



# The Schengen area in the new area

## Master Thesis

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## **Statement of authenticity**

*This paper represents my original work. All sources used to prepare this paper are properly cited.*

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## **Abstract**

Under the pressure of the growing illegal immigration, the Schengen area is about to suffer