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on the move

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The Holy Grail?

In Search of Conditions for the Enlargement of Schengen

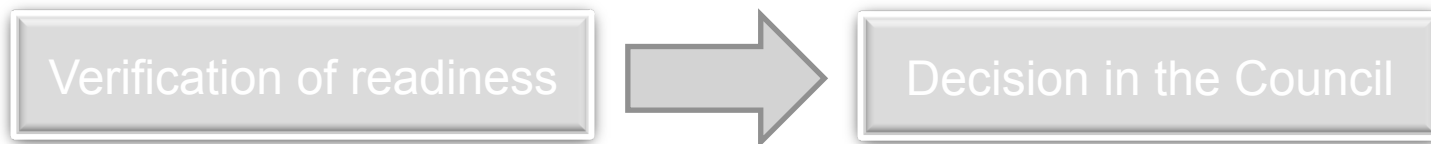


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In Search of Conditions for the Enlargement of Schengen

1. Schengen enlargement: a two-step process
2. Quo vadis? Romania's and Bulgaria's stalled Schengen accession
3. Schengen liminality? What does accession mean in legal terms?
4. Criteria for accession: fixed or moving targets?
5. Romania's and Bulgaria's Schengen accession: a quest for the holy grail?

1. Schengen enlargement: a two-step process (1)

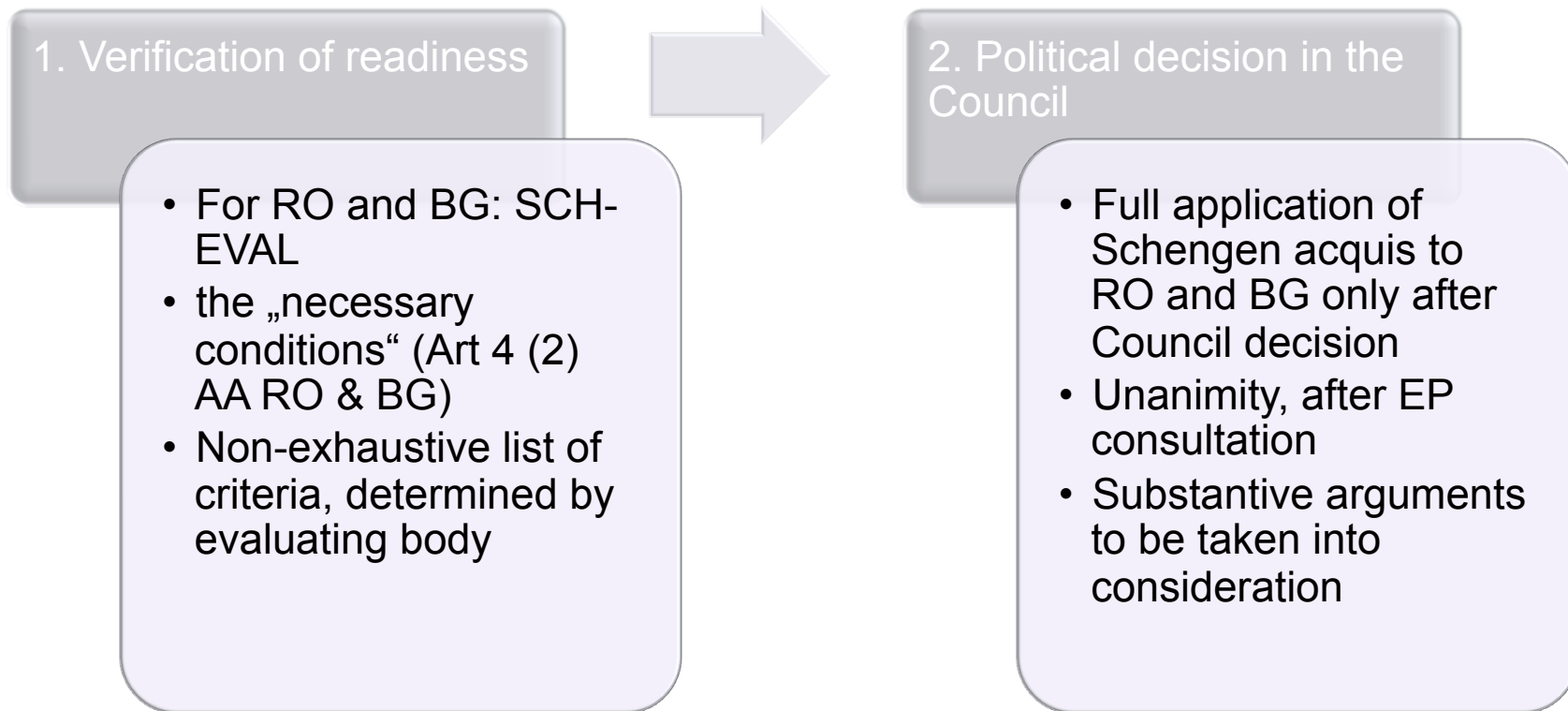


Article 4 Act of Accession 2005 Romania (RO) and Bulgaria (BG): Full application of Schengen acquis only “pursuant to a Council decision [...] after verification in accordance with the applicable Schengen evaluation procedures”

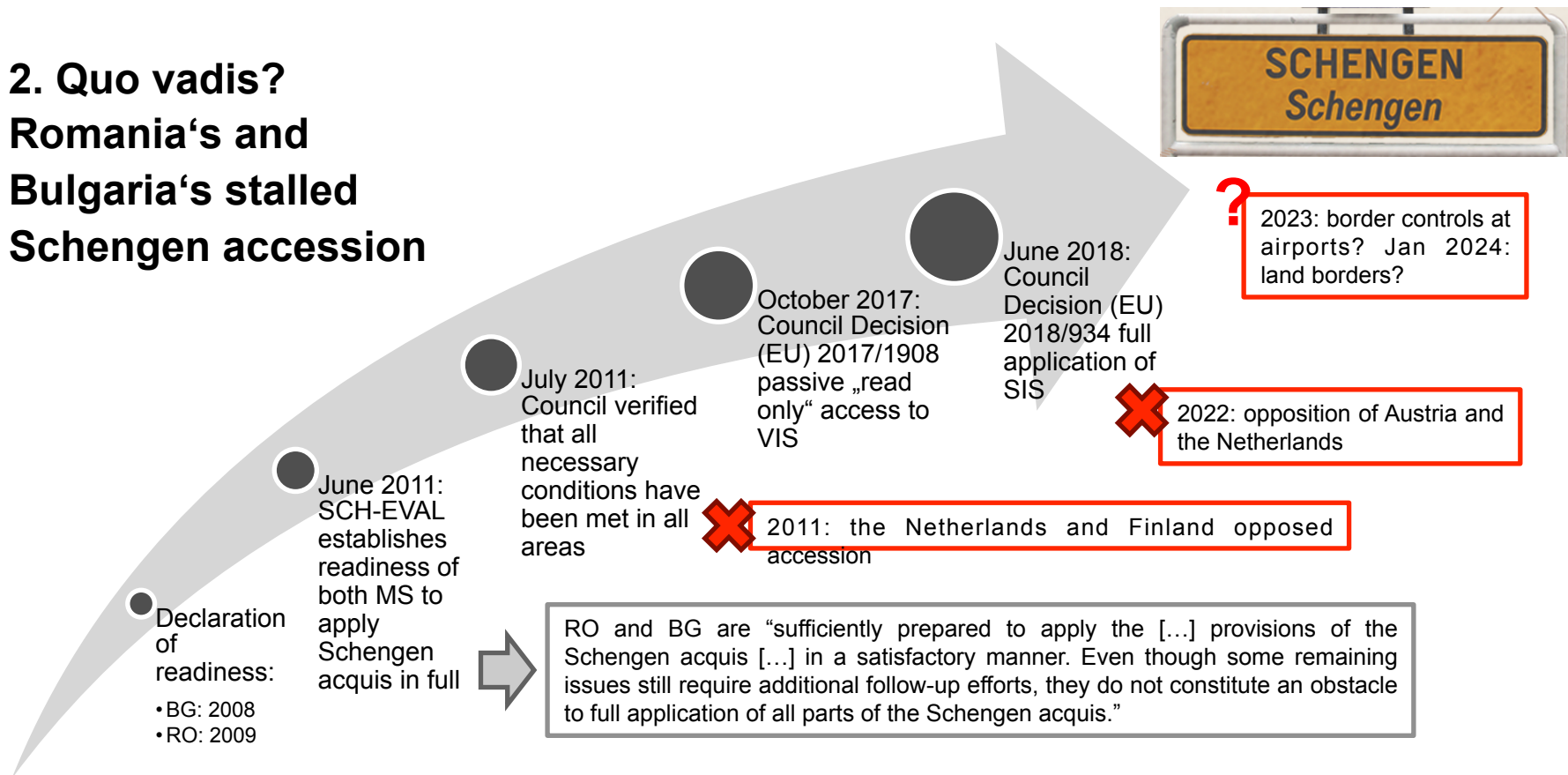
1. Schengen enlargement: a two-step process (2)

