



# Romania's Schengen Accession Process: lesson learned, failed exam

- an independent evaluation -



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## Context

Less than a month is left until the European Union Council on Justice and Internal Affairs (JAI), where a formal decision should be reached as to whether Romania and Bulgaria shall join or be postponed from joining the Schengen Area. Meanwhile, there have been many political declarations and signals, determined especially by France, which argued that Romania and Bulgaria should not join Schengen as of March this year. Therefore, the focus of discussion shifted from the objective area of complying with the technicalities to the biased area of political dispositions.

In a first stage, the Romanian Centre for European Policies (CRPE) carried out a 6 month monitoring (April-September 2010) of the Romanian authorities activity regarding the implementation stage of the measures to comply with the *Schengen acquis*.

The monitoring was aimed at recording the compliance with the official engagements undertaken by Romania in the work sheet entitled the *Schengen Action Plan*, developed each year by the Schengen Department, endorsed by the National Schengen Self-evaluation Commission<sup>1</sup>, operating under the coordination of the Ministry of Administration and Internal Affairs and approved by the Government of Romania. This commission is made up of all Romanian institutions with managerial prerogatives related to the *Schengen acquis*.

This report completes the independent monitoring of the Romanian state institutions responsible for complying with the technicalities in view of the Schengen joining process. Throughout this report, the focus shall be on the progress or stagnations (as the case may be) registered during the last part of 2010, from September to present. At the same time, lessons shall be learnt from the political lesson offered within the framework of the Schengen process. Our opinion shall be given as regards the more or less justified arguments brought by various representatives of the EU Member States against Romania's immediate accession to the Schengen Area.

**The aim of the monitoring process was to make the European public, in general, and the Romanian public, especially, aware of the Romania's preparation stage for the accession to the Schengen area on the previously established date.**

The project within which this independent monitoring report was developed is being carried out in Romania and Bulgaria (both candidate countries having 2011 as accession target), using similar methodologies in the two countries.

For start, though, some things need to be said in relation to the procedural aspect, that is what we call the *Schengen acquis*.

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<sup>1</sup> All institutions with prerogatives in the implementation of the Schengen acquis are part of this commission.

## What is the Schengen *acquis* and how is it enforced?

From the standpoint of the Romanian authorities, all Romania had to do was to observe the Schengen *acquis*, part of the *European acquis*. The *Acquis* represents the overall joint rights and obligations enforced upon all Member States.

For a legal framework of the accession procedure, the following three steps have been set up for any candidate country to take within the evaluation process:

1. Submission of a *Declaration of readiness* mentioning that they are ready and evaluation can start;
2. Filling in and submission of a self-evaluation questionnaire. The questionnaire is tailored to the Justice and Internal Affairs field technicalities, on the Schengen *acquis*, to be more specific.
3. Development of seven evaluation visits where to experts from the Member States came to the field and evaluated on the spot, the adoption of the legislation and implementation stage of the technical supervision measures and procedures in the following fields:
  - a. Police cooperation (March 23rd – 29th, 2009);
  - b. Personal Data Protection (April 29th - May 1st, 2009);
  - c. Visas (June 2nd - 11th, 2009);
  - d. Maritime frontiers (September 3rd -7th, 2009);
  - e. Air frontiers (November 15th -18th, 2009);
  - f. Terrestrial frontiers (March 26th – April 01st, 2010);
  - g. Schengen Information System /SIRENE – (December 6th –10th, 2010).

As of 2007 to present day, Romania had to implement provisions regarding personal data protection, Schengen Information System (SIS), air, terrestrial and maritime frontiers as well as the ones regarding police cooperation and visa regime. All these chapters of the „Schengen pack” are being exhaustively examined and only after it is considered that all criteria have been complied with, the approval of an evaluation group authorized by the JIA Council is given.

The Council experts are actually specialized representatives of the Member States. They develop reports based on which the implementation stage of the *acquis* is established and recommend the elimination of internal border controls. These experts are employees of the Internal Affairs or Justice ministries of the Member States and have evaluation authorization from the EU Justice and Internal Affairs Council. The reports are then approved within the EU Council Schengen Evaluation Work Group (SCH-Eval).

## Decision making procedure

The European Parliament (EP) plays an advisory part in this mainly technical process. The final decision belongs to the EU Council made up of the internal affairs ministers of the Member States. The decision is a consensual one and shall be made unanimously. Well, here is where the **thorn in EU's side stings**: the vote, in its essence is a political one. The final decision shall be made by politicians (just as the one regarding Romania and Bulgaria joining the EU in 2007).

Had it acted as per the unwritten law, the Council should not be reach the decision based on anything else but the EP consultation and the reports adopted by the SCH-Eval. Up to present day, there has never been any case when the Council vote was based on other arguments of the political kind now attached to Romania and Bulgaria.

The Mechanism of Cooperation and Verification (MCV) on Justice, the situation of Roma people's social exclusion or other brought into discussion such as the custom officers' level of retribution have never been part of the Schengen acquis or of what Romania and Bulgaria undertook to comply with. These are additionally introduced measures that other states have not been confronted with.

President Traian Băsescu's position caliming that Romania and Bulgaria are being discriminated against is based on this same logic.

The President of the European Commission (EC), Jose Manuel Barroso, on ocasion of his visit to Bucharest, on November 8th, 2010 emphasized that "to the extent in which all criteria have been complied with, there is no legal relation between the accession to the Schengen Area and the MCV".

### **The question of trust between the Member States**

On the ocasion of the same visit to Bucharest, the CE President somehow started the debate and targeted the aproach shot with the following statement: "The consolidation of trust between the Member States is crucial".

Or, Romania, by lack of justice reform, was not convincing enough to be worthy of the trust of the European partners, at least asa regards the two fields it gave its word to manage responsibly: justice reform and fight against corruption.

The question of trust opened other topics such as the MAI staff incapacity to effectively and responsibly guard the South-Eastern borders of the Union or to manage the information contained by the Schengen Information System (SIS). It is referring to issues related to integrity, that shall be addressed in a detailed manner throughout this report. As futher seen, many of such suppositions are not grounded and the political communication of our European partners is operating with generalities that are difficult to quantify.

For analyst Elizabeth Collet of Migration Policy Institute, quoted by „Evenimentul Zilei” daily, the real reason behind Romania and Bulgaria's delayed accession, is another. *"I think that France and Germany, together with a certain number of other countries, are facing political difficulties in proving themselves open to immigration. Even in European framework, this process is controversial during an economic crisis"*

In the same context of trust, Romanian and Bulgarian authorities are being offered the Greek precedent as a counter--argument against quick integration. Greek failed the exam three times before joining the Schengen Area and today, it has the greatest difficulties in guarding the Turkey border. "Maybe there is a legitimate preoccupation in relation to the Greek frontier", explained the same Elizabeth Collet. "At present, the Greek border is a tension creating area. And if Bulgaria would become part of the Schengen

Area, it would become the next illegal immigration tension emerging border area, or this is a reason for preoccupation for some countries", she said<sup>2</sup>.

### **The idea of zero priority**

Both the President of Romania and various ministers of the Boc cabinet have repeatedly declared that for Romania, the access to the Schengen Area represents a zero priority. In the beginning this desire seemed easily reachable and electively quantifiable. Though, things unexpectedly speeded up in 2010 when talks focused on other questions in the area of justice and internal affairs undertaken, but not completed by Romania, which were part of the Schengen acquis and on which Romania had not been evaluated by the EU Council. There was a separate monitoring, different from the one of the European Commission on the Mechanism of Cooperation and Verification (MCV) but this was not formally (signed and sealed) related to Schengen. As per the monitoring reports published by the European Commission, Romania has not satisfactorily complied with the obligations undertaken in 2007.

