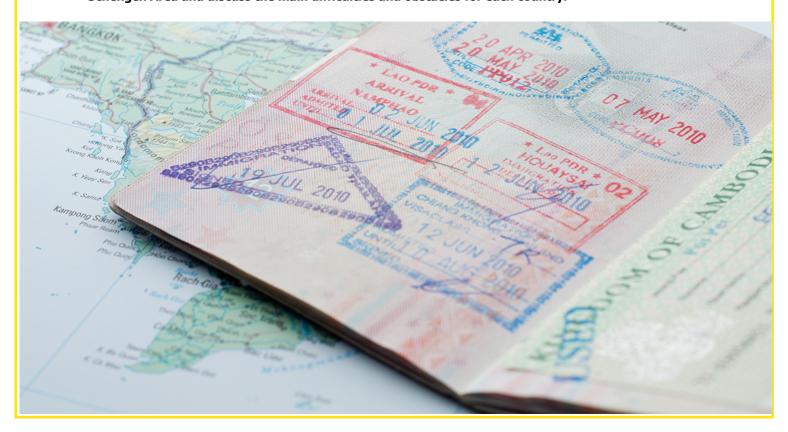


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An Arduous Path: Are Bulgaria, Croatia and Romania Ready to Join the Area?

Žiga Faktor

The concept of free movement between European countries anchored in the Schengen Agreement, manifested in the creation of the borderless Schengen Area, is arguably one of the great achievements of European integration. By facilitating conditions for trade, services and movement of citizens, the Schengen Area acts as one of the converging economic factors for Member States. Decision on the dissolution of state borders is generally seen as a positive step for economic development, regional integration and a sign of trust between the countries. Nevertheless, it also raises many questions and challenges, especially on the topic of security and compliance of national laws with rules and conditions set in the Agreement. This article will focus on the accession of Croatia, Bulgaria and Romania to the Schengen Area and discuss the main difficulties and obstacles for each country.





The ability to travel freely is often seen as one of the biggest benefits of EU membership in the eyes of general public. Yet not all the member states enjoy the benefits of Schengen while other non-member states, such as Norway or Switzerland, joined Schengen many years ago. That is because the implementation of 'Schengen acquis' does not fall directly under the accession process and the adoption of EU conditionalities.

Four states are currently members of the EU without being accepted to join the Schengen Area. Bulgaria, Romania and recently Croatia have their technical preconditions set for the enlargement, while Cyprus is facing an unsolvable situation over the dispute with Turkish Republic of North Cyprus, remnants of an armed struggle after the Turkish invasion in 1974.

With a great division over the topic of enlargement of the EU displayed on the European Council meeting in October, it is clearly visible that, although technical in its basis, also the expansion of Schengen area is becoming more of a political problem. Enlargement of the EU and expansion of Schengen Area are to some extent interlinked. Firstly, candidate countries of both face similar problems associated with their past, specifically with the transformation of their political regimes, as all of these countries were historically part of socialist bloc. Problems generally criticised by the leaders of the EU, such as rule of law or corruption, are in smaller or larger extent remnants of this transformation. Although not mentioned directly in the Schengen Agreement, compliance with the Article 2 of the Treaty on European Union is together with the fulfilment of technical requirements a focal point of the accession to the Area. This is specifically visible on the case of Bulgaria and Romania, which are monitored on the improvements of rule of law, corruption and independence of judiciary under

the CVM (Cooperation and Verification Mechanism) by the Commission. Lack of progress under the CVM as a main problem of the accession to the Schengen was stressed repeatedly by EU member states, most recently by Dutch Prime Minister Mark Rutte. ¹²

Secondly, there is a strong push within the EU led by French President Emmanuel Macron, for a thorough reformation of the Union, which would include changes in both processes of Schengen expansion and EU enlargement. Those would include a reform of a common asylum policy applying to the Schengen Area. For the process of the EU enlargement, possible reforms are being proposed by member countries, such as a non-paper published by France.³

Schengen Enlargement – A Deterioration Towards Mirroring the Moving Goalposts of EU Enlargement?

