



SCHENGEN IN TIMES OF PRESSURE : A VIEW FROM A NON-SCHENGEN EU MEMBER STATE

IED Research Project: “Migration, borders control and solidarity: Schengen at stake?”

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Abstract: The current research paper aims at examining the perceptions of the Schengen Agreement and its current state from the point of a view of a non-Schengen EU Member State. It sheds light on the public support for the Agreement in Bulgaria and looks for parallels to Romania since both countries acceded the European Union together in 2007 and since then have been jointly put under a tailor-made mechanism for oversight of their judiciary, the shortages of which play a crucial role on their way to Schengen membership. While governments in both Member States attempt to tackle these shortcomings, public support for Schengen starts to decrease, since it gets perceived no longer as an advantage, but rather than as a security threat. However, the paper argues that institutions can leverage on the strong support for EU in Bulgaria and Romania to prevent populist rhetoric from using Schengen for enhancing its outreach.

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1. Introduction

Thirty years after the Schengen Agreement was signed, its main achievements seem to be under severe pressure due to the unprecedented influx of migrants and refugees to Europe and the terrorist attacks in Paris and most recently in Brussels. While Member States (MS) of the European Union (EU) are still in the pursuit of a working common approach based on the values of solidarity to tackle the former, preventing the latter in the future will be a subject of an imperative and long-term debate on the free movement of people in Europe.

All these recent developments raise the valid question about the future of the Schengen Agreement and its adjustment to the current circumstances or saying it in other words the price citizens are ready to pay for the free movement they have been enjoying in the recent decades, which many have already taken for granted. Understandably enough, the outreach of these debates is about not only to influence policy-makers in Brussels, Paris, Berlin, etc. but also to go beyond the 26 full Schengen members. What is more interesting in this regard is the reflection of the Schengen-future-debates on the Member States that aspire to become members of the Schengen Agreement (or at least did so) but experience delays in joining for differing reasons – Bulgaria, Croatia, Cyprus and Romania.

Citizens of Bulgaria and Romania, which both joined the European Union in 2007 and since then are often regarded as a group in different EU aspects, reportedly used to perceive this status as a second class EU membership. However, nowadays it is increasingly the case that nationals from the above-mentioned two non-Schengen countries might question the added value of the Agreement since even today they can easily travel to other EU countries despite the existing border controls. What is more, the fact that the residence permits for these countries are not valid for the Schengen area proved to be one of the reasons (among other purely economic ones) why migrants felt discouraged to head especially to these countries when entering the EU.

Having this as a background, the current research paper aims at examining the current implications of the Agreement on these two non-Schengen EU Member States and elaborate on the perceptions about the future the Convention there. It will eventually argue that restoring Schengen will be essential but not enough for communicating its full scope of achievements and advantages to countries outside the Agreement. After making Schengen working efficiently (and attractive) again, a period of time will be definitely needed before societies in member countries are fully convinced of its merits and Brussels can use it as a leverage in communicating with Schengen-outsiders that are about to join.

2. Current situation

The Schengen Agreement, which marked its 30th anniversary in 2015, started as an intergovernmental initiative of several of EU Member States and meanwhile has been incorporated into the body of EU law, thus making all acceding countries legally bound to join it from 2004 onwards. Nowadays it covers partially the territory of the European Union and includes four non-EU countries (Norway, Iceland, Liechtenstein and Switzerland). EU Member States that are not participating are the United Kingdom and Ireland, both having the “opt-in” option, and several of the countries from the EU Fifth Enlargement – Cyprus, Bulgaria and Romania, as well as Croatia that joined in 2004, 2007 and 2013, respectively.

These four countries are expected to join the Agreement sooner or later, although by following different paths. Croatia, the latest EU Member State, started the application process in 2015, while Cyprus is still not part of the Convention because of the unsolved dispute with the Northern part of the island. When it comes to Bulgaria and Romania, the history of their aspirations to enter Schengen is multi-layered and significantly affected by the objections of several Member States that bind the Schengen membership with the persisting shortcomings both countries have been experiencing in the field of judicial reform, corruption and organised crime. To tackle them, the European Commission (EC) set criteria ("benchmarks") for assessing progress made on these issues by both countries in 2006, which are a matter of tailor-made monitoring within the so called "cooperation and verification mechanism" (CVM).¹ This monitoring appears as annual progress reports for Bulgaria and Romania since 2013 (and biannual reports between 2007 and 2012).

¹ http://ec.europa.eu/cvm/index_en.htm

Although, the Schengen accession and CVM procedures are officially not connected, it gets increasingly obvious that CVM reports' findings are crucial for taking decision on Schengen entry, which should be unanimous. Opposition comes from members countries of the agreement – officially from France, Germany, the Netherlands and Finland (as well as less formally from Austria, Denmark, Belgium and Norway).² In 2011 the Netherlands and Finland blocked the Schengen membership of Bulgaria and Romania stating that both countries are not ready to join. According to the Netherlands the lack of progress in fulfillment the CVM benchmarks is a convincing argument for stopping the Schengen entry of the two countries. It was stated then that a minimum of two positive CVM reports will be needed before the veto is lifted. In 2013 Germany and France joined the Dutch resistance, which led to the withdrawing of the Romanian request for voting on the subject. Since then the issue of the two states' membership in Schengen was reviewed only once – during the Justice and Home Affairs Council in December of 2014 when the ministers' conclusions at the time stated that the decision for full application of Schengen legislation to Bulgaria and Romania had not yet been made.³