Alina Mungiu-Pippidi, professor with Hertie School of Governance in Berlin, in a statement for *Financial Times*, says that „after Schengen, the EU persuasion mechanisms on Romania shall tend to zero<sup>3</sup>.” This could be one of the interpretation keys for the positions of the states opposing Romania and Bulgaria.

In the context in which the Romanian leaders kept on repeating the „zero priority”, the leaders of other Member States have seen here a way of consolidating the negotiation position, beyond the usual procedural context. This is a double-edged approach as it leads to the lack of trust of the new Member States in the formally–legal operation a multi-state democratic construct, such as the EU, should be based on.

### **Schengen stake and benefits for Romania**

The stake is mainly psychological and it regards image. Knowing they have done well their technical homework, Romanians do not want to register yet another failure. The Union was always regarded confidently by Romania. Being part of the Union means for Romanians having equal rights. Even if the movement rights are not affected, at psychological level, passing through border points in a borderless Union is of nature to create an artificial tie-break.

Neither the work rights, nor the residence rights are affected by joining the Schengen Area. The main effects are felt at primary level, among the businesses in the field of transportation and tourism. These register additional costs induced by the additional time spent at the Western border. At secondary level, even the competitiveness of the Romanian products is affected to little extent as the transport costs are encompassed into the final prices of Romanian products within the EU. And, almost 80% of Romania's exports go to the European Union.

### **The Romania - Bulgaria Tandem**

<sup>2</sup> „The Schengen Area Gates remain closed for Romania and Bulgaria” *Evenimentul Zilei*, January 15th, 2011

<sup>3</sup> „EU's newcomers smart over Schengen delay”. *Financial Times*, January 21st, 2011

Up until now, Romania and Bulgaria represent the last „accession wave” to the EU and most probably the situation will stay the same for quite a while from now on . This because the EU has changed the approach on the extention process. Botht the Western Balkans countries and those in the Eastern PArtnership are treated individually. Their progress is treated individually.

Romania and Bulgaria’s intergation into the Schengen Area actually represents (together with the access at the Euro Zone) a technical reamin of teh European integration process initiated within the same previously mentioned accession wave.

The two states have started the process together by signing the Accession Treaty and are evaluated together. The geographical area they are protecting comes in support of this logic. If one of the two states performs less and registers negative reports from the Sch-Eval experts, then both states shall be kept at the outskirts of the Schengen Area. The principle according to which the Schengen accession speed is actually that of the last ranked in this tandem, applies.

For the time being, Bulgaria registered a negative report from the Sch-Eval experts as regards teh protection of the terrestrial frontiers (the Turkey border). Despite the fact that the Bulgarian authorities have initiated quick measures to correct the situation, the short time left until the reunion of the EU Council for Justice and Internal Affairs makes it impossible to have a new re-evaluation. This aspect might result in postponing the accession of the two states to the Schengen Area as initially established, in March 2011.

### **The Opposition of France and of other Member States**

France was in 2010 and remained in 2011 the country directly opposing Romania and Bulgaria’s accession to the Schengen Area. As provided in September, France sought allies so as not to be the only country to opose during the EU Council. Un to now, it has openly found such allies in Germany and Finland.

France gave the impression of virtually opposing this countries, along the way seeking different arguments which have proven easily dismantable. Two of these, namely relating the non compliance with the benchmarks in the Mechanism of Verification and Cooperation for Justice and the issue of Roma people non-intergation were treated upon in the previous report developed by CRPE in October 2010. At present, we are paying attention to the evolution of the argumentation of the French representatives who lead us into believing that they are simply looking for pretexts to prevent Romania and Bulgaria from joining the Schengen Area at the established moment. The declarations of the French representatives are taken over by the mass-media and seem plausible to the public unfamiliarized with such technical topic. We choose two of such topics which are representative for the French political game. These show either lack of seriousness or a severe lack of knowledge of the technical aspects, otherwise unacceptable at such a high level: the question of the danger to compromise the data in the Schengen Information System (SIS) and that of the relationship of Romania and Republic of Moldova.

### **What is SIS and what is compromise?**

Laurent Wauquiez, the French Minister of European Affairs accredits the idea that Romania and Bulgaria’s accession to the Schengen Area threatens Europe’s security. We quote: "if the data base of (...) the

Schengen Area falls in the hands of international organized crime, the whole European internal security shall be whipped off<sup>4</sup>".

What the French representative does not know or ignores is that Romania already has access to this data base as of November 5th, 2010 after the Eu Council on JIA, approved Romania's access following Sch-Eval recommendations. Also, the European Parliament voted with an overwhelming majority in favour of Decision 365/2010. Thus, as of autumn, Romania is introducing data into the system, and based on alerts received from the Romanian authorities, 192 people subject to SIS alerts have been located. Therefore, the topic is not serious.

In order to establish whether Wauquiez is right we must understand what kind of data are found in this system, who has access to such data and in what way. The data entering the system are the following:

People	Goods (stolen, hidden or lost)
- People subject to extradition or surrender procedures based on a European arrest mandate;	- Motorized vehicles, with a cilinder capacity higher than 50 cm <sup>3</sup> , trailers and carvans, documents and numbered plates
- Foreign citizens (inadmisibles) against whom an entering restriction has been ordered;	- Lethal weapons
- Missing persons;	- ID issued, residence permits, travel documents
- Persons subpoenaed to appear before the legal authorities;	- Banknotes or securities
- People subject to discrete surveillance or specific controll.	- Ships, aircrafts

*From all these categories only the last one is not part of the area of informatioon already made public by other authorities (justice, external affairs, police). But this category is aimed especially at anti-terrorism measures.*

Policemen have access to the data, but according to the *hit by hit* system. In other words, to get an alert previously detained exact data should be introduced. Each search registers the operator's name and ID. There can be no searches by key words, nor can the data base be copied as such.

### **The question of Romania's relation to the Republic of Moldova**

Lately the citizens of Western Europe are ever more sensitive to topics such as personal safety and migration. It was tried and partly succeeded to acredit the idea that through Romania waves of imigrants coming from the Republic of Moldova shall have access to the West. On this topic,

"What France says is very simple: of course the door is not slammed to Romania and Bulgaria's faces, but simple criteria need to be observed. The first is that we must be sure about our frontiers", explained Wauquiez, emphasizing that Romania "does not recognize the border with the R. f Moldova, where the flows pass by". Hotnews.ro /12.10.2010

<sup>4</sup> Hotnews.ro, January 20th, 2011

Romania registered two critiques. The first referred to the fact that it does not recognize the border to Republic of Moldova, and the second to the policy of granting Romanian citizenship to people in the Republic of Moldova.

The first critique is easy to contract. Propelled by the German Chancellor, Angela Merkel, on occasion of her visit to Bucharest mid October 2010, Romania signed the treaty regarding the regime of the state frontier with the Republic of Moldova, two weeks before the declaration of the permanently missinformed Wauquiez.

The second critique refers to the fact that Romania increases the number of immigrants from the non-EU emmigrants by easily granting Romania citizenship to Moldovans. We shall not argue here the legitimacy of this policy (historical repair, identity decision), but we shall content ourselves to fiind that, as per EUROSTAT, in 2008, France granted no less than 120,000 citizenships to inhabitants in its own colonies and the rest of the world, while Romania, the same year, granted aproximatively 4,000 citizenships. Unfortunately, we do not hold exact data, but estimates show that at the level of 2010, Romania granted almost 32,700 citizenships, with France granting around 150,000. Even if 2010 was a „peak” in Romania granting citizenships, the number remains nettly inferior to that of France. And under no circumstance does it justify the millions of immigrants, as put forward by a part of the tabloid media in the countries faced with immigration related probems.

### **Double criteria and the credibility of France**

What the world of uninitiated knows less with regard to the fields of Justice and Internal Affairs within the European Union is that there is not a single type of evaluation, as the Schengen access initial evaluation. Thus, the Schengen Member States are being evaluated at least once every 5 years on aproximatively the same criteria and in the same form as the candidate states. It's only natural, the Schengen procedures are evolving and new security and surveillance technologies emerge.