As a part of the reforms determined by the Delors Commission within the Single European Act, the Schengen agreement was signed in 1985 by Germany, France and Benelux countries ⁴ to provide a legislation focused on solving physical problems arising from the abolition of border controls. ⁵ It was later supplemented by Schengen Convention, creating a foundation for the so called 'Schengen acquis', and incorporated into institutional and legal framework of the EU. Currently, there are 26 members of Schengen area, 22 of those members of the EU. Great Britain and Ireland opted to stay out and keep border controls, while Norway, Iceland, Switzerland and Liechtenstein have all implemented the rules and obligations, although not being member states of the EU.⁶

Schengen Visa Info, available at https://www.schengenvisainfo.com/news/dutch-pm-romania-willjoin-schengen-zone-when-it-complies-with-the-rule-of-law-anddemocracy/

https://www.rferl.org/a/eu-slams-romania-for-rule-of-law-regress-praises-advances-in-bulgaria/30230965.html

³ Politico, available at: https://www.politico.eu/article/france-outlines-proposal-to-overhaul-eu-accession-process/

⁴ The Netherlands, Belgium and Luxembourg

⁵ The Schengen Agreement, available at: https://eur-lex.europa.eu/legal-

content/EN/TXT/PDF/?uri=CELEX:42000A0922(02)&from=EN

⁶ Schengen Vise Info: https://www.schengenvisainfo.com/schengen-visa-countries-list/



To become eligible for the membership, a state needs to fulfil various preconditions set under the Agreement. It needs to harmonize sets of rules for external borders, common visa and asylum policies with the standards of EU. Moreover, it needs to adopt rules of Justice and Home Affairs provisions. Another precondition is to establish and operate Schengen Information System (SIS) while protecting personal data collected by the system. Finally, the country needs to abolish checks at the internal borders while maintaining the external borders of the EU.⁷

Bulgaria and Romania, both having joined the EU in 2007, are still undergoing deep socio-economic transformation. Throughout the process of accession to the EU, the two countries did not fully succeed in tackling crucial challenges of necessary political and judicial reforms, high corruption or organized crime rates.⁸ To tackle and observe those challenges, the European Commission opted to establish a Cooperation and Verification Mechanism (CVM) that would monitor criteria on the above-stated issues set under the CVM. Commission, then reports on the progress on regular basis while giving recommendations to both governments. Each report is also discussed and later endorsed by the Council of Ministers.⁹

Although CVM was only set to function for a limited time, it is still active, as there is still insufficient progress made from the parts of Bulgaria and Romania. ¹⁰ The government officials of both countries are heavily criticising the measure and see it as unjust, as it was never applied to any other EU country. ¹¹ However, the situation of both countries is somewhat unique in a European context;

according to the report of Transparency International from 2018, Bulgaria has the highest corruption rate in EU, with Romania closely behind. It is important to mention that although still at the lowest rankings, both countries are making a progress within the last few years.

To make the situation more difficult for Bulgaria and Romania, the Great Recession of 2008 that encompassed the world and had a severe effect on many European Union countries, particularly newly-joined member states with fragile economies, stalled an anticipated economic growth, which should have provided the governments with a momentum for a demanding process of reforms. Without sufficient funds and a robust economy, neither country was able to make a sufficient progress on the problems monitored under CVM, and although both countries fulfilled all the technical preconditions for the membership in Schengen Area and got a motion of approval by European Parliament 13 and European Commission before September 2011 European Council meeting, the decision was taken to postpone the accession of Bulgaria and Romania indefinitely.. From that moment, the situation over enlargement of no-border Schengen Area was struck by the 'migration crisis' of 2015-2016 that only intensified the division within the European Union on that particular question.

