

THE PROCESS OF ROMANIA'S ACCESSION TO THE SCHENGEN SPACE. THE SCHENGEN INFORMATION SYSTEM

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Abstract:

Schengen space requires the removal of internal border controls of the signatory states and creating a single external frontier where checks should be conducted according to clear rules. It also implies respect for common rules on visas, migration, asylum and measures relating to police cooperation, judicial and customs. Romania's geostrategic position makes our country to manage an important part of the EU's external borders, which involves special measures to ensure a high level of control and border surveillance. This paper aims to present the main coordinates of the process of Romania's accession to the Schengen space and the results of this process.

Key words: legislation Schengen evaluation process, the Schengen Information System, cooperation and verification mechanism

JEL classification: F15

I. Short history

In Europe of the '80s, the concept of the free movement of people gained a special significance. The importance of this process determined some well-known personalities of that time to make some decisions to this direction. Therefore, in 1984, the former German chancellor Helmut Kohl together with the president of France at that time, François Mitterand, decided to remove the controls at the border between France and Germany.

In the first stage their decision resulted in an agreement signed between Germany, France, the Netherlands, Belgium and Luxembourg, known as the Schengen Agreement, and concluded in 1985 on the „Astrid” ship, near the border town Schengen in Luxembourg. On 19 June 1990 **the Convention Implementing the Schengen Agreement was signed, and came into effect in 1995.** It removed the controls at the domestic borders of the signatory states and created a single external border where controls took place according to stringent rules. Common rules as regards visas, migration, asylum, as well as measures concerning police, judicial or customs cooperation were also set.

These measures, together with the Schengen Agreement, the Convention Implementing the Schengen Agreement, decisions and statements of the Schengen Executive Committee (established in 1990), protocols and accession agreements that followed, represent the **Schengen acquis.**

At the beginning, it was not part of the legislative frame of the European Union. However, at the same time with signing the Amsterdam Treaty in 1997 and its enforcement in 1999, the **Schengen acquis was included in the Community legislation.**

At present, the freedom of movement of people is ensured on the territory of 26 Member States in the Schengen Space¹: Belgium, the Netherlands, Luxembourg,

¹ <http://www.schengen.mai.gov.ro>

Germany, France, Italy, Spain, Portugal, Greece, Austria, Denmark, Sweden, Finland, Iceland, Norway, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Malta, Slovakia, Slovenia, Switzerland and Liechtenstein,

The states that are to access the Schengen space are: Cyprus, Romania, Bulgaria.

II. Effects of Romania's accession to the Schengen Space

The main effects of our country's accession to the Schengen Space are:

a) **Romania will benefit by the removal of controls at the internal borders of the Schengen Member States.** Accession to the Schengen space has as result the removal of controls at the internal borders of the Member States, a single external border being created where controls take place in line with a set of clear rules as regards visas, migration, asylum. Crossing the border can be carried out by any place and it can be compared with a trip inside the country. Thus, the time allotted to crossing an internal border will reduce significantly. However, the member states can introduce controls to the Schengen internal borders for a limited period of time from the reasons of public order or national security. The decision can be taken nationally and assumes the prior notification of the European Commission and the other Member States of the Schengen Space. In case of accession to the Schengen space, there will be international airports and internal traffic airports in Romania. Practically, all flights inside the EU become internal flights and only international airports will be capable to receive external flights outside the Community space. For the time being, only three airports have been certified as being international: Otopeni, Cluj and Sibiu;

b) **Control strengthening at national borders, surveillance capability at external borders, as well as protection capability against cross-border criminality.** The external border of the Schengen Space is in fact Romania's border. It will be the second as size in the entire Schengen space, with a length of around 2000 km. At the same time, the border security assumes compliance with some extremely stringent requirements and a suitable technical infrastructure;