By now, all states have been evaluated, but there were also negative reports. For example, France had negative reports from the Sche-Eval experts regarding the securization of terrestrial and maritime frontiers. Greece as well is facing big problems, as per the same reports regarding the securization of teh maritime frontiers. Therefore, there are countries that do not observe the Schengen acquis. France has at present an action plan monitored by Sch-eval, such as Romania and Bulgaria because they are candidate countries.

On the other hand, there are no coercitive mechanisms to impose sanctions on the states that are already members of the Schengen Agreement. Right now, there are signals that EC wants to take over the prerogatives of the Eu Council in order to monitor the already member states. It is however, difficult to believe that sanctions shall also be applied.

Due to the chaotic and undocumented way in which it has oposed Romania, but also due to its own problems in managing the Schengen acquis, France is facing some credibility issues. Countries such as Holland or Germany, which are consistent over time are not faced with such issues nor do they have any problems with the Sche-Eval experts.

We are not saying that the standard or the passing mark should be lowered. But it is at least bizzare for a state with its own technical problems to hinder another state that has complied with the technical conditions.

Moreover, Romania's accession was partly funded by the European Union, Romania benefited the expertise of Member States, especially Germany and France, border security is ensured by a contract with a French-German group.

### The Bucharest Reply

The Bucharest reply was very lively especially as a result of the letter of the Internal Affairs ministers of France and Germany addressed to the European Commission, militating in favour of non admission of Romania and Bulgaria to Schengen relating the Mechanism of Cooperation and Verification on Justice to the Schengen process.

Were hereunder publish the position of the Romanian Foreign Minister Teodor Baconschi to this letter. The expression of reply best reflects the mood of the Romanian authorities with prerogatives in managing the Schengen process.

France could not vote in favour of Romania's accession to the Schengen Area considering its declarations, but neither is it correct to reject by a political vote a report that says that technically speaking, we are all right. [...] What upset Paris? I have no answer, and usually well informed people also seem to speculate rather than be sure. The truth is that France failed lamentably. And I am not saying this because it is „us” versus the French. For example, I am not saying the same about Holland although it, too opposes (it did not sign the French-German letter, but it declared so) Romania's accession to Schengen because we have corruption issues. Is this correct? I don't know. What I do know is that we should have expected this to happen. We have joined the EU with that justice verification mechanism which we kind have mocked, according to the logic: we are now EU members, there's nothing you can do to us. I kept on writing about this, on the way the Parliament keeps blocking files, on how, immediately after January 2007, Tăriceanu government tried to close down the institutions which the EU had invested so much into. Everything with the idea that, that was it, we got what we wanted, there was nothing they could do to us. Well, it seems that there is! We need their vote to join Schengen. But, wait a minute, we round on so, it's not fair, corruption was not a Schengen criterion. But, hey, you also cheated on us and did not do what you promised, and now you are pulling our ears and telling us we should do as promised in relation to Schengen? How did you Romanians become such men of words only and only with regard to Schengen? This might be the mental dialogue between Romania and the EU countries, such as Holland, that have always pressed us in relation to corruption. Well, who is right in this case? What is correct and what is incorrect? These being said, I cannot mind Holland: they have always told us their opinion on Romanian corruption, they were just about to block Romania's accession to the EU for to the same reason. Holland was coherent and consistent on this topic. Not France, though. Paris was the capital that, back in 2004, said that the corruption in Romania was not such a big thing, only to say that now it is. It was even the last topic on which they wanted to block the accession to Schengen, first there was the Roma population, then the Republic of Moldova and, at last, corruption. Therefore, I don't trust France's good faith on the topic of corruption in Romania. Maybe, someday, we shall find out more details.

Cristian Ghinea, „Schengen or die”, Dilema Veche, 27/01/2011

*„The letter of the French and German Internal Affairs ministers has some wording problems. First, it is addressed to the Commission, although the decision shall be made by the Council on Justice and Internal Affairs. Therefore, the addressee is wrong. [...]The text includes some political essay approaches. I do not think that a formula of the kind <the current general state of the two countries> can be accepted as a*

*work model. There are generalities that are not supported. Any country in the world has its problems, none is perfect".*

*"We can say: dear European partners, we are a Member State, we have done our duty. If you want to do your duty, as written in Romania's Accession Treaty, give us a call! Because that's a contract: it says that the moment we comply with the technicalities, we shall join the Schengen area", said Teodor Baconschi.*

President Bănescu answered on the same occasion that „we shall not accept to be discriminated by anyone, even from the most powerful EU states.”

The President of the Romanian Senate, Mircea Geoană, requested by a letter the support of the Presidents of the EU Member States Parliaments as well as the one of the European Parliament, for Romania's accession to the Schengen Area in March 2011. Geoana emphasized that "early position from some of the Member States represents an unprecedented form of pressure".

## Methodology

From the point of view of the evaluated main planning instrument (The Schengen Action Plan), this report does not continue the methodology used in the first report dedicated to the Schengen topic launched in October 2010 by CRPE – „Ready for Schengen? Hardly graduates”. We remind that the 2010 report due to internal communication problems within MAI with effects between the communication between CRPE and MAI we did not get, although we did repeatedly required so, access to the Schengen Action Plan (PAS) for 2010. Thus, we have used then the only instrument that could have been followed and monitored: PAS 2009. Right now, the communication misunderstandings have been solved and MAI made PAS 2010 available to us.

We chose to continue the evaluation of PAS, version 2010, considering it an updated instrument and being the planning instrument at the base of most actions complied. A great part of the volume of the technical measures have been taken by the Romanian authorities in 2010. This decision falls us short on comparing longitudinal data (collected at different time intervals) but offers us a much clearer image on the transversal data (collected once from all relevant and updated Schengen process fields).

PAS 2010 was developed based on the recommendations made by the SCH-Eval experts and is made up rather from technical operations to complete than from measures clearly correlated to the Schengen acquis. The previous plans, although easier to relate to the acquis, became irrelevant as the measures were being implemented and the evaluation visits presented reports focused on different operations – fine tuning – that Romania had to comply with. We appreciate the revision of PAS 2010 in respect of the grounding thereof based on the recommendations in the reports following the evaluation visits as being an inspired and realistic approach, oriented towards timely compliance of technicalities and all recommendations.

**The interpretation of measures in this document differs: if the first one evaluated the compliance of aspects requested at general Schengen *acquis* level, PAS 2010 evaluates mainly the compliance with the recommended measures following visits carried out by the Sch-Eval experts. Therefore, the measures not totally complied with does not mean non observance of the Schengen *acquis*, but non compliance of**

**additional measures related to the permanent process of security improvement and border securization.**

## Evaluation Model

The current evaluation is a summative-descriptive one. It is mainly descriptive (opposed to the causal one) as it does not evaluate the causes that led to the compliance/non-compliance of the technical conditions, but the features of the evaluated topics. It is summative as it was developed at the end of the implementation process and does not evaluate the process with the intention of correcting it, but examines the effects and synthesizes the results.

During the evaluation process, we have collected both quantitative and qualitative data and have used mainly secondary data (but trustworthy) from official documents or of internal use of the Romanian authorities.

Our monitoring focused on two directions: (1) Romania’s Progress (stage) in the fields of the Schengen acquis and (2) Absorbtion of funds allotted by Schengen Facility.

1) Romania’s Progress (stage) in the fields of the Schengen acquis evaluated

- a. Frontiers (air, terrestrial, maritime)
- b. Visas
- c. Police cooperation
- d. Schengen Information System/ SIRENE Office
- e. Data protection

Due to the fact that right from the initial evaluation, the measures in the fields of *Immigration and Judicial Cooperation* have been complied with, we have removed them from the current evaluation.

(2) Absorbtion of funds allotted by Schengen Facility.

