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REPORT

on the draft Council decision on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania
(14142/2010 – C7-0369/2010 – 2010/0820(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the draft Council decision on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania
(14142/2010 – C7-0369/2010 – 2010/0820(NLE))

(Consultation)

The European Parliament,

- having regard to the draft Council decision (14142/2010),
 - having regard to Article 4(2) of the 2005 Act of Accession pursuant to which the Council consulted Parliament (C7-0369/2010),
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0185/2011),
1. Approves the draft Council decision as amended;
 2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 3. Asks the Council to consult Parliament again if it intends to substantially amend its draft decision;
 4. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Draft decision

Recital 4

Council draft

(4) On XXXXXX 20XX [date of adoption of the relevant Council Conclusions], the Council concluded that the conditions in each of the areas mentioned had been fulfilled by Bulgaria and Romania.

Amendment

(4) On XXXXXX 20XX [date of adoption of the relevant Council Conclusions], the Council concluded that the conditions in each of the areas mentioned had been fulfilled by Bulgaria and Romania. ***Each Member State concerned should inform the European Parliament and the Council in writing within six-months of the date of entry into force of this Decision on the follow up that was given to the recommendations that are contained in***

*the evaluation reports and are referred to
in the follow-up reports, which still need
to be implemented.*

EXPLANATORY STATEMENT

Schengen Background

The Schengen cooperation has started on 14 June 1985, with the Schengen Agreement, allowing for the abolishment of systematic border controls at the internal borders of the signatory states and for the creation of a common area, with free movement of persons, and a single external border (with common rules on external border controls, a common visa policy, police and judicial cooperation and the establishment of the Schengen Information System (SIS)).

The initial membership of 5 Member States (MS) (Belgium, Germany, France, Luxembourg and the Netherlands) has been extended over time. Currently, the Schengen area comprises 25 Schengen MS: the EU countries Austria, Belgium, Denmark, France, Finland, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia as well as the 3 associated non EU countries, Norway, Iceland and Switzerland (Liechtenstein should become the fourth associated country, the respective protocol should enter into force on the 7th April 2011, followed by the necessary evaluation visits). Bulgaria, Romania and Cyprus only partially apply the Schengen acquis at the moment and checks are therefore still carried out at the borders with these 3 Member States.

At this moment, the free movement is guaranteed on a territory with 42 673 km of external sea and 7 721 km of land borders, covering 25 countries and 400 million citizens.

Schengen Evaluation Criteria

Romania and Bulgaria adopted the Schengen acquis when joining the EU in 2007. According to Article 4(2) of the Act of Accession, the verification through evaluation procedures that the necessary conditions for the application of all parts of the Schengen acquis (Data Protection, the SIS, Air Borders, Land Borders, Sea Borders, Police Cooperation and Visas) have been met by the new Member States is a precondition for the Council to decide on the abolition of checks at internal borders with those Member States.

The evaluations for any new Member State should start following a request of the respective MS (declaration of readiness). They should be conducted under the responsibility of the Schengen Evaluation Working Group (SCH-EVAL), starting with a questionnaire to the MS concerning all parts of the Schengen acquis and followed by evaluation visits. Teams of experts should be sent to the SIS facilities, SIRENE bureaus, Consulates, to the Borders, etc., and should prepare exhaustive reports containing factual descriptions, assessments and recommendations which can require additional measures and follow-up visits. The final report should establish whether the new MS concerned, after being subject to a full evaluation procedure, fulfils all the preconditions for the practical application.

The integration decision should be made by the Council, by unanimous decision of all governments of the states which already belong to the Schengen area.

Conclusions regarding Bulgaria

Bulgaria issued its Declaration of readiness on 25 January 2008.

The evaluation on data protection was positive. The decision was adopted by the Council, after a favourable opinion of the European Parliament, and from 5 November 2010 the SIS was connected and became fully operational.

The SIS evaluation visit revealed the appropriate implementation of the SIS and SIRENE functions, in compliance with the relevant Schengen acquis. Among the issues that needed further attention are: implementing a three shift model for the SIRENE bureau; providing more training for end users regarding the use of Latin characters; minimizing manual interventions in the SIRENE Bureau.

Most of the preparatory work for the implementation of the Schengen acquis in the area of police cooperation has been done as regards institutional and operational structures. Agreements with neighbouring countries (Romania, Greece, Serbia) on cross-border police cooperation in criminal matters have been finalised and further agreements with other Member States are under preparation.

The evaluation of visa issuance was mainly positive and in some aspects an example of best practice. Taking in account the results of some follow-up measures, it was considered that Bulgaria was in a position to implement the Schengen acquis in full due course. The recommendations made have in the meantime been implemented. However, staff should continue to be aware of the illegal immigration risk and other forms of misuse of visas as well as of the possible pressure on staff once they start to issue Schengen visas.

