

Romania and the prospects of accession to the Schengen area

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***Abstract:** On January 1, 2007, after a negotiation process that lasted seven years, Romania has joined the European Union and entered into a new phase, consisting of the preparation and adoption of all necessary measures for accession to the Schengen Area. Accession to the Schengen Area, currently consists of 26 of the states, has the effect of lifting internal border controls between Schengen Member States, being created a single external frontier, where checks are carried out according to a strict set of rules. The time horizon considered by the Romanian authorities for Schengen accession was March 2011. Although, to date, there have been several visits for assessing Romania's preparation for accession to this space, during which it was found that Romania is ready, and meets all the technical requirements to be part Schengen, Romania still has not been accepted to join this space. As a matter of major interest for the entire Romanian society, this study aims to analyze the root causes of non-acceptance of Romania into the Schengen and perspectives we have, in a time frame closer or more distant, to be accepted into the Schengen Area, an area of freedom, security and justice.*

***Keywords:** Schengen area; membership; membership criteria; freedom; security.*

Introduction

Following negotiations between Germany, France, Luxembourg, Belgium and the Netherlands, on June 14 1985, in Schengen, Luxembourg, was signed the Agreement in which the heads of governments of the five countries decided gradual abolition of controls at internal borders. The main purpose of this Agreement, also known as the „Schengen Agreement” [1], is the fluid traffic, simplifying and strengthening cooperation between police and customs authorities of the signatory states. Convention Implementing the Schengen Agreement, also called „Schengen Convention”, was signed by the same states on June 19, 1990. This Convention entered into force in 1995, at which point they were removed internal border controls of the signatory states, and the controls at only the external border thus created, follows a set of rules very clear and precise. By the Schengen Convention there were also established, common rules on visas, migration, asylum and important measures concerning police cooperation, judicial and customs among the signatory states of the Convention. The territory thus formed by the States which have acceded to the Schengen Agreement, constitutes an area of free movement for citizens of these countries, being called „Schengen Area”.

Since initially the Schengen acquis was not part of the Community legal framework, through a protocol attached to the Treaty of Amsterdam of October 2 1997, this it was incorporated into the legislative and institutional framework of the European Union, respectively in Title IV, „Visas, asylum, immigration and other policies related to free movement of persons”. Also, under the Treaty of Amsterdam, the EU Council took over prerogatives of Schengen Executive Committee, and from May 1, 1999, Schengen Secretariat was incorporated into the General Secretariat of the Council of the European Union, being created new working groups, to help Council activities. In this way, the Schengen area is a smaller area within the larger territory of the European Union.

For EU citizens, the main benefit of their countries' integration into the Schengen area, is the abolition of controls at internal borders and a much higher freedom of movement within the area. Crossing internal borders is like a trip within the country. Under these conditions, the controls in ports and airports are performed only to verify the identity of a person. No person may be subject to checking at the internal borders of the Schengen Member State. The Police may make checking based only on information held, on possible threats to public safety and for combating cross-border crime. Member States have the obligation to remove all obstacles to fluid traffic movements, including on the speed limits unnecessary. Any person who believes

that can be the subject of illegal checking can make a complaint with the European Commission. As a result, at the external borders, the citizens of the Schengen area can be subject of the minimal controls for verifying their identity and the citizens of the third-country, in addition to the identity and travel documents valid, must present a valid visa and documents justifying the purpose of the stay and livelihoods on this duration.

However, migration and greater freedom of movement of persons, in current conditions, determined by the breadth and depth of globalization, implies not only positive but also very negative impacts, consisting of various threats and dangers to internal security Member States and their citizens' safety, by the continued escalation of crime in all its forms, and the consequences of the worst of the crime phenomena, both politically, socially, economically and financially. Among the most serious direct threats, in the conception of followers of human security theory are those related to [2]: 1. *violence and death* by killing human beings, by serious acts of terrorism, genocide and torture; 2. *dehumanization* by abduction, slavery, arresting political opponents; 3. *drugs*, through illegal drug trafficking and drug addiction; 4. *discrimination*, through legislation discriminatory and practices against minorities, corruption and undermining rule of law institutions; 5. *international disputes*, through the crises and tensions between states; 6. *weapons of mass destruction*, through proliferation of weapons of mass destruction, etc. At the same time, are considered and a series of threats and indirect consequences, such as those related to: low and slow GDP growth, inflation, unemployment, political and economic instability, regional and global migration, etc.

Migration is often associated with globalization and, most times, with crime in growing in the western states of Europe, and this has given rise to numerous uncertainties and political debate within the European Union. As a result, the administration of the external borders of the European Union is clearly one of the major challenges that EU countries must face in the future, therefore, further developing and strengthening the area of freedom, security and justice, it is extremely important. Thus, after Schengen accession by any State whose territory has external borders with third countries, which are not part of the European Union, a major challenge is to maintain the credibility of that State in his relations with other member states of the Schengen area after abolition of the internal border controls.