- f. Analysis of the objectives funded by the Schengen Facility;
- g. Level of absorbtion of allotted funds;

We have evaluated the activities/measures included in the Schengen Action Plan based on a four level scale:

<b>minus ( - )</b>			<b>plus +</b>
<b>Unimplemented</b>	<b>Rather unimplemented</b>	<b>Rather implemented</b>	<b>Implemented</b>

where:

Unimplemented = measures/activities are not implemented and have no chance of being completed in time in a convenient and assumed form with the European partners;

Rather unimplemented = measures/activities have been initiated, but we feel they would not be completed in time;

Rater implemented = measures/activities are almost implemented, have great chances of being completed in time (most of these have exceeded the implementation deadline at least once);

Implemented = measures/activities have been completed in time or by present day (December).

The evaluation was based on:

- Adapting the Romanian legislation to the Schengen acquis (normative acts/application norms etc.);
- Existence of infrastructures necessary to carry out the responsibilities undertaken and to implement the Schengen acquis;
- Building the administrative capacity necessary (especially the professional training);
- Ensuring the necessary funding to implement the Schengen requirements (Schengen Facility, national co-financing and other EU funding instruments).

**Methodology applied throughout the 5 months of monitoring was made up of:**

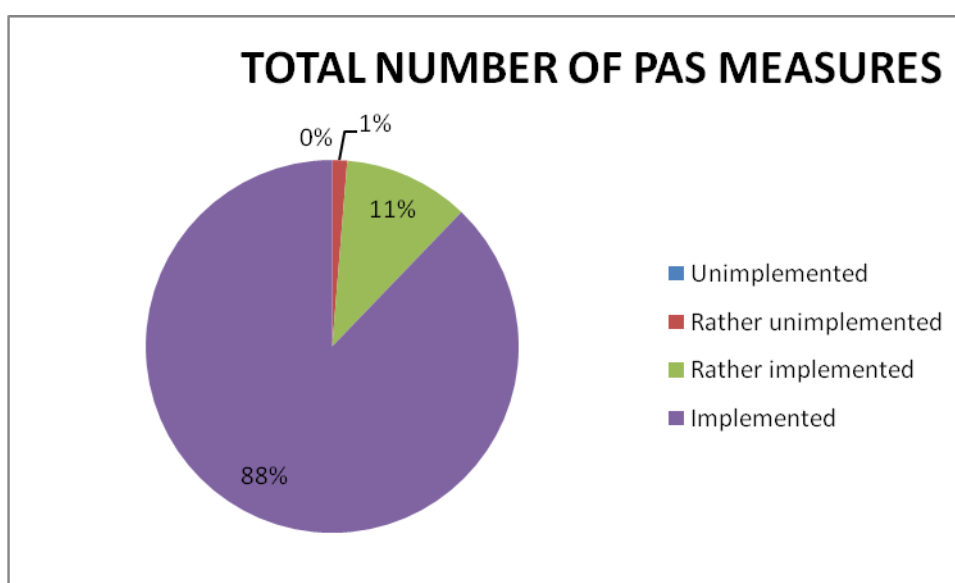
1. Document analysis: identification of secondary data, reports, declarations, strategic documents issued by the relevant institutions, including by the European institutions.
2. Contents Analysis (unclassified information) on the legislative and institutional framework, evaluation reports, information published by the Schengen Self-Evaluation (Intergovernmental) Commission and by the institutions with prerogatives in the field of Schengen Area accession, administrative and/or political level declarations.
3. Monitoring of the activity of political and administrative authorities with prerogatives in view of Schengen accession according to indicators such as: institutional framework, procedure coordination, procedures, task efficiency; transparency and liability as regards the main activities (unclassified information); objective completion.
4. Interviews with representatives of the political and administrative authorities, independent experts in the field.
5. Public information requests.
6. Collection of data from mass-media and carrying out thematic and contents analysis.

## CURRENT STAGE OF ROMANIA'S ACCESSION PROCESS TO THE SCHENGEN AREA

CRPE monitored 156 measures comprised by the Schengen Evaluation Plan set up at 2010 level under the methodological coordination of the Ministry of Administration and Internal Affairs. Several institutions contributed to the compliance with the plan itself (not just the compliance with the measures within).

The 156 monitored measurements have been evaluated as follows:

<b>Unimplemented</b>	<b>0</b>
<b>Rather unimplemented</b>	<b>2</b>
<b>Rather implemented</b>	<b>17</b>
<b>Implemented</b>	<b>137</b>



### How to read the data?

There have not been any unimplemented measures. As regards the *rather unimplemented* and *rather implemented measures*, these do not reflect the implementation of the Schengen acquis as goal, but, most of the time, are rather additional measures recommended by the Sch-Eval experts or taken at the Romanian authorities own initiative. There, where the measures were unimplemented, the Romanian authorities took alternative measures in order to meet the standards in the Schengen Catalogue containing the best practices and recommendations.

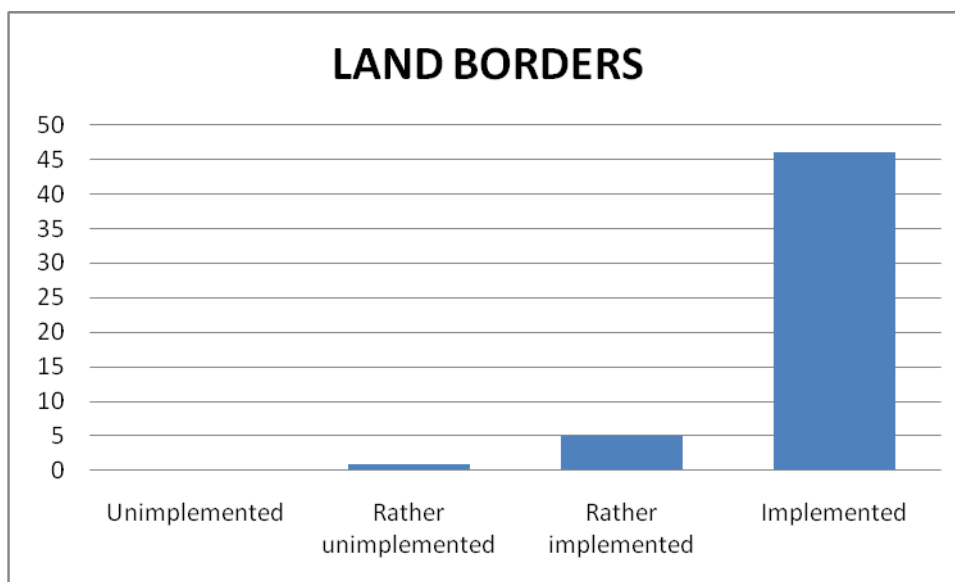
It's only normal for some measures not to be completed yet as some of the evaluation visits took place in 2010 or later that year.

These such unimplemented measures do not influence the accession to the Schengen area. They could have influenced the accession if, following evaluation visits, the Sch-Eval experts would have had negative reports as to the situations on the spot and required a re-evaluation. Right now, no re-evaluation visits have been required.

In the following chapters, each measure is statistically interpreted, measures to be implemented are presented and explanations are offered for each of them

## LAND Borders: 52 measures

The evaluation mission took place between March 26<sup>th</sup> – April 1<sup>st</sup>, 2010. Although it did not recommend a new visit for this country, the Evaluation Committee paid an additional visit in order to evaluate the BCPs Moravița (road and railways), as well as the integrated management of border control with the new equipment planned to be acquired in order to endow the territorial and local structures of RBCPs (PFR), between November 15<sup>th</sup> -17<sup>th</sup>, 2010. The findings were positive.

