

# The High Level Conference on Migration Management at the EU Parliament

On the 21<sup>st</sup> of June I attended together with Elena Schigirev (also a member of Issues Without Borders) the “*High Level Conference on Migration Management*” organized by the EU Parliament.

The conference was aimed at finding solutions to the migration crisis and deliver on the expectations of EU citizens.

The participants at the conference were: political leaders, policymakers, stakeholders and practitioners.

The speakers included important figures such as : Antonio Tajani (President of the European Parliament); Jean-Claude Juncker (President of the European Commission); Federica Mogherini (High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission); Dario Scannapieco (Vice-president of the European Investment Bank); Markku Markkula (President of the European Committee of the Regions); Dimitris Avramopoulos (European Commissioner for Migration, Home Affairs and Citizenship); Julian King (European Commissioner for Security Union); Johannes Hahn (European Commissioner for Neighbourhood Policy and Enlargement Negotiations); Louise Arbour (United Nations Special Representative for International Migration); William Lacy Swing ( Director General of the International Organisation for Migration).

The discussions were around strengthening the EU`s internal security, discussing on the root causes of migration and ensuring a stable social and economic environment in non-EU countries as well.

The conference was divided in the following way:

There was first an introduction section, furthermore there were two round tables at the same time, the participants could choose the one that they wanted to attend:

The first round table was on *“Managing asylum and migration”* , with included presentations related to: *“Better sharing responsibility for asylum seekers, accelerating asylum procedure”*; *Addressing legal migration gaps*; *Promoting integration*; *Addressing irregular migration*; *Implementing return decisions*; *„Ensuring coherence with the Union’s human rights policy”*.

The second round table which took place in parallel was on *“Promoting stability and prosperity in third countries”* which included presentations related to : *“Fostering economic and cultural diplomacy to ensure prosperity, tackling root causes”*; *„Addressing humanitarian needs”*; *„Helping partners prevent or manage crises on their own”*; *„Enhancing third countries’ capacity building in border management and asylum”*; *„Ensuring coherence with the Union’s human rights policy*; *Ensuring democratic scrutiny of international cooperation tools”*.

I chose to attend the first round table because it was more related to the work Issues Without Borders is conducting now, while Elena attended the second one because it is more related to her job. This was anyway a wise decision since we spent time after the conference and shared our thoughts from both rounds tables.

The conference continued with another round table *“Strengthening the EU internal security”* and lastly there was a closing session with the leaders of the political groups.

Even though there were many interesting and viable solutions raised, they have no binding force. So there are some solutions to the problem but without a political will, without consensus change is very hard to implement.

Even so, I was very happy to attend this conference, because I heard many important figures discuss about a topic that I am highly interesting in, I got the chance to exchange ideas with some of the NGOs that were given the opportunity to offer their opinion at the conference and I spend a great day in the European Parliament, an amazing building, with an amazing history.

Hopefully if next year there will be another conference on migration

management Issues Without Borders will also be given the opportunity to make its voice heard and offer its expertise on this topic.



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## Brexit story of the moment

What is your opinion on Brexit? How will this impact Europe as a continent and Europe as a major international player?

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## European Union, the Paris terrorist attacks and the refugee crisis

Last night's terrorist attacks in France left an entire country in chaos and the whole world in fear. Official sources say that 128 people were killed and over 300 injured.

The fact that the seven strikes were coordinated shows that the authors of these horrific events were not refugees. Most probably they were French citizens with Maghreb heritage, radicalized by the Islamic State.

Until now Polish leaders said that they will refuse to accept the migrant and refugee quotas, while France is in a State of Emergency and reinstated its frontier controls. Many voices are talking about a possible EU dissolution.

The terrorist attacks left a lot of people in fear and made the refugees that are wandering on European soil even more vulnerable. Even though many people had said that refugees are leaving their countries because of terrorist attacks like those from last night, a more common opinion is that they could be terrorist and therefore should not be let into European borders.

We are living very interesting times, mostly because of unfortunate matters. The dream that once was the European Union is now turning into a nightmare for those hundreds of thousands who left Syria and Iraq behind in search for a new life.

What is your opinion about the terrorist attacks and how do you think they will affect Europe's refugee policies?

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## The Scottish referendum: a reflection of an imperfect British model

The last is yet to be heard about the resultants of the Scottish Referendum on the question of independence from the United Kingdom. Whilst the United Kingdom survived the scare of a looming threat of an independent Scotland by a vote of 55% to 45%, the ripples generated by the simple act of balloting will continue to reverberate the island of Britain and indeed the wider World in years to come.

“If not us – then who?

If not now – then when?

Friends – we are Scotland's independence generation.

And our time is now”.... Alexander Salmond

For the first time since 1st July 1997 when the Union Jack was lowered at its Far Eastern outpost in Hong Kong, which was the United Kingdom's last colonial outpost, the waning power and influence of the once global affluent 'Great Britain' was brought to bear as a 'coup de grace' was about to be dealt to homeland Britain.

What started as a union of Anglo-Saxons and Normans in what is now called England, ended up enveloping the Welsh in the 13th Century, and, in series of wars and finally in political agreements, the Gaels, Picts and Celts which make up what is now called Scotland were brought into the 'Union' first by the Union of Crowns in 1603 when King James VI of Scotland became King

James I of England following the death of heirless Queen Elizabeth I of England. Thus, the seat of the Scottish Monarchy moved from Holyrood in

Edinburgh to Buckingham Palace in London and finally in 1707 after a crippling bankrupting feat Scotland attained in trying to colonize the Isthmus of Panama in the Americas, the Scots looked South of their border to the English for economic salvation; and as such, after series of parliamentary debates, the 'ACT OF UNION' was born 1st May 1707 when England and Scotland came under one political government—effectively uniting the entire Island of Britain under one political and Monarchical Government

### **ACT OF UNION, 1707**

I. That the two Kingdoms of England and Scotland shall upon the First day of May which will be in the year One thousand seven hundred and seven, and forever after, be united into one Kingdom by the name of Great Britain; and that the Ensigns Armorial of the said United Kingdom be such as Her Majesty shall appoint, and the Crosses of St. George and St. Andrew be conjoined in such manner as her Majesty shall think fit, and used in all Flags, Banners, Standards and Ensigns both at Sea and Land.

III. 'That the United Kingdom of Great Britain be represented by One and the same Parliament, to be stiled, the Parliament of Great Britain.'

With such 'Unity' the United Kingdom of Great Britain wittingly sought to build an Empire thus colonizing about 1/4th of the Earth's population. At the Zenith of this attainment, the British Empire was in the words of George Macartney referred as "this vast empire on which the sun never sets, and whose bounds nature has not yet ascertained."

Over three quarters of North America in what is now known as Canada and the United States of America to patches of land in South America, the West Indies (Caribbean Islands), the Indian subcontinent (India, Pakistan, Bangladesh, Myanmar, Sri Lanka and Singapore), Australia and patches of Chinese territory; the 'British were famed as Colonial Masters and Master of the Seas! And not even Africa was left out of the British Colonial zest, for they effectively subjugated the choicest of territorial lands and largest number of peoples under their control in territories now known as Nigeria, South Africa, Egypt, Kenya (All economic and regional powerhouses) not to talk of

the Sudans (North and South), Uganda, Ghana, Tanzania, Gambia, Zimbabwe and Zambia.

**'the wind of change is blowing through this continent; and whether we like it or not, this growth of national consciousness is a political fact, we must all accept it as a fact'... Harold Macmillan** (British Prime Minister from 1957-1963)

The 20th Century brought a significant 'wind of change' to the British Empire. Actively fighting off two World Wars, the homeland British war economy faced near economic crippling terms and coupled with the signing of 'Atlantic Charter' with the United States which guaranteed the right to self determination of subjugated peoples, the British Empire began to defoliate rapidly for the first time since 1776 when the United States sued for Independence of London.

Starting from the British Isles, the Catholic Irish got Ireland off Westminster's control and then the floodgates of independence opened in British colonies in Asia and Africa culminating with the return of Hong Kong to China –Britain's last colonial outpost in the Far East in 1997.

Coincidentally, 1997 saw the British Labour Party consolidating power in Westminster and that came with the promise of devolution of powers to the constituent Non-English entities making up the United Kingdom. Ultimately, that set the tone for a series of intrigues that set the stage for this Scottish referendum question;

### **SHOULD SCOTLAND BECOME AN INDEPENDENT COUNTRY?**

Whilst the 'No' votes helped to pass a volte-face to the 'Yes' separatist agitation, that simple act of ballot has posed several teasers for the British and indeed other countries of the free world in the following:

In an era of 'International Unionism' as seen in the formation of strong Continental Organizations such as the EU, NATO, AU etc; where smaller individual countries seemingly do not have a voice; is there really a need for emergence of new Nations who will in turn have to vie to join these

continental bodies who advocate loose economic and border controls?

Though England has roughly 85% of the UK population and significantly projects the UK's global influence, Scotland holds a significant portion UK's defence capabilities in military industries and the UK's Nuclear Weapon deterrents. What would have become of the UK's military capability in the wake of a Scottish independence?

The UK prides itself as a model of Parliamentary democracy and have exported this to several nation including India (the World's largest democracy), Australia amongst others. The Scottish agitation has once again raised the once forgotten 'West Lothian Question'. If Scotland, Northern Ireland and Wales (all making up 15% of the UK population) have separate parliaments and administrations independent of Westminster and yet have representatives there to vote on issues relating to England only, what about having a separate English parliament? Is the prided British governance model in any way effective? Isn't it time for the UK to adopt the USA model of a 'Federal system of Government'?

With the ease at reaching a decision for the Scottish referendum, what will become of other separatist agitations in Spain (Catalonia), France (Basque, Corsica, Catalonia), Moldova (Transnistria), Turkey (Kurdistan) etc, and even other colonial aggregated Countries in Africa where separatist agitations are rife?

For over 400 years, the British have prided themselves in setting the pace in terms of industrial and political revolution and have given the world their language— English Language. With the latest Scottish referendum and issues bordering on it, the British have once again aroused separatist agitation levels around the world. The British model is not perfect after all. Is it?

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Abortion in Poland and Romania: two



# former communist countries, completely different experiences

Poland and Romania are two countries that share a lot of similar experiences from a cultural and historical point of view, but as we will see in this article, it is their differences that makes them stand out on the European scene. Both experienced their fair share of occupations, partitions and communist dictatorship and both had a chance of a rebirth after 1989. Despite their similarities, their trajectories were quite different and this is reflected in the way in which the two states also tackle sensitive issues such as abortion. While one country is very pro-life, the other is European champion at abortion. Nevertheless, the two countries have similar birth rates: for the year 2013, it is estimated that the birth rate for Romania was of 9.4 births/1,000 population and in Poland of 9.88 births/1,000 population. ( <http://www.indexmundi.com/>)

The following examination will look at the two countries' overall history of abortion and try to determine possible reasons why they are situated at two opposite poles on this issue. To do this, we will look at the role of the foreign influence, political parties and religion.

## **Abortion in Poland**

Poland is one of the most pro-life oriented countries in Europe, but few know that it hasn't always been like this. Starting in 1932, abortion was legally performed if there were medical reasons indicating that the pregnancy endangered the life of the women. Poland was also the first country to accept abortion in the case of pregnancies which were a result of a criminal act. This law was effective until WWII, when under the rule of Hitler, abortion was possible on demand in Poland. This was not the case in Germany, where it was still considered a crime. At that time, Martin Bormann, Hitler's private secretary and head of the Party chancellery said:

"The Slavs are to work for us. In so far as we do not need them, they may die. Slav fertility is not desirable."( Robert S. Wistrich, *Who's who in Nazi*

*Germany* (New York: Routledge, 2002), p. 19). This quote appears also on pro-life websites and the topic has been brought up recently by Polish pro-life activists in a few interviews.

([https://www.academia.edu/795365/Polish\\_pro-life\\_movement\\_and\\_one\\_of\\_its\\_leaders](https://www.academia.edu/795365/Polish_pro-life_movement_and_one_of_its_leaders))

In May 2010, Polish abortion activists shocked the public opinion by displaying graphic billboards with aborted fetuses and the face of Hitler, in order to remind the Poles of the Nazi rule. Nevertheless, this argument is used by isolated groups who are aiming at putting the equal sign between abortion and murder or abortion and the Nazi regime. The main reason why many Poles oppose the legalization of abortion nowadays has to do with religious convictions mainly.\*

At the end of WWII, things went back to how they were before, but later it was the Communist regime that permitted abortion on demand. Some criteria still had to be met however: the mother had to prove either that she had no means for raising a child or that the future baby was the product of a crime.

