

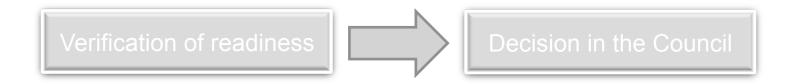


The Holy Grail? In Search of Conditions for the Enlargement of Schengen

- 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 - Generally, Schengen evaluation and monitoring mechanism, nowadays in Council Regulation (EU) 2022/922 (which repealed Regulation (EU) 1053/2013)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)

1. Verification of readiness

- For RO and BG: SCH-EVAL
- the "necessary conditions" (Art 4 (2) AA RO & BG)
- Non-exhaustive list of criteria, determined by evaluating body

2. Political decision in the Council

- Full application of Schengen acquis to RO and BG only after Council decision
- Unanimity, after EP consultation
- Substantive arguments to be taken into consideration

nccr on the move

Dr. des. Jonas Bornemann LL.M.

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

> July 2011: Council verified that all necessary conditions have been met in all areas

June 2018: Council Decision (EU) 2018/934 full application of SIS

October 2017:

Council Decision

(EU) 2017/1908

passive "read

VIS

only" access to

2023: border controls at airports? Jan 2024: land borders?

2022: opposition of Austria and

SCHENGEN

Schengen

the Netherlands

2011: the Netherlands and Finland opposed accession

Declaration of readiness:

•BG: 2008

•RO: 2009

RO and BG are "sufficiently prepared to apply the [...] provisions of the Schengen acquis [...] in a satisfactory manner. Even though some remaining issues still require additional follow-up efforts, they do not constitute an obstacle to full application of all parts of the Schengen acquis."

June 2011:

SCH-EVAL

establishes

Schengen

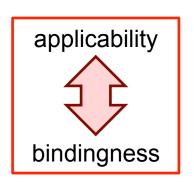
apply

readiness of both MS to



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"



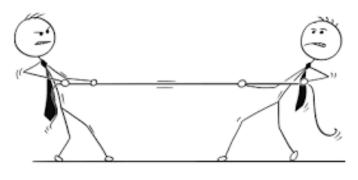
link between candidate Member States performance and Schengen accession?



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



The Holy Grail?

In Search of Conditions for the Enlargement of Schengen



Source: euronews