To prevent some such threats and dangers, and to ensure a greater security, Schengen member states have introduced and a set of compensatory measures, set out in detail to the Schengen acquis, as well as recommendations for their implementation, consisting of technically, in the following [3]: 1. *applying a set of common rules for the people crossing the external borders of the Member States of the European Union*, for to harmonize the conditions of entry and rules on visas and consular cooperation; 2. *enhanced police cooperation*, consisting of: mutual support between the police of the member states in the judicial assistance domain, the exchange of liaison officers between police, missions border cooperation at the internal borders and missions to the surveillance and pursuit of Schengen area by the police force; 3. *judicial cooperation between Schengen member states*, through a faster mechanism extradition and transfer of the enforcement of criminal judgments; 4. *creation and development of the Schengen Information System (SIS)*, consisting of a European common system border police chase, in which are introduced in a standardized format different data and information in national databases that can be accessed by all Member States, to increase the effectiveness and efficiency of preventive measures; 5. *application of the measures concerning the protection of personal data*, to protect those characteristics that can lead to identification of individuals.

Schengen accession is permitted to any European country, however to provide limiting dangers and enhancing the security of the European Union as a whole, each country interested, including member of the Union, must make in a correct manner, uniform and effective, the prove certain important capabilities, such as those relating to: 1. Capacity to take responsibility of controlling the external borders of the Schengen area, on behalf of all states that are part of this space; 2. Capacity to cooperate effectively with States that are part of the Schengen area to maintain a high level of security, after the abolition of controls at internal borders; 3. Capacity to apply the entire ensemble of rules Schengen; 4. The ability to connect to the Schengen Information System and to use it, etc. In order to establish the degree of fulfilment of these conditions and capabilities, any candidate country for accession to the Schengen area must be evaluated to ensure that are correctly applied the Schengen rules.

In accordance with the provisions of the Schengen acquis, *the Schengen area accession involves the following steps*: 1) the transmission of the Declaration of preparation on accession to the Schengen area; 2) completing and submitting the questionnaire Schengen; 3) evaluation Schengen visits to assess progress on the implementation of the Schengen acquis on five areas: police and judicial cooperation; visas; borders maritime, air and land; SIS; and protection of personal data; 4) drafting reports on the results of the evaluation visits and their approval within the Schengen Evaluation Working Group in Brussels; 5) adoption by the EU Council the decision on the abolition of controls at internal borders.

Currently Schengen area consists of 26 European countries that are full members of the Schengen Agreement [4], which acceded to this area and removed all internal border controls, as follows: Belgium, France, Germany, Luxembourg, the Netherlands, Spain and Portugal of 1995, Italy and Austria of 1998, Greece of 2000, Denmark, Sweden, Finland, Iceland and Norway of 2001, the Czech Republic, Estonia, Latvia, Lithuania, Slovakia, Malta, Slovenia, Poland and Hungary of 2007, Switzerland of 2008, the last being Liechtenstein of December 2011.

Amongst the states signatories to the Schengen Agreement, 22 countries are members of the European Union and 4 countries not members of the European Union, these being: Iceland, Norway, Switzerland and Liechtenstein.

The EU states that are not members of the Schengen area are: United Kingdom, Ireland, Cyprus, Romania, Bulgaria and Croatia. Croatia has joined the European Union in 2013, and should join Schengen in 2015. It should be noted that the UK and Ireland, European Union member states, although they decided not to fully implementing the Schengen acquis, they is working with the Schengen Member States in several domain of the Schengen Convention, such as: police cooperation and judicial against the offences, the fight against drugs, and the Schengen Information System.

Future Schengen states are considered: Bulgaria, Cyprus and Romania.

Regarding Romania, although is a member of the European Union since 1 January 2007, after seven years, has not been received within the Schengen area as a result of the negative vote granted along time, of the some of the states which make part of this space. The controls at the Romania borders with the Schengen area will be maintained until the EU Council will decide that are fulfilled the conditions for the removal of internal border controls. As a result, without regard to pure technical aspects of Schengen accession, this study aims to examine several of the main causes underlying the negative vote and prospects, more or less remote, which it has Romania to be accepted and integrated into much desired Schengen space.

1. Important aspects on fulfilling the conditions of Romania's accession to Schengen area

Romania's accession to Schengen is, first, an obligation assumed by the Treaty of Accession to the European Union [5], the obligation provided for in art. 4 of the Protocol concerning the conditions and arrangements for admission of Bulgaria and Romania to the European Union, the Protocol annexed to the Treaty of Accession of Bulgaria and Romania. In this way, Romania has committed to participate in all forms of cooperation to deepen European integration.

In accordance with Article 4, paragraph 2 of the Treaty of Accession of Bulgaria and Romania to the European Union, EU Council's decision on Romania's accession to the Schengen area shall be adopted by unanimous vote of the Member States, similar to previous decisions on Schengen enlargement with new member States.

According to the National Strategy on Schengen accession [6], Romania it has been systematically prepared for Schengen accession, in parallel with the development of the activities that targeted the integration into the European Union, that ensure de facto the security at the external borders of the European Union yet since its accession EU in January 2007.