In 1980, abortion became possible only with the affidavit of the physician and since there were no regulations restricting it, many abuses took place. Things dramatically changed after the fall of communism in 1989, when new debates on the theme of abortion began. The distribution of the film "the Silent Scream" along with better knowledge on the subject, and also with the teachings of Pope John Paul II, who played an important role in the independence movement made abortion be perceived as a crime

([http://www.sxpolitics.org/frontlines/book/pdf/capitulo5\\_poland.pdf](http://www.sxpolitics.org/frontlines/book/pdf/capitulo5_poland.pdf), p. 191)

The moment when everything changed was 1993, when a new law on family planning was adopted, a law that was also sought to protect the human embryo. A legal abortion is now possible only when the pregnancy endangers the life of the mother, when there are clear indications that the fetus is malformed or when the pregnancy is a result of a criminal act.

### **Abortion in Poland nowadays**

The issue of abortion is difficult to approach because of the emotions and contradicting views involved: while the majority agree that the law needs to be changed and that abortion based on socio-economic factors should be approved, studies show that there is a difference of opinion in feelings towards the law on abortions and the abortions themselves. Some people believe that abortion is murder and this might explain lack of action for reform.

Nowadays, the debate is between those who are pro-life and those who are pro-choice and so far no agreement has been reached between the two extremes. With regard to the pro-choice standpoint, the first argument in this camp pertains to the woman's right to self-determination. The second pro-choice argument has to do with her socio-economic background and her inability to raise another/a child and is also related to avoiding illegal abortions which are riskier for her health. When abortion was legalized in Poland during the 1950's, the reason behind it was that it was needed: a large number of women were dying during underground abortions. But here lies the problem: it was not a right obtained by the women themselves, it had nothing to do with self-determination or any feminist movement, it was simply necessary for the well-being of the entire society. Moreover, the communist egalitarian approach to gender roles provided no actual benefits for the women, as everything was calculated to serve the nation and not certain individuals. The changes took place only in several spheres of the lives of the people, but traditional gender roles had stayed the same and Poland continued to be a patriarchal society. (same thing in Romania, certain rights or benefits were granted, but not because women had fought for them). The fact that women were passive in receiving these "benefits" only means that they had no influence in keeping them and this is exactly what happened later.

*The debates that followed after 1990's focus on the fact that abortion is necessary especially for the impoverished women who will resort to illegal abortions because of a restrictive law that does not allow for a legal one and thus risk their own lives: "Past experiences shows that poor and helpless women will use drastic means [because of the restrictive law]...No one promoting the [anti-abortion] law mentions the easily predictable effect of*

the law, which will be an increase in infanticide, as was the reality before 1956". ([http://www.sxpolitics.org/frontlines/book/pdf/capitulo5\\_poland.pdf](http://www.sxpolitics.org/frontlines/book/pdf/capitulo5_poland.pdf), p. 191)

The problem with this argument, which is in use even nowadays, is that it reinforces the idea that women are helpless and need protection (a notion that is more beneficial to maintaining patriarchy) and that women who decide to have an abortion and who do not want to use the socio-economic background as a reason are excluded from the equation.

On the other hand, the absence of a rights-based approach for so many years (especially during communism) makes it problematic for such notions to be adopted in present-day Poland, as they have not evolved out of a solid basis. The concept of human rights applied in such a fashion is something that emerged only in the last decade and it still requires time to sink in.

*It is also considered that from a historical point of view, the identity of the Polish women became almost synonymous with the fight for independence. They become more than mothers, daughters and wives, they were heroines, especially during the time when Poland was divided between Russia, Austria and Prussia (18930-1864). While men were at war, women stayed home, kept the society and the national identity together. During this time the concept of "Mother Pole" has emerged and this legacy of women as "saints" has become a heavy burden; not fulfilling that role was and still is perceived as betraying the family institution as well as the catholic church.*

([http://www.sxpolitics.org/frontlines/book/pdf/capitulo5\\_poland.pdf](http://www.sxpolitics.org/frontlines/book/pdf/capitulo5_poland.pdf), p. 191)

### **Abortion in Romania**

Before discussing the current situation regarding abortion in Romania, this article will firstly present the historical development of abortion in this state. The victory of Bolshevism in Russia (in 1917) brought with it for the first time in the world a concrete measure of women's emancipation: the legalization of abortion on demand. This law was in effect for 16 years, until Stalin, in contradiction to the principles he agreed upon 30 years before, forbade abortion. The prime reason for this measure was to counter

the low growth of the Soviet population. This law remained in place until his death (1953).

As an Eastern European country, Romania had to abide by Soviet law, a situation that changed when Khrushchev took the power in the Soviet Union. In that period the 1920s law was reinstated. The Romanian government at that time started a pro-soviet propaganda, followed afterwards by the 463 Decree, decree which brought Romania the emancipation much desired. It was this Decree that empowered women and gave them full custody of their own bodies: they could decide if they wanted to keep the baby or not.

(<http://www.soviethistory.org/index.php?page=subject&SubjectID=1936abortion&Year=1936>)

After this period, what followed was a decade of abortion that ended in 1966 when Ceaușescu, the president at that time, prohibited it. The reason for taking this measure was rooted in his fears about the impact and popularity of pregnancy terminations in the long run (abortions were more than 1 million a year). He was also preoccupied, just like Stalin, with the demographic phenomena and the nation's future. Thus the 770/1996 law emerged, which was made to regulate abortions. There were 6 conditions that a pregnant woman had to fulfill in order to get an abortion: if she had at least 4 children (5 starting with 1985); if she was over the age of forty; if she was suffering from a serious disease, which can be transmitted genetically; if she was suffering from a physical disability incompatible with the normal upbringing of a child; if the pregnancy was putting her life at risk; if the pregnancy is the result of rape or incest.

([http://www.ceausescu.org/ceausescu\\_texts/overplanned\\_parenthood.htm](http://www.ceausescu.org/ceausescu_texts/overplanned_parenthood.htm))

Between the years 1966 and 1989, with few exceptions, abortions were strictly prohibited, and contraception as well. However, illegal abortions continued, despite the legal restrictions applied and the serious consequences on health. This law existed until 1989, when Ceausescu lost power and Romanian legislation was changed, with the introduction of a new law making abortion legal.

Romania is an interesting case to study. It is the only communist country where abortion was prohibited from 1967 to 1989 and which nowadays represents a tragic case. The procedure of having an abortion is a very controversial one, because there are no restrictions concerning the way in which it is performed and the women who go through it do not receive any counseling at any time during this process.

The only institution that is condemning it is the Church, because Christianity sees abortion as one of the biggest sins that one can commit in front of God. The maximum time limit for performing an abortion in Romania is for pregnancies that do not exceed 14 weeks. The abortion is made at the women's request in a medical institution and according to the law, it can be performed later as well, if it is absolutely necessary for therapeutic reasons. A doctor who performs illegal abortions risks suspension.

In the case of this country, abortion can be considered a contraceptive measure, because Romania is the European member with the highest number of abortions per year. This may lead one to the conclusion that abortion is perceived here as a contraceptive measure and not as an extreme, emergency measure. Having the highest rate of abortion in the EU, it is a paradoxical country, which shifted from one extreme to the other.

Romania has to make changes in its legislation concerning abortion. If a woman wants to have this procedure she should benefit from the best medical care, where she is offered therapy before and after the abortion. One might blame the education system for "the normality" of abortions. If people would be more informed on this topic, than the frequency of abortions would likely diminish.

### **Conclusions**

The two countries are perfect examples of two extreme situations. While in Poland abortion was legalized because of necessity and not because women would have necessarily fought for it, in Romania it was banned because of Ceaușescu's desire to build a larger nation. The Polish culture was and still is bound to value family traditions, the idea of community and of a unified

society and that women are seen as “mothers of the nation.” Moreover, the Nazi regime left deep scars that will take several more years to heal.

Romania is at the other extreme, having for 22 years a dictator with grandiose plans for the country: release it from national debt (at his death, in 1989, Romania had zero national debt), increase the natality and have more citizens who “fight” for the communist cause. In order to achieve these goals, he created a nation of impoverished people, who lived in fear of the system and in fear of each other. The Romanian mothers of the nation were compensated the more children they had. The title of “Heroic Mother” was awarded to the women who had at least ten children and it was accompanied by a monthly subvention of 500 Lei. This honorific distinction was not enough motivation for the impoverished families to have more children and illegal abortion were at its peak during this time. Therefore, when communism fell and all the ideals connected to it were rejected, the notion of “Heroic Mother” had no more value as well.

Although the socio-economic background is fairly similar in the two countries, their extreme approaches to abortion might be a result of two factors. First of all, the way in which the countries put an end to their communist regimes was very different: in Romania, the end of 1989 brought a bloody revolution, followed by Ceaușescu’s execution. The kangaroo trial that the President faced as well as his shooting were broadcasted on national television. Afterwards, Romania had no viable alternative for the communist party, while in Poland, the anti-communist Solidarity Party won the free Polish elections and communism was overthrown in a democratic way. While Romania was in a period of confusion and sunk even deeper in corruption, Poland was finding its way out of the dark times and adopted good, healthy reforms right from the start.

Second of all, while the Orthodox Church was fairly obedient to the communist state, the Catholic Church was a strong advocate for anti-corruption and anti-communism in Poland. Looking at how different cultures deal with the issue of abortion, one obvious pattern is that the strong Catholic Church has a clear say in how the legislation is shaped not only Poland, but all the

countries in which it is the national religion.

In Romania, after the fall of the communism, the Orthodox Church – dwarfed by Ceausescu's regime – started to get strength again, but not enough to impose its views into politics. On the other hand, Pope John Paul II was not only an international figure, but was and still is one of the most beloved people of Poland. He had a great role in the collapse of Communism and therefore, the Catholic religion in itself was regarded as the savior of the nation. Furthermore, since abortion is considered a sin and feminism an attempt to destabilize family life, women's voices were not heard then and have a hard time being heard nowadays as well.

The two countries have yet to find balance and although they have opposite problems with abortion, it is clear that sexual education needs to be a priority for both of them. Catholic Poland treats sex as a taboo and illegal abortions represent the unseen struggle of Polish women. In Romania on the other hand, the very high number of abortions performed each year shows that people, women and men, are not preoccupied with safe contraception, which also means a lack of concern in regard to the sexually transmitted diseases. Both countries are in a critical time, when things have to change. Only time will tell in what direction things will go and how long it will take to get there.

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\* *article updated on 6th of April 2014*

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## Romania`s accession to the European Union and the controversial use of the Mechanism of Cooperation and Verification

In this chapter I will present the requirements imposed to Romania by the European Commission in 2007 when it joined the European Union. These requirements refer to several reforms that Romania should implement in order to fight the existing corruption in the system. The evolution of these reforms is followed by the European Commission through a mechanism entitled the Mechanism of Cooperation and Verification. Thus each year Romania is evaluated through two reports which follow up the changes that Romania has made.

Further on I will also analyse the use of the Mechanism of Cooperation and Verification employed in order to prevent Romania from entering the Schengen space, presenting thus briefly the Schengen as a concept and the conditions that a country must fulfil in order to join the free movement space.

As a conclusion I will underline that the Mechanism of Cooperation and Verification was used as a political tool, by some western countries to prevent Romania from joining the Schengen space.

# **1. Romania`s accession to the European Union and the creation of the Mechanism of Cooperation and Verification.**

In this part of the paper I will describe the status of Romania in 2007 when it joined the European Union. In addition I will also present the necessity of the creation of the Mechanism of Cooperation and Verification, the reasoning behind it.

As previously mentioned, the year 2007 was highly important for Romania due to the fact that this was the year of Romania`s entrance in the European Union. The national mentality of that period was characterised by dualism, because there were voices that were for change from an institutional point of view and voices that were against it and against the intrusion of the European Community in the Romanian domestic affairs

(<http://www.migrationinformation.org/feature/display.cfm?id=338>)

As an example of this, the international media considered that the old parties were working to push this issue of change under the rug. Even if the EU put pressure on Romania, the Government responded and they responded by passing legislation in the Parliament.