The justice and home affairs deficiencies as mentioned above let the opposing Member States formulate their objections in the following main directions:

- 1) the inconclusive results in fighting corruption and organized crime in the two countries might jeopardize the security of the whole Schengen area;
- (2) external factors, referring to the increased migration pressure on Europe and
- (3) internal ones, linked to domestic public and political concerns.⁴

These concerns, however, contradict to the repeated positions of European institutions confirming that Bulgaria and Romania fulfilled the Schengen criteria – firstly in June 2011 by the European Parliament and the Council of Ministers on Justice and Home Affairs, and most recently by the European Commission President Jean-Claude Juncker.⁵

² Perspectives for the Schengen Membership of Bulgaria and Romania: Between the Implementation of Criteria and the Changes in the European and International Context, European Policies Initiative (EuPI) of the Open Society Institute – Sofia, June 2011

³ <http://www.euinside.eu/en/comments/juncker-romania-and-the-cvm-walk-into-a-bar>, last access on May 31, 2016

⁴ Perspectives for the Schengen Membership of Bulgaria and Romania: Between the Implementation of Criteria and the Changes in the European and International Context, European Policies Initiative (EuPI) of the Open Society Institute – Sofia, June 2011

⁵ http://www.rii.ro/en_gb/romanas_schengen_accession_likely_to_take_place_in_two_stages-2546560, last access on May 30, 2016

In terms of the Schengen membership criteria, the main focus used to be on fulfillment of the so called “technical criteria” which proves to be a very ambiguous concept. Actually, there is only one set of criteria, which was negotiated during the pre-accession talks with Bulgaria and Romania. Therefore, when saying that both countries cover the “technical criteria” for membership in the border-free area, one should understand that they comply with all membership criteria and everything else is matter of the objections raised by Member States, which were never put even as in an unofficial list.⁶

Having said that, the options left for decision-makers in Bulgaria and Romania to receive an official date for accession are mainly concentrated in trying to convince their counterparts from other Member States that both countries are not a risk for the Schengen Agreement. In order to achieve this, politicians in the two new Member States have been addressing the raised concerns in two thematic fields:

1) improving their countries’ performance within the Cooperation and Verification Mechanism in fighting organized crime, corruption and reform of judiciary or at least attempts to do so;

2) protecting the external borders of the EU by sticking to all current Schengen requirements and procedures and even putting in place additional compensatory measures.

As of the first thematic field, the fact that the CVM monitoring reports get prepared nowadays only once a year instead of twice as it was the case before 2013 indicates a progress, which however seems to be still fragile and not sufficient for lifting the mechanism per se. What is more, the latest reports under CVM from early 2016 point out that separation of Romania from Bulgaria becomes more possible in the near future, despite the fact that there has never been any binding between the two states formally. A possible separation of Romania from Bulgaria might lead to different dates for Schengen entry, which however seems less likely for the time being, but can additionally motivate political elites in both neighboring countries – to make the reforms in Romania sustainable and to serve as an

⁶ Perspectives for the Schengen Membership of Bulgaria and Romania: Between the Implementation of Criteria and the Changes in the European and International Context, European Policies Initiative (EuPI) of the Open Society Institute – Sofia, June 2011

external shock to the political establishment in Bulgaria and making it eventually deliver the expected results.⁷

Bulgaria and Romania seem to be much more successful so far in the second thematic field i. e. in protecting the external European borders. Reportedly, they did not spare resources for protection of the land, maritime (Black Sea and the Danube River) borders and airports, as well for acquiring technologies and training staff as a part of the measures, constituting the integrated border management system that is required by Schengen. The security risks in that respect arose initially from the Arab Spring and the expected at that time waves of migrants to Europe and later on the delays in Bulgaria and Romania's entry were often attributed to the geographical proximity the countries used by refugees as main corridors to enter Europe, especially after the outbreak of the civil war in Syria. Sharing land borders with Greece and Turkey, Bulgaria has been even more exposed to this concern and in order to proactively tackle it, its authorities took the decision to build a fence on country's 256-km-long border with Turkey (Fig. 1). The construction works started in 2013 and as of June 2016, the fence covers 95 km of the border, while another 119 are to be completed in the months to come, thus the total length is expected to reach 214 km by year's end.⁸ In addition, protection of the country's borders, which by law was a responsibility of the border police authorities, was reinforced by units of the Bulgarian army – an amendment that was unanimously agreed by all political parties in the beginning of 2016.

Thus, so far neither Bulgaria nor Romania, which is however not directly exposed to the Eastern Mediterranean and the Western Balkan migratory route, proved to be targets of the waves of refugees or migrants and since policymakers in both countries are well aware of the fears in that direction and therefore are ready to take even extreme decisions to prevent such concerns turning into reality.

⁷ <http://www.euinside.eu/en/comments/juncker-romania-and-the-cvm-walk-into-a-bar>, last access on May 31, 2016

⁸ Denvnik Daily, June 14, 2016

Fig. 1 Border controls and construction of fences along the Eastern Mediterranean and the Western Balkan migratory route as of June 2016



Soucre: New York Times

Eventually, tackling internal concerns such as judiciary and home affairs and external ones related to the migration pressure can be perceived as insufficient if the level of mutual trust is not sustainable over time. Thus, provided that all criteria for Schengen membership are met, political elites in both new Member States will need to invest much more time and energy in convincing their counterparts of the achieved results and their durability. What is more, the readiness of both countries to join is yet to be communicated in an appropriate manner with the constituency in Schengen Member States, which for the time being is increasingly exposed to populist slogans and uprising nationalism. Finally, this amalgam of still existing doubts about the unfinished domestic homework and the preparedness of Bulgaria and Romania to protect the external borders of the EU, the failure of their elites to live up to the commitments towards their EU peers and the fragmented public opinion in the home countries of the latter, will leave the Schengen issue open for a long time, even if a phased entry is going to be negotiated in the foreseeable future.⁹

⁹ One of the possible scenarios for Bulgaria and Romania includes a joining the border-free area in phases – starting firstly by lifting the airport check points and then by opening the land borders several months or years later.