Croatia had only joined the European Union in 2013 as its accession process was affected by Croatian war of independence and subsequent armed struggles connected to the dissolution of Yugoslavia. Therefore, the entry negotiations for EU membership only started in 2005,

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0443+0+DOC+XML+V0//EN&language=EN

⁷ Convention on Implementing Schengen Agreement, available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX%3A42000A09 https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX%3A42000A09 <a href="https://eur-lex.europa.eu/Lex.e

⁸ European Commission Press Release, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP 07 94

⁹ European Commission, available at: https://ec.europa.eu/info/policies/justice-and-fundamentalrights/upholding-rule-law/rule-law/assistance-bulgaria-andromania-under-cvm/cooperation-and-verification-mechanismbulgaria-and-romania_en

¹⁰ European Commission Press Release, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP 07 94 8

 $^{^{\}rm 11}$ Romanian Foreign Affairs Minister Mircea Geoana criticising CVM,

https://www.nytimes.com/2019/09/21/world/europe/romania-euschengen-zone.html

¹² Transparency International report on corruption: Western Europe and the EU. Available at: < https://www.transparency.org/news/feature/cpi2018-western-europe-eu-reqional-analysis





when accession of Bulgaria and Romania was already in the pipeline. One of the main problems that Croatia was facing over its accession bid was to settle the border disputes created by a breakup of Yugoslavia, especially with Slovenia, the only ex-Yugoslavian EU member at the time. As Slovenia was expected to veto a possible enlargement process without assurance over a solution of the border dispute, Croatia agreed on an international arbitration process to settle the problem. This step was made due to a fact that earlier bilateral talks did not bring any conclusions for over two decades. After the agreement on arbitration, Croatia smoothly finished all the accession articles and became a 28th member of the European Union.

The plan for implementation of Schengen acquis was set for year 2020 and the progress of Croatia was recently evaluated by the European Commission, which, on 21st of October 2019, gave the country a "green light" for a final approval by the European Council. 14 However, it is highly possible that the Council will face difficulties to reach a unanimous decision; planned arbitration between Croatia and Slovenia did not solve the border disputes. During the process, the Croatian government decided to withdraw from it as a result of a leak of confidential information by a Slovenian judge, a member of Permanent Court of Arbitration in The Hague. 15 Although the judge resigned and the court continued with the case, the Croatian government seen this as a sign of bias from the court members and decided to ignore the court's final rulings, which determined maritime boundaries and Slovenia's corridor to the high seas.16

The situation led into changes over the guidelines on future Schengen Area enlargement, as Croatia circumvented the obligations to settle border disputes by first committing to a progressive path, only to subsequently renege on their commitment. This can not only harm Croatia's chances of Schengen Area membership but also

long-running-wiretapping-dispute/

set a bad precedent for future EU candidate countries with similar disputes, i.e. Serbia. Moreover, it could cast a negative shadow over the European Commission, which did not want to get involved in the dispute, although the Slovenian government was repeatedly calling for the European Commission to issue an opinion on the matter of arbitration.

Where do the countries stand currently?

To summarize the current situation, Bulgaria, Croatia and Romania all met the technical preconditions, got the support from both European Parliament and European Commission, and should be eligible to become members of the Schengen area. The problem over their accession bid is that an entirely technical issue was turned into a political struggle. Within the last years, countries such as France or the Netherlands adopted more negative approach over the topic of enlargement of the EU, which also affects the situation over the Schengen Area, largely connected to the need of reform as explained in a previous chapter. This shift was highly impacted by the situation over migration crisis that peaked in 2015, when over 1 million asylum seekers entered the EU. 17 High number of migrants fully demonstrated the weaknesses of European asylum policy connected to the no-border area and created a wave of panic within certain countries, caused mainly by local politicians and the media outlets. Instead of a constructive cooperation among the member states to solve the problem and accept crucial reforms, countries of Visegrad group, led by Hungary, opted not to follow the rules set under Dublin III agreement and were against any attempts of imposing a mandatory relocation quota of refugees¹⁸ This led into a subsequent division of European nations and governments over the topic. If candidate countries join the Schengen area,

¹⁶ Ruling on border dispute between Croatia and Slovenia, available at: https://pcacases.com/web/sendAttach/2172
17 Database of UNHCR, available at: https://data2.unhcr.org/en/situations/mediterranean
18 The Guardian, available at: https://www.theguardian.com/world/2015/jun/24/the-boat-is-full-hungary-suspends-eu-asylum-rule-blaming-influx-of-migrants



they will take over the control of crucial external borders, specifically, in the case of Bulgaria and Croatia, being amongst the countries on the most frequented migrant routes through the Balkans.