As a consequence of the internal situation, the year 2007 brought two significant changes in Romania that have been suggested and monitored by the European Commission: first of all the creation of the National Integrity Agency (ANI) and second of all the Cooperation and Verification Mechanism (the CVM). Before going deeper and analysing these two concepts and their necessity I will present briefly Romania`s and Bulgaria`s evolution since they became democratic countries. Why did I decide to include Bulgaria as well in this analysis? Bulgaria`s path to the European Union and the Schengen space is very similar to Romania`s path.

([http://www.sieps.se/sites/default/files/2012\\_1epa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_1epa%20EN_A4.pdf))

The revolutions of 1989 in both Romania and Bulgaria can be considered an internal communist coup where opportunists reinvented themselves as transitional democratic leaders, after which they used the state power to win

early elections. Most part of the 1990`s there were partial economic reforms which enriched the elite and contributed to the enlargement of corruption, networks of corruption, while prolonging the economic hardships of the average citizen. In both countries, the communist successor parties were implicated. By 2000 Romania was making some progress. One of the reasons for which Romania made significant institutional reforms is because of its desire to join the European community.

As already mentioned the first major change refers to the creation of the National Integrity Agency (ANI). This agency is characterised by substantial powers that have the ability to force all public servants to reveal their assets, that could investigate individuals who were in the impossibility to explain the origin of their assets, that could seize the unexplained assets and finally that could require the public officials to submit the conflict of interest declarations.

The second huge change refers to the creation of the Cooperation and Verification Mechanism, monitored by the European Commission. In order to better understand this concept a short explanation is required.

When Romania and Bulgaria joined the EU on the 1<sup>st</sup> of January 2007, the European Community considered that these countries still had to progress in making reforms in the fields of judicial reform, corruption and also organised crime.

The EU justified this action by saying that their desire is that these countries develop proper administrative and judicial systems, which they need in order to deliver on their membership, but also for them to enjoy their benefits. They also considered that a progress in judicial reform, corruption and organised crime will allow Bulgarians and Romanians to enjoy their full rights as EU citizens. ([http://ec.europa.eu/cvm/index\\_en.htm](http://ec.europa.eu/cvm/index_en.htm))

The CVM can be defined as a monitoring process that asks for a prompt policy response from the Bulgarian and Romanian governments. The CVM has as its aim the reform in these two countries and also the prevention regarding the reversal of the rule of law reforms which were enacted during the EU

accession negotiations.

Every six months, the Council issues a CVM report for both Bulgaria and Romania which evaluates the progress on these established benchmarks and which also have to flag the most pressing issues that should be addressed before the next report. All these monitoring reports have been praised for being highly detailed and also for following the evolution of specific administrative reforms, judicial cases and political developments. In consequence they have played an important role in gathering and disseminating all information about the state of reform in both countries.

([http://www.sieps.se/sites/default/files/2012\\_1epa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_1epa%20EN_A4.pdf))

The most relevant reports have been published in July each year, and the so-called interim “*technical*” reports or updates have come in February. In order to get a grasp of the CVM reports and understand their goal I will shortly present the most important ones.

## **2. The overall assessment of the CVM reports since 2007**

The European Commission started issuing reports since 2007 when Romania joined the European Union. In the early years Romania was still struggling with the reforms that had to be enforced in the countries, so I will not present the early ones. I will start with the CVM from 2010 which was a controversial one after which I will describe the CVM from 2011 which shows an improvement made by Romania and finally the one in 2012. The report from 2012 is the one that arose a lot of problems in the international community, because this was the report used by some western countries to block Romania's accession to the Schengen space.

The CVM report from July 2010 is a very debatable report as well. In this report the European Commission was highly critical, especially because of the abolition of ANI (the National Integrity Agency). The Commission declared that Romania was in breach of its accession commitments and it called on

Bucharest to „re-establish the ANI's powers to propose the effective forfeiture of unjustified wealth”.

The Commission also noticed that Romania lacks „broad-based political support in favour of transparency and the effective protection against corruption and conflict of interest”. As a consequence of this in August 2010, both houses of the Romanian Parliament voted to resurrect a weaker National Integrity Agency, this measure was widely understood to be the direct result of EU pressure. ([http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf))

After the report was issued there were several comments made by the European community. The most controversial statement came from Pierre Lellouche who was at that time France's secretary for European Affairs. Pierre Lellouche was the first one to connect the requirements necessary to join the Schengen space to the Mechanism of Cooperation

and Verification requirements, mostly due to his worries about the Romanian-Moldovian border “because of the distribution of Romanian passports outside their border”. As a consequence of this statement, France reunited its forces with Germany and declared in a joint letter that the Schengen entry should be postponed until: „ both members have initiated clear and objective, sustainable and irreversible positive developments in the fight against corruption and organised crime and in reforming the judicial system”.

( <http://www.spiegel.de/international/europe/press-review-on-blocking-romania-and-bulgaria-from-schengen-area-a-887668.html>)

After the harsh evaluation made by the European Commission in the report from 2010, the report from 2011 shows a different face of Romania. The CVM report from July 2011 acknowledged the fact that Romania had „responded swiftly to the Commission's recommendation by adopting a new legal framework for the National Integrity Agency (ANI). The National Integrity Agency was operational under this new legal framework and started to establish again its track record of investigations”.

(<http://www.spiegel.de/international/europe/press-review-on-blocking-romania-and-bulgaria-from-schengen-area-a-887668.html>)

The Commission also stated the fact that Romania has made significant steps: „to improve the efficiency of judicial procedures and continued preparations for the entering into force of four new codes that are the foundation for a modern judicial process”.

([http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf))

Because of the CVM process, the Commission monitors the progress of important cases and also helps build the pressure both on the judiciary and the Parliament in order to act appropriately. Even with these measures, the Commission considers that progress in fighting corruption remains slow; many cases never go to trial whilst others are dismissed or lost because of the delays during the trial period and sentences are often very light with little effective confiscation of assets and not to mention the fact that Court proceedings often show the defendants raising objections that postpone trials.

The Commission regretted that certain important high-level corruption cases saw little movement in Court during early 2011. This calls for “urgent action” to accelerate trials that risk being ended due to the fact that too much time has passed since that alleged crime.

Another report was issued in 2012 in February. In this report Romania received a good feedback from the European Commission. Romania was thus praised for progress made in fighting corruption.

But the most expected report was the one in July 2012, which marked the first five years since the inception of the CVM. After this long period of time the Commission was expected to make an overall assessment of reforms in both countries. Besides the assessment the Commission also had to make recommendations about whether or not the CVM should remain in place.

The following part of the paper I will present the guidelines and recommendations given by the European Commission because I consider it relevant to prove the efforts and progress which were made by Romania since the inception of the CVM.

By presenting these guidelines and recommendations I will also demonstrate the fact that these are different conditions from the ones required to join the Schengen space, conditions that I will touch upon later in my paper.

The Guidelines imposed to Romania were established in the following four areas:

- judicial reform;
- integrity;
- fight against high-level corruption;
- the prevention and fight against corruption in the public sector.

When the last CVM was issued in 2012 the guidelines given by the European Commission were in the following areas: Regarding the judicial reform the Commission gave the following advice to Romania: " *Ensure a more transparent and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes*".

**Concerning the fight against corruption** the Commission advised Romania to: „ *Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken*".

„ *Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption*".

" *Take further measures to prevent and fight against corruption, in particular within the local government*".

([http://ec.europa.eu/cvm/docs/com\\_2012\\_410\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2012_410_en.pdf))

The Commission considers that in the future Romania could attain the

objectives of the CVM, if it guarantees the rule of law, maintains this direction and steps up the implementation of reforms. Romania needs to ensure respect for the rule of law which also includes independent judicial review.

The Romanian government is committed to ensure respect for the rule of law in line with the recommendations which are listed below. This enforces the conclusion that the progress in the implementation of the benchmarks which would be required for the Commission to decide to end the CVM is not there yet.

More reforms within all branches of government, within its judiciary and also a stronger commitment to integrity and to the fight against corruption is mandatory to fulfil its requirements. Mostly, the Romanian authorities need to prove that a sustainable reform process has taken root in Romania and that the external intervention of the CVM is no longer required.

The experience of the last five years shows that when action is taken, it can bring the expected results. Romania has already made reforms regarding institutions such as DNA (The Anti-Corruption Agency) and ANI (The National Integrity Agency). In the last years the judiciary has been more active regarding its judicial independence

All Member States have obligations concerning an area of freedom, security and justice. The Commission is eager to see Romania completing that particular process of the CVM and also addressing these issues to the other Member States.

Regarding the current situation the Commission will adopt another report under the CVM for Romania, before the end of 2013. In this report, they will analyse if their concerns regarding the rule of law and the independence of the judiciary have been improved and they will also check if the democratic and judiciary system are stable again. The Commission will closely monitor progress, by having regular missions and also by having regular dialogue both with the Romanian authorities and with the other Member States.

As previously mentioned the Commission did not only give guidelines but it



also gave recommendations for Romania in some areas. There are still improvements that Romania must fulfil in the following areas:

1. Respect for the rule of law and the independence of the judiciary;
2. Reform of the judicial system;
3. Accountability of the judicial system;
4. Consistency and transparency of the judicial process;
5. Effectiveness of judicial action;
6. Integrity;
7. Fight against corruption.

([http://ec.europa.eu/cvm/docs/com\\_2013\\_47\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf))

**The analysis of the CVM report and its guidelines were necessary in order to explain Romania`s path in the European Union since 2007.**

### **3. How does the Mechanism of Cooperation and Verification assess the progress in a country?**

In this part I will present the practical way in which the CVM works in Romania. It is important to understand the way in which the Mechanism of Cooperation and Verification assesses progress because it is impossible to understand the CVM reports if one does not understand the way in which it works and how it actually measures the reform in the system.

The Mechanism of Cooperation and Verification assess the progress made in both countries through yearly reports. These reports include regular reporting from the Commission and they also provide the fact that the mechanism will continue until the moment when all the CVM objectives are met and all four benchmarks are satisfactorily fulfilled.

These reports analyze what has been achieved so far and what has to be

achieved still.

They cover both the legislation and tools; the elements of the legal framework which still need to be completed and also if ownership is sufficiently embedded to maintain the right direction of reform. The Commission takes into account the sustainability and irreversibility of the reform process as the determining elements of its assessment.

During these five years since the CVM tool was implemented in Romania there have been periods of progress and setbacks, times when cooperation has worked and times when not, these being comments made by the European Commission when analyzing the status of Romania. So this report from 2012 recognizes the entire progress made since accession.

Nevertheless, this report is adopted at a time when relevant questions are raised with regard to respect for the rule of law and also the independence of the judiciary in Romania. The overall progress has to be assessed in the context of the wider social recognition of important principles such as the rule of law and the independence of the judicial process, these being part of a well-functioning democracy. Thus, a well functioning, independent judicial system and also respect for democratic institutions is indispensable for mutual trust within the European Union and for winning the confidence of both citizens and investors.

This report looks at the last five years as an entity, the current controversies pose a serious threat to the progress which has been achieved so far and also raises serious questions as to the future of the reforms which have already been launched. As a consequence this report includes specific recommendations which address the current situation that help restore the respect for principles which are milestones of European democracy.

In the present in the European Union the rule of law represents one of the fundamental principles. The rule of law also represents a particular concern for Romanians because the Eurobarometer polling has shown that 93% of Romanians think that corruption is an important issue for their country and

91% responded the same regarding the shortcomings in the judicial system. The same poll also underlined the fact that 76% of Romanians supported the EU which was helping to tackle these issues.

This CVM does not demand Romania to achieve higher standards than in other Member States. Its goal is to help Romania achieve a certain standard, which is comparable to other Member States. This objective is also supported by 72% of the Romanians.

The Commission is using in this report points of reference and comparative indicators where they are available. In order to compare the progress made in Romania with the situation in other Member States, the Commission also drew upon senior experts from key professions which are dealing with these issues.

The Commission's assessment of the progress registered by Romania since accession shows that many of the building blocks required are now in place, even though there has been some problems in the country. The CVM has made a huge contribution in Romania. The focus has shifted in order to ensure that the implementation delivers the results required and also that the ownership exists in order to maintain the reform also in challenging all the political circumstances.

Even so, the implementation of this framework with rules by the judiciary and administration has still not met all the objectives mentioned in the CVM. There are cases where implementation has just started, or where there are difficulties.