Once with the acquiring to full member quality of the European Union, Romania has entered a new phase, which involves the preparation and adoption of all necessary measures to eliminate internal border controls, for accession and integration of the Schengen area. The term assumed of Romania for joining the Schengen area and lifting internal border controls was for March 2011, across 4 years after the accession to the European Union, which seemed very reasonable and viable at the time. Meanwhile, achieving this major strategic objective for Romania became only a dream, which could not be materialized neither 2012, neither 2013. Remain further just the dream and the optimistic hope to achievement for joining Romania in 2014, eventual in 2015, if not later, because nobody makes no prediction in this sense.

Romania's preparations for accession to the Schengen area, its been started and are further ongoing under the coordination of the Ministry of Interior (MI), in parallel with the launch of the negotiation process on Chapter 24 - "Justice and Home Affairs' (JHA), and included activities drafting of some strategic documents, institution building, their implementation and monitoring commitments assumed.

During the activities of the preparation, there occurred several Schengen evaluation visits on all areas, namely: visa, borders air, land and sea, police and judicial cooperation, the Schengen Information System, the protection of personal data. The main conclusion of the Schengen evaluation reports adopted by the end of 2010, was that Romania has reached an advanced stage in the implementation of the Schengen acquis and is ready to join the Schengen area [7]. Within each evaluation report was made and recommendations by

experts, in legislative, procedural and infrastructure field, that Romania had to implement before the date set for accession to the Schengen area. All Schengen evaluation reports relevant to the missions carried in Romania in 2009-2010, were successively approved by the Schengen Evaluation Working Group of the European Union Council.

The report on Romania's Schengen accession was subject to approval, for the first time on June 8, 2011 [8], when was adopted by the plenary of the European Parliament with 487 votes for, 77 against and 29 abstentions, giving a positive notice for Romania's accession to the Schengen area. However, the European Parliament's vote has only an advisory role. The last word, in taking decision regarding Romania's accession to Schengen is the one of the 25 states, members of the Schengen area which should have to unanimously approve the accession. As a result, at the Justice and Home Affairs Council meeting on 9 June 9 2011 in Luxembourg, although the interior ministers of the European Union welcomed the successful completion of the technical evaluation stage by the Romania, it was decided to postpone Romania's accession to Schengen, initially until September 2011. Thereafter, until now, namely June 2014 following a series of successive deferrals Romania has not yet been accepted to join the Schengen area, although investments in this area are enormous and there was constantly emphasized that all requirements are fulfilled for Schengen accession, from a technical standpoint.

In his approach to Schengen accession, Romania has been hit, by turn, of the opposition the several European Member States of this area, led by France and Germany, countries that have introduced an additional conditionality to the strict technical criteria, required to Schengen, respectively the results obtained by Romania to fight corruption. In this situation, the vote of the Romania acceptance for joining the Schengen area was linked to the Cooperation and Verification Mechanism reports.

The Cooperation and Verification Mechanism (CVM) was created in 2007, after Romania's accession to the European Union as a result of problems and nonconformities found on the Justice and Home Affairs (JHA) and is a process of the regular checking of the progress on that Romania made in judicial reform, corruption and organized crime [9]. For CVM, regarding Romania were established benchmarks in four areas, namely: *judicial reform; integrity; combating high-level corruption; as well as preventing and combating corruption in the public sector*. Trough this mechanism was imposed regular reporting by the European Commission, and it was established that the mechanism will continue until to achieve the objectives CVM and until to satisfactorily fulfilment to all four benchmarks. It is important to know that the European Commission that elaborate the CVM report, not make a positive or negative assessment regarding the report or satisfactory performance targets and adherence, but the only Schengen Member States interpret this report, when it comes to Romania's accession to Schengen.

2. The main reproaches that bring to Romania for to be refused to the Schengen area accession

To make a succinct analysis but relevant at the same time, of the causes that led to the opposition of some Member States regarding Romania's accession to the Schengen area, I proposed to study and present in this article the main problems from the perspective of CVM reports of the position to the European Union officials, and of the relative position of the authorities in Romania at the issues raised of the CVM reports and positions of Union officials.

2.1. Problems resulting from CVM reports. CVM reports, successively published, highlighted, first, the progresses recorded by Romania during these years and the significant contributions of this mechanism in the reforms in Romania. From a CVM report to another, however, there are highlighted the major issues on reforms in the judiciary, the integrity and fight corruption at all levels, being recognized various progresses recorded, and at the same time, there were made different recommendations with reference to the best practices in the domains analyzed. However, from a CVM report to another, on the areas analyzed, it has been found out to have been applied to only some of the recommendations of the European Commission and, therefore, there was highlighted maintaining some of problems and the emergence of other new problems, what, every time, questioned the sustainability and irreversibility of the reforms implemented in Romania.

