgaria and Romania's public responses

A major finding of the conference was that Bulgaria and Romania stood firmly together. They've done this since the date of application to join Schengen, in their planning and preparations. They understand very well that it is in their best interest to stick and act together, as going alone will not bring them any benefits.

However, the conference debates once again underlined the different public approaches of the two governments to the objections of Schengen member states. While Bulgaria avoids commenting to the criticism, apparently concerned that any protest would bring about even harsher criticism.

The Romanian approach is different as the Romanian government continues to voice its discontent of "an unfair treatment", insisting that the Schengen criteria for membership did not include any of the consequent requirements (however vague they may be).

Still, the countries do not have any particular winning options in the face of unflinching positions of many influential member states.

Skeptics not moved by Bulgaria and Romania's actions and pleas

The conference discussion demonstrated that the applicants for Schengen and their opponents agree basically on one thing: that someday Bulgaria and Romania will be members of Schengen, but the timing of the process is still to be clarified.

Bulgaria and Romania hope for positive change with the upcoming CVM report in July to change somehow the dominating distrust in the two countries. Then they would hope to receive a date, or some action plan containing the new requirements in September 2011.

But there is a risk that although the Schengen criteria are covered, the opponents would stick to their position that “Schengen” is much more than border protection and visa issuing. Bulgaria and Romania’s efforts to demonstrate reliability and even extra compensatory measures would not be enough. In other words, Bulgaria and Romania depend on the political discretion of the countries that oppose it.

What next: phased entry?

There is also a chance of a compromise being worked out that can partially help Bulgaria and Romania’s governments save face and the opposing governments can also claim victory as the issue will be off the agenda for a while (or years to come). The compromise solution may be in the form of a phased entry of Bulgaria and Romania into Schengen. This will include some period of monitoring the progress of fighting corruption and crime, followed by opening the airport check points first and after that (months or years) opening the land borders.



Open Society Institute – Sofia

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 priority area of the European Policies and Civic Participation Program of Open Society Institute – Sofia, EuPI contributes 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.

The views expressed herein do not necessarily reflect the position of the Open Society Institute –Sofia.

Contact

Address:

56 Solunska Str.

Sofia 1000

Tel.: (+359 2) 930 66 19

Fax: [\(+359 2\) 951 63 48](tel:+35929516348)

E-mail: eupi@osi.bg

Web: www.eupi.eu