Ownership and implementation represent thus the key elements in the fulfilment of the CVM benchmarks. They are demonstrated through actions, results and decisions which are taken by those that have the authority to influence both the direction and the speed of change. The future appointments of a new General Prosecutor and a Chief Prosecutor of the DNA (Anti-Corruption Agency) will be crucial indicators of the sustainability of reform.

The Romanian government has responded to the specific demands in the CVM

reports, suggesting that in the absence of the CVM there would be less reform. The detailed monitoring and assessment in the CVM reports, coupled with the political pressure and also some concrete sanctions, can deliver substantial results.

Due to the huge problems regarding the rule of law, judicial quality and the fight against corruption in the Western Balkans states, the EU would do well to set up a CVM structure for each acceding state. In case it is not needed anymore then it can be dismantled. There are also some opinions that state the fact that the behaviour of public officials could change in areas such as accountability, transparency and the fight against corruption once their country has joined the EU. They consider that the CVM structure would help deter backsliding. ([http://europa.eu/rapid/press-release\\_MEMO-08-523\\_en.htm](http://europa.eu/rapid/press-release_MEMO-08-523_en.htm))

Also EU pressure can be powerful when it is mixed with domestic incentives that are related to winning elections and also with holding the power. Civil society groups play a relevant role in highlighting corruption and also regarding the need for judicial reform. The EU needs to rethink civil society funding through government institutions, since this undermines the readiness of civil society groups to highlight corruption.

In addition, the connection made between the CVM process and the EU has motivated the governments to make more effort in order to join the Schengen space (ex: Romania and Bulgaria). From that point of view, we can consider that the decision taken in 2010 and 2011 by most of the EU countries not to allow Romania in the Schengen space, as a sanction for not meeting the CVM benchmarks, has helped trigger reforms in the country, since Schengen membership is valued by citizens.

One of the most significant results of Romania and Bulgaria joining the EU is that it helped put the fight against corruption squarely on the EU agenda – an instance, perhaps, of „ *reverse conditionality*”.

([http://ec.europa.eu/public\\_opinion/flash/fl\\_351\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_351_en.pdf))

## **4. Is Romania catching up with the other countries?**

In this sub chapter I will present the evolution of Romania since the inception of the Mechanism of Cooperation and Verification in 2007. I will present the changes made by Romania and the way in which the changes affect the current situation of the country both internally and internationally.

So the question is: Are Romania and Bulgaria catching up with the other countries? The opinions in this case are divided. Normally success is defined as delivering all the domestic institutional changes which are necessary to create an effective judiciary and also to fight corruption. Also it is important to state the fact that political leaders and parties will persuade their reforms as a response to the forces of both domestic and EU influence. The domestic incentive for all political leaders are firstly the electoral ones and they are related to aspects such as: the salience of judicial and corruption-related reforms to all the voters; other parties position, mostly potential coalition partners and also the role of civic groups which are making public government performance and which are galvanizing the public pressure.

On the other hand the EU incentives stem firstly from the evaluations of each governments performance, which is made public by the Commission in the biannual CVM reports and also the possibility of punitive actions taken by the EU, mostly related to EU funds and to the Schengen accession.

The CVM has been pressuring both Bulgaria and Romania to adopt and implement some relevant reforms. The inception of CVM is also seen with scepticism by some countries and also by EU officials.

Historically speaking, since the fall of communism in 1989, ten states have passed through the EU's accession process. The huge benefits of EU membership created all the political incentives to satisfy the EU's complex membership requirements.

These incentives along with other characteristics of the pre-accession

procedure actually create the EU's leverage on domestic reform. EU leverage has helped compel candidates to reform both the state and the economy, improving thus the quality of democracy and also the efficiency of state institutions in various ways.

*„ By 2005, the eight post-communist states that joined the EU in 2004 were, on average, indistinguishable from the EU's old member states on measures of political rights and civil liberties. However, the two post-communist states that joined in 2007, Bulgaria and Romania, have struggled to achieve the same relative success. Severe problems with corruption, judicial quality and state capacity remain”*

*([http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf))*

In the pre-accession process, the strict enforcement in some areas was limited to the adoption of EU rules. In other areas, mostly related to the corruption situation, there were not that many rules to be enforced. After 20 years of democratization, both Bulgaria and Romania are considered to be: semi-consolidated democracies, in contrast to the other eight post-communist EU members that are seen as consolidated.

The domestic conditions in Bulgaria and Romania at this moment of democratization were not as auspicious as in the neighbouring states. Complex literature that analysed the comparative politics of post-communism has shown the importance of communist and also pre-communist legacies in shaping all the political trajectories after 1989.

*„ Bulgaria and Romania suffered under oppressive and highly clientelistic communist regimes that took power in societies that had low levels of industrialization and civil society organization in the pre-communist period”. ([http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf))*

There have been attempts from the EU to try to consolidate this democracy since accession. In the last two decades there have been two important changes in these societies: reforming the judiciary and also reforming and trying to control the corruption.

*„While the EU’s previous reports on the progress of candidate States were often criticized for being too vague, these CVM reports are remarkably detailed, following the activities of relevant institutions and tracking the outcome of high-level criminal cases”. Hinting at the likely longevity of the CVM mechanism, the Council declared in September 2010 that the CVM is an „ appropriate tool” that will stay in place „pending the results expected in this framework” (Council of the European Union 2010).”*

*„ Since accession, we argue that the causal importance of domestic incentives has increased substantially (see also Noutcheva and Bechev 2008). Why? In a variety of ways, EU leverage has helped empower domestic coalitions with liberal democratic aims and undermine illiberal ones (Vachudova 2005)”.  
([http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf))*

Domestic incentives to fight corruption are normally tied to elections. Many parties might chose to build their electoral platform on trying to improve the rule of law. From the moment this commitment has been made, the credibility of the political party may hinder its capacity to deliver at its best.

The chance of being re-elected might vanish if the voters no longer have trust in that the party would implement the domestic institutional reforms in order to fight corruption and organised crime. In these cases, there is a stringent necessity for an active civil society which can analyse not only the performances made by the governing political parties but that could also highlight all the important shortcomings. Thus the CVM can only work in connection with strong domestic incentives.

Regarding the National Integrity Agency which identified and investigated cases where there is unexplained financial gain. An important signal was sent to Bucharest, where the Commission said that *„ the potential dissuasive effect of ANI cases is hindered by the delays and lack of consistency in the judicial and administrative follow-up to ANI cases’ (European Commission 2012)”. ( [http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf)) Thus the Commission called for bigger political will and also commitment on the*

part of the judiciary which should fight corruption. In this case, the Parliament is seen as blocking the progress.

Even if Romania made significant steps still there are still reforms to be undertaken. The report underlined the fact that there has been limited progress in developing the cooperation amongst the government, the civil society and the fight against corruption.

In addition training and recruitment standards need to be improved, alongside with transparency and accountability. „ *As in Bulgaria, a rather large „conservative” faction within the judiciary appears committed to fighting both transparency and accountability as it continues to protect the beneficiaries of widespread corruption in Romania. The performance of government officials in many areas remains poor since accountability is largely absent and political allegiance is the main determinant of success.* ([http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf))

After analysing the CVM reports since its inception in the following part of the paper I will present the inclusion of Schengen in the Amsterdam treaty.

## 5. The inclusion of Schengen in the Amsterdam Treaty

The inclusion of Schengen in the Amsterdam Treaty represents an important moment in the evolution of the Schengen space. With the Amsterdam Treaty, this intergovernmental cooperation was incorporated into the EU framework on 1 May 1999. Besides this, there is also a protocol attached to the Treaty of Amsterdam which incorporates the developments brought about by the Schengen Agreement into the EU framework.

The Schengen area is now within the legal framework of the EU. This means that it comes under both parliamentary and judicial scrutiny and it attains the objective of free movement of person which is enshrined in the Single European Act of 1984.



As it was previously specified, in the Treaty of the Amsterdam, the Council replaced the Executive Committee which was created under the Schengen Agreements.

The Council implemented a Decision 1999/307/RC of 1 May 1999 which set up a procedure for the incorporation of the Schengen Secretariat into the General Secretariat of the Council, including also the arrangements that are related to Schengen Secretariat staff. As a consequence of this, new working groups were set up to help the Council to manage their work.

One of the Council's most important tasks in incorporating the Schengen area was to identify those provisions and measures which were taken by the signatory States that formed a genuine Acquis and that could serve as a foundation for further cooperation.

A list of the elements that make up this Acquis, which also set out the corresponding legal basis for each of them in the Treaty was adopted by the Council Decisions [1999/435/EC](#) and [1999/436/EC](#) of 20 May 1999. Since that moment the Schengen legislation has been further developed.

Today, the Schengen Area encompasses most EU States, except Bulgaria, Cyprus, Ireland, Romania and the United Kingdom. However, Bulgaria and Romania are currently in the process of joining the Schengen Area. Of non-EU States, Iceland, Norway, Switzerland and Liechtenstein have joined the Schengen Area. ([http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/l33020\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33020_en.htm))

In this subchapter I will present the conditions required to join the Schengen space, further on in my paper demonstrating thus the fact that there is no legal connection between the CVM conditions and the Schengen requirements.

## **6. Membership of the Schengen space from a Romanian**

## **perspective**

Now I will briefly describe the Schengen space as a concept, after which I will shortly present the conditions that a country must fulfil in order to join the Schengen space. The analysis of the Schengen space is necessary because further on in my paper I will demonstrate the fact that the conditions necessary to fulfill the CVM are not the same conditions necessary to join the Schengen space.

So going back to history, in 1985 when a break-through came that year, when cooperation between individual governments led to the signing in a small village in Luxembourg (Schengen) of the Agreement on the gradual abolition of checks at common borders which was followed by the signing in 1990 of the Convention implementing that Agreement.

The implementation of the Schengen Agreements thus started in 1995, initially involving seven EU States. It was created as an intergovernmental initiative, the developments brought about by the Schengen Agreements have now been incorporated into the body of rules governing the EU. Today, the Schengen Area encompasses most EU States, except for Bulgaria, Cyprus, Ireland, Romania and the United Kingdom. However, Bulgaria and Romania are currently in the process of joining the Schengen Area. Of non-EU States, Iceland, Norway, Switzerland and Liechtenstein have joined the Schengen Area.

What is the Schengen space about? Any person, irrespective of nationality, may cross the internal borders without being subjected to any border checks. However, the competent national authorities can carry out police checks also at the internal borders and in border areas, provided that such checks are not equivalent to border checks. This is valid for cases when, in particular, the checks do not have border control as an objective and which are also based on general police information and experience. It's also valid when the checks are carried out in a manner clearly distinct from systematic border checks and on the basis of spot-checks. Under such circumstances, the police may for example ask you to identify yourself or pose questions regarding your stay, depending on the purpose of the check.

If there is a serious threat to public policy or internal security, a Schengen country may exceptionally reintroduce border control at its internal borders for, in principle, a limited period of no more than thirty days. If such controls are reintroduced, the other Schengen countries, the European Parliament and the Commission should be informed, as should the public.

Even if Schengen is most of all a political call, there are also some technical conditions that each country must fulfil in order to join the free space:

- each State has to take the responsibility that they will control the external borders on behalf of the other Schengen States and also that they will issue uniform Schengen visas
- that every State will cooperate efficiently with law enforcement agencies in other Schengen States so they can maintain a high level of security
- apply common set of Schengen rules (the so-called “*Schengen Acquis*”), such as controls of land, sea and air borders (airports), visas, police cooperation and also the protection of personal data connect to and use the SIS.

The Schengen Information System is the largest information system for public security in Europe. By allowing for easy information exchanges between national border control, customs and police authorities, it ensures that the free movement of people within the EU can take place in a safe environment. It also contains alerts on missing persons, in particular children, as well as information on certain property, such as banknotes, cars, vans, firearms and identity documents, that may have been stolen, misappropriated or lost. Information is entered into the SIS by national authorities and forwarded via the Central System to all Schengen States. The SIRENE Manual lays down the procedures for EU States’ exchanges of supplementary information on alerts stored in SIS.

On 9 April 2013, the second generation Schengen Information System (SIS II) entered into operation. SIS II has enhanced functionalities, such as the

possibility to use biometrics, new types of alerts, the possibility to link different alerts (such as an alert on a person and a vehicle) and a facility for direct queries on the system. It also ensures stronger data protection.