Among the most important problems and non-conformances, identified by CVM reports, I mention the following [10]:

a. nonconformities on the respecting rule of law in Romania, consisting of:

- ❖ *excessive use by the Government of emergency ordinances*, aspect that is deemed to have played an important role in the concerns circumvention of constitutional norms [11]. Also, it believes that the large number of emergency ordinances or parliamentary procedures adopted without a minimum degree of transparency, not allow the development of a proper process of evaluation, consultation and training of judges, prosecutors, lawyers, economic agents, administrations and citizens, who thus are confused and make mistakes, due to ambiguities which are used for divergent interpretation of the law;
- ❖ *actions of the contesting the authority of the Constitutional Court*, which had the effect of diminishing its essential role of defence of the supremacy of fundamental law, of the independence and stability of the judiciary, as well as of principle the separation of powers of the rule of law;
- ❖ *failure to comply with court decisions on several levels*, including by the Parliament regarding the decision cease the mandates of MPs who were declared incompatible with this quality by final judgment;
- ❖ *political attacks against the National Integrity Agency (ANI)*, who coincided with the cases of this agency against some political senior representatives, as well as the *successive attempts in Romania's Parliament to undermine the effectiveness of ANI and the integrity framework*. Are envisaged in this regard, the attempts to change the rules on incompatibility in the case of locally elected representatives in the summer of 2013, and attempts to alteration the new Criminal Code of 2013, code which then due to enter into force on February 1, 2014, attempts that targeted out of the removal some categories of individuals under the incidence of the integrity rules, including rules on conflict of interest. Against this background, CVM reports points out constantly that there is a clear risk that lawmakers be perceived as using rules they adopt to protect themselves from the effects of laws and not to provide a new rigor in proceedings;

b. nonconformities relating to exercising of pressures on the independence of the judiciary in Romania, consisting of:

- ❖ *attacks with politically motivation against the judiciary*, through criticism made by all members of the political class on court decisions, what shall be deemed that have resulted in undermining the credibility the magistrates and the exercise of pressures on them [12];
- ❖ *exercise of the pressures and acts of intimidation or harassment committed against some persons working in major anticorruption and judicial institutions*, including personal threats against judges and their families, as well as media campaigns of harassment [13];
- ❖ *lack of some solids procedures for appointing the executive positions in the judiciary*, although it is known that non-political appointments, of people with a high level of professionalism and integrity are essential to judicial independence and public confidence in it;

c. nonconformities in the fight against high-level corruption, which consist of:

- ❖ *untreated always of the acts of the corruption as a being serious offences, given the high proportion of suspended sentences*, which is inconsistent with the guide establishing penalties of the High Court of Cassation and Justice of Romania [14];
- ❖ *inopportune statements of Romanian politicians*, who expressing sympathy for people convicted of corruption;
- ❖ *the changes to the Criminal Code who was adopted by Parliament in December 2013*, without a debate or public consultation prior, in relation to which judicial bodies in Romania, including the High Court of Cassation and Justice and the Superior Council of Magistrates, have expressed serious concerns as these changes would have the effect of removing lawmakers, of the President of Romania and persons who performs activities in the profession

d. nonconformities on combat corruption at all levels, consisting in *the existence of the widespread corruption*, highlighted by the polls, what you is an important source of public concern about reducing possibilities to commit acts of corruption and especially regarding ensuring all the guarantees that the facts discovered are not remain without juridical consequences;

Each time, the CVM reports being analyzed of the JHA Council, due to the persistence of these problems highlighted, was decided the return to the subject on the Romania's accession to Schengen when the conditions will be favourable.

2.2. Positions of the some European Union officials

Still since 2011, the Netherlands and Finland have announced JHA Council, just before of the debates in Brussels that oppose Romania's accession to the Schengen Area, position he had maintained constant thereafter.

Netherlands, the main foreign investor in Romania, is the state who vehemently has opposed in the most obvious way to Romania's accession to the Schengen Area, accusing the deficiencies in the fight against corruption and organized crime [16]. The Dutch authorities have linked the Romania's accession to Schengen of the issuance some positive reports under the Cooperation and Verification Mechanism. Given the shortcomings mentioned, the former ambassador to the Netherlands, Tanya Van Gool, in an interview with Mediafax on 24 February 2011 reproach Romania that, *„in the first three years after joining the European Union in 2007, nothing happened for achieving progress needed in justice, provided in the CVM, but only in the last year started actions in this regard”*, and the fact that *„what was not clear from the beginning in Romania, was the fact that there is more than just the technical issues, in terms of Schengen accession”*. Also in 2011, Gerd Leers, the Dutch Minister of Immigration, said about Romania: *„Our position is clear. We are not in favour of the accession in this moment. We must have the certainty that the Schengen acquis is fully implemented, particularly in the fight against corruption and organized crime”* [17]. In continuing of his interview he stated that: *„If necessary, then we will have a gate equipped with the best eight padlocks in the world, but beyond this gate we will have someone who lets on everybody to enter, and this is a serious problem”*. By this statement Gerd Leers suggest clearly that in case of threats and dangers grave and imminent, of technically will be identified and applied the best solutions, but and in such circumstances will be someone, clearly in Romania, which will allow to anyone to enter this space, making allusion to corruption of Romania due to which could not being guarded effectively the external borders of the EU. Furthermore, to support the opposition on Romania's accession to Schengen, the Party for Freedom in the Netherlands (PVV) has launched a website in which the Dutch to report their grievances about Eastern European immigrants in the Netherlands. This fact, however, was condemned by the European Parliament on the grounds that *„prejudice the free movement of persons and the right to non-discrimination”*. Also in September 2013, the Dutch Minister of Social Affairs, Lodewijk Asscher, has initiated an research to verify the Dutch discontents which is complaining that remain jobless because of Eastern European workers who accept lower wages.