c) **Improvement of professional training of personnel directly involved in this domain, and enhancement of its control abilities.** The education of personnel trained in Romania's accession process to the Schengen space took place on two coordinates: a general training that aimed to create a professional culture in the Schengen domain (appropriation of content as regards the Schengen strategic documents) and a specialty training focused on the running field of specific activity, including integration of the practice study process;

d) **Development of an efficient technico-administrative infrastructure to implement the Schengen requirements in the security domain** (suitable technical equipment and administrative structures);

e) **A better image for Romania as future member state of the Schengen space,** with positive consequences economically, socially and politically;

f) Romania, like the other member states, will benefit by a set of **balancing measures through which attenuation of the negative impact as regards removing controls at internal frontiers is aimed to.** These assume:

- A cross-border cooperation, especially by establishing common services of police, customs and border police, aiming to protect its citizens;

- Direct exchange of information between police forces, surveillance and cross-border pursuit of offenders, that represents the fight means against terrorism, organised crime, traffic with human beings and illegal immigration;

- Establishment of a European common cross-border police pursuit system, called the Schengen Information System (SIS), wherein all member states introduce

information about their own citizens directly from the national data bases. All national systems (N-SIS) are connected to the central system (C-SIS) in Strasbourg, France. Since the 1st of January 2004, the European Commission was required to cover the technical approaches of the second generation of the Schengen Information System (SIS II), in order to include information concerning the new EU member states in the central data base;

- Starting from the fact that many personal data information transfers between the member states, a set of rules has been adopted to ensure the citizens of the member states, protection of personal data against any infringement of the basic rights.

III. Stages covered by Romania in the accession process to the Schengen Space

1. Delivery by Romania of a statement of preparation concerning the start of the Schengen evaluation process. On 28 June 2007, Romania sent the Statement of Preparation through which it suggested the second half of 2008, as a date concerning the start of the evaluation process on three domains: police cooperation, visas and data protection;

2. Delivery to the General Secretariate of the Council of EU of an extended questionnaire that contains detailed questions about all relevant aspects for the implementation and application of the Schengen provisions;

3. Romania filled in the questionnaire and sent it to the Council of EU;

4. Starting of evaluation visits, delivery of further questions. This stage ended in December 2010.

5. Writing some reports that will analyze the preparation stage of each state in order to apply the Schengen acquis provisions. These reports can include recommendations for adjustment or improvement of less satisfying aspects. Further visits can be also carried out, after passing a period of time, in order to check the possible negative aspects noticed (stage that is in progress);

6. Decision of the Council of EU concerning removal of controls at internal borders.

IV. The Schengen Information System

According to the Convention Implementing the Schengen Agreement (CAAS), the signatory countries create and manage a common information system, called the Schengen Information System (SIS). It enables the competent authorities that, by means of an automatic search procedure, have access to announces concerning people and objects, for border controls and verifications.

The objective of this information system consists in keeping the public order and security, including the security of the state that implements it and application of provisions of the Convention Implementing the Schengen Agreement as regards the movement of people on the territory of Contracting Parties. Initially, the system has been designed for 15 Member States that were implementing the CAAS – SIS 1. Later, by accession of the Nordic countries (2001), the system has been extended to 18 user states – SIS 1+.

The general architecture of the information system SIS 1+ consists of :

- a central system called C.SIS (localized in France, in Strasbourg);

- its national components, called N.SIS, existing, compulsorily, in all the Schengen Member States.

The C.SIS central system ensures the fact that data files of the N.SIS national system are identical, by sending information on-line. The system enables the exchange of additional information between the Member States, by means of the national SIRENE offices (Supplementary Information Request at National Entry).

The role of SIRENE in the SIS operation is crucial. SIRENE practically represents the human interface of SIS and is the single point in the contact with the other member states. The goal of establishing SIRENE consists in the requirement of exchanging information across all the Schengen states, within the international police cooperation carried out between the Member States, according to the provisions of the Convention Implementing the Schengen Agreement.