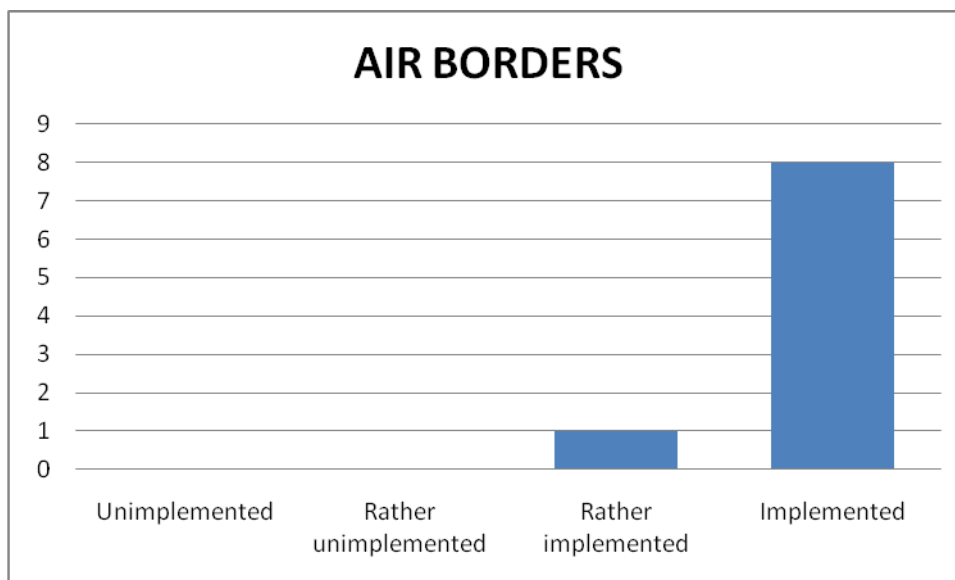


The measures to be implemented regard the following issues:

Measure/Sch-Eval recommendation	Explanation/ Stage
Completion of the adoption process of the “National Strategy for Integrated Border Management” for 2010 – 2012 and the implementation stage thereof.	The document is now with the Supreme State Defense Council (CSAT), under completion.
Ensuring permanent surveillance of the air state-border. 24/7 availability of helicopters belonging to the police forces for intervention activities.	Means are sought to increase the number of helicopters.
Building a fence between the passenger and truck terminals to prevent unsupervised passage of unauthorized persons between the two zones, BCP Siret and BCP Sculeni.	Process under development
Installing a stationary surveillance system in the uninhabited area between the Prut river border and the villages nearby considered to have the highest risk degree in illegal border crossing; BCP Răducăneni.	Project under development Ensuring mobile security: patrols, cars, mobile equipment.
Improving the surveillance on the Danube river as regards the legislation and the additional facility grant for border crossing control at BCP Orșova.	Process under development
Fast implementation of the future fixed surveillance system. Until this one is functional, it will be necessary to use Nestor type night-time technical surveillance equipment and other technical devices to detect illegal border passage in any weather conditions. Considering (planning) to increase the number of technical surveillance and detection means.	Process under development. Permanently under development.  Installation of fixed surveillance equipment area is developed as per the risk analysis, while project is still under development.

## AIR Borders: 9 measures

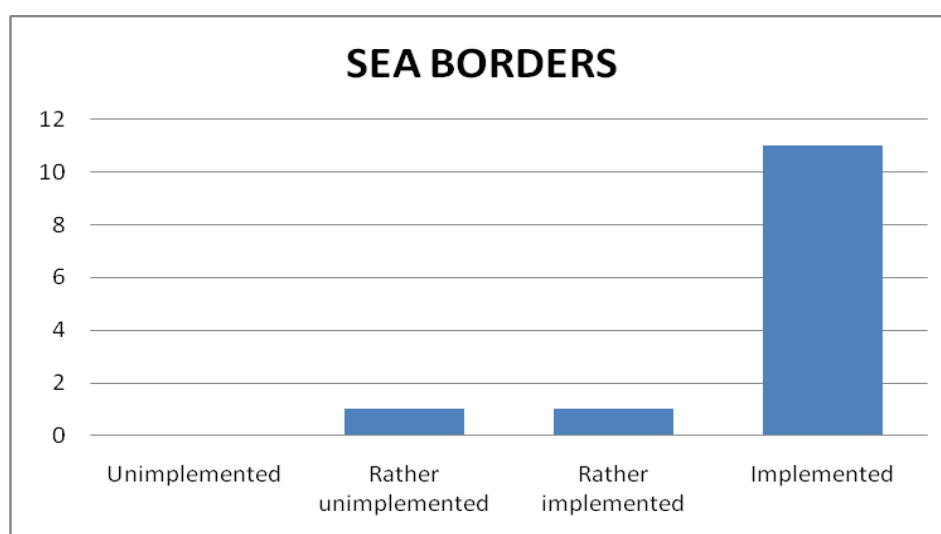
The evaluation mission took place in November 2009. The evaluation report recommends revisiting the infrastructure of the two Airports - Otopeni and Timișoara. Between November 15<sup>th</sup> – 17<sup>th</sup>, 2010 the reevaluation visit took place and found that Romania was ready to implement the entire Schengen acquis, in the respective field.



Measure/Sch-Eval recommendation	Explanation/ Stage
The need to adopt national legislation and administrative practices with regard to the implementation of transporters responsibility fully compliant with the EC Directive 2001/51/EC of June 28 <sup>th</sup> , 2001 as regards the quantum of fines and application of financial penalties in all cases.	Process under development.  The project is still under interministerial endorsement procedure. An incredible amount of time was lost because of this bureaucratic procedure.

## MARITIME Borders: 13 measures

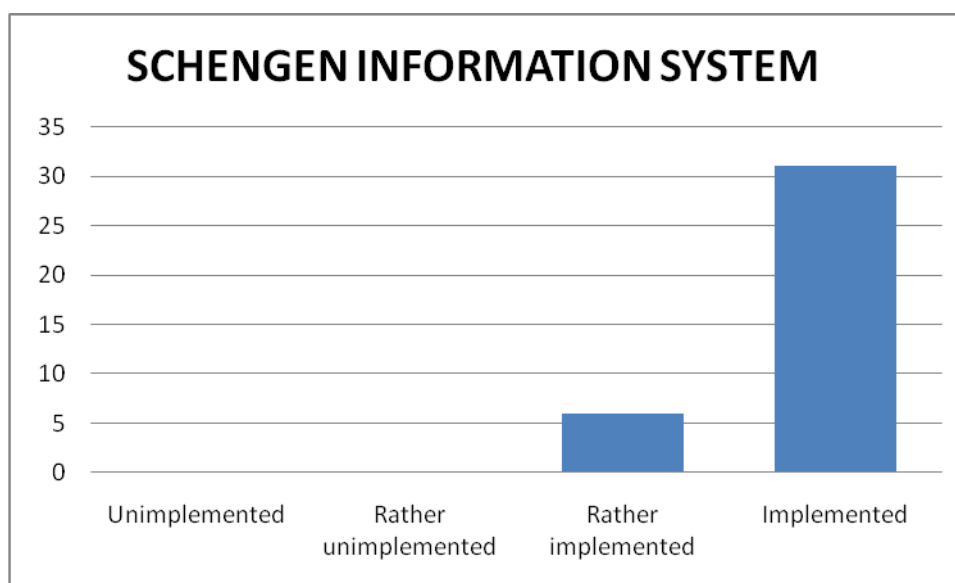
The evaluation mission took place in September 2009. The evaluation report does not recommend reevaluation, only follow up measures.



Measure/Sch-Eval recommendation	Explanation/ Stage
Harmonization of legislation regarding transporters responsibility and administrative practice of fine penalty of transporters as per the Decision of the European Council 2001/51/EC 2001	Process under development.
Installation of fixed technical surveillance means along the Danube and complementing the capacities thereof with mobile equipment, such as thermo-camera equipped vans.	Under implementation within the project with EADS to build the surveillance system on the Danube, on Chilia horn. The Danube is not a risk zone.