Concerning the CVM report of January 2014 regarding Romania, Embassy of the Netherlands notes that: *„CVM report shows positive developments, but also concerns about some issues. ...is still required an special attention. ... one Rule of law which works well and an effective fight against corruption and organized crime are fundamental to the functioning of the European Union, in the interest of our citizens and our companies”*. These assertions, obviously, are likely to contour the future decisions unyielding to the Dutch authorities to oppose Romania's accession to the Schengen area, unless there is convincing proofs of the application of relevant and irreversible reforms in the functioning of the Rule of law and the justice.

The Finnish government, less vocal in this regard, decided in turn yet from 2011 to temporarily block Romania's Schengen accession, because of domestic political reasons related to the increase of current Eurosceptic and anti-immigration, and the efforts of Dutch part for not to remain isolated in the position adopted. Subsequently, Finnish government took into account and the opposition of France and Germany in connection with the Romania's accession to the Schengen area. In the case of Finland, which not stands out too much with its decisions regarding Romania's accession to the Schengen area, it appears that an important role in its approach is the spirit of solidarity, especially with Netherlands.

Initially France and Germany opposed the Romania's accession to Schengen, by introducing an additional conditionality toward to the strict technical criteria necessary for Schengen - the results in fighting corruption. However, in 2011, France and Germany have announced that they support the compromise proposed by the Polish Presidency of the European Union, which included the accession of Romania in stages, first with air and sea borders, who had to take place on 31 October 2011, following that the decision on joining with land borders to be taken no later than 31 July 2012. But in the end, and this compromise proposal fell. Subsequently, France and Germany have expressed opposition to accession; in the conditions in which the authorities of these countries frequently mention that there is not still a certain decision in this regard.

France, traditionally and strategic partner of Romania, opposes Romania's accession to Schengen, mainly considering political, economic and social problems, which could be created by Roma immigrants at the opening of borders, aspect emphasized by officials at the highest level in the state, including the French Interior Minister, Manuel Valls [18]. We consider in this respect that in an interview in September 2013, Valls said: „As Minister of the Interior and the member of the Board of the Interior Ministers of the European Union, are obviously more than the reserved the today concerning the opening of the borders, as long as Romania has not made some efforts. Therefore, this topic is not on the agenda and I say this very clearly. Not now, not in January (2014 - author's note), or as long as there are not taken some measures to ensure the security of the other countries and of the other citizens”. More interesting however is the opinion of the French ambassador in Bucharest, Philippe Gustin, according to which Romania's accession to Schengen has become a "hot potato" for all European Union countries, but and a political topic, he noting that: „Romania is not in Schengen and Roma are all over Europe, and the UK is not in Schengen and has the Roma. It's simple: the link between Schengen and migration is a false connection”. In my opinion, this statement is very true, if we take into account that in the present conditions, almost three million Romanian is out of their country, of whom most of the they work honest to support their families, bringing their contribution to welfare and economic growth of these countries in which they live and work. Also among Romanian migrants, there are Roma people who have settled almost in all countries of Europe, and many individuals commit serious or less serious offences, with varying degrees of media impact, but they are not the most representative immigrants from Romania.

Germany, the main actor of the European Union and the largest net contributor to the EU, manifests opposition to Romania's accession to the Schengen area, because „there are shortcomings and criticisms towards the judiciary and corruption in Romania”, according to the statement of the former German Interior Minister Thomas de Maiziere, in January 2011, when he reiterated the common Franco-German position, which qualify as „premature” Romania's accession to the border-free area that encompassed then the 25 states. In March 2013, the German Interior Minister Hans-Peter Friedrich said in an interview with the German press that his country will use its veto if Romania will insist to put themselves on the agenda of the JHA Council, who following the to take place in that month, the subject of entry into the Schengen [19]. On this occasion, Hans-Peter Friedrich argued bluntly that “no possibility of partial accession of Romania, with air borders, sea and land, no longer current”. Moreover, considering that „who can buy a visa by bribing, without additional controls might end up in Germany”, he said further: „Romania must insist on meeting all EU requirements regarding compliance with justice system. Schengen enlargement is accepted by our citizens, only if the basic conditions are provided, which is not the case this moment. By us will be taken and additional measures to stop the so-called immigration caused by poverty, recalling the serious issues raised in Germany of who which abuse the right to free movement for to receive social benefits”. Thus, German interior minister suggest that in Germany will be analyzed and determined the most appropriate ways to oppose 'tourists', which are amateurs of the social benefits and who want to take advantage without embarrassment of Germans tolerance. This suggests, of course, and Germany's decision to not compromising the principles and values of the European Union and to oppose Romania's Schengen accession indefinitely until will be make proof the ability to apply appropriate and irreversible policies in the functioning of the rule of law and justice.

