**Follow-up** **to the European Parliament non-legislative resolution on the accession to the Schengen area**

1. **Resolution tabled pursuant to Rule 132(2)of the European Parliament's Rules of procedure**
2. **Reference number:** 2023/2668 (RSP) / B9-0309/2023 / P9\_TA(2023)0278
3. **Date of adoption of the resolution:** 12 July 2023
4. **Competent Parliamentary Committee:** N/A
5. **Brief analysis/assessment of the resolution and requests made in it:**

Bulgaria and Romania successfully accomplished the Schengen evaluation process pursuant to Article 4(2) of the 2005 Act of Accession in 2011. No Council Decision on Bulgaria and Romania’s accession to the Schengen area and the lifting of controls at their internal borders has been taken to date.

With a view to strengthening mutual trust and acknowledging that the Schengen *acquis* has developed since 2011, Bulgaria and Romania issued a Joint Declaration declaring their willingness to invite, on a voluntary basis a team under the coordination of the Commission, to ensure the application, among others, of the latest developments of the Schengen *acquis* since the 2011 evaluation.

These voluntary fact-finding missions, which took place between 9 to 15 October 2022 and 14 to 18 November 2022, revealed that Bulgaria and Romania have not only continued implementing the new *acquis* and tools, but that they have also substantially reinforced the overall application of the Schengen *acquis* in all its dimensions.

The decision for the accession was on the agenda of the Justice and Home Affairs Council (JHA) of 8 December 2022. Such a decision which requires unanimity was not taken to the regret of the Commission.

This resolution on the accession of Bulgaria and Romania to the Schengen area is consistent with the Commission’s position on Schengen enlargement. The resolution is addressed to the Council, but for some of the points the Commission is requested to react:

• discrimination of Bulgarian and Romanian citizens; are there any possible breaches of the Treaty on European Union and what possible procedures are in place to defend the right to free movement of Romanian and Bulgarian citizens?

• societal and economic burden for the businesses and population of the two countries; are there any possible mechanisms for the compensation of financial losses?

• environmental impact and health risks, due to the increased pollution from the many thousands of vehicles which are queuing daily; what are the estimated financial losses, missed gains and environmental damage?

1. **Response to requests and overview of action taken, or intended to be taken, by the Commission:**

Every citizen of the Union has the fundamental right to move and reside freely within the territory of the Member States, based on Article 21(1) of the Treaty on the Functioning of the European Union (TFEU). The Free Movement Directive 2004/38/EC[[1]](#footnote-1) lays down detailed rules as regards the exercise of that right. Romanian and Bulgarian citizens have enjoyed the right of free movement since these two Member States joined the European Union.[[2]](#footnote-2) The right of free movement can be exercised in the whole territory of the European Union, regardless of whether a Member State applies the Schengen *acquis* in full. The fact that Romania and Bulgaria do not yet fully apply the Schengen *acquis* does therefore not restrict the exercise of the right of free movement of EU citizens.

The Commission strongly regrets that checks at the internal borders with Bulgaria and Romania have not been lifted yet, and notes that these controls affect not only Bulgarian and Romania citizens but all persons crossing those borders, irrespective of their nationality. In this sense, the absence of a decision lifting controls at the Bulgarian and Romanian internal borders affects all EU citizens, as well as legally staying or residing third country nationals entitled to travel within the Union, who wish to cross those borders **(paragraph 3)**.

The Commission considers that both Romania and Bulgaria are ready to join the Schengen area and have gone beyond the necessary requirements accepting a new set of checks during the voluntary fact-finding missions that took place between 9 and 15 October and 14 and 18 November 2022. The positive outcome of the fact-finding missions was reflected by the Commission in its Communication of 16 November 2022[[3]](#footnote-3), which confirmed that both Member States continue to meet the Schengen standards and have substantially reinforced the overall application of the Schengen *acquis* in all its dimensions in a comprehensive manner.

Nonetheless, Article 4(2) of the Act of Accession does not entail any automatism, in the sense that the Commission’s assessment of the fulfilment of the necessary conditions for the full application of the Schengen *acquis* and a positive opinion of the European Parliament do not automatically lead to a positive vote from the Council. The accession procedure does not set out any time limit for the Council to take a positive decision on the accession of new members to the Schengen area.

The Commission is working closely with the Spanish Presidency to prepare for a decision to be taken by the Council to lift internal border controls still this year. The EU has to honour its commitment to grant the two Member States full membership to the Schengen area, and further strengthen European unity in doing so **(paragraph 8)**.

The absence of a decision for full application of the Schengen *acquis* does not put into question the right of free movement of Union citizens, including, Romanian and Bulgarian nationals, under Article 21 TFEU and the Free Movement Directive 2004/38/EC.

Article 21 TFEU is applicable since the accession of Bulgaria and Romania to the EU, thus Romanian and Bulgarian citizens can already now move and reside freely in the other Member States, subject to the general conditions set out in the Free Movement Directive **(paragraph 11)**.

1. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.4.2004 [↑](#footnote-ref-1)
2. Member States could, however, put in place transitional arrangements regarding the free movement of workers from Bulgaria and Romania until the end of 2013 [↑](#footnote-ref-2)
3. COM/2022/636 final [↑](#footnote-ref-3)