



BULLETIN

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Corruption Out, Schengen In: Time for a Fair Discussion on Romania

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Although there is no technical link between Romania's Schengen accession and the conclusion of the Cooperation and Verification Mechanism (CVM) in the fight against corruption, politically the two issues have been tied. This kind of conditionality is neither credible nor efficient. It is thus high time to decouple CVM from Schengen: continue the first, finding alternative incentives for Romania to improve the rule of law, and at the same time launch a frank discussion on the prospects of Schengen enlargement.

The False Link between Schengen and CVM. Having joined the EU in 2007, Bulgaria and Romania were expected to also enter the Schengen zone, in 2011, once all the technical preparation related to such matters as modernising border controls were finalised. Completely separate from that, the EC launched the Cooperation and Verification Mechanism (CVM), a special instrument to monitor judicial reform and the fight against corruption in Romania and Bulgaria in the post-accession period. Although there is no legal or technical link between the two matters, a significant political one was created in 2010. The French and German interior ministers addressed a common letter to EU officials in which they warned that Schengen extension to Romania and Bulgaria, scheduled for 2011, was premature given these countries' persistent deficiencies in security, justice and corruption. The letter argued that even if the border protection system was modernised Romania and Bulgaria might not be able to be trusted to manage the Schengen Information System because of corruptible police and border guards. Thus, despite successfully fulfilling the criteria for Schengen membership, they claimed there should be no accession as long as the CVM process was ongoing.

While the argument seemed logical, five years on it has lost much of its validity. There has been visible progress in Romania in anti-corruption (this year's CVM report has an overall positive assessment for the second consecutive year) and the political class understandably expects a new timeline for Schengen accession. Yet the topic remains off the agenda for reasons beyond the reach of Romania, that is, the multi-faceted internal crisis in the passport-free travel area. Rising populism, anti-immigration sentiments and the recent terrorist attacks on Charlie Hebdo in Paris have paved the way for tightening internal controls rather than extending Schengen. At the 12 February informal Council meeting, France asked for a revision of the Schengen Border Code.

Thus, conditioning Romania's Schengen accession on its progress with CVM sounds barely credible anymore. Neither is it effective, and it is close to failing to further motivate the Romanian political elite to pursue the fight against corruption. If despite their achievements the promised reward does not come from Brussels and the parties fall short of delivering on their electoral promises of leading Romania into the Schengen zone, then the current fragile political will for further reforms might quickly be overridden by vested interests. Brussels' Schengen card might then even generate a reverse effect. It is time to give a fair assessment to progress on the rule of law on one hand, and discuss Schengen separately.

Advances in the Fight against Corruption. The latest CVM report on Romania published on 28 January cited major success in addressing high-level graft and found increasing professionalism among the judiciary and other institutions that demand integrity. Indeed, there has recently been a wave of investigation of top business and political figures. Among the most spectacular court cases were the convictions of former Prime Minister Adrian Năstase for bribery

and blackmail and politician and media mogul Dan Voiculescu for money laundering. In early February, Mircea Moldovan, a former judge with the Bucharest Tribunal, was convicted of bribery and sentenced to 22 years in prison—the toughest penalty issued thus far in a corruption case.

The engine for these achievements, though, is primarily the National Anti-Corruption Directorate (DNA), a specialised prosecution office established in 2005. For the DNA's notable track record, the 2014 EC Anti-Corruption Report singled it out as one of the top five anti-corruption agencies in the EU and commended its actions as best practices and recommended them to other Member States. By early 2013, DNA had indicted more than 4,700 defendants, with 90.25% of them convicted in final court decisions. In the course of only one year (between May 2013 and May 2014), among the convicted were four ministers, one former MEP, four deputies, one senator, 11 mayors, five judges and three prosecutors. Noteworthy also is that such efficiency has been maintained regardless of the election results and the convicted are defendants of all political stripes.

Despite such achievements, the CVM report also warns that corruption needs to be fought more systemically. To begin with, apart from the prosecution and adjudication of corruption, prevention needs more attention. What seems like petty corruption has been neglected, particularly in the healthcare and education systems. The fact that Romania's score in Transparency International's Corruption Perception Index has not significantly changed in the past few years (staying around 70th place) clearly suggests that, despite the success at the elite level, Romanians continue to experience corruption in their everyday life.

Another major concern highlighted in the CVM report is the sluggishness of parliament to cooperate with the judiciary, for instance, on the matter of lifting immunity of MPs in criminal cases and in applying final court decisions. In late 2013, parliament also attempted—unsuccessfully—to curb the competences of the National Agency for Integrity in order to increase its own say on matters of incompatibility and conflicts of interest. Furthermore, recent scandals have repeatedly put a spotlight on the Romanian Intelligence Service, which the relevant parliamentary control committee apparently fails to rigorously oversee. Also subject to criticism is the performance of the ombudsman, a position currently held by Victor Ciorbea, a former prime minister who, since his appointment in April 2014, has not questioned any of the government's several, controversial and arguably unjustified emergency ordinances.

Continue CVM, but Decouple It from Schengen. Despite notable progress, clearly the mission of CVM has not been completed and many of the results remain reversible. While the political elite tends to see the lifting of CVM as a matter of honour, the public deems it largely efficient in constraining politicians and making them more accountable. According to the Flash Eurobarometer survey published on 26 January, 73% of Romanians think the EU has had a positive impact on improving judicial shortcomings in the country, and 67% claim the same in terms of corruption. The findings also hint at an increasing public awareness of CVM. No surprise thus that 73% want the EU to continue this monitoring process.

CVM should therefore be continued in order to further consolidate the reforms. At the same time, the EU should acknowledge that Schengen accession is no longer the main motivational factor in the fight against corruption. For the sake of efficiency, the two issues should be dealt with separately. With respect to CVM, Brussels should look for alternative sticks and carrots in the fight against corruption, perhaps in the form of allocations from Structural Funds, a means of sanction used during the first three years of CVM. It is also important that the achievements and positive conclusions of the CVM process should be publicised as much as unsatisfactory ones.

As for Schengen, Brussels should give clear signs to Bucharest that it is not being punished for someone else's mistake (be that Bulgaria's poor performance in the CVM, or other Member States' own internal security challenges). To begin with, the processes in Bulgaria and Romania should be tackled separately. In the renewed debate on the Schengen Border Code, the arguments for and against enlargement should also be discussed anew. French President François Hollande has already signalled at a bilateral meeting with President Klaus Iohannis his support of Romania's entrance to the Schengen zone in 2015. The major missing piece remains the German position. The upcoming visit of Iohannis to Berlin will serve as a good occasion to advocate for German backing. An informal discussion should clarify Member States' positions so that at the JHA Council in June the issue can be frankly discussed.

There is no doubt that an EU with rising populist and anti-integration sentiments is in need of positive signs of consolidation. As the Czech Republic, Hungary and Poland seem increasingly hesitant about joining the eurozone and Greece may even attempt to leave, Romania remains an overwhelmingly pro-European Member State: newly elected President Iohannis identified the core aim of his mandate to be completing the European integration of Romania—that is Schengen and eurozone accession. Due to its track record of stable economic growth, Romania's significance is increasing in economic terms, as well as in security due to the ongoing Ukraine–Russia war just over the Romanian border. Thus, the need to keep Romania motivated to develop and aiding it to feel like a fairly treated full member should not be neglected by Brussels.