Italy, the main country of destination for Romanian immigrants, just like most of the member states, does not oppose Romania's accession to Schengen. Moreover, at the end of 2013, the Italian Ambassador in Romania, Diego Brasioli, said: „Our position is very clear: we believe that Romania has successfully fulfilled all the requirements of the Schengen system, we believe that Romania should have already been Schengen member of some time. We hope this will happen very quickly. Italy will take over the EU presidency from July 1, 2014, and will do everything possible to achieve this important objective. In Italy we have a large Romanian community, estimated at over a million people who have been successfully integrated and who are part of our society. We see no problem for complete Romania's accession in Schengen area”.

At the European Commission level, the president Jose Manuel Barroso said that however much would support Romania, her accession to Schengen is not yet possible [18], noting in this regard that: „Our position, of the Commission, has not changed. We have maintained a position to support Romania in this endeavour. But I have to be realistic, the decision is taken by our Member States and, as you know, for different reasons, this is not yet possible. This is also the reason why I can not engage for to advance a specific date”. In his interview Barroso said further: „The decision depends on the position some of Member States. This is a reality, a very honest appreciation. I say this because it is important for public opinion in Romania, to understand how sensitive this issue in some Member States is. It is a very sensitive issue because the extremist forces use against some Member States, against partners and neighbours, against EU principles”. Also, the European Commission spokesman Mark Gray, on presentation of the latest report on progress in Romania under the Cooperation and Verification Mechanism in January 2014 in Brussels, said in an interview: „Always I forwarded clearly that, in terms of assessing compliance with the accession criteria in Schengen Romania complies with on the full the criteria. There are two different exercises and should not be mixed. Romania has been assessed and the answer is a YES convinced”.

In December 2013, the JHA Council, by Dailis Alfonsas Barakauskas, Lithuanian Minister of the Interior, whose country holds the EU presidency, announced that he would return to the subject of Romania's accession to Schengen, when the conditions will be favourable.

2.3. Position of authorities in Romania at oppositions entry into Schengen

Since 2011, but especially currently, Romania reiterates that it has a high level of preparation for accession to the Schengen area, the result of some significant investments and the constant efforts of the authorities. This fact was confirmed by assessments made, recognized as such by the European Union Council and the European Parliament, successively, of 2011. Authorities in Romania, considers that there is no reason juridical or based on concrete realities, for another postponement of the decision, as and fact that the solution advanced concerning adherence phased so far not led to any result. In Romania's opinion, a new discussion on the JHA Council on Schengen accession without the prospect some political decision, which to be in unanimity is likely to perpetuate the blockage on accession. As a result, Romania has proposed to require resumption of the discussion at the JHA Council without delay when is attained the unanimity.

Practical, the authorities of Romania considers that achieving some link between Romania's accession to Schengen area and CVM reports constitute a discriminatory criterion, the opposition of the Member States at accession constituting thus an abuse. On these considerations, we can appreciate that due to obvious discontents from Romanian authorities, in a totally undiplomatically style, was kicked off real „war of statements”, particularly with the Dutch authorities, through various position papers of the toughest.

3. Considerations on the premises and prospects of Romania's accession to Schengen area

First we consider it necessary to mention that it is not so easy to identify the causes of the opposition of some states on Romania's accession to the Schengen area, these being very complex and determined by many factors, political, economic, social and cultural of internally specific Romania, as well from externally plan, specifically each Member State, and the European Union as a whole.

The opposition Member States on Romania's accession to Schengen, I believe represent direct forms of exercising the pressure on political factors and authorities in Romania, to comply with supreme values of the European Union, namely the principles of the rule of law, independence judicial and democracy, values which, considering that are not respected, have led and to monitoring Romania through CVM. These I believe that are and the main reasons for which, although are respected the technical requirements of the accession, was made the connection between Romania's accession to Schengen and the CVM. In this respect, it is obvious that behind all these technical conditions, respective of the equipment more or less sophisticated, are people who must to act and to operationally them. These people being in different structures of the state, which must cooperate on different levels, from the lowest level up to the highest hierarchical level, in a true functional network, can be honest or dishonest, and, therefore, corrupt or not. The honest and incorruptible men should be appreciated and promoted. The less honest, the corruptibles and corruptions, when deviating from the rules, should be punished. From this point of view it is obvious that in Romania, even if are fulfilled the technical conditions of accession to the Schengen, weighs enormously the fact that border crossings are still true hotbeds of corruption. Thus, the researches made in criminal cases, after which hundreds of policemen and customs officers were arrested in 2011-2013, highlighted the complex mode of the

organization of criminal networks, and the protection afforded until to the highest positions in the ministries. In such circumstances it is important the independent justice, that through his activity, through research and indiscriminate punishment of all those responsible for crimes of corruption, ensuring combating, reduce and limit corruption, provides the link between the technical conditions and criteria MCV. Finally, honesty, justice and equity, promoted consistently by an independent judiciary in Romania, we believe that it must be eternal values, which to be always appreciated and never be questioned.

In the context of, if we take in considering fulfilling the technical requirements for Schengen accession, we can appreciate that Romania must be received of more time in the Schengen area. But, in Romania case, being taken into account more than the technical features mentioned, as important elements on the rule of law and justice, which still does not meet them, we think it still can not take into account the short perspective, the e.g. 2014 for membership in this space. The main reason of worry of the opposing Member States, displayed by these, is the international reputation of Romania, of country with a high level of corruption, emigration and export of crime that are associated with increased risk of European contagion, who corresponding the serious manifestations of the endemic corruption in Romania.