### SCHENGEN INFORMATION SYSTEM: 37 measures

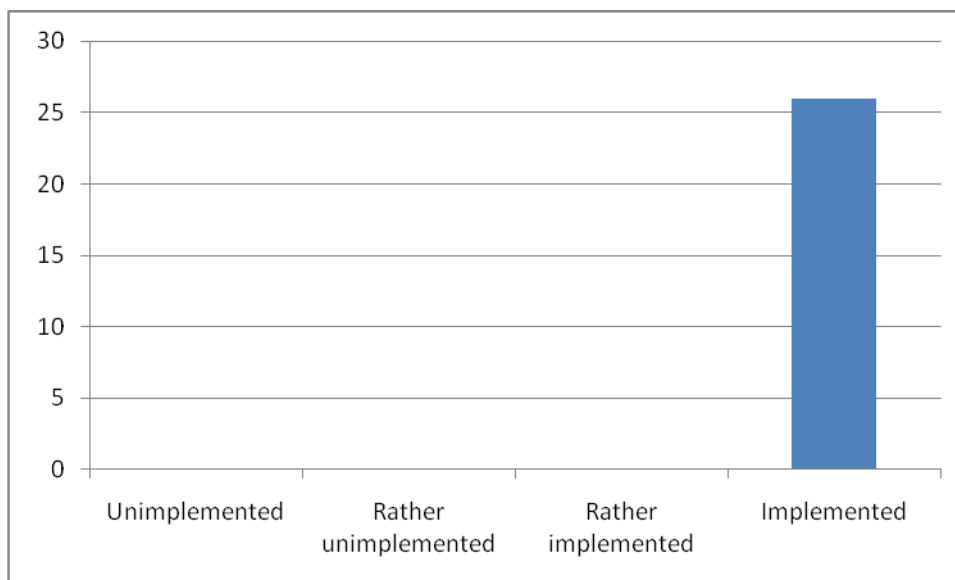
The evaluation mission took place between December 6<sup>th</sup> -10<sup>th</sup>, 2010. The resulted report was positive.



Considering the sensitivity of this topic, the SIS measures to be implemented shall not be listed below as these may cause operational issues. A numerical analysis shall sum up this field.

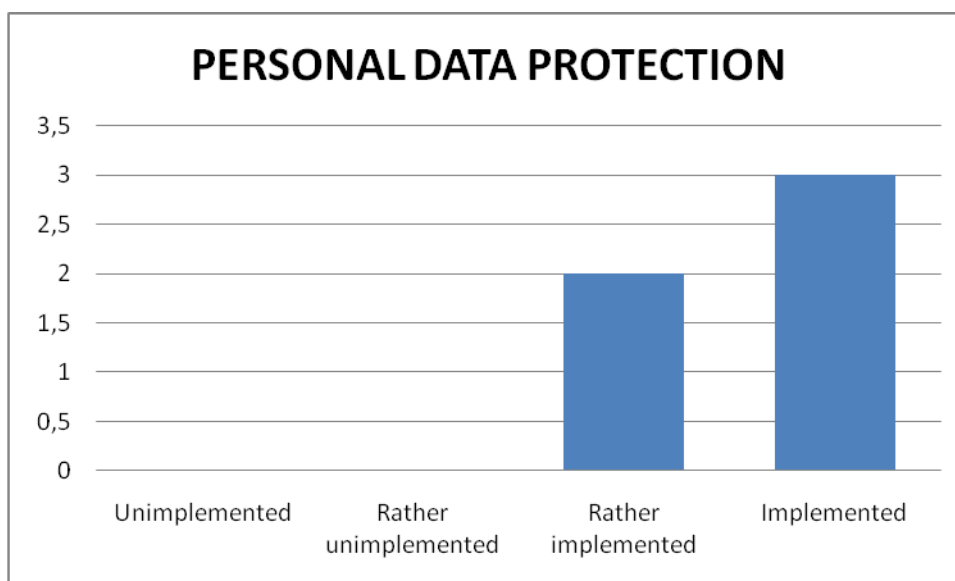
### SIRENE (Supplimentary Information Requested at the National Entries) Office: 37 measures

SIRENE represents the human interface of SIS. It is the only point in contact with the other seven Member States. The aim of setting up SIRENE was the need to exchange information at the level of all Schengen states, within the international police cooperation developed between the Member States. The Sirene Office's specific role is the responsibility for real time information supply to the end user, with the possibility to complement the information with additional data, in the shortest time possible.



### Personal data protection: 5 measures

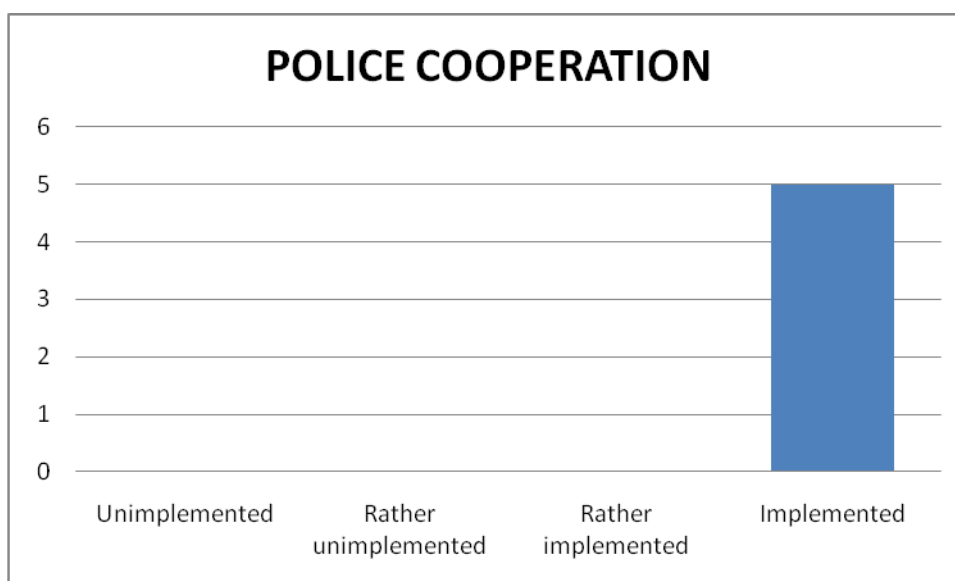
The evaluation mission took place in April 2009. The evaluation report does not recommend re-evaluation, but only follow up measures.



Measure/Sch-Eval recommendation	Explanation/ Stage
Allotment of new headquarters for ANSPDCP in view of carrying out the activity thereof in good conditions.	Solutions are sought to relocate ANSPDCP
Increasing the personnel scheme of ANSPDCP, considering the increasing workload of the institution as a result of the high number of complaints addressed thereof and especially in view of increasing the prerogatives related to the personal data protection, following Romania's connection to SIS and accession to the Schengen Area.	The situation has been reevaluated and prerogatives redistributed. Even if the personnel scheme was not increased, ANSPDCP is operating in optimum conditions.