Air borders: the infrastructure used for border checks responds to the requirements of the Schengen Borders Code and equipment for 1st and 2nd line is mainly sufficient and modern. Nevertheless, shortcomings were still detected in the field of equipment, performance of border checks and training, full physical separation at Burgas airport and the obligation to communicate passenger data, linguistic skills and implementation of carriers' liability are currently being worked on.

Sea Borders: systematic tactical risk analysis, control of fishing vessels and border checks on pleasure crafts could be regarded as best practice. The border surveillance system was found to meet in general the requirements of the Schengen Borders Code. A follow-up has shown that the Integrated Coastal Surveillance System has been further elaborated and that the detected shortcomings (in the field of border checks, border surveillance, visa issuance, infrastructure, staff and language skills) have been addressed.

Land Borders: a professional level of cooperation at the border both as regards border checks and border surveillance. Also the amount of equipment available in 1st and 2nd line was noted positively, although the process of providing equipment as well as the necessary training in this context is still ongoing. Shortcomings in the field of border checks, border surveillance, in particular the improvement of the situational awareness, the intra-agency cooperation, airborne surveillance and the chosen tactical approach were still detected. The results of the revisit in December 2010 were still unsatisfactory and a follow-up visit to the

land borders took place from 21 to 23 March 2011. The Evaluation Committee came to the conclusion that Bulgaria has made good progress and, as regards the field of border control at the external land border, it fulfils now the Schengen requirements.

However, to further enhance the already undertaken measures and to adequately prepare for a possibly increasing migration-pressure after full accession the Evaluation Committee invites Bulgaria to prepare a "special package" of accompanying measures.

Conclusions regarding Romania

Romania issued its Declarations of readiness on 2007 and 2008.

The evaluation on data protection was positive. The decision was adopted by the Council, after a favourable opinion of the EP, and from 5 November 2010 the SIS was connected and became fully operational.

The SIS evaluation visit revealed the appropriate implementation of the SIS and SIRENE functions, in compliance with the relevant Schengen acquis. The equipment and installations used for N.SIS and SIRENE were considered state of the art. However, some issues required further attention, namely the question of missing A and M forms for the CISA Article 95 alerts (European Arrest Warrant), but it was concluded that the Romanian authorities seem to have addressed the issue satisfactorily. Recommendations were made and follow ups took place regarding several other issues (further training, minimization of manual interventions, improvement of the PDA mobile terminals).

The bilateral police cooperation agreements with Hungary and Bulgaria have been ratified. All preparatory work for the implementation of the Schengen acquis regarding police cooperation, after some follow ups, can now be considered as completed.

The checks carried out at the Romanian Embassy's visa section in Chisinau and at its General Consulate in Istanbul, and the follow up measures taken show that Romania is now in a position to fully implement the Schengen acquis, all the points meriting attention or reviewing have been remedied (improvement of risk assessment, upgrade of the security features of the buildings, improvement of the process of submission and processing of visa application, etc.) and in some aspects it could be considered as an example of best practice.

Air borders: there is in general a well structured public authority carrying out border management, a good professional competence within the border police officers and agents and a satisfactory knowledge of the requirements of the Schengen Borders Code. A revisit was necessary and it was possible to assess that the detected shortcomings were remedied (carriers liability, available infrastructure for the separation of Schengen and non Schengen passengers, minor shortcomings in the equipment in 1st and 2nd line).

Sea borders: there is a good level of cooperation and communication, a good situational awareness and reaction capability, and good level of risk-analysis. Detected shortcomings regarding carriers' liability, performance of border checks and training have been remedied.

Land borders: good level of border checks, a professional overall tactical and operational

approach in border surveillance. The available infrastructure and the staffing-level on the spot was found to be sufficient. The minor shortcomings detected were addressed properly in the follow up process and the recommendations are mostly implemented (performance of border checks, availability of equipment in 1st and 2nd line, increasing of the number of unannounced inspections as a way to fight against corruption). The 2 Border Control Posts that required a revisit are now fully operational and equipped according to the relevant recommendations; also the shortcomings in the equipment for border-surveillance had been remedied properly.

According to the Evaluation Reports, Romania has on the whole shown that is sufficiently prepared to apply both the non-SIS related provisions of the Schengen acquis, as well as its SIS-related provisions in a satisfactory manner. The preconditions have been fulfilled for the Council to take the decision referred to in Article 4(2) of the 2005 Act of Accession, allowing for the lifting of internal border controls at the air, land and sea borders.

European Parliament's access to the results of the evaluation procedure

By letter of 12 November 2010, the Council referred the draft Council Decision on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania to the Parliament for opinion.

According to the consolidated Court of Justice case-law on the principle of sincere cooperation between the institutions, mirrored in Article 13(2) TEU, the Parliament should be provided with all the necessary information in order to fully play its role in the procedure.

By letter of 16 December 2010 of the Chairman of the Committee on Civil Liberties, Justice and Home Affairs (Juan Fernando López Aguilar) to the Minister for Home Affairs of the Belgian Presidency of the Council (Annemie Turtelboom), the Parliament required the evaluation reports concerning Bulgaria and Romania, any reports made concerning re-visits, as well as the recommendations made to each one of them and the information on the state of play regarding the implementation of these recommendations by the MS concerned.

On 25 January the answer of the Council arrived to the Parliament, stating that the documents requested could be made available to the Chairman, the coordinators of the political groups and the rapporteurs. Access was to be arranged within a secure room on the Council premises. In accordance with the Council's security regulations for protecting EU classified information, the documents will remain in the possession of the Council, and no subsequent direct reference to the content of the documents should be made in any public meetings.

It is important to highlight the fact that in this answer, the Council took a big step backwards to what was its position in 2007, when it was requested to the Parliament to give its opinion regarding the accession to the Schengen Area of 9 countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia), which is unacceptable.

In parallel, both Romania and Bulgaria's Ambassadors have sent a letter to the Council requesting that those documents should be declassified and send to all the Members. The Coreper approved this request, by majority of its Members, and the documents were finally send to the Parliament on 15 February 2011, enabling all the Members to have access to

content of the evaluations, recommendations and final conclusions.

However, the Parliament decided to treat these documents as "classified" due to their sensitive character related to the security of the external borders of those 2 MS. Access was granted to the Members, within a "secure room", with the application of the European Parliament rules to deal with confidential documents.

Full access to the evaluation reports of the experts on the progress of preparations by these two countries is essential in order to make a clear judgment with all elements that are required to determine in European Parliament's opinion whether these two countries are ready to join the Schengen area.

Rapporteur's conclusions

Taking into account the results of the evaluations and the necessary revisits carried out by the expert teams, the rapporteur concludes that, although there are some outstanding issues that will require a regular reporting and a follow-up at some point in the future, they do not constitute an obstacle to full membership for these two Member States.

The experts' conclusions were already approved by the Council and send to the European Parliament, with the exception of the last follow-up report regarding the revisit of Bulgaria's land borders which still has to be approved and formally send to the European Parliament (even if the Rapporteur already had the opportunity to receive it in a "informal way").

The Rapporteur, together with some shadow-rapporteurs had also the opportunity to visit both countries (22 to 25 March) and to acknowledge *in loco* the current state of play and all the necessary improvements made. Therefore, the Rapporteur supports the decision to open up the borders for those Member States.

At this moment, both Romania and Bulgaria have proved that they are sufficiently prepared to apply all the provisions of the Schengen acquis in a satisfactory manner.

However, It should be taken in account that the area Bulgaria - Turkey - Greece is one the most sensitive areas of the external borders of the EU, in terms of illegal migration. This requires Bulgaria to adopt some additional measures, namely to prepare a special plan containing actions to be implemented at the moment of entering Schengen and also a joint approach (between EL-TK-BG.) in order to be able to respond to the possible strong increase in migration-pressure.

On this context, the Rapporteur presents an amendment requesting that the Member States concerned shall inform the European Parliament and the Council, in writing in the course of a six-month period, beginning on the date of entry into force of this Decision, on the implementation of these additional measures and shortcomings.

It is essential to bear in mind that the removal of controls at the internal borders requires a high level of mutual trust, between Members States, on the existence of effective controls on the external borders, because the security of the Schengen area depends on the rigour and efficiency that each Member State makes its controls at its external borders.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	2.5.2011
Result of final vote	+: 31 -: 5 0: 0
Members present for the final vote	Jan Philipp Albrecht, Emine Bozkurt, Philip Claeys, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Kinga Gál, Kinga Göncz, Nathalie Griesbeck, Anna Hedh, Sophia in 't Veld, Juan Fernando López Aguilar, Monica Luisa Macovei, Louis Michel, Claude Moraes, Jan Mulder, Georgios Papanikolaou, Birgit Sippel, Csaba Sógor, Wim van de Camp, Daniël van der Stoep, Renate Weber, Tatjana Ždanoka
Substitute(s) present for the final vote	Elena Oana Antonescu, Edit Bauer, Anna Maria Corazza Bildt, Ioan Enciu, Stanimir Ilchev, Iliana Malinova Iotova, Franziska Keller, Marian-Jean Marinescu, Mariya Nedelcheva, Jens Rohde, Cecilia Wikström
Substitute(s) under Rule 187(2) present for the final vote	Andrey Kovatchev, Traian Ungureanu, Pablo Zalba Bidegain