Given this reputation, to make a brief analysis of the prospects, more or less remote, on the future of Romania's accession to Schengen, it is useful to we have in mind another aspect, which we consider essential in this respect, this being less known opinion public in Romania. This aspect consist in the fact that, in June 2011, the European Commission adopted the Communication on combating corruption in the European Union, in which informs on elaboration EU Anti-Corruption Report, report which must to appear for the first time in 2013 and subsequently once to two years. Thus, the year 2011 is the year in which Romania has proposed of date the Schengen accession initial, and 2013 is the year in which must to appear the first anti-corruption report. Because the report on combating corruption in the EU has not appeared in 2013, once again there has not been taken a positive decision on the accession, this document being presented scarcely on 3 February 2014.

Of Communication Commission European to the European Parliament and the Council of Europe on combating corruption in the European Union, of June 2011 [20], result that in the last ten years have made some efforts at national, EU and at internationally to reduce corruption. At EU level, the legal framework of the fight against corruption was developed by adopting legislation to combat corruption in the private sector and the EU accession to the UN Convention against Corruption (UNCAC). Treaty on the functioning of the European Union recognizes corruption as a serious crime with cross-border dimensions, which Member States are not capable to combat by their own forces. To some extent, the fight against corruption has been integrated into an overall EU policy. However, application of the legal framework of the fight against corruption is performed patchy in the Member States and is overall unsatisfactory. EU anti-corruption legislation is not transposed in all Member States. Some countries have not ratified the most important international anti-corruption instruments. More importantly, even there where there are institutions and legislation to combat corruption, in practice, implementation is often insufficient, this being and the specific case of Romania. The establishment of the EU anti-corruption Report is the Commission's response to the call of the Member States, expressed in the Stockholm Programme, by which these asked „to develop indicators based on existing systems and common criteria to measure efforts filed in the fight against corruption in the all EU countries”, as well as at the request of the European Parliament of regular monitoring of Member States efforts to combat corruption [21]. Romania's international reputation of highly corrupt country, this Communication of the European Commission, and establishment the Report on fighting corruption beginning from 2013, we believe that was envisaged by States which are opposed to accession, for to delay a decision favourable to Romania's accession to Schengen.

Of Report on combating corruption in the EU since February 3, 2014, presented by European Commissioner for Home Affairs Cecilia Malmstrom, it is found that „*Member States have made more in recent years to combat corruption*” but in opinion to Commissioner „*today's report shows that is far from enough*” [22]. Thus, this report highlights that, at European level, three-quarters of respondents to a Eurobarometer survey (76%) believe that corruption is widespread in their country. According to the same survey, Romania is among the countries where the population believes the phenomenon of the corruption is widely spread, but similar situations are found in the Italy, Greece, Portugal, Spain, Slovenia, Czech Republic, Lithuania, Bulgaria, Cyprus, Croatia, etc. Also, this report shows the continuity of the positive results of key institutions anti-corruption in Romania (SCM, HCCJ, DNA), and reiterates the usefulness and effectiveness of policies and actions undertaken over the years in terms of fighting corruption, noting and many positive results, appreciated by the Commission. At the same time, it shows that the Romanian State has achieved the goal the adoption of adequate anti-corruption legislation, present stage being of the implementation and

consolidation of practices, with focus on unitary and predictable interpretations, which ensures favourable conditions to eliminate vulnerabilities at corruption.

Given these positive aspects presented in the report, we tend to believe, with optimisticly, that increased Romania's chances of joining the Schengen area, being sufficient conditions to take a favourable decision still since 2014, unless there are other impediments from the Member States who must voting unanimously in favour of such a decision. This with so more with as the, although Great Britain is not part of Schengen, an support of the positive aspects mentioned in the anticorruption raport, result and from the statements of the Ambassador of that country in Bucharest, according to which: *"I think we saw an justice becoming more independent; you have here in Romania men of courage, men of iron, in the prosecution, in the High Court of Justice. In my opinion, their contribution to the fight against corruption is far more significant than the contribution embassies, because there are people here in Romania who fought against corruption with an impressive determination"* [23].

However, of the EU Anti-Corruption Report, result that in Romania there is an systemic corruption and that measures to eradicate the phenomenon are „easy reversible”. In this respect, in the European Commission Report affirms: *"The ease with which the foundation of the reform was able be attacked in Parliament reminded that there is no any consensus regarding the pursuit of the objectives CVM. Accountability and integrity of elected and appointed servants are still grounds for concern"*. Also, of the report result that there are and „significant challenges” related to the implementation of the new criminal codes. In this respect, it is appreciated that *„instability of these legislative acts and several legal issues identified by professionals, which might require changes of the codes or of the guides for interpretation before their entry into force, creating additional difficulties"*. In the conditions of these impediments, not just so easy overlooked the negative aspects presented and obvious real regarding Romania, are likely to make us believe, the pessimistic, that Romania's accession to the Schengen area is removed towards a perspective of the years 2015, 2016 or 2017, when, following of the new European elections, presidential or parliamentary, Romania will prove undeniable capacity to implement and enforce irreversible reforms on the rule of law and independence of the justice as well as regarding effective and efficient anti-corruption policies.