The development of Schengen III suggests that integration will continue to deepen, especially concerning the efforts to combat both terrorism and illegal migration. As the EU grows and as free movement extends eastward, Schengen will bring the advantages of freedom of movement, but it will also call upon all the European nations to develop increasing trust in each other's ability to control who is allowed to enter and enjoy these advantages.

Applicant countries undergo a „ *Schengen evaluation*” before joining the Schengen Area and periodically thereafter to ensure the correct application of the legislation. At the present there are two countries that want to be part of the Schengen space and so far have been declined: Romania and Bulgaria.

(<http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/>)

For Romanians Schengen membership (if ever they get it) will not bring a major change. They have been able to travel around Europe only with their ID or passport since 2007 when their country became an EU member. Even so, another Schengen membership postponement is a setback for Romania. As long as the Romanian Parliament continues to block the prosecution for corruption charges of high-profile politicians and Romanians rely on bribes to solve their daily problems, the country's integration into the EU will not be completed. (<http://europa.eu/newsroom/calendar/event/421051/progress-report-under-the-cooperation-and-verification-mechanism-for-romania>)

The stake is mostly psychological and it is about Romania's image. Because Romania knows that it has done everything correct from a technical point of view another denial would be a failure for the country.

In the Romanian mentality being part of the Union means having equal rights. With the Schengen dilemma, it is true that the movement rights are not

affected but from a psychological point of view, passing through border points in a borderless Union is capable to create an artificial tie-break.

Another thing worth mentioning is the fact that neither the work rights, nor the residence rights are affected by joining the Schengen Space. The most relevant effects are felt at a primary level, especially concerning the business in the field of transportation and tourism. All of these things register additional costs which are induced by the additional time spent at the Western borders.

In other words, Romania and Bulgaria's integration into the Schengen Space actually represents a normal step in their evolution due to the fact that they became EU members since 2007.

These two states have initiated the process together by signing the Accession Treaty and they are also evaluated together. The geographical area they are protecting comes in support of this logic. If one of the two states performs less and if it also registers negative reports from the Schengen Evaluation experts, then both states shall be kept outside of the Schengen Space. After analysing the conditions required to join the Schengen space in the following part I will present the connection made between the CVM and Romania's accession to the Schengen space.

## **7. Connection made between the CVM and Romania's accession to the Schengen space**

In this subchapter I will present the most important views regarding Romania's denial to join the Schengen space and the connection made between it and the CVM report from 2012. I will present several opinions, emphasizing the legal arguments about the above topic that demonstrate the fact that the legal requirements mentioned in the CVM guidelines differ from the legal arguments mentioned in the Schengen Acquis and if the legal conditions differ then tying them represents a controversial action.

The European Union has further delayed a decision on whether Romania and Bulgaria should be admitted to the Union's Schengen area of borderless

travel. A meeting of home-affairs ministers from the EU's 27 Member States in Brussels decided that the two were not yet ready to join: *"The Council decided that the issue will again be addressed before the end of 2013 and there are a number of*

*states who had a variety of issues of concern"*

*([http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf)) said Alan Shatter, Ireland's minister for justice, equality and defence, who chaired the meeting. Shatter also said that these concerns were of a political nature and that the European Commission had found the two countries to be ready for Schengen membership from a technical point of view.*

In the final statement, the ministers suggested that a two-stage approach might be decided by the end of the year, which means that border controls would be abolished for air travel first after which the checks at land borders will be abolished as well. In addition Shatter also said that opposition to admit the two countries to the Schengen space also extended beyond the Dutch and German governments.

There has been made a connection between the requirements stated in the CVM and the requirements necessary in order to join the Schengen space. About this topic a lot of opinions have been expressed and I will underline the most important ones, from journalists to EU officials, politicians, analysts etc. The reason why I include all these opinions, even if some of them do not have a legal background is to present the overall situation, that many EU issues have a political explanation, so one cannot exclude the other.

Germany declared at the EU Council meeting they would veto Romania's accession. The Schengen legal framework requires a unanimity of votes from all member countries in order to open their borders to a new country.

Germany's concern as that of Netherlands and Great Britain is the rise of economic refugees that would come to their country if the borders would be open for Romania. The EU diplomats representing these countries declared that they have registered an increasing number of arrivals from Romania and Bulgaria.

Friedrich, the German Minister of Interior declared repeatedly over time that the influx will only grow once the countries are given full freedom of movement and access to the labour market across the EU. He added that the *„The time isn't right, there are still weaknesses – especially when it comes to the reliability of the justice system, which prevent us from being able to say: Remove the border controls now“*.

( <http://www.spiegel.de/international/europe/press-review-on-blocking-romania-and-bulgaria-from-schengen-area-a-887668.html>)

The journalists and political analysts in Germany have blamed Hans-Peter Friedrich (German Minister of Interior) for his behaviour saying it's a political decision. They have observed a populist tone in Friedrich's remarks on the wave of migration. In the past weeks, he accused the new immigrants of taking advantage of the German social welfare system through what the British call *„benefits tourism“* and the Germans call *„poverty migration“*. Friedrich is asking at a European level questions such as: *“Does freedom of movement mean we have to assume that people from all over Europe who believe that they can live better on welfare in Germany than they can in their own countries will come to Germany? This danger cannot be allowed to come true“*.

(<http://www.spiegel.de/international/europe/press-review-on-blocking-romania-and-bulgaria-from-schengen-area-a-887668.html>)

Most people are severely criticising Friedrich. They are complaining of the fact that the politician is trying to score votes ahead of September's election by blocking Bulgaria and Romania from entering the Schengen Area.

*For example, Berliner Zeitung writes: “But this doesn't make false arguments correct. Bulgarians and Romanians also require passport controls when they come to Germany. Yes, and among them are people who beg, steal or work as prostitutes. But they are not the majority. Eighty percent are seeking legitimate work. Twenty percent are even highly qualified. They are anything but the freeloaders seeking to profit from the German welfare state that some would make them out to be“*.

*“One can certainly debate whether it was correct or not to allow Bulgaria and*

*Romania into the EU. But now they are now a part of it, even if they don't exercise the same level of rule of law. This delay in allowing both of them into Schengen looks like an attempt to assert pressure but this will not help much. In Romania, people are already saying they can live without Schengen. In other words, there can't be much more to this than a campaign issue for Freidrich."*

The Christian democrat German Parliament ran by Gunther Krichbaum shows the tight connection between Romania joining the Schengen and the reforms made in justice. The CDU member of the Parliament underlined the fact that the evaluation of the progress realised by Romania can take place only after the report will be issued in December 2013. After this, according to him, Romania`s entrance must become reality.

Krichbaum has also mentioned the fact that Germany has no doubts regarding the technical capacity of Romania to ensure the external borders of the EU. On the other hand, the EU has the duty, in his opinion to elaborate on mechanisms to monitor and improve some of the shortcomings of these countries. Contrary to this, some Member States might no longer sustain Romania`s entrance into the Schengen area. In addition, some of the problems are according to Krichbaum „ *actually not created by the Schengen system but by the consequences of the Iron Curtain*".

<http://ancheteonline.ro/2013/03/germania-este-o-legatura-stransa-intre-adera-re-la-schengen-si-raportul-mcv-o-evaluare-abia-in-2014/>

The reasons why some old member states are opposing Romania`s entrance is also motivated by populism, which represents a risk because the voice of the Schengen space is not a unified voice, but it would be indeed better for Romania to have a unified voice.

As a consequence it would be better for Romania to hear a unified voice from Europe saying that we are not prepared, then just listening to Germany that wants to use its veto right, thus changing the current political situation.

Analyst Elizabeth Collet of Migration Policy Institute, quoted by „ *Evenimentul Zilei*" daily ( Romanian newspaper) stated 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 precedents a counter-argument against quick integration. Greek failed the exam three times before joining the Schengen Space and today, it has the greatest difficulties in guarding the Turkey border”.

([http://eupi.osi.bg/fce/001/0066/files/SchengenReport\\_ROMANIA\\_February2011.pdf](http://eupi.osi.bg/fce/001/0066/files/SchengenReport_ROMANIA_February2011.pdf))

On the other hand even if Great Britain is not part of the Schengen space, they still mention their position regarding Romania's and Bulgaria's entrance. Great Britain declared that they are for Romania and Bulgaria joining the Schengen space and that they have adopted this position since 2011. The officials of Great Britain also said that it is in their best interest to have an efficient control system at the borders. UK also mentioned that they were not part of the group that made the connection between the Schengen and the CVM report. Great Britain is taking into consideration the CVM report but they consider the CVM report to be distinct from the Schengen space. But, obviously, there are also other EU partners which have made this connection and which have specifically said that more progress is needed in order to agree with Romania's accession to the Schengen space.

(<http://www.revista22.ro/numirea-unor-oameni-independen539i-537i-curajo537i-la-parchetul-general-537i-dna-este-o-urgen539a-23305.html>)

The European Commission was reserved even from the beginning to create a connection between the CVM reports and the admission conditions in the free movement space. The fact that everybody in Brussels is dissociating the CVM report from the Schengen situation is not helping Romania that much.

Traditionally speaking, the Commission has already admitted the fact that CVM and the Schengen have different evaluation criteria and that they cannot be tied one to the other, which did not stop the main occidental powers to take

precautionary measures and use the CVM in order to block the Schengen access to Romanian citizens.

We are assisting at an incoherence of the European politics which has its own explanations. The Commission is defending its own authority and is worried about the initiatives of some states to base their policy against immigration. Highly significant is the initiative taken by Internal Affairs ministers to reestablish the control at the national frontiers in certain conditions. With this gathering of the ministers of Internal Affairs in the Schengen space, which was organised in 2012 in Luxembourg, it has arrived to an agreement which allows the states to adopt protection measures from the moment when immigration waves become burdensome.

The idea, launched by the ex-president of France, Nicolas Sarkozy was promoted by the minister of Internal Affairs Claude Guéant, which together with his German colleague Hans-Peter Friedrich have signed a letter in which they request the countries from the Schengen space to allow through a national decision to reintroduce the frontier controls for a period of 30 days with the possibility of an extension, in case needed. After the French elections, the proposal was also promoted by the socialist minister of internal affairs Manuel Valls.

The European Commission never agreed to these initiatives which consolidate the sovereignty of national states. The spokesmen for the EU Commissioner Cecilia Malmstrom declared in 2012 that au contraire: „ *The Schengen space needs more of Europe*”.

The European Commission proposed a solution which meant to limit the abusive use of new powers, requiring the national states which would want the extension of this measure of closing down the frontiers, to request for the help from the Member States. But actually the Commission did not agree at all with the revisal of the Schengen Agreements, hoping to conserve its prerogatives regarding the free movement.

If initially the Schengen space had its framework built through inter-governmental agreements, subsequently it was integrated in the EU treaties.

The declarations of the representatives of the Commission regarding the Romanian situation have followed thus the guidelines of its general politics which have not approved the revisal of the Schengen agreements.

The Commission is controversial in its comments due to the fact that on one hand it allows the access of Member States to the free movement and on the other hand it reveals the fact that these states are denying the access of Romania also from reasons which are not contained in the CVM reports.

(<http://www.dw.de/rela%C5%A3ia-dintre-mcv-%C5%9Fi-dosarul-schengen/a-16564550>)

Jose Manuel Barosso, the president of the European Commission declared that he is supporting both Romania and Bulgaria in their process to join the Schengen space and he also added the fact that the decision to allow these two countries is not taken by the European Commission but by the Member States. About the last CVM report he commented: „ *The CVM report acknowledges the fact that progress has been made in the past five years but the report also contains other recommendations in order to finalise the reform process. I have asked for another report before the end of this year*”.

(<http://www.hotnews.ro/stiri-esential-12824890-live-video-text-ora-14-00-comisia-europeana-preznta-raportul-mcv-pentru-romania.htm>)

On the other hand the EU Parliament President Martin Schulz said that Berlin was politicizing Bulgaria and Romania's accession process. Schulz said that it was necessary to wait for the European Commission's progress reports. “*We are a community of rights,*” Schulz said. “*I reject political criteria.*”

(<http://www.dw.de/germany-blocks-schengen-membership-for-bulgaria-romania/a-16656037>)

The European Commission spokesman Jonathan Todd said no EU country has presented „ *Any evidence whatsoever that there is benefit tourism. It is a non-problem. It does not exist. There is a perception in some Member States that has no grounding in reality*”.