The new technical discoveries, new needs occurred during the SIS operation, the new legal context occurred after the Amsterdam Treaty and extension of the European Union, required the development of the second SIS generation (SIS II).

The new information system enables:

- connection of a double number of users compared to the current ones;
- management of a higher data volumes;
- introduction of new data categories, industrial machinery, aircrafts, ships and ship motors, watercrafts, respectively;
- performance of a mixed search in SIS (combination of announces concerning people with those as regards objects, for instance: possible relations: person + person, person + object);
- storage and interrogation of biometric data (digital fingerprints and photographs in case of pursuing people).

In Romania, the Ministry of Administration and Internal Affairs, through the National Centre of SIS, is responsible with the implementation, operation, maintenance and security of the National Information System of Announces (SINS).

The main announces that will be introduced for a person relates to:

- people that are the purpose of some procedures of extradition or transfer based on a European warrant of arrest;
- foreign people (third parties) against whom the measure of not allowing the entrance was enacted and foreigners against whom the measure of expulsion was enacted;
- people disappeared or that, in the interest of their own safety, should be located in a safety place provisionally at the request of the competent authorities;
- people summoned to present before legal authorities;
- people that are the purpose of direct surveillance or specific control.

Romania started the process of preparation to connect to SIS in 2005, by initiating some contracts related to SIS II. This issue is due to the fact that at that time, SIS II was representing the connection solution to the future Schengen states, including the 9 EU states that accessed in May 2004.

As regards the SIS implementation in Romania, the following stages have been covered until now:

- insurance of the national legislative frame concerning establishment, organization and operation of the National Information System of Announces (SINS);
- establishment of the National Centre of SIS – national structure qualified to manage the SIS National System;
- modernization of information systems of the Ministry of Administration and Internal Affairs structures that will supply data to the National Information System of Announces (SINS).

V. Cooperation and verification mechanism

On 13 December 2006, the European Commission established a Cooperation and Verification Mechanism (MCV) of progresses achieved by Romania and Bulgaria after accession to the EU in the domain of the legal system reform and in the fight against corruption and organized crime. The objectives that our country had to meet in these fields were:

a) Insurance of a more transparent and more efficient legal procedure, especially by strengthening the capability and responsibility of the High Council of Magistracy. Reporting the effects of new civil procedure and criminal procedure codes;

b) Establishment of an integrity agency with responsibilities related to verification of wealths, incompatibilities and potential conflicts of interests, to issue tying decisions based on which appropriate sanctions can be applied;

c) Continuation of carrying out some professional and objective investigations in case of high level corruption complaints;

d) Adoption of some additional prevention actions in the fight against corruption, especially in local administration.

The Cooperation and Verification Mechanism provides that in case when the two countries do not succeed to reach the objectives, the European Commission will apply the saving actions provided in the Accession Treaty: the general clause of economic saving, the specific saving clause concerning domestic market and the specific saving clause concerning justice and internal affairs. According to the provisions of the Cooperation and Verification Mechanism, these saving actions can be applied in three years from the accession date, but can be applied after this date as well, until the retrieve of situation. The European Commission can modify the application time or suppress the actions following the progresses registered.

On 20 July 2010 the Report of the European Commission was issued by the European Parliament and European Council concerning progresses achieved by Romania within the Cooperation and Verification Mechanism, created at the same time with Romania's accession to the European Union.

This document is the fourth annual report from the establishment of the Cooperation and Verification Mechanism and comprises the results of evaluation carried out by the Commission as regards the stage of the reform process, as well as recommendations concerning the following actions that should be adopted to continue the required reforms.