- Step 1: Schengen evaluation
 - Generally, Schengen evaluation and monitoring mechanism, nowadays in Council Regulation (EU) 2022/922 (which repealed Regulation (EU) 1053/2013)
 - But not applicable to Romania and Bulgaria, since both Member States‘ “verification in accordance with applicable Schengen evaluation procedures has already been completed” (rec. 43, Council Regulation (EU) 2022/922).
 - Criteria determined by evaluation body
- Step 2: Council decision
 - Unanimity
 - Considerations other than those raised by the evaluation procedure?
 - Interplay with Mechanism for Cooperation and Verification (CVM) (Arts. 37 & 38 Act of Accession 2005) or Rule of Law report?

1. Schengen enlargement: a two-step process (3)

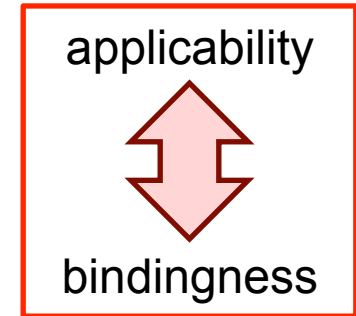


2. Quo vadis? Romania's and Bulgaria's stalled Schengen accession



3. Schengen liminality? What does accession mean in legal terms?

- Art. 4 Act of Accession 2005: Schengen acquis is fully binding on RO/BG, but some elements thereof cannot be applied until Council lifts restrictions
- The (non-)applicability of certain elements of the Schengen acquis in practice
 - Checks at Romanian and Bulgarian borders follow Schengen rules on external border checks (with optional simplifications relating to the recognition of documents, Decision No. 565/2014)
 - Access to databases and operation of Entry/Exit system at external borders (Council Decisions (EU) 2017/1908 and 2018/934)



4. Criteria for accession: fixed or moving targets? (1)

- SCH-EVAL conclusions in 2011:
 - Sufficient progress: data protection, police cooperation, visa-issuance, land, sea, air borders and the SIS
- Additional arguments against the readiness of Romania and Bulgaria?

Romania and Bulgaria must “implement all the necessary measures: rule of law, fighting corruption, independent judiciary.” (Mark Rutte)



Source: Merlijn van Veen

4. Criteria for accession: fixed or moving targets? (2)

Effective linkage to other evaluation mechanisms?

- Mechanism for Cooperation and Verification (CVM)
- Rule of law report

The Council's prerogative to adopt a *political* decision

- Ensuring mutual trust through the fulfilment of criteria?



Source: Merlijn van Veen

5. Romania's and Bulgaria's Schengen accession: a quest for the holy grail? (1)

Romania's and Bulgaria's stalled Schengen accession – four attempts at explanation:

- (1) Fact-based Schengen governance
 - Accuracy and comprehensiveness of SCH-EVAL findings
 - Elapse of time and new developments that render SCH-EVAL's findings outmoded
- (2) Functional considerations
 - Schengen accession as leverage
 - functionality of instruments required (partial) lifting of restrictions (such as in the context of the Entry/Exit-System)

5. Romania's and Bulgaria's Schengen accession: a quest for the holy grail? (2)

Romania's and Bulgaria's stalled Schengen accession – four attempts at explanation:

- (3) Accession inhibited by the current state of the Schengen area itself?
 - “the Schengen area does not work and cannot be expanded at the moment”



- link between candidate Member States performance and Schengen accession?

5. Romania's and Bulgaria's Schengen accession: a quest for the holy grail? (3)

Romania's and Bulgaria's stalled Schengen accession – four attempts at explanation:

- (4) An institutional conflict?
 - Council and Member States assert their political power in Schengen matters: wide decision making power
 - Opposed by the Commission and European Parliament repeatedly advocating in favour of the full application of the Schengen acquis by RO and BG



Source: 123RF

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Source: euronews

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