(<http://www.spiegel.de/international/europe/press-review-on-blocking-romania-and-bulgaria-from-schengen-area-a-887668.html>)

Stefan Fule declared about Romania`s accession to the Schengen space „ *is blocked by some considerations of a political nature, mostly related to the fact that in some states which oppose our accession, 2013 is an electoral year and the government from Bucharest cannot change that thing*”. The EU Commission does not support the tendency of some EU states to create a political connection between Romania`s and Bulgaria`s accession to the Schengen space and the CVM, this being the declaration of the EU commissioner for enlargement.

<http://www.ziarulfaclia.ro/corina-cretu-comisia-europeana-reitereaza-ca-intr-e-aderarea-romaniei-la-spatiul-schengen-si-mcv-nu-exista-legatura/>

When Romanians are asked about the connection between Schengen and the CVM they consider the connection made between them as being incorrect. Not even the European Commission is saying out loud there exists a connection between the two. Thus, if this connection is not correct that means that Romania`s refusal to join the Schengen space could be considered as an injustice.

After analysing the Schengen space and the way in which the CVM was used to block Romania`s entrance in the free movement space several questions arise. Why was the CVM tool used the first time in the case of Romania and Bulgaria? When these countries joined the European Union in 2007 the European Commission considered them to have huge problems concerning corruption. But if this was the mentality of the period and these countries were still far away from other EU countries that were stable and where the justice system was more efficient then why were both Romania and Bulgaria accepted in the European Union? By accepting Romania in the European Union Romanian citizens could benefit from all the freedoms enriched in the treaty, the most important ones being the free movement of people and workers, freedoms that I will touch upon later in my paper. My opinion, as a Romanian is that the implementation of the CVM was a good idea, because Romania needed an international body that offered guidelines/ recommendations and the country also needed an international body to follow up those changes and guide the country on the right track. Even if I agree with the implementation of the CVM in Romania I do disagree with the fact that this was used as a political tool by Germany and The Netherlands that did not want Romania in the Schengen

space.

Another question that arises is the following: Will the CVM be used again in the future for other countries? Looking at the latest case it would appear no to be the answer, because Croatia joined the European Union on the 1<sup>st</sup> of July 2013 and no CVM was implemented in that country. Even so, maybe Croatia did not have so many corruption problems in order for the European Commission to decide to implement this mechanism in the country. There are still other European countries that will join the European Union in the future, so only time will decide upon this question, if this mechanism will be reused or not, because there are indeed other EU countries that are as corrupted or even more corrupted than were Romania and Bulgaria in 2007 when they joined the European Union.

One of the features of the CVM is represented by its temporary nature. A question that must be asked is then, if this mechanism was introduced in the same year for both Romania and Bulgaria, will it be also removed at the same time for both countries even if one country might progress more and implement all the recommendations faster? So if Romania receives better feedback than Bulgaria or vice versa and the European Commission considers that one country has fulfilled its recommendations then will they keep the CVM in that country until the other country is at the same level? Or will it be just removed in one country? Will these countries also be regarded together by the European community because of their common past or not? Again time will decide on this matter but my opinion is that when they will remove the CVM in the case of Romania they will also do the same thing for Bulgaria. Because both countries were accepted in the European Union at the same time, in both countries the CVM was implemented and both countries were denied access to the Schengen space because of the CVM report from 2012. So in my opinion, when they will remove the CVM for a country they will do the same for the other one as well because they are seen in the same light, as an entity.

This question of interdependence between the two does not only refer to the removal of the CVM but also to the Schengen accession. If Romania receives a better feedback from the European Commission and western countries decide to

accept Romania because of that in the Schengen space, what will happen to Bulgaria? Will Romania be rejected because Bulgaria is not prepared yet? Or will Bulgaria also be accepted because of Romania? Regarding this question I think that when Romania will be accepted in the Schengen space Bulgaria will be accepted as well. Besides corruption and other issues this political move also represents a geopolitical problem, so as a consequence the Schengen community will accept both countries in their community at the same time.

Because of the connection made between the requirements necessary to fulfil the CVM and the requirements necessary to join the Schengen space a new question appears: if the CVM will be implemented in other countries that join the European Union, will it be used again in order to prevent that new countries from joining the Schengen space? I consider that the CVM will be used again by western countries to block a country from joining the free movement space, if that is in the interest of those western countries (being in an electoral year, anti-immigration politics, etc). If it happen once it can happen again because the connection made between the CVM and the Schengen was not recognised anyway by the countries that made the connection.

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## Free movement of workers from a Romanian perspective

I will analyse in this chapter the rights of free movement of Romanian nationals especially as workers and assess the situation of gypsies, trying thus to answer the following questions:

What rights do Romanian workers have according to the EU legislation? What rights do Romanian gypsies have according to EU legislation? Are the rights of Romanians and Roma citizens effectively protected in accordance with the EU Treaty?

In answering these questions, it will become evident that there are still many restrictions in Europe towards both Romanian workers and Romanian gypsies, even if some of the restrictions are not actually part of Romania's Accession Treaty to the European Union. In this sense they might be seen as abuses made by EU countries that throughout their policy breach not only EU law principles but also human rights principles.

### **1. Defining the concept of free movement of workers in the European Union**

In this subchapter I will present the concept of free movement of workers in the European Union, from a theoretical point of view relying essentially on the case law of the European Court of Justice. It is essential at this stage to have a good understanding of the rights of Union citizens, especially those who qualify as workers, in order to assess the status of Romanians and Gypsies in this light and assess whether their EU-rights are effectively protected



The free movement of workers is protected both by primary EU law sources, such as treaties (the EU treaty) and secondary legislations, such as directives (Directive 2004/38/EC).

It is relevant to present all the primary and secondary EU law sources that protect workers, because the free movement of workers is protected by various sources so it is important to assess who qualifies as a worker.

The EU Treaty which defines the free movement of workers is article 45. This article entails: *„the right to look for a job in another Member State; the right to work in another Member State; the right to reside there for that purpose; the right to remain there; the right to equal treatment in respect of access to employment, working conditions and all other advantages which could help facilitate the worker’s integration in the host Member State”* (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:en:PDF>)

The provisions of Article 45 TFEU are further developed in Council Regulation 1612/68, Council Directive 68/360/EEC , Regulation (EEC) No. 1251/70. These provisions entitle any EU national to take up and engage in gainful employment on the territory of another Member State, to equal treatment to national workers as regards working and employment conditions, social and tax benefits; his or her family members are also entitled to establish themselves, together with the worker, whatever their nationality. Nevertheless, employment in the public services is excluded from this provision (Article 45(4) TFEU).

Although free movement is an economic, not a social concept, it creates many problems of a social nature: transfer of pensions and social benefits, entitlements of migrant workers to unemployment, social security and other benefits, family issues of education, housing and so on. These social issues were dealt with not as independent social concerns, but under the heading of economic free movement of labour. This created a tension in the balance between the economic and the social perceptions of free movement of workers. Policy initiatives, legislative provisions and court decisions were concerned

with economic and not social consequences, that is with possible restraints on free movement and not with the social implications of free movement of workers. Overall, the principle of free movement of workers as a founding principle of the common market had initially a dominant influence on the perception of the nature of labour regulation in the European Union.

(<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/freemovementofworkers.htm>)

Looking at the problem from a more practical approach, in the case where a Union citizen wants to reside in another Member State, without exercising any work related activity or studying, that citizen has to provide proof that he does not represent a burden on that state. In case the person brings members of his family than he has to prove that he has sufficient financial resources for them as well.

The concept of free movement of workers relates to citizenship in the European Union. Thus EU citizenship is defined in article 20(1) TFEU as: *“Every person holding the nationality of a Member State shall be a citizen of the Union”*, while Article 21(1) TFEU provides that *“Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect”*.

(<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/freemovementofcitizens.htm>)

The EU Treaty has a number of provisions that deal with the free movement principle, such as article 21 that provides the following: *„ Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States subject to limitations and conditions laid down in the EC Treaty and by the measures adopted to give it effect”*.

The Treaty contains a general prohibition on discrimination on the grounds of nationality and it specifically states that freedom of movement for workers entails *“the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other*

conditions of work and employment”.

(<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/freemovementofcitizens.htm>)

Workers are also defined as previously mentioned in secondary legislation, such as the Residence Directive, in article 7, which is essential because it presents the situations where a citizens can reside in another country for more than three months: “if they are workers or self-employed persons in the host Member State; have sufficient resources for themselves and their family members not to become a burden on the host member state during the period of residence and have comprehensive sickness insurance cover in the host Member State; are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and have comprehensive sickness insurance cover in the host Member State”.

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0038:20040430:EN:PDF>)

One of the first cases where free movement of workers was defined was the Levin Staatssecretaris van Justitie (case 53/81): „ the concept of worker is a Community concept, not dependent for its meaning on the laws of Member States. There are two aspects to the definition of worker: a formal aspect and an economic aspect. The formal aspect questions whether an individual is employed, rather than self-employed; while the economic test looks at the nature, duration and quality of the work. (Steiner, Josephine and Woods, Loma, Oxford University Press, tenth edition, 2009, pag 410)

The concept of worker has also been explained in the Hoekstra v BBDA case 75/63: „ the Court held that it extended not merely to the present workers, but to the one who, having lost his job, is capable of taking another”.

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61963CJ0075:EN:PDF>)

Worker is also defined in the Immigration (European Economic Area)

Regulations 2006 as “*within the meaning of Article 39 (now art. 45 TFEU) of the Treaty establishing the European Community*”. This shows that a worker is a person who is employed, actually or potentially, under a contract of employment and is not a self-employed person. (<http://www.legislation.gov.uk/ukxi/2006/1003/contents/made>)

The Residence Directive also provides that a worker’s right of residence cannot be withdrawn just because he is temporarily incapable of work, as a result of illness/ accident or involuntarily unemployment. The ECJ dealt with the issues of involuntary unemployment in relation to a fixed term contract in the case 431/01 (Ninni-Orasche): „ *The ECJ noted that in some sectors workers might have no choice but to accept fixed-term contracts; becoming unemployed on the cessation of such contract could not therefore be considered to be a choice of the worker*”.

(<http://www.efbww.org/pdfs/annex%208%20-%20Brochure%20part%201%20%5BEN%5D.pdf>) So in this case it was not voluntary unemployment. If a worker is not genuinely seeking work, from the moment his employment relationship had ended that person loses his status as worker, but if he can prove that he is genuinely seeking work then he becomes a jobseeker.

The European Court of Justice, in Lawrie-Blum case 66/85 stated that the essential point is that the person provides services during a given time for and under the direction of another in return for remuneration. The EEA national’s position within the organisation, the purpose of the work, the level of income it yields (including whether or not the person has to supplement his or her income by claiming social security benefits), and whether payment is in cash or in kind, are not relevant factors.

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61985J0066:EN:HTML>)

In addition reliance on public funds during periods of involuntary unemployment or training does not affect the right to remain under Community law. However, while a person who has been seeking work for more than 6 months may still be a worker for Treaty purposes, the evidential burden shifts to that person after 6 months to demonstrate that genuine efforts are being made

to find employment and that he or she has a realistic prospect of success (Antonissen C292/ 89).

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61989J0292:en:HTML#M0>)

As expressed in the Residence directive, self employed citizens have the same right of residence in the host country as the workers. Self employed citizens are those citizens who are carrying a self employed business activity in the host country. They are also protected against nationality discrimination and obstacles to their freedom of establishment.

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0038:20040430:EN:PDF>)

Another category of workers is the cross border category. Cross-border workers are those that can be described as people who commute to work across a national border and return home at least once a week and who enjoy the same benefits as any other worker in their country of employment. Even if, the Court of Justice of the European Union has held that no residence requirement may be imposed on these benefits, cross-border workers sometimes encounter specific problems when claiming social advantages because these are still linked to their residence

([http://ec.europa.eu/taxation\\_customs/taxation/personal\\_tax/crossborder\\_workers/](http://ec.europa.eu/taxation_customs/taxation/personal_tax/crossborder_workers/))

After analysing the concept of worker I will also explain the concept of jobseeker. Jobseekers are those who arrive to the host country in order to look for a job and they have not worked there before. They are a hybrid category between the workers and the inactive Union citizens even though they fall under Art. 45 of the Treaty, article which was presented previously in this chapter. If they fall under art 45 of the Treaty that means that jobseekers have the same rights and obligations as workers.