In the report in 2010, the Commission shows positive aspects (progresses in the institutional and legal field), as well as deficiencies in Romania's struggle to achieve progresses within the Cooperation and Verification Mechanism. Therefore, it is mentioned that our country did not prove a sufficient political commitment in sustaining the reform process, and decision making factors in the legal system have showed certain reluctance as regards cooperation and incurrence of responsibilities. The Commission wrote a number of recommendations, such as²:

- Initiation of an independent analysis of the legal system performance and operation of the required structural modifications, including the transfer of magistrates, if necessary;

- Insurance of an easy and fair transition legally to a new High Council of Magistracy, in compliance with the law requirements concerning the eligibility of candidates;

- Increase of capability of the National Institute of Magistracy as regards initial/continual training and taking measures in order to guarantee some professional standards suitable for all the new magistrates, for instance, by extending the requirement to promote the capability examination for all recruited people;

- Taking a full revision and competence of the Higher Court of Cassation and Justice into consideration, by reducing the competence to judge in the first instance and by limiting the appeal trial in the issues of law;

² <http://www.just.ro>

- Taking a thorough reform of the disciplinary system into consideration; introduction an annual evaluation of performance concerning judicial inspection;
- Adjusting the law of the National Agency for Integrity according to commitments assumed by Romania at the time of its accession to the EU; ensuring a contribution of the National Agency for Integrity that will be an efficient continuation in the prevention and punishment of corruption by pronouncing tying decisions concerning unjustified wealth.

In February 2011, the Commission released the Interim Report concerning progresses achieved by Romania within the Cooperation and Verification Mechanism. This report noticed that Romania took a number of important measures in order to make the judicial process more efficient, responding constructively to the recommendations mentioned in the report released in the summer of the previous year.³ The Report also states that, until the next evaluation of the Commission, in the summer of 2011, Romania should mainly focus on launching an independent revision of the judicial system, on the reform of the disciplinary system for magistrates and on settling the top level corruption cases.

VI. Calendar of Schengen evaluations in Romania

The Schengen evaluation process consists in the verification that all requirements necessary to the Schengen aquis will be met. It means that the candidate state should prove its capability to meet the Schengen aquis requirements evenly, correctly and efficiently. The Schengen evaluation is the responsibility of the Working group for Schengen Evaluation comprises representatives of the European Commission and the General Secretariat of the Council of the European Union.

In the years 2009-2010 Romania covered seven evaluation missions from the Working Group for Schengen Evaluation. The evaluation visits took the following domains into consideration: police cooperation, personal data protection, visas, sea borders, air borders, land borders, the Schengen Information Systems.

All Schengen evaluation reports related to the missions carried out during the years 2009-2010, were approved consecutively within the Working Group for Schengen Evaluation. The main conclusion of the approved evaluation reports was that Romania is in an advanced stage as regards the implementation of the Schengen aquis and is ready to access the Schengen Space. Every report also contains legislative and procedural recommendations that Romania should implement until the date of accession to the Schengen Space. After approving the evaluation reports implementation of these recommendations has been monitored, the stage being evaluated within the same working group.

On 6-10 December 2010 Romania covered the last evaluation mission in the domain of SIS/SIRENE, that aimed to check how are met the Schengen standards concerning implementation of this system in Romania by competent structures in this domain. On 14 January 2011, the Schengen evaluation Report of Romania in the SIS/SIRENE domain was presented at Brussels. The Report was presented within the monthly meeting of the Working Group for the Schengen Evaluation by the coordinating expert of the evaluation mission. Although the document was positive, its adoption was initially blocked by France, that required more time to study it. The report shows that Romania fully meets the Schengen standards in the SIS/SIRENE domain and was fully accepted by the member states, without wording comments. The evaluation committee considered as very good the technical education of personnel, it proved a good theoretical and practical training in the domain of the Schengen procedures.

³ <http://www.juridice.ro/wp-content/uploads/2011/02/MCV-18-02.pdf>

On 28 January 2011 the experts of the EU member states adopted the last evaluation report of Romania in the SIS/SIRENE domain, after France gave up the objections arose at the previous meeting of the members of the Schengen evaluation group.