As a reaction to the 'migration crisis', some members of Schengen, such as Germany or Austria, decided to restore internal border controls. Another sensitive issue raised by the migration crisis was redistribution of the asylum seekers, as countries affected the most by the arrival, especially Italy and Greece. High number of refugees in those countries puts an enormous pressure on its governments and makes it a very sensitive topic, which can be easily used in favour of populist, anti-migrant politicians. Relieving Italy and Greece from the amounts of asylum seekers would support more stable political environment. The incapability of some EU members to agree on a constructive and consensual solution of the problem over migration only widened divisions within the Union.

One of the main critics of the current situation in the EU is French President Emmanuel Macron, According to him, the European Union needs a renaissance, a reformation within itself, specifically calling for changes in the process of the accession of new members and refoundation of the Schengen Area, especially towards its migration policy. Macron openly criticised a common practise of some countries to only take the benefits from its membership in Schengen while not sharing its burdens.¹⁹ Belgian Prime Minister Charles Michel went even further and asserted that the countries of Visegrad group should be expelled from Schengen if they will not show solidarity over the distribution of refugees.²⁰ This division is a major issue for the functioning of the EU as any resolution can be only adopted unanimously. Although unanimity protects every member state from adopting decisions which are against its interests, it also makes the decision-making process challenging and, in some cases, ineffective.

Given the current veto of France over the start of accession procedure with Albania and North Macedonia for their future membership in the EU, such a move can signify a similar stance of French government in a question of enlargement attempts for the Schengen area once the decision-making process comes to the European Council. As complicated and sensitive issues over enlargement policies are, the EU should seek a proactive approach from all the member states while keeping an open dialogue with candidate countries. Prolonging the accession procedure to Schengen area for Bulgaria, Croatia and Romania will only foment negativity towards the EU within the countries, as they had already delivered on the tasks — for North Macedonia settling name dispute with Greece and for Albania judiciary reform — given to them.

What needs to be done in a near future?

The Presidency of the Council of European Union, which, from 1st of January to 30th of June 2020, will be held by Croatia, can be a very useful tool for gathering support from other countries towards the Schengen accession. Although Croatia cannot propose voting on the issue while overseeing the presidency, it can set foundations for a future voting of the Council. Prime Minister Plenkovič should also focus on solving the dispute over a border with Slovenia, as Slovenia could play a crucial role in blocking the Croatian bid. Having full media coverage, Croatia can use the opportunity by displaying a positive approach towards cooperation with Slovenia and setting itself as an important regional actor with a possible influence over the process of enlargement of Western Balkan countries to the EU. Opening the accession talks with Albanian and North Macedonia should be one of the targets for Croatian presidency, as it is closely connected to their accession to Schengen. After Macron's veto, many EU countries together with European Parliament and Commission showed great support to the governments of Albania and North

²⁰ Euractiv: available at: https://www.euractiv.com/section/future-eu/news/belgian-pm-suggests-visegrad-countries-should-be-ousted-from-schengen/

^{19 &}lt;u>https://www.schengenvisainfo.com/news/macron-schengen-area-no-longer-works-refoundation-is-indispensable/</u>



Macedonia²¹²², and Croatia can place itself in a position of a mediator to settle the disputes, while already working on strengthening its own position as a Schengen Area candidate country. As it is expected that Schengen member states would prefer all three candidate countries to join the Area at the same moment, the Croatian position also affects Bulgaria and Romania, and those countries should show a full support of Croatia during its Presidency.