3. Future Schengen perspectives for Bulgaria and Romania

According to the 1951 Refugee Convention refugees may request political asylum if they are unable or unwilling to return to their country of origin because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.¹⁰ Political asylum includes the right to live and engage in wage-earning employment in the host country, to receive at least the treatment which is accorded to aliens, and to be re-united with family members. This implies to any signatory state of the Convention Relating to the Status of Refugees, including all EU member states.

To apply for political asylum, refugees have to present themselves to authorities in the territory of the signatory state. What is more, latest EU rules require that the first Member State in which the application for international protection was lodged shall be responsible for examining it (Dublin III Regulation)¹¹. If Schengen regulations are considered, Schengen countries do not grant visa to third country citizens for the purpose of seeking protection. On the contrary, conditions for obtaining any Schengen visa are usually so restrictive that many persecuted individuals do not qualify. Therefore, since refugees who seek protection in a Schengen country have to travel without valid documents and therefore are not admitted as passengers to airlines or other regular transport carriers, most refugees opt for reaching Schengen countries irregularly, usually by risking their lives. Additionally, enforcement efforts have been tightened over the last years and under the current regulation, refugees must have their finger-prints taken upon arrival and, in principle, no other Schengen country will process their application for asylum.¹²

The regulations also determine which member state is responsible for processing asylum applications and providing material support to refugees for the duration of their status is being processed. Thus, having in mind the prolonged duration of such procedures particularly in times of excessive migratory pressure (and the still not functioning relocation plans), the selection of the first recipient country proves to be of paramount importance. Understandably enough, less wealthy EU countries are less attractive to migrants. According to 2014 EUROSTAT data Bulgaria and Romania rank last with GDP per capita significantly below

¹⁰ Convention relating to the Status of Refugees (Geneva, 28 July 1951), Protocol relating to the Status of Refugees (New York, 31 January 1967)

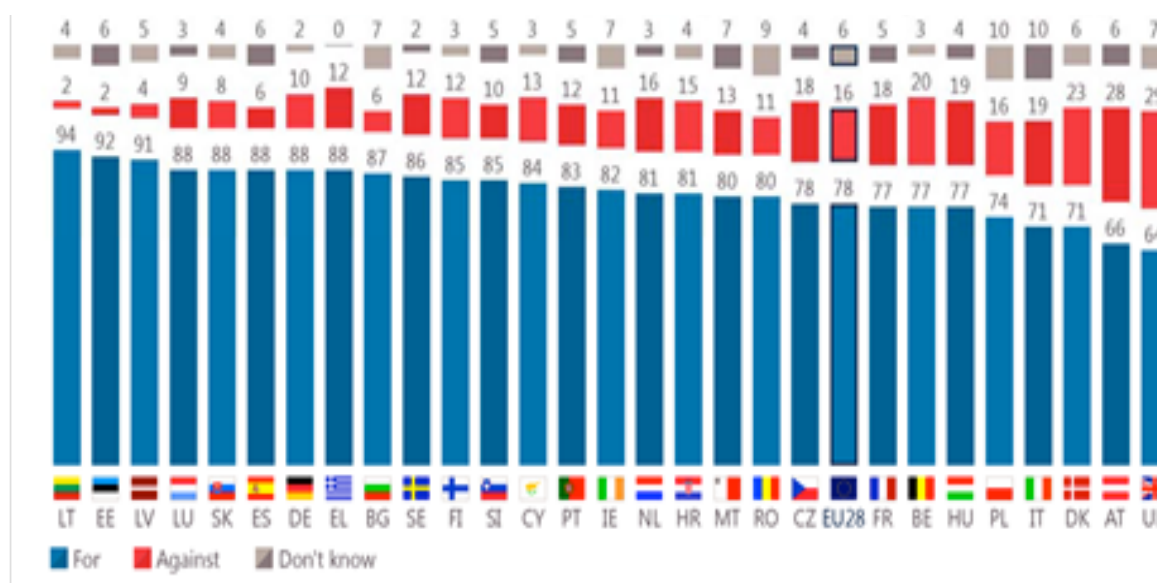
¹¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>

¹² Ademmer et al., Internal blessing, external curse?, Kiel Policy Brief, 30 Years of Schengen, No. 88, June 2015

the EU average – 47% and 55%, respectively for Bulgaria for Romania, which along with the enhanced border protection measures as mentioned above, can make them everything but eager to join the border-free area any time soon or even not immediately after it will have been restored.

At first glance, citizens in Bulgaria for Romania continue to support the “free movement of EU citizens who can live, work, study and do business anywhere in the EU” above the EU average – 87% of the Bulgarians and 80% of the Romanians (Chart 1). However, since accession to Schengen was delayed for years, the public support in Bulgaria started decreasing over time. It remains relatively high but latest opinion polls clearly show the downtrend – it lost 13% in the period 2011-2015 and decreased from 67,3% to 54,3% respectively. Similarly, the opposition to Schengen entry increased from 6,2% in 2011 to reach 16% in 2015 (Chart 2)¹³.