*A jobseeker is according to the Joined Cases C-22/08 and C-23/08, in Vatsouras and Koupatantze v. ARGE Nürnberg 900: Is someone that has established genuine links with the labour market of a Member State and which*

*can receive a benefit of a financial nature intended to facilitate access to employment". Independently of its status under national law, such a benefit is not social assistance which Member States may refuse to job-seekers".*

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:180:0014:0014:EN:PDF>)

In the Case 138/02, the Collins case, the Court of Justice makes clear that the right to equal treatment in relation to employment laid down in Article 39, read in conjunction with Articles 12 and 17 of the Treaty, relating to "prohibition of discrimination on grounds of nationality and to citizenship of the Union, does not preclude national legislation which makes entitlement to a jobseeker's allowance conditional on a residence requirement, in so far as that requirement may be justified on the basis of objective considerations that are independent of the nationality of the persons concerned and proportionate to the legitimate aim of the national provisions".

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62002J0138:EN:HTML>)

Another case that defines a jobseekers rights is the Antonissen case law 292/89. If you qualify as a jobseeker according to the Antonissen case you have the right to move freely within the territory of the other Member States and to stay there for the purposes of seeking employment. Jobseekers are eligible to any cash benefits which are intended to help them find work, provided they have a genuine link with the local employment market, e.g. they have looked for a job there for a reasonable period of time.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61989J0292:en:HTML>)

In case the right to reside is conditional upon having sufficient resources not to become a burden on the host EU country's social assistance system (i.e. when you are not economically active), it might be terminated from the moment the person becomes an unreasonable burden on the social assistance system (this is mostly applicable to students, retired people, etc). This does not mean that the person cannot apply for social assistance there when he/she are in need for it. The citizens still has the right to receive the

benefit under the same conditions as nationals of the host EU country. However, the host EU country is entitled to examine the circumstances of the claim. Those citizens can consider whether your need to apply for assistance is a case of temporary difficulties. They will also take into account the duration of the residence, the personal circumstances and the amount of aid granted. If the host EU country arrives to the conclusion that the person has become an unreasonable burden on its social assistance system, they may proceed to your expulsion. However, an expulsion measure can in no case be the automatic consequence of recourse to the social assistance system

Another category that I will analyse is the one represented by inactive citizens. According to the Grzelczyk case 184/99 : *“A citizen of the European Union, lawfully resident in the territory of a host Member State, can rely on Article 12 of the Treaty in all situations which fall within the scope ratione materiae of Community law”*.

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61999J0184:EN:HTML>)

Inactive citizens are also protected by the Treaty in articles 18, 20 and 21. Article 18 of the Treaty specifically prohibits any discrimination on grounds of nationality. Article 20 specifies the following, *„Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national*

*citizenship”*. (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF>)

Citizens of the Union shall have the same rights and be subject to the duties provided for in the Treaties, such as, for example the right to move and reside freely within the territory of the Member States. Article 21 mentions the following : *„Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect”*.

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:019>)

9:en:PDF)

*There is a derogation from these rules, specified in the Residence Directive, article 24 (2): „ the host member state shall not be obliged to confer entitlement to social assistance during the first three months of residence, or where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to the acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self employed persons, person who retain such status and member of their families.*

(<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0038:20040430:EN:PDF>)

Romanians fully enjoy rights as self-employed and citizens of the Unions whereas Member States are entitled to restrict their rights of free movement as workers.

## **2. The necessity of restrictions imposed on Romania in the Accession Treaty**

In this subchapter I will present the general framework concerning the restrictions that were imposed to Romania when it joined the European Union. I will also explain the necessity for imposing these restrictions in the accession Treaty before analyzing in a subsequent section the specific restrictions that were taken by the Member States concerning Romanian workers.

Several analysis were made after the accession of the ten Central and Eastern European Countries to the European Union since (and well before) May 2004. The debate was then mostly focused on the preparation of the candidate countries, their economical potential; the capacity of the EU to keep the balance in order to increase heterogeneity and also the perception of the



other members about the new entries, not to mention conserving the national interests. Related to the conservation of national interests, questions were asked such as the distribution of community budget or the implementation of various national labour market policies.

In 2004 the EU enlargement shocked the world because of the number of countries that joined (10) whilst in 2007 two more countries joined: Romania and Bulgaria. This can be explained due to the fact that both countries applied for EU membership in the mid 90`s but the decision to start the accession negotiations was taken only in 1999 when the European Council gathered at Helsinki.

The Treaty of Accession was signed with both countries in 2005 and entry into force could be postponed by one year if the progress reports made by the European Commission showed insufficient preparation from the candidate. Some arose also concerning the two countries referring to some economic requirements and regarding the possibility of financial correction on EU funds or restrictions regarding the free movement of workers as well.

Reading the common terminology which was used during the accession negotiations, from the moment a candidate country joins the European Union, it becomes a *“fully fledged member”*. But, in relation to Romania and Bulgaria one can speculate whether that was actually the intention of the people that drafted the Accession Treaty.

( <http://ec.europa.eu/social/main.jsp?catId=508&langId=en>)

First of all, art. 39 (1) of the Protocol related to the conditions and arrangements for Admission of the Republics of Bulgaria and Romania to the European Union stated, that in case of *“clear evidence that ... there is a serious risk of either of those States being manifestly unprepared to meet the requirements of membership by the date of accession of 1 January 2007 in a number of important areas, the Council may, acting unanimously on the basis of a Commission recommendation, decide that the date of accession of that State is postponed by one year to 1 January 2008”*.

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:157:0029:004>)

Being aware of the fact that the legal framework of these countries cannot be separated from its historical, economic and political context, European Citizens Action Service considered that it is necessary to go beyond the facts and to show not only the general context but to also show the legal implications of the accession of Bulgaria and Romania to the EU. These legal implications refer to the much debated topic about migration, exploring human rights and the correlation between Romanians/ Bulgarians and the current EU Member States both past and present.

On the other hand art. 36 – 38 of the Accession Treaty stipulate specific safeguard clauses, which could be taken up to three years after Accession, but they could also remain applicable beyond that date until the particular situation is remedied.

Another interesting clause is the *economic safeguard clause* (art. 36) which represents a traditional trade policy measure that helps to deal with adjustment difficulties from an economic sector or an area for both the EU25 and also for the new Member States.

The *internal market safeguard clause* (art. 37) allows the Commission to take measures by analyzing case by case ( either on its own initiative or upon the request by one Member State) in sectors such as telecommunication, competition, energy, agriculture, consumer and health protection. An example of this could be given in the food sector, where the Commission can decide to restrict the sale of some Romanian products of the internal market if the product does not follow the high-level EU standards.

The specific *justice and home affairs safeguard clause* (art. 38) is related to the functioning of the judicial system in fields such as insolvency, parental responsibility, matrimonial matters, uncontested claims etc. In addition to this, in case that EU funds are not used properly, financial corrections, like delayed disbursement, reduction of future payments or recovery of funds can be imposed. Also transitional measures are applied for a period of time in fields such as free movement of workers, land

acquisition, road transport, agricultural and environmental EU laws and standards.

*From a more practical approach, during the first two years following the accession of Bulgaria and Romania the access of their citizens to the labour market of the EU 25 Members States will depend on the policy and national law of that particular State, as well as taking into consideration the bilateral agreements that these countries might have.*

There are some countries that have mentioned the fact that they are going to open their labour market, whilst other countries have said that they are going to impose more restrictive access, which practically means that Romanians will need a work permit during the period in which the EU-25 Member States will apply those national measures.

After the end of these two years, the Commission will draft a report, which will be analysed by the Council. The Council thus has to review the functioning of the transitional measures. Besides this, all 25 EU countries have to make a formal notification addressed to the Commission stating if they want to continue with the national law measures for a maximum of three more years (in this case you will need a work permit), or if they will apply the Community law regime concerning the full free movement of workers, which means that they can go and work freely there.

As a principle the transitional arrangements should end after the expiration of the first five years after the accession. But still there exists this possibility for the 25 Member countries to ask the Commission for authorisation in order to continue to apply their national measures for two more years. This extension for two more years can be justified only if these countries experience serious disturbances on their labour market. The transitional measures cannot be extended after a maximum period of seven years.

After the national law restrictions have ended and free movement can be applied, the EU-25 Member States can no longer require a work permit from Romania and Bulgaria as condition of access to the labour market.

In the situation when an EU-25 Member State has stopped applying national measures and free movement of workers under Community law fully applies, it can be asked again to re-impose restrictions if it has serious problems on its labour market, or is threatening it.

Thus the Commission must decide what type of restrictions can be enforced and their duration as well. Any Member State can ask the Council to annul or change the Commission's decisions and this action must be voted and agreed by a qualified majority. These „ *safeguard clauses*” have been included in every Accession Treaty since the European Union was formed still they have never been invoked.

Discrimination on grounds of nationality is excluded. Regarding the job market, the Member States must give workers from Bulgaria and Romania priority over workers from third countries.

In the situation a citizen legally works in an EU-25 Member State at the date of accession and also have a work permit or an authorisation for 12 months or more than that, he/she will gain direct access to the labour market of that particular Member State, but not automatically to the labour market of other EU-25 Member States which are actually applying national measures during all of these temporary measures.

In case a citizen decides to work in one of the EU 25 Member State after the date of accession and actually have permission to work there for 12 months or more than that he/she will benefit from the same rights. But in the situation where you decide voluntarily to leave the labour market of the host Member State, you then lose the right of access to the labour market of that State until the temporary measures have expired.

Another concept integrated in the Accession Treaty is the standstill clause. This clause means that the EU-25 Member States cannot make access to their labour markets by workers from Bulgaria and Romania more restrictive than it was before the moment when they signed the Accession Treaty in 2005. So in the situation when the EU-25 Member States has a quota of workers from these two countries which is part of a bilateral agreement from 2005 or earlier

then it is impossible to go below that quota.

**The most controversial issue that arose was regarding the migration issue, because of the newly entrants and also national unjustly turned attention away from the European problem: the right of each European citizen to move freely from one Member State to another, but not only as tourists or beneficiaries of services or other but also workers or self-employed.**

(<http://ec.europa.eu/social/main.jsp?catId=508&langId=en>)

This transitional system allows any Member State to grant free access for Bulgarian and Romanian workers to their labour market any time during the application of maximum seven years or if not to restore their national regime of work authorisations in the case when that country (having previously granted free access to workers from the new Member States) actually experiences serious disturbances on its national/regional labour market or in regarding a particular occupation (*safeguard clause*).

The general rule mentions the fact that the transitional arrangements should cease to apply on 31/12/2011. However between the following period: 01/01/2012 – 31/12/2013 a Member State can still be authorised to maintain its work permit regime but only if it can prove that there is a real disturbances on the labour market, which justifies closing the labour market. Even so, this system of transitional measures precludes any Member State from not following the community preference principle and so act towards people coming from third country nationals in a more favourable way than accession State nationals when trying to apply for work and also having equal aptitude to fulfil their position.

These transitional measures do not affect the workers that are already legally working in those countries, for an uninterrupted period of 12 months or longer. So they can automatically gain access to that labour market, but this does not apply to those of the other Member States which are also maintaining restrictions. Explained in a different way: these transitional measures apply to Bulgarian and Romanian workers who join the labour market of a Member State which continues to apply its national work authorisation

regime before or after the 1<sup>st</sup> of January 2007 but who do not have a work authorisation (contract) which lasts for more than 12 consecutive months.

As a conclusion the transitional measures part of the Accession Treaty are complicated, but this is because their application is actually flexible. This flexibility makes it almost impossible to provide the accurate information as each of the EU-25 Member States has to decide regarding the access that they allow Romanians into their national market. (<http://ec.europa.eu/social/main.jsp?catId=508&langId=en>)

### **3. The implementation of the restrictions in the Member States**

After analyzing the Accession Treaty and the general provisions regarding Romania, in this part of the paper I will present the specific restrictions taken by some EU countries concerning the free movement of Romanian workers, demonstrating thus the fact that there are still many problems for Romanians to obtain a work permit in some countries, not to mention the fact that besides the restrictions that are still some countries that are restrictive in hiring Romanian workers. I consider it relevant to present these cases because this also shows the opinion of the European countries about Romania and the way in which they actually interpreted and implemented the provisions of the Accession Treaty in their national legislation.