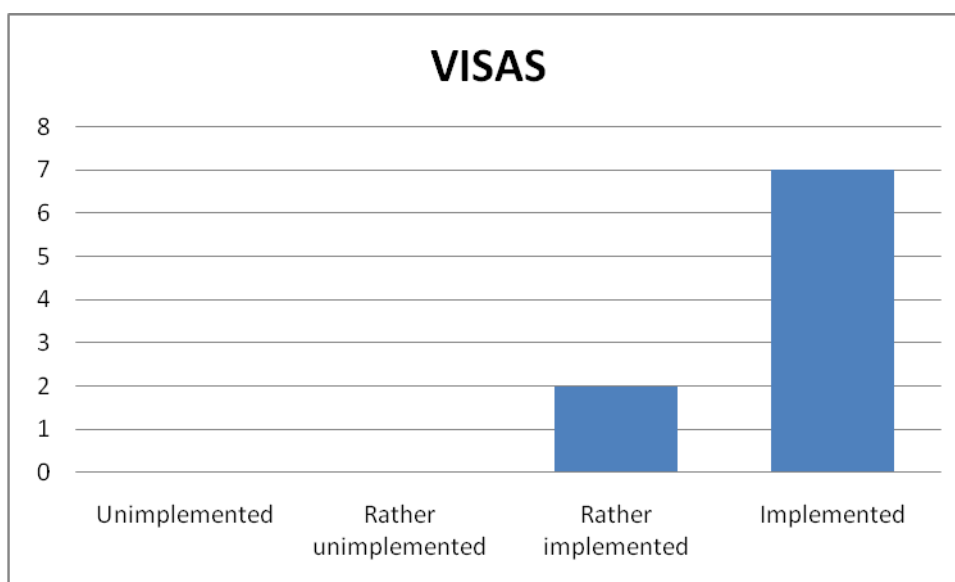
### Police cooperation: 5 measures

The evaluation mission took place in April 2009. The evaluation report does not recommend reevaluation.



### VISAS: 9 measures

The evaluation mission took place in April 2009. The evaluation report does not recommend reevaluation, only follow up measures.



Measure/Sch-Eval recommendation	Explanation/ Stage
Amending the legislation regarding the aliens regime in view of introducing: - the concept of uniform visa - provisions regarding visa extension and mutual principles of cancellation, recall and shortening the uniform visa	It regards the amendment and complement of GED no. 194/2002 regarding the regime of foreigners in Romania, consolidated, as further amended and complemented, in view of harmonizing thereof with the Schengen Convention.

<p>validity period</p> <ul style="list-style-type: none"> <li>- notion of visa with limited territorial validity</li> <li>- possibilities for Romania to be represented by another member state in issuing visas</li> <li>- the right to appeal in case of visa application refusal and to notify the refusal grounds in the national legislation</li> <li>- possibilities that the medical insurance should cover the entire staying period the visa is required for</li> <li>- obligativity that upon visa application, the foreigners posses medical insurance as per the provisions of art. 15 within the Community Visa Code</li> </ul>	<p>At present, the legislation is under inter-institutional endorsement procedure.</p> <p>Time was unjustifiably lost because of this bureaucratic procedure.</p>
<p>Implementation of the Electronic Visa System at the level of consulates and border pass points.</p>	<p>Process under development, depending on VIS operationalization at european level.</p> <p>It does not influence the accession to the Schengen area.</p> <p>The system is not ready at European level.</p>

## ABSORPTION OF FUNDS ALOTTED BY SCHENGEN FACILITY AND OTHER DONORS

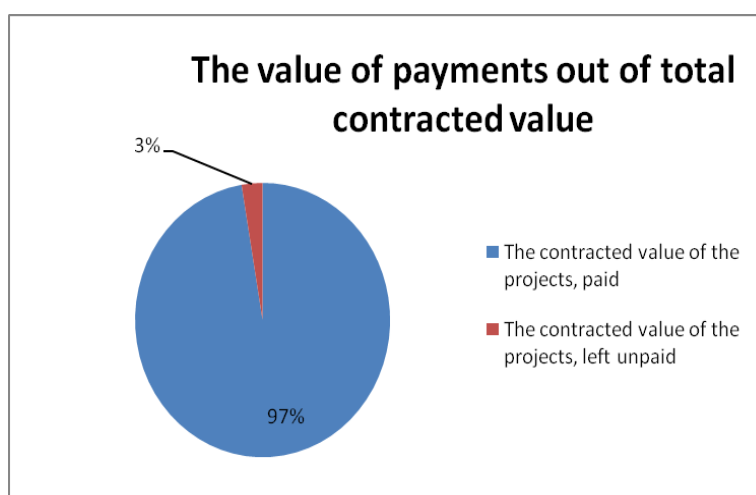
The Schengen Facility is a European fund set up as part of the temporary financial instrument named the „Schengen Facility and cash Flows”, destined to support Bulgaria and Romania during the period from the accession date to March 31<sup>st</sup>, 2010 in view of funding the actions at the new EU external frontiers, in order to implement the Schengen acquis and border controll.

		Payments September (interim)	Payments December (overall)
<b>A. Overall Schengen Facility</b>	<b>602,469,345</b>	-	-
<b>B. Contracted value of funded projects</b>	<b>362,465,442</b>		
<b>C. Payments made at 2010 level</b>		154,039,602	352,917,950
<b>D. Amount not spent within projects</b>		208,425,840	9,551,395
<b>E. Amount not spent from the Schengen Facility</b>			249,551,395

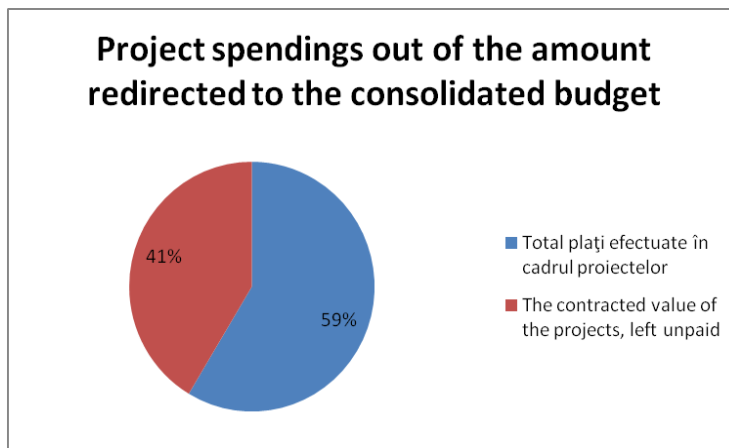
### Table Interpretation

- A. The amount is made up of the value allotted by the EU plus interests.
- B. Represents the amount contracted based on procurement procedures within the programme. Projects whose aims and measures are detailed below have been funded.
- C. Represents the payments made in September, namely by December 31<sup>st</sup>, 2010. Notice that most money were spent late, „in the last stages” of the funding programmes. The procurement developed in a difficult/delayed manner and the main results occurred late.
- D. Represents the amounts not spent within projects ( $D = B - C$ )
- E. The amount not spent from the initial programming (A). Here  $E = A - B + D$  final.

The funds left unspent from the Schengen Facility shall not be returned, but go directly to the consolidated budget under the cashflow component (GD no. 620/2007). From this standpoint it can be said that Romania has not lost the money allotted from the Schengen Facility as they are not returned as it happens for example, in the case of structural instruments.



The accession treaty provides that at least 50% of the allotment within the Schengen facility and for the cash flow should be used for the „ Schengen component”, destined to support the Member State in complying with the obligation thereof to fund actions at the new EU external frontiers in order to enforce the Schengen Acquis and external border controls. The effective percentage used for the Schengen component must be established by the authorities of the member State, while observing the above mentioned provision.



The accession treaty does not contain provisions regarding the use of allotted amounts for the improvement of the cashflow component of the Facility. The information received from the European Commission and confirmed by the experience of other member States of the ten that acceded to the EU in 2004, show that the use thereof is exclusively at the discretion of the Member State.

The Schengen Facility funds are used in view of making the payments related to the Schengen Facility Indicative Programme by December 31<sup>st</sup>, 2010.