However, are not of ignored neither the impediments represented by different extremist forces, of which makes speaking European Commission President, Jose Manuel Barroso, forces who, in a way abusive and discriminatory nor, act against the principles of the European Union, which could prolong the indefinitely Romania's accession to Schengen. In fact, ultimately we believe that the link between compulsory voting unanimously and the existence of such extremist forces, who strongly oppose of reasons which can rid us, opposition who is of nature could not be done too soon unanimity, is the main reason that no senior official of the European Union is unable to provide a precise date at wich Romania will be received in the Schengen area, regardless of the degree of fulfilment of technical conditions and the CVM.

Conclusions

Considering, however, that the main factors are the internal, I can appreciate that Romania's Schengen accession prospects are and will remain primarily related to the existence of compelling evidence on the application of relevant and irreversible reforms in functioning of the rule of law and justice in Romania. As a consequence of the correct functioning of the rule of law and justice, Romania's Schengen accession is linked to the obvious reduction in the level of corruption in Romania, which is a cause for extreme concern in the European Union because at the EU level causes economic damages estimated at 120 billion euros, and other serious social and democratic harms.

Therefore, in order to increase of the chances on joining, in an optimistic perspective as close as possible, Romania needs to ensure and maintain a high rhythm of the reforms. Within these reforms Romania must make and the proof clear and unequivocally, on the ability to transpose in own legislation, entirely, all international legal instruments and the European Union in the fight against corruption. But, and in these circumstances, the main issue that has crucial importance, consist however in implementation without discrimination and consistent monitoring of the effects of anti-corruption instruments implemented. I am considering in this regard, the need of existence some evolutions constant and positive in the detection and prosecution of corruption offences to the highest level, a systematic evidence dissuasive sanctions and a high degree of recover damages created by the offence. The main effects pursued, I am consider that should consist to significantly reduce the temptations to corruption and constant increase public confidence in justice.

To achieve these objectives, it is necessary however an extremely strong political commitment on the part of all stakeholders in Romania. And this it because is obvious that at this point, the current mechanisms

of combating, monitoring and evaluation of corruption in Romania have not yet generated the critical mass necessary to reduce this serious phenomenon, which is appreciated in the European Union as being systemic and contagious. In these circumstances it is necessary to be undertaken in a transparent and consistent, the most relevant and effective approaches to stimulate political will in Romania to address resolutely continue the fight against corruption. Therefore, depending on the actions taken, we consider it important of pursued, analyzed and interpret, which will be the effects of the Report on combating corruption in the EU of February 2014, reported at how this report will influence future decisions on the Romania's accession to the Schengen area.

Regardless of the time Romania's accession to Schengen, taking into account that the EU Anti-Corruption Report will be elaborated and submitted every two years, the next being in 2015, I believe that all the authorities in Romania must continue with consistently and perseverance the actions on combating against corruption through the all policies and instruments implemented. Integrity, transparency and accountability should be promoted actively throughout the central and local public administration, up to the highest levels, so that integrity policies becomes integral part of the central and local governance in Romania as well as credibility of the Romania in relations with all Member States of the European Union. Being deeply rooted in institutions in Romania, to the limitation and irreversible eradication of the corruption, it is requires a comprehensive approach who to aimed at enhancing all measures of prevent of this phenomenon as well as control mechanisms in both the public and the private sector. For this, however, the politicians and peoples state in Romania should be able themselves, to demonstrating Romanian and international society, that they know always respect the rule of law, independence of the justice and the media. In this regard, they must ensure compliance with the highest standards of conduct and the principle that nobody is above the law, to ensure that the law applies equally to all, including politicians and peoples state, regardless of the quality and function that have in the state.

Only under the conditions mentioned above, through the responsibility and good faith, doubled with more work and diplomacy by the part of legitimate state authorities, I consider that it can ensure increase the Romania's chances for accession to the Schengen area in an optimistic perspective as close, but wich now I consider there can not be yet estimated, especially in the conditions of the new current Eurosceptic and extremist determined by the outcome of the elections for the European Parliament, since May 2014. And these new forces, in a manner abusively and discriminatory, may still act against the principles of the European Union, and therefore against Romania's accession to Schengen.

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- [12] CVM report of January 2014 is mentioned in this regard that there are cases of direct criticism addressed of judicial institutions and to the magistrates, shortly before the pronouncement of some judgment aimed important political figures.
- [13] Allegations of exercise the pressures on the Constitutional Court judges and intimidating them were brought to the attention of the European Commission. See in this respect the letter of President Barroso addressed to the Prime Minister of Romania, dated 10.8.2012; http://europa.eu/rapid/press-release_MEMO-12-621_en.htm
- [14] In DNA cases in the period between January 1, 2013 and October 15, 2013 received prison sentences a number of 853 people indicted. Basically, 22.2% (189 sentences) were pronounced with execution and 77.8% (664 sentences) were given suspended execution (whether with conditional suspension, whether with suspension of sentence under supervision). See this and Technical Report, Section 3.6.1.
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