As France blocked the adoption of the latest technical report in Romania's evaluation process to access the Schengen Space, it is not the first „initiative” like that of the French state. Thus, in December 2010, through a letter addressed to the European commissioner for internal affairs within the European Commission, the German and French ministers of internal affairs requested the accession delay of our country and Bulgaria to the Schengen Space. The two ministers consider that accession of the two countries in March 2011 is premature and a decision should not be taken until the two states will remedy the deficiencies noticed in the domain of security, justice, and that of the fight against corruption. Therefore, objections of the two countries are related to provisions specific to the Cooperation and Verification Mechanism.

Germany has not mentioned yet clearly the reasons for which it does not want Romania to be a member of the Schengen space, but the German chancellor Angela Merkel told Romania that: „we should be sure that providing visas at the external borders of the EU will be done without corruption and illegalities”⁴. In his turn, the German minister of internal affairs suggested that Romania and Bulgaria should access the Schengen Space in two stages. Thus, in the first stage controls at air borders should be removed and in another stage, controls at land borders should be removed. France agreed with Germany's suggestion.

The Netherlands also considers that Romania is not ready to access the Schengen space in March 2011, because of deficiencies in justice and corruption. In fact, the number of countries that do not support the accession of Romania and Bulgaria to the Schengen space has increased, Finland and Austria joined to Germany, France and the Netherlands.

Bulgaria had a good report in the domain of SIS, but achieved negative results as regards the land border with Turkey. This domain received a negative notice from the EU experts, and as a result, the decision concerning the simultaneous accession of the two states to the Schengen space is more difficult.

VII. Conclusions

In the past years, Romania has astonishing diplomatic successes, for instance, accession to the EU and NATO and made considerable efforts for the implementation of the Schengen acquis, however, obviously non-accession to the Schengen space on the initially set date (March 2011), will be considered a failure of the management specific to this process, a major political and diplomatic failure that emphasizes the weakness of some national institutions, such as those in the domain of justice and internal affairs.

According to legislation, for the access to the Schengen space, the most important issue is compliance with technical criteria, meaning that accession should not be subject to meeting the provisions specific to the Cooperation and verification mechanism. Equally true is that this mechanism was and is still very efficient in the fight against corruption, in the reform of the legal system, helping Romania to progress.

The free movement of our country's citizens in the EU space was anyway regulated following our country's affiliation to the single internal market, but accession to the Schengen space would have indicated from this point of view, the extension of our country's right to the level of the three states outside the European Union (Norway, Iceland, Switzerland).

⁴ „Adevărul” publication, 22 December, 2010, pag. 16

In case of non-accession to the Schengen space, Romania will experience the damage of its reputation/image, as many blames provided to it relate to the persistence of a high corruption. This disadvantage for the image has negative consequences over the country rating and the capital market.

Negative consequences can be experienced economically by discouraging foreign investments. Under the circumstances of the current global crisis, but the economic recovery of some states in the world economy as well, continuation of the downward trend concerning direct foreign investments flows in Romania would delay the process of the national economy recovery.

Extending the application period of saving causes specific to the Cooperation and Verification mechanism can be another negative consequence of our country's non-accession to the Schengen space.

Last but not least, Romania's non-accession to the Schengen space encourages the maintenance of a long transit time at the internal borders of the European Union due to controls, the carriers being most affected in this respect.

Considering these advantages, it is required to meet the recommendations made by the European Commission within the Cooperation and Verification Mechanism related to the removal of corruption, a better evaluation of the legislative frame efficiency in the field of public acquisitions, as well as the reform of the state institutions in the field of justice.

Our country's accession to the Schengen space represents an important chance for Romania to make significant steps on the way to democracy consolidation, economic recovery so necessary under the circumstances of the current world crisis, that requires the approach of this opportunity professionally and suitably.

REFERENCES

1. <http://www.schengen.mai.gov.ro>
2. <http://www.mai.gov.ro/documente>
3. <http://www.legstart.ro>
4. <http://www.just.ro>
5. „Adevărul” publication collection, 2010-2011