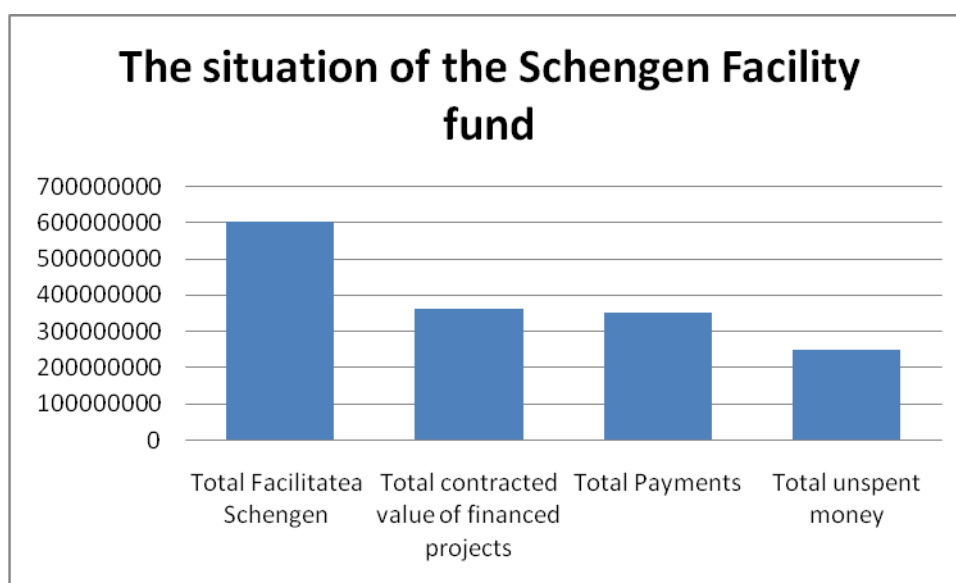
**The Indicative Schengen Facility Programme encompasses 21 projects subscribed to the following objectives:**

- a) strengthening control and surveillance area at the external borders, as well as the protection capacity against cross border criminality (4 projects);
- b) intensifying the control abilities by increasing the data storage capacity and access to information (17 projects).

**The main actions funded by the Schengen Facility Fund are:**

- Extension of the implementation of the National Signaling IT System (SINS) at national level;
- Endowment with TETRA terminals of the Ministry of Administration and Internal Affairs structures;
- Extension of public key infrastructure (PKI) at the level of sectorial IT systems within the Ministry of Administration and Internal Affairs;
- Carrying out the extension of the Voice – Data Integrated Communication Network (RCVD) of the Ministry of Administration and Internal Affairs in order to ensure communication support, at access level, necessary to MAI structures contributing to the setting up of the electronic European cooperation environment in the field of internal affairs, in general, as well as in the Schengen field;
- Strengthening the capacity of the IT system of the Romanian Police necessary to implement the Schengen IT System – generation II (SIS II);
- Creating the SIRENE application and investments in infrastructure, purchase of technical and computational equipment in order to render the SIRENE Office operational;
- Upgrading the IT system of the Romanian Office for Immigration, correlated with SIS II and the Visa Information System (VIS);
- Setting up and integrating into the IT system of the Romanian Office for Immigration of a virtual library comprising specimens of all ID, travel and civil status documents used by foreigners on the Romanian territory, including a description of the safety elements thereof;
- Technical assistance to prepare the conditions necessary for the subsequent implementation of FADO and APIS systems;
- Strengthening external border control by increasing the naval, fluvial and terrestrial mobility of the Romanian Border Police teams;

- Updating and adjusting/re-configuring the real estate patrimony in order to meet the new/future requirements of external border surveillance and control;
- Updating the Consulates at Schengen standards and setting up a Training Centre for consular prerogatives personnel;
- Developing the National Information System regarding visas (NS-VIS);
- Extending and consolidating the integrated communication network WAN-ATM at the level of Romanian cities in order to ensure the necessary information flow for the government public institutions, up to the level of territorial structures;
- Carrying out a validation and pre-identification interface for SINS users, others than the Ministry of Administration and Internal Affairs.



## 2. PHARE funds

- Alotted Phare funds: Euro 94,000,000;
- Alotted co-financing: Euro 30,000,000.

The Romanian Border Police benefitted from consistent funds by PHARE 1999 – 2005 programmes to insure and secure the state frontiers and to effectively manage the EU external border surveillance and control. The money funded the following actions, such as:

- Strengthening the external border control and surveillance by increasing terrestrial, fluvial and maritime mobility of the Border Police
- Endowment with IT and border crossing points detection
- Implementation of the integrated Black Sea coast maritime traffic observation and control system, SCOMAR
- Extension of the voice-data communication system in Suceava and Botoşani counties
- Implementation of TETRA mobile communication system in Iaşi, Vaslui and Galaţi counties
- Implementation of the communication infrastructure in Caraş Severin county

Assimilation of funds also contributed to the updating and institutional reconstruction of the Border Police, to the harmonization of the legislative-procedural framework with the community's best practices and standards, to staff training and professionalization.

The Romanian authorities estimate that the cumulated financing efforts (EU + Candidate State) are getting close to Euro 1.2 billion<sup>1</sup>. Also, important amounts from the national budget or from external credits have been spent. For example, the Integrated System for Romania's State Border Security was

supplied with funds as of 2005, and at the level of 2009, 440 millions have been allotted out of which approximately 260 millions were spent. Another case where national funds were used are the airports where Schengen terminals are being built. Only in the case of Henri Coandă International Airport in Bucharest (Otopeni), did the Ministry of Transport invest Euro 60 millions.

The estimate refers to the last five years and also includes the pre-accession funds.

## 5. CONCLUSIONS AND RECOMMENDATIONS

### Conclusions

**Romania has to fight both negative perceptions and negative realities.** The negative perceptions affect the technical Schengen Area accession process. Such perceptions are based on negative realities such as failure to comply with engagements undertaken the moment of accession to the European union in 2007. Such realities refer mainly to the Mechanism of Verification and Cooperation on Justice, a mechanism that uses a parallel evaluation procedure without a real connection to the Schengen process

Romania complies with the Schengen acquis and is ready to access the Schengen Area. There was no report recommending Romania's re-evaluation on one of the evaluated fields.

There, where not all recommendations made following the evaluation visits have been implemented, the Romanian authorities took temporary alternative measures until the recommendations shall be entirely enforced.

The Schengen accession process was neglected by the political factors for a long period of time. Most part of the technical conditions have been fulfilled during the last stage, at the level of 2010 to be more specific.

Even if the Schengen process was declared zero priority, not all public administration understood that. The high number of changes of ministers and state secretaries have strongly influenced the first part of the process that suffered due to lack of coherence and stability of positions. There was no person with sufficient political power to solve the blockages occurred and this turned poignant following Vasile Blaga's resignation back in October 2010.

Delays have been registered, the deadlines undertaken in different action plans have been many times redefined and pushed further and further to the possible accession date. Despite all these, the process itself went well, Romania benefiting the experience and the administrative capacities developed during the EU accession process.

**Romania did her technical homework. The political context is not favourable due to failure to comply with other obligations undertaken and to objective reasons (internal political context, reluctance regarding immigration) within certain member states.**

## **RECOMMENDATIONS**

### **For the Romanian authorities**

Continued compliance as quickly as possible of the measures recommended by the Sch-Eval experts following the evaluation visits. This fact proves seriousness and engagement as to the EU border securing process.

Urgent adoption of the remaining laws/strategies, so that Romania presents itself with a complete homework the moment the JIA Council takes place.

In the event (quite probable) of postponing Romania's accession to the Schengen area, Romania shall have to aim to reach this target during the period Hungary holds presidency of the European Union.

Initiation of bilateral relations with the states opposing Romania's accession to the Schengen area (France, Germany, Finland) in order to offer additional guarantees that Romania observes the Schengen acquis.

Continued justice reforms and taking all anti-corruption measures necessary to satisfy the conditions undertaken within the Mechanism of Cooperation and Verification. Even if there is no formal relation between the two processes, it was proven that there are political implications of nature to affect Romania's way towards the Schengen Area.

The opinions expressed does not necessarily imply the position of all CRPE affiliated experts or of other CRPE partner institutions and organizations.

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<sup>i</sup> Amount not checked by the CRPE. The amount was mentioned by the Romanian President and the representatives of the Ministry of Administration and Internal Affairs.