The restrictions concerning Romanian workers differ from country to country. There are some countries that opened their job market without hesitations, there are some countries that did not differentiate between the countries that joined in 2004 and the countries that joined in 2007, there are also other countries that had specific, national requirements concerning Romanian workers making it thus very hard for Romanian workers to access the job market of that specific country. In the following part, I will present different categories of countries and their policies concerning Romanian

workers.

### **3.1. Liberal countries**

In this category I can include Sweden, Finland, Denmark and Italy. Sweden is known to have opened its door policy, being thus the first country to fully liberalise the access to the labour market and not restricting access to social benefits either. This type policy is applied not only concerning the EU10 nationals, but also concerning Bulgarian and Romanian workers.

Finland was also the first from the EU15 countries that announced that they are going to lift the restrictions to free movement of workers at the end of the second year of the transitional period as regards EU10 nationals. So as a consequence of this Finland does not apply restrictions to Bulgarian and Romanian nationals either.

Denmark is also a liberal country. In Denmark for example a citizen is eligible to obtain a Danish work permit if the person holds a fulltime (which means at least 30 hours per week) employment on collective bargaining, contract conditions or having a standard wage and work conditions while their employer has to be registered in compliance with Danish laws. That particular applicant can start his work once his/her work/residence permit has been granted and once both the employer and the employee can be penalised if working or employing illegally.

### **3.2. Moderate countries**

Countries such as Italy, Luxembourg , France and Belgium can be considered moderate countries concerning their approach towards Romanian workers because they applied the same restrictions for these countries as for the ten countries that joined in 2004.

In Italy even from the 1<sup>st</sup> of January 2007 Bulgarian and Romanians could seek for work easier in areas such as: construction; agriculture; domestic work;

engineering trades; hotel trade; tourism and also some other highly qualified areas. Thus seasonal work is also covered by this facilitated procedures, even if the rest of the occupations, the transitional arrangements apply. So as a consequence the Italian Minister for Social Solidarity states the fact that partial liberalisation of access to the labour market “*would cover the majority of Romanians already in Italy who have been hitherto subject to restrictions as non-EU*

*members”*. (<https://ec.europa.eu/eures/main.jsp?acro=free&lang=en&countryId=RO&fromCountryId=BE&accessing=1&content=1&restrictions=1&step=2>) This action made by the Italian government is seen as a sort of regularization programme because it legalises the Romanian workers which are already present in Italy.

In the case of Luxembourg as I previously mentioned the government chose to impose the same restrictions as of the countries that joined in 2004 (which is actually a simplified procedure to grant work permits in viticulture, agriculture, the catering sector and also in the financial sector.

France chose to adopt a coherent approach (“*choix de le cohérence*”) related to labour migration for the ten countries that joined in 2004 and the other two that joined in 2007. This means that the sectors open to workers that are coming from EU10 and Bulgaria and Romania are the same. In the situation when a worker applies for a work authorisation in sectors such as agriculture, construction, tourism and other sectors the required authorisation should be automatic. The opening of those 61 sectors is benefiting seasonal workers, mainly those ones that are working in agriculture.

In Belgium on the other hand there exists a selective labour market policy which which allows EU10 nationals, Bulgarians and Romanians to get easily access to “*bottleneck jobs*”, for which there are not that many candidates from the other found member states. The work permits are issued using an accelerated procedure in maximum five days in the sectors that are struggling with labour shortages. Another specific feature of Belgium is that Belgium does not differentiate between workers of the fifth enlargement round (EU10 and EU2), meaning that they do not make any difference between the countries that joined in 2004 and those which joined in 2007. But even with this



measure, a difference between the two stages of EU Accession differ because on one hand the restrictive measures related to the countries that joined in 2004 will end in December 2008 those the countries that joined in 2007 will end, optimally speaking at the end of 2013. So at the end of the day, there will still be a difference between the treatment applied to these countries.

### **3.3. Restrictive countries.**

There are countries that have restricted their policy regarding Romanian workers, such as the Netherlands, Austria, Germany, The United Kingdom and Spain.

In the Netherlands workers from EU2 are treated differently from the EU10 ones regarding the Dutch labour market. Concerning the EU10 workers the Dutch government was liberalising step by step the restrictions and took the decision to open other sectors, where obtaining a work permit would be easier since 2007. Transition is completed now for EU10 countries. From the 1<sup>st</sup> of May 2007 the government liberalised the access to the Dutch labour market for all the workers concerned and applied EU rules on free movement of workers. At that moment the Bulgarian and Romanian citizens were subject to more restrictive labour market measures. Romanians and Bulgarians must apply for a work permit and they must also satisfy the "*labour market test*" before being granted the authorisation.

Austria for example restricts access to its job market by applying a federal quota system and also imposing the work permit requirements at the same time. Like Germany, Austria also restricts some provisions of services in some sectors. The migrants coming from Bulgaria and Romania who wish to work in Austria have to pass the "*labour market test*" which represents a verification that assesses if there are no other EU15 (the EU member countries before 2004) national better placed for that particular job.

As I previously mentioned Germany acted as Austria because they clearly expressed that they will use these possibilities offered by the Accession Treaties to a maximum extent blocking the free provision of services in both

the construction and in the industrial cleaning sector with the others. This immigration policy has not changed from that moment since: *“employment and self-employment of foreigners are to be oriented on Germany’s economic needs, taking into account the labour market situation and the need to reduce unemployment”*. (<https://ec.europa.eu/eures/main.jsp?acro=free&lang=en&countryId=RO&fromCountryId=BE&accessing=1&content=1&restrictions=1&step=2>)

Actually section 39 (6) of the German Residence Act says that nationals coming from the acceding States can take part in the German market if there are no Germans or other persons which are enjoying equal rights (which means not the new Member State nationals ). But priority must be given to EU10 and EU2 workers over third country nationals.

The United Kingdom had a different policy concerning Romanians and Bulgarians. If those nationals want to work in the UK they have to be in the possession of an *“accession workercard”* in case they intend to take up employment. Bulgaria and Romania will be granted gradual access to the country’s labour market which means that for the present the number of lower skilled workers is limited by a quota in the United Kingdom. On the other hand skilled workers are not submitted to a quota requirement but they need to satisfy the criteria for obtaining a work permit.

Spain initially took the decision to restrict the access to its job market from the newest Member States for the first phase of the transitional period. After that the government had to review all the measures after the expiration of one year and then assess if the evolution of the situation on the labour market justifies more restrictions or not. There are two important factors to assess in this situation: first of all public opinion and second of all the status of the Romanian immigrants that came to Spain. Now Spain obtained an authorisation from the European Commission to keep its labour market closed to Romanian workers until the end of 2013.

In December 2012 the Commission authorised the Spanish authorities to maintain their temporary restrictions concerning Romanian and Bulgarian workers. The Spanish government took this measure because they declared that

their labour market has been seriously disturbed by the Romanian workers and that this measure should be valid until January 2014. After this restriction Spain has to report to the European Commission every three months on the situation of its labour market.

#### **4. The reasons invoked by the other Member States for their restrictions concerning Romanian workers**

*There are explanations for the measures taken by some states concerning Romanian workers. In France currently because of the high unemployment rate (a record of 10 percent), people are worried because of the competition represented by citizens coming from the East. The French government is also divided on this matter. For example, the French Senate, who votes both from the Socialists and the opposition, vetoed a motion made by the Green Party that tried to eliminate the restrictions earlier than planned, meaning in the autumn. An important French figure, Marine Le Pen of the Front National (FN) party described Holland's action as being a „ scandalous decision, especially given that France is already suffering from mass unemployment”.*

In Germany for example, there is a great debate about 2014. Some political parties have as their slogan: *“poverty immigration”* concerning the East migration. There has been a report released last year by the German Association of Cities which said that municipalities are no longer capable of addressing the issues related to the growing number of immigrants on their own. The Association President Christian Ude is looking for additional financial support from the German government : *„If countermeasures aren't finally taken, then the situation is going to intensify come Jan. 1, 2014”*, Guntram Schneider, the labour minister for the populous western state of North Rhine-Westphalia warned in the Frankfurter Allgemeine Sonntagszeitung newspaper.

On the other hand there is some evidence which shows exactly the opposite. For example in 2012 when the EU lifted the labour market for Poland there was no sudden flood of immigration, because most of the Poles who actually wanted

to immigrate to Germany did that before 2012.

The controversy with the year 2014 does not take into consideration the fact that both Romanians and Bulgarians are already permitted to work in Germany. Not only people with higher education can work but also job trainees and skilled workers. Besides this any Romanian or Bulgarian now has the right to own a business in Germany or work as a freelancer. The only problematic labour market sector is that of unskilled workers, because in this case seasonal workers can only come and work in Germany for a maximum of 6 months.

The Federal Office for Migration and Refugees declared that in Germany there are around 209 000 Romanian workers and 121,000 Bulgarian workers. It is still not documented how many of them are from the Roma community. There are also thousands of additional immigrants who come from the south-eastern Europe which arrive every month. There are thus some cities that report a six-fold increase from the moment the two countries became EU members.

But, on the other hand with the Roma community there are other problems having local governments complain about their status in their countries. As an example, Hans Peter Friedrich the German minister of interior has requested the EU to make money available for the integration of Roma into their countries.

The migration situation will continue for as long as there will be a lack of jobs and career opportunities in these two countries. In Germany the discussion now revolves around who should be held reliable for the costs of integrating into the society all the immigrants. Romanian and Bulgarian immigrants are not, average wise unemployed more than other Eastern Europeans.

<http://www.spiegel.de/international/europe/western-europe-fearful-of-roma-immigrants-from-romania-and-bulgaria-a-884760.html>

**László** Andor (The European commissioner for employment, social affairs and inclusion) considers that: *"I strongly believe that free movement of workers should be promoted and that restrictions on it are not the answer to high unemployment. However, Spain's labour market has been very badly hit by the*

*crisis and the Commission has therefore agreed to this temporary measure.”*  
(<http://www.europeanvoice.com/article/imported/commission-backs-spanish-restrictions-on-romanians-/76109.aspx>)

Spain's policy concerning the migration situation is very unusual compared to the other countries, because Spain opened its labour market for Romanians and Bulgarians in 2007. But after that moment they restricted the Romanians work permits in the summer of 2011, measure that will be valid until January 2014. After this restriction Spain has to report to the European Commission every three months on the situation of its labour market.

**Even so in UK the mood is tense regarding the year of 2014, this being the year when the restrictions concerning the free movement of workers have to be removed. The governing Tories have mentioned not only once the fact that they dubbed the welfare tourism: “We’re not tough enough right now about people coming from the other side of the world who decide to use our health service,” Prime Minister David Cameron recently stated. „They haven’t contributed in their taxes. They should pay when they use the NHS,” the National Health System. British Work and Pensions Secretary Iain Duncan Smith has thundered against other Europeans who „use the free movement rules just to travel around, looking for the best benefits they can get”.**

(<http://www.europeanvoice.com/article/imported/commission-backs-spanish-restrictions-on-romanians-/76109.aspx>)

These statements are a response from the country's newspapers, such as The Sun for example, which talks about a flood of poor immigrants from southeast Europe: „ So here we stand, staring at the oncoming train, but ... utterly impotent”, an article in the Daily Mail stated. With this “potentially huge political and social disaster hurtling down the tracks,” the paper warned, Cameron and his government are standing, „ frozen in the headlamps, waiting for the crash in January”. The story is accompanied by a photo of a group of downtrodden Roma standing in front of a dumpster.

The UK prime-minister has announced his intention to cap social services for all immigrants coming to Britain. There is already a team in his cabinet that

is working currently on proposals to make this action happen. One of the measures that they plan to take is to apply fees to newcomers for a national healthcare system in Great Britain which at this moment is free of charge. Another idea that was launched was that of creating an advertising campaign in Bulgaria and Romania that would discourage future immigrants from coming to England

## **5. Instead of a conclusion**

The restrictions imposed on Romanian workers in the Accession Treaty were nearly the same as those imposed on its 10 predecessors in 2004 and these restrictions will probably be imposed also in the future. Yet, one could regret some comments made by some high-up politicians regarding Romanian workers, calling Romanian immigration the poverty migration. Romania has been in the European Union since 2007 and in 2014 all restrictions concerning workers will have to be lifted, Romania becoming a country on the same footing as all the older members.

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