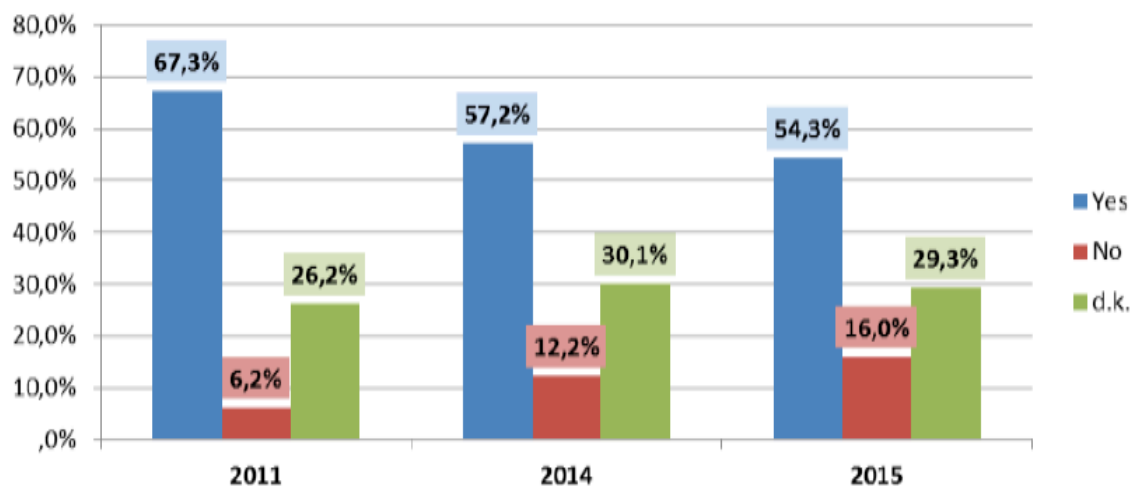
Chart 1. Public opinion on the free movement of EU citizens who can live, work, study and do business anywhere in the EU (%)



Source: Standard Eurobarometer 84, autumn 2015

¹³ Assessing EU Membership Experience, Benefits and Further Integration: Public Opinion in Bulgaria 2015, European Policy Initiative (EuPI) of the Open Society Institute – Sofia, May 2015

Chart 2. Public support for Schengen entry in Bulgaria (2011 - 2015)



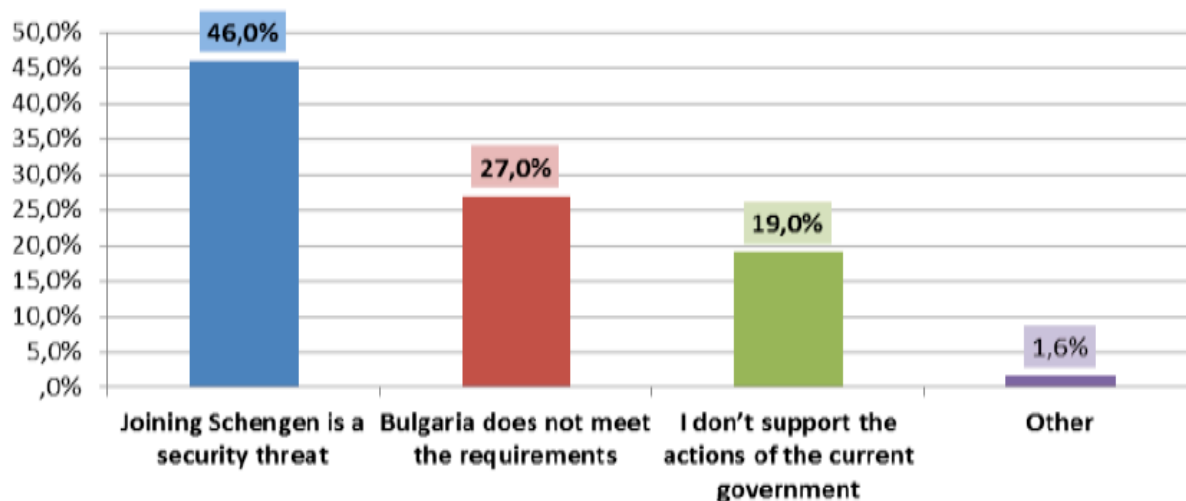
Source: European Policy Initiative (EuPI) of the Open Society Institute – Sofia

The main reason for opposing the Schengen membership is the perception that it can prove to be a security threat, which is increasingly the case if two consecutive opinion polls are considered (Chart 3¹⁴ and Chart 4¹⁵). If only “no” answers within the 2015 survey are considered, the security threat ranks first with 46% of the answers, while within a comparable survey from 2014 it gathers 20% of the responses. This perception is likely to be even more dominant if a similar survey is conducted in 2016 since the latest nationally representative public opinion survey presented above was conducted in March 2015, which is much ahead the peak of the migration crisis in the second half of 2015.

¹⁴ Ibid.

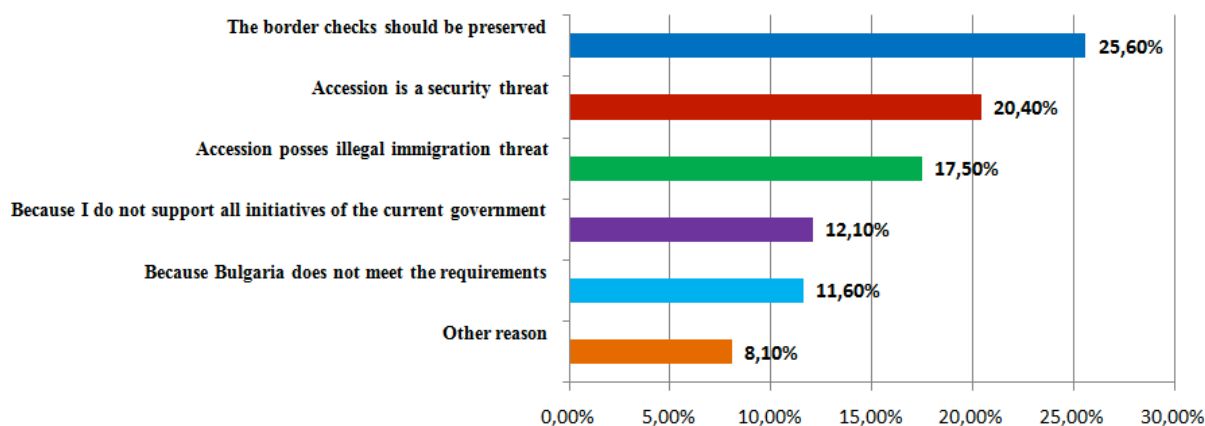
¹⁵ What about the Pivotal EU Projects: Schengen and Eurozone Membership and Bulgaria’s Public Opinion, European Policy Initiative (EuPI) of the Open Society Institute – Sofia, August 2014

Chart 3. Reasons for disapproving Schengen in Bulgaria: only “no” answers are considered (2015)



Source: European Policy Initiative (EuPI) of the Open Society Institute – Sofia

Chart 4. Reasons for disapproving the Schengen Entry in Bulgaria (2014)

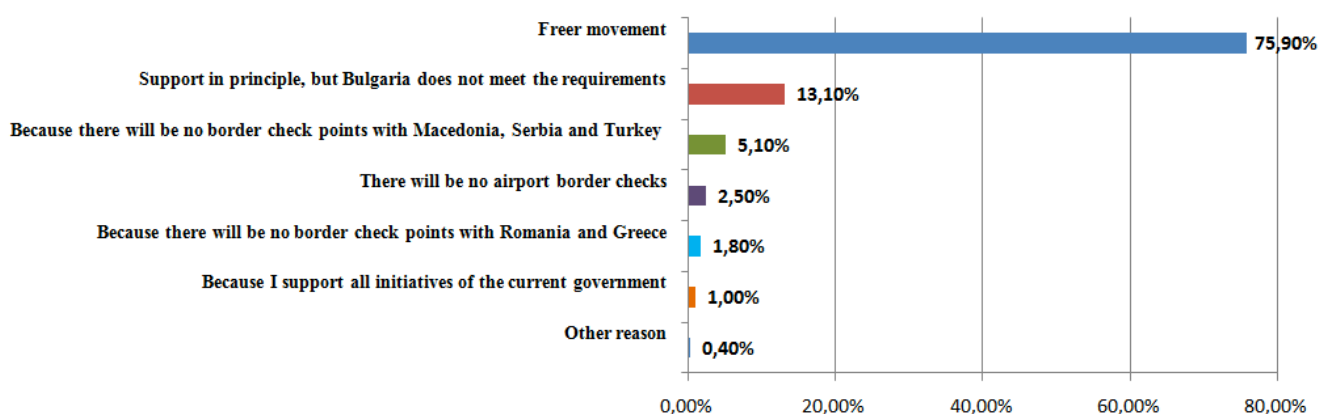


Source: European Policy Initiative (EuPI) of the Open Society Institute – Sofia

The skepticism towards the Schengen Agreement can be further nurtured by the still existing lack of information or even considerable levels of misunderstanding among local population in Bulgaria and Romania. A survey from March 2010 shows that over 50% of the citizens in Bulgaria had incorrect idea of Schengen membership, with 23,8% of respondents stating that Bulgaria was already member of Schengen and some 36% pointing at that time at 2012 as the expected year of entry. In comparison, a February 2011 poll found out a more

informed public opinion with about half of the respondent - 55% - saying correctly that Bulgaria is not a member of Schengen and 32% saying that the expected year of entry is 2011.¹⁶ Although, a certain level of improvement has been registered since then, more recent surveys show that the misinterpretation continues to exist. According to data from the opinion poll of the European Policy Initiative (EuPI) of the Open Society Institute – Sofia mentioned above, reveal that 13% of the respondents support the entry in general being at the same time skeptical that the country meets the requirements for membership, while 5% link wrongly the Schengen entry with lifting of border checks to non-EU countries like Macedonia, Serbia and Turkey and another small group of 2,5% attributing the merits of the Agreement to abolishment of airport border checks only (Chart 5).

Chart 5. Reasons for supporting the Schengen Entry in Bulgaria (2014)



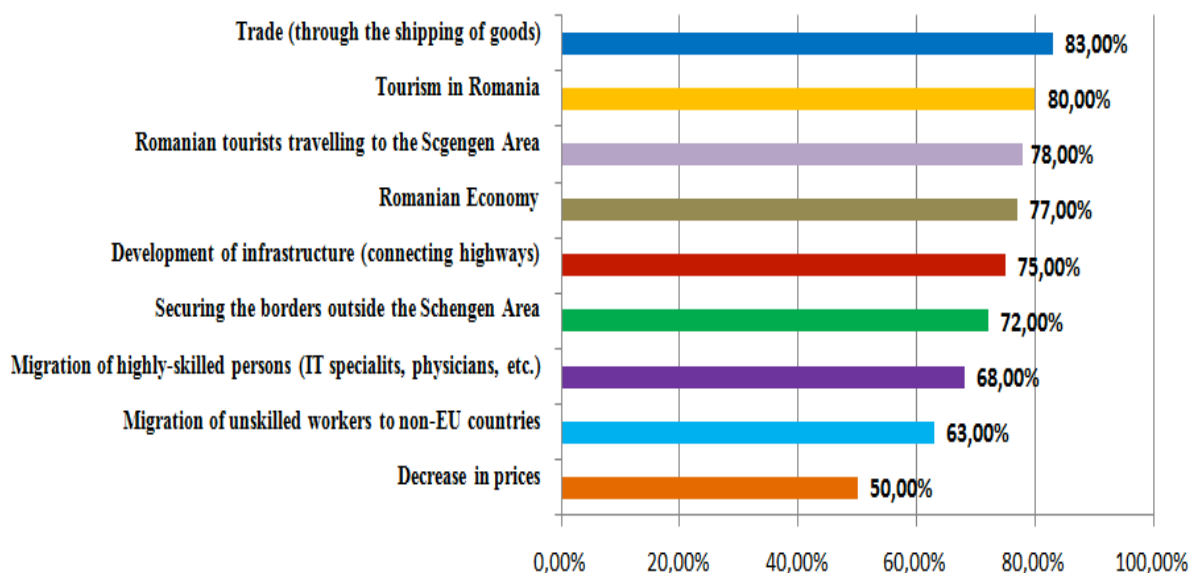
Source: European Policy Initiative (EuPI) of the Open Society Institute – Sofia

When it comes to Romania, in 2015 one out of five Romanians is not familiar at all with country's bid to join Schengen and does not know its implications. Most of those who report to be aware of the topic believe that the accession to the Schengen Area point out possible impacts in the field of trade (83%), tourism in Romania (80%), travel of tourists from Romania to Schengen countries (78%), Romanian economy (70%), development of infrastructure (75%), migration of highly-skilled professionals (68%), migration of unskilled

¹⁶ Perspectives for the Schengen Membership of Bulgaria and Romania: Between the Implementation of Criteria and the Changes in the European and International Context, European Policies Initiative (EuPI) of the Open Society Institute – Sofia, June 2011

workers to non-EU countries and even decrease in prices (50%)¹⁷. Although, many studies provide detailed scientific evidence that increased cross-border transactions bring economic benefits¹⁸, the areas of impact mentioned by respondents seem to be overrated and often misleading (Chart 6). Eventually, the failure of authorities in both countries to explain appropriately the Schengen membership to their constituencies can lead to false expectations but more importantly it can leave enough space for populist and/or nationalist parties to take advantage of these communication shortages and to create half-truth messages paving the way for easy-to-spread security concerns.

Chart 6. Areas impacted by Romania's joining the Schengen Area



Source: European perceptions in Romania – 2015

¹⁷ European perceptions in Romania – 2015, Wilfried Martens Centre for European Studies and Konrad-Adenauer-Stiftung, 2015

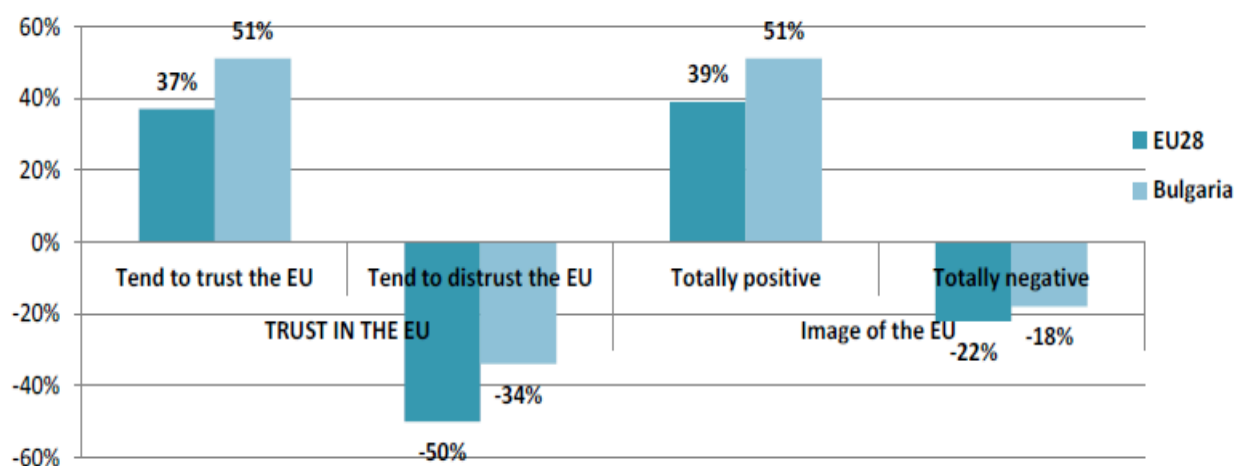
¹⁸ Ademmer et al., Internal blessing, external curse?, Kiel Policy Brief, 30 Years of Schengen, No. 88, June 2015

4. Political objectives and relative strategies

In order to prevent the afore-mentioned scenarios from happening, political leaders in Bulgaria and Romania should still refer to the high levels of public trust in the European Union and its institutions for keeping the momentum of the EU integration and when the right time comes, to proceed with the two unfinished projects in front of both countries' future within the EU – the delayed Schengen membership and the pending dates for joining the Eurozone.

In fact, Bulgarians und Romanians tend to trust the EU much more than the EU28 average, whereby they have a higher degree of confidence in the EU institutions than in the national ones, which might be attributed to wide-spread perceptions for corruption (almost entirely associated to the national institutions, not to the European ones)¹⁹ and the image of the EU as an external center of control that might improve the situation in the respective country²⁰. As it is shown below, 51% of the Bulgarians trust the EU, while the EU average stands by 37%, accordingly the level of distrust is much lower in Bulgaria (34%) compared to 50% in EU28. The picture is similar when the perception about the image of the European Union is questioned. The majority Bulgarians see it totally positive (51%), while this share is close to 40% in the EU as a whole.²¹

Chart 6. Trust and Image of the EU: Bulgaria and EU8



Source: Eurobarometer EB82; 2014

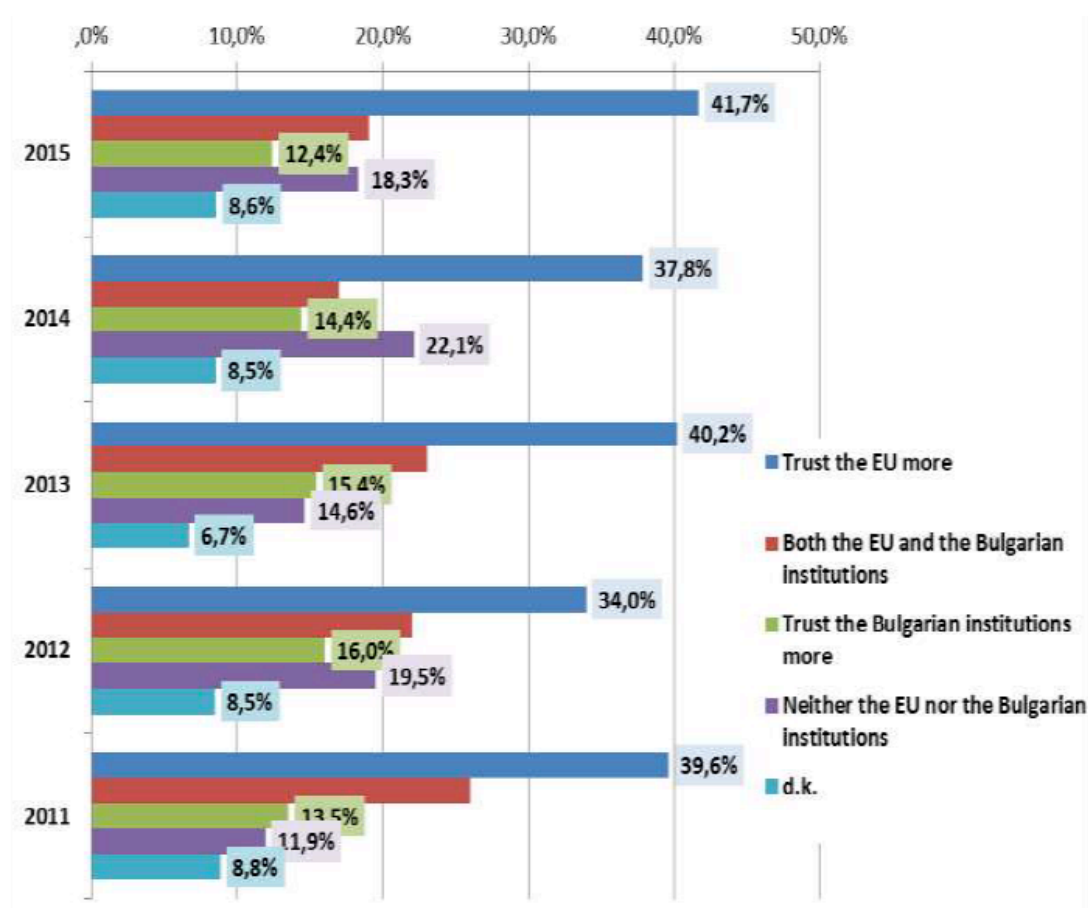
¹⁹ European perceptions in Romania – 2015, Wilfried Martens Centre for European Studies and Konrad-Adenauer-Stiftung, 2015

²⁰ Assessing EU Membership Experience, Benefits and Further Integration: Public Opinion in Bulgaria 2015, European Policy Initiative (EuPI) of the Open Society Institute – Sofia, May 2015

²¹ Ibid.

Another opinion poll (See Chart 7.) confirms that the level of trust of Bulgarians in the EU is by far higher than the confidence in national institutions – 41,7% in comparison to 12,4% in 2015, whereas this relation remains almost unchanged for the period 2011-2015.²² In the case of Romania, 2015 witnesses almost the same picture - the European Commission, the Council of the European Union and the European Parliament are better positioned than the Presidency of Romania as a matter of confidence on behalf of Romanians (Chart 8)²³.

Chart 7. Trust of Bulgarians in EU and Bulgarian institutions 2011-2015

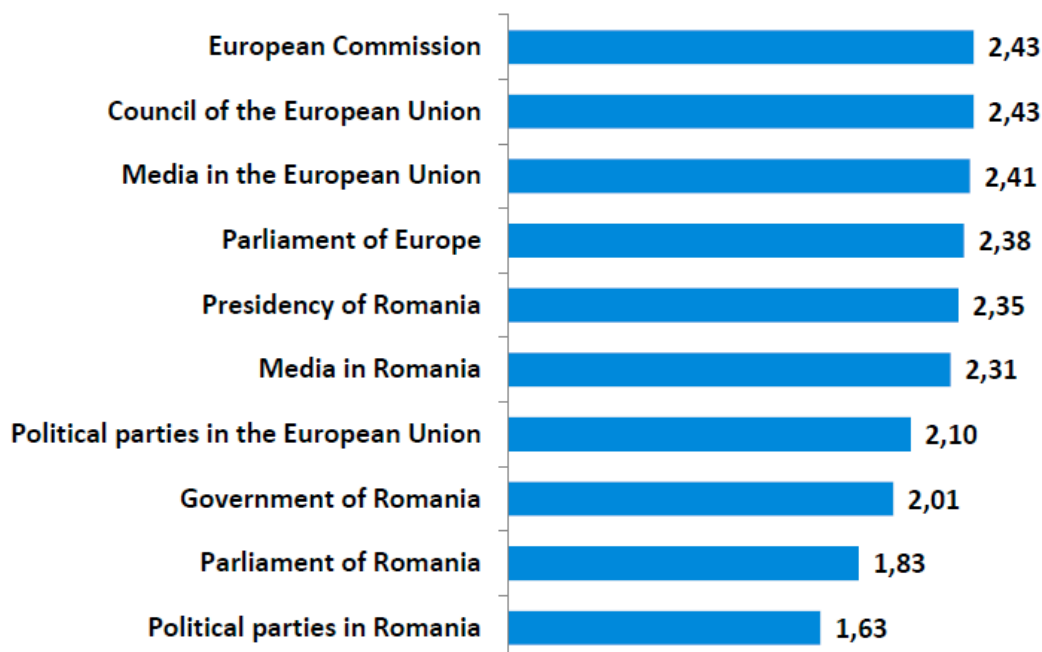


Source: European Policy Initiative (EuPI) of the Open Society Institute – Sofia

²² Ibid.

²³ European perceptions in Romania – 2015, Wilfried Martens Centre for European Studies and Konrad-Adenauer-Stiftung, 2015

Chart 8. Trust of Romanians in European and national institutions
(minimum value is 1 (a very low/no confidence) and the maximum value is 5 (very high confidence))

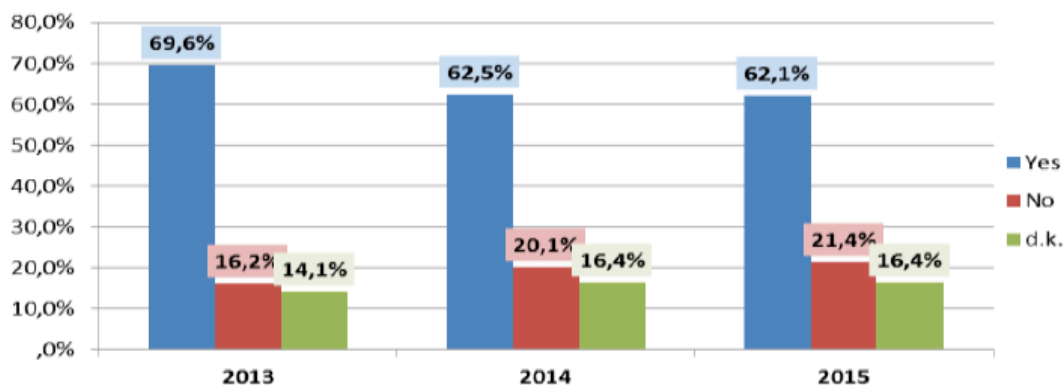


Source: European perceptions in Romania – 2015

Notwithstanding this, reaffirming the support for EU, respectively for the EU membership, should not be taken for granted over a long time. Although, Bulgarians remain consistently in favor of EU, with over 62% asserting that they would vote in favor of EU membership should it be put to vote. There is a decrease of about 7% in support to membership in 2015 and 2014 in comparison to 2013, accompanied by an increase of 5% on behalf of unfavorable potential votes, which reached 21,4% in 2015, starting from 16,2% in 2013.²⁴

²⁴ Assessing EU Membership Experience, Benefits and Further Integration: Public Opinion in Bulgaria 2015, European Policy Initiative (EuPI) of the Open Society Institute – Sofia, May 2015

Chart 9. Would you vote in favor of EU membership now: 2013 - 2015



Source: European Policy Initiative (EuPI) of the Open Society Institute – Sofia

5. Conclusion

The current challenges before the Schengen agreement including closing of borders and the debate on nationalization of policies can be considered another argument for delaying the entry of Bulgaria and Romania in the Schengen Agreement, although for the first time since announcing their aspirations to join, both countries witness a situation, which goes beyond the official and unofficial criteria they are supposed to comply with. These processes go hand in hand with ever lower rates of public support for Schengen membership, which together with the still insufficient knowledge about the coverage of the Schengen Agreement and its potential implications as well as the rising concerns for the security threats that it might impose, can put at risk the positive image the European Union in both countries and can undermine its perception there as an external center of control. On the one hand side this might open the door to Eurosceptic attitudes that, if getting stronger than expected for the time being, can on the other impact on the leverage the European Union has at present to influence political elites in both countries for the benefit of its credibility and for the benefit of all European citizens, including Bulgarians and Romanians.