Another issue over Croatia's membership in the Schengen Area was raised recently. That is a strong criticism over inhuman behaviour of Croatian police towards asylum seekers reported by local NGOs and by Human Rights Watch. HRW video taken in August 2019 is showing how police officers deny asylum seekers access to Croatia and return them to Bosnia and Hercegovina, directly violating 1951 Geneva Convention on the protection of refugees and the EU Charter of Fundamental Rights.²³²⁴.

Moreover, Romania hosted the Presidency recently, from January to July 2019. It has been seen as a successful Presidency, displaying Romania as an active and ambitious member of the EU.²⁵ During the time of the Presidency, both Jean Claude Juncker and Antonio Tajani, President of European Parliament, reiterated full support of Commission and Parliament to Romania in the effort to become a member of Schengen area. ²⁶ Although a successful Presidency cannot guarantee possible progress in negotiations, it definitely shows the capabilities of the country, and it strengthens it voice in Brussels. The appointment of Laura Codruţa Kövesi as a first EU Public

Prosecutor, a chief position within EPPO²⁷ that will start operating in 2020, is another sign of Romania successfully expanding its influence inside the EU. Kövesi was previously a Chief Prosecutor of Romanian anticorruption body (DNA) and it is clear that by her appointment to the position of EU Prosecutor member states appreciated efforts of Romanian government to tackle corruption, one of the critical points of their possible membership in Schengen. It is important to mention that Kövesi was released from the position by Prime Minister Viorica Dăncilă and was not supported at first for the nomination. During the rule of PSD²⁸, Romania did not embrace the progress made by previous governments in the battle against the corruption. Moreover, its government, led by 3 different Prime Ministers within a twoyear span, decided to decriminalize certain offences of abuse of power and was undermining the rule of law in the country.²⁹ Recently, Dăncilă and her government got a vote of no confidence and new government was formed under Ludovic Orban, leader of National Liberal Party. Orban is strongly set on a European path and will most certainly continue to push the agenda of a Schengen enlargement, while planning to roll back some of judicial measures passed by PSD.³⁰ Dialogue with the Netherlands will be needed for any improvements as the Dutch government was very critical on the situation of the rule of law in the country and could decide to block a possible Council voting on the accession of Romania.31

The position of Bulgaria did not change in recent years although its Prime Minister Boko Borisov recently raised questions over the benefits of Schengen membership

https://www.dw.com/en/romanias-new-government-wins-confidence-vote/a-51112839

²¹ European Western Balkans, https://europeanwesternbalkans.com/2019/10/24/ep-adopts-a-resolution-supporting-negotiations-with-albania-and-northmacedonia/

²² Austria, Italy, Slovenia, Croatia, Bulgaria

Human Rights Watch report, available at: https://www.hrw.org/news/2019/11/08/eu-address-croatia-border-pushbacks
EU Charter of Fundamental Rights, Article 18, available at:

²⁴ EU Charter of Fundamental Rights, Article 18, available at: https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX:12012P/TXT

Euractiv, available at: https://www.euractiv.com/section/euroad2sibiu/news/dreams-of-schengen-haunt-romanias-eu-presidency-bow/

²⁶ Schengen Visa Info: https://www.schengenvisainfo.com/news/presidents-of-eu-

<u>parliament-and-commission-show-their-support-for-romanias-accession-to-schengen-area/</u>

²⁷ European Public Prosecution Office

²⁸ Social Democratic Party, at power from December 2016 Parliamentary elections

²⁹ Euractiv, available at: https://www.euractiv.com/section/justice-home-affairs/opinion/corruption-in-romania-a-european-affair/
30 Deutsche Welle, available at:

³¹ https://www.schengenvisainfo.com/news/dutch-pm-romania-will-join-schengen-zone-when-it-complies-with-the-rule-of-law-and-democracy/



in the current context of unresolved problems with migration.³² If Bulgaria entered the Schengen area, it would, courtesy of bordering Turkey among the other countries, immediately take over one of the most sensitive external borders of the EU. With no progress being made on the issue of migration and no resolution accepted on the redistribution of migrants, Borisov is afraid of a sudden rise in number of refugees entering Bulgaria, although it should be noted that Bulgaria is primarily a 'transit country' and not viewed as a viable destination for the vast majority of asylum seekers, partially due to low asylum recognition rates 33, partially due inhospitable treatment and living conditions.34 Apart from that, the country is supportive of the accession process to be finalized and is also pursuing future membership of the Eurozone. To be successful in both bids, the Bulgarian government will need to strengthen the fight against corruption. Efforts from all three countries will be needed for a successful overturn of the current stagnation in Schengen enlargement.

From the perspective of European leaders, the issue over the enlargement of Schengen still raises many valid questions already outlined. As the main decision-making body is the European Council, the latest European Parliamentary elections do not represent a significant shift on the topic; stagnation is likely to continue as the European Parliament is unlikely to emerge as a meaningful driver in this area. The new European Council President Charles Michel, who will start his term in December 2019, could be the only new actor with an influence over the communication between the likes of Macron, Dutch PM Rutte or his Slovenian counterpart Sarec and representatives of Bulgaria, Croatia and Romania. However, there is no real power that EU representatives could use to push the process of Schengen enlargement given the current status quo.

Openness as a key factor for the completion of the accession

Concluding the path that was outlined in the creation of CVM is important. It is important to show patient and supportive approach, while providing a better guidance to the countries for achieving goals on independent judiciary and anti-corruption policies. Accession of new countries to the Schengen area provides tangible benefits to its citizens and governments, while also bearing a symbolic value of completion of the accession process. Such a decision would also act as a positive sign for EU candidate countries³⁵ assuring that the process of enlargement to Western Balkans is not definitively a closed topic for the EU. As the entire region is very sensitive towards foreign influence, constant criticism from the EU can open up a space for other global actors such as Russia or China.

Setting aside evaluations of benefits and disadvantages of Bulgaria, Croatia and Romania joining the Schengen, there is one area which EU members are ignoring and that is to act according to the European values, where equality is stated as one of the pillars.³⁶ Equality over the conditions for the accession to Schengen, which is currently not completely respected, due to political pressures within the EU. It is completely reasonable for the likes of Macron and the others to demand reforms, as those are needed to protect the citizens and provide sustainability to the Area. Nevertheless, all the Schengen candidate countries are members of the EU and bearing in mind the progress of whole Union, inclusion of Bulgaria, Croatia and Romania into the process of drafting the reforms, rather than postponing their candidacy indefinitely, could provide both high motivation and appreciation from the respective countries, as these countries are already playing an active role in the field of migration.

³² https://www.schengenvisainfo.com/news/bulgaria-doesnt-want-to-join-schengen-zone-for-now-due-to-fear-of-migrant-invasion/

https://ec.europa.eu/eurostat/statisticsexplained/index.php?title=File:Table 5 -

First instance decisions by outcome and recognition rates, 2 nd quarter 2019.png

³⁴ Bjelica, Jelena, "Far Beneath the European Average: The Treatment of Afghan Migrants in Bulgaria." Available at: https://www.afghanistan-analysts.org/far-beneath-the-european-average-the-treatment-of-afghan-migrants-in-bulgaria/

³⁵ Serbia, Montenegro, North Macedonia and Albania ³⁶ https://europa.eu/european-union/about-eu/eu-in-brief en







In sum, there is still much work to be done from both parties, before an expansion of Schengen can be voted on by the Council. All three candidate countries need to solve certain problems, be it high corruption, state of judiciary or territorial disputes. Therefore, it is not plausible to expect an expansion within the foreseeable future.

However, as the three countries meet the technical conditions, member states of Schengen should try to find a common ground with the candidates on how the process can be finalized and provide a concrete, realistic timeline in order to avoid Schengen enlargement suffering a similar fate to EU enlargement, in which the goalposts keep moving.

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