

# BULLETIN

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Editors: Marcin Zaborowski (Editor-in-Chief), Katarzyna Staniewska (Executive Editor),  
Jarosław Ćwiek-Karpowicz, Beata Górka-Winter, Artur Gradziuk, Roderick Parkes, Beata Wojna

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## **Delaying Romania's Schengen Membership: An Opportunity to Rescue Passport-free Travel not to Punish a Government**

Anita Sobjak, Roderick Parkes

*On September 19, the EU's Justice and Home Affairs Council will probably reject Romania's bid to join the Schengen area as punishment for breaches of the rule of law. In so doing, ministers will leave themselves open to charges of hypocrisy: existing weaknesses in the Schengen regime give them a clear ulterior motive for blocking enlargement. If the EU wishes to punish Bucharest, therefore, it should use the proper channels. Delaying the country's Schengen bid is nevertheless necessary if the free-movement regime is to be secured.*

The EU has a robust if limited array of tools to steer the development of good governance in its member states, most notably Article 7 of the Lisbon Treaty, under which it can suspend voting rights for breaches of the rule of law. Romania and Bulgaria are, however, subject to extra supervision. Doubts about corruption existed before their accession in 2007, and the EU introduced a special process to guide matters such as judicial reform. Yet this process, the Cooperation and Verification Mechanism (CVM), is not as powerful as it was. The EU had reserved a period of just three years under which it could impose conditionality. That period has now expired.

Romania has shown recent signs of regression. The high-profile in-fighting between the government, president and judiciary is the most obvious sign of political corruption on a broader scale. July's CVM report charted severe infringements of the rule of law, and made a special point of lamenting the lack of leverage available to punish the government. More than ever, therefore, member states are eyeing the question of Romania's Schengen entry, due to be debated at September's Justice and Home Affairs Council, as a potential source of conditionality.

**Corruption as a Collective Action Problem.** If the EU's anti-corruption efforts have previously foundered in Romania, it may actually be because of its use of precisely this kind of top-down, conditionality-driven reform. The conditionality approach is based on a view of corruption as a principal-agent problem in which citizens (the principals) lack the means to control their politicians (the agents). This view is faulty. Corruption is in fact a far more complex collective-action problem, and it cannot be solved merely by mechanisms of accountability and transparency introduced at Brussels' insistence.

For one thing, these top-down reforms usually fail to alter the deeper causes and incentive structures of corruption. Rather than dealing with the reasons for discretionary power, for instance, they focus on relatively superficial legal changes. Successful anti-corruption policies instead require simultaneous reform at other levels of the state, society and economy. In particular, they require changes within the public administration, particularly as regards public finances and the recruitment of civil servants. This ensures the continuity of anti-corruption efforts in a public sector such as Romania's, in which staff can change with the political tide.

For another thing, these top-down processes do little to mobilise the public. This matters, because citizens who have invested in a corrupt system, no matter how unwillingly, have few incentives to 'move first' and pursue alternative forms of governance. In this context it is imperative that, besides conditionality, the EU provides them with a positive example: citizens must be able to identify in the EU a tangible model of good governance for domestic institutions. And they must be sure the EU will stick to its side of the bargain if they are to commit to this externally-driven reform process.

Without this motivating force, transparency reforms will simply create public apathy by revealing the full extent of corruption.

**The Risk of Linking Schengen Membership to the CVM Process.** This recognition that corruption is a collective-action problem makes Schengen enlargement even more enticing as a source of leverage: passport-free travel is something which Romania's citizens care about; by linking Schengen accession to the CVM process, EU governments will therefore be able to mobilise the public in favour of reform. Or so they believe. In fact, Schengen membership is not a matter of genuine popular concern in Romania. It promises little direct benefit to a population whose main preoccupation as regards free movement is with broader labour-migration restrictions.

Delaying Romania's Schengen accession in order to punish the government in Bucharest would indeed have little positive effect. This is, firstly, because by blocking the membership bid the EU would be breaking its own rules, thus undermining its power to set an example to Romania's citizens. Romania has cleared the formal hurdles for Schengen accession, and has a right to entry despite its government's broader disregard for the rule of law. Merely because the EU claims to be breaking the rule of law in order to defend the rule of law, would not absolve it from accusations of an abuse of power. The EU has an obvious ulterior motive for delaying Romania's accession to Schengen and minimising its exposure to South-East Europe: Turkey has been using the growth in immigration from Syria and Greece's porous border as leverage over the EU. Moreover, Romania's poor integration of its mobile Roma population has been a matter of complaint in other capitals.

This concern about Roma integration in turn points to the second problem, namely that this new attempt at conditionality would not actually remedy the real governance deficits in Romania. This, again, is particularly true as regards Romania's capacity to live up to its Schengen duties, where serious doubts remain. The Schengen regime relies for its good functioning on a whole range of public and private players—from security officials who handle data passed to them formally and informally by other member states, to the transport firms (Council Directive 2001/51/EC), employers (Directive 2009/52/EC) and NGOs (Directive 2002/90/EC) which take on a public role in controlling migration. According to Transparency International's latest National Integrity assessment, many of these players are weak or compromised in Romania, despite the formal completion of the Schengen readiness process.

**Conclusions and Recommendations.** Poland is a long-time advocate of Schengen enlargement. But by reconciling itself to the likelihood of a further six-month postponement in September, it would be well-placed to push for a fair and constructive settlement for Romania. Such a settlement does not currently look likely. Rather than make a clear statement about the reasons for postponement, member states seem minded to sweep the issue under the carpet for fear of affecting the September 12 elections in the Netherlands, or so as to use it for backroom bargaining with the European Parliament. It is imperative that Warsaw push for clarity. The question, however, is what legitimate purpose postponement could serve, if it is not to punish the government in Bucharest for breaches of the rule of law.

The answer is that delaying Schengen enlargement for a further six months would provide a precious window of opportunity to undertake the deeper reforms necessary to truly prepare this country for its membership duties. Through European agencies such as Frontex, which has recently made corruption a focus, the EU can enact better administrative standards in Romania. A European programme could also draw on European families of trade unions, NGOs and employer associations, in order to share expertise on migration management and encourage cooperation between the different platforms overseeing the implementation of the relevant aspects of Romania's National Anti-corruption Strategy 2012-2015.

To be truly effective, however, some reforms—for instance in the sensitive areas of minority integration and border management—would require the reinforcement of EU-wide rules or a settlement with the EU's neighbours, most notably Turkey. It is important that the EU does not shirk from this task by pushing the burden for Schengen reform unfairly onto Romania. After all, the issue of its fair treatment has already become politically charged in Bucharest, where the current social-liberal government has abandoned its predecessor's unconditional support for the EU. An increasingly critical EU discourse can be expected if national interests are unfairly harmed. With the Union's already crisis-ridden image, it will not take long for this discourse to affect public sentiment. This is a chance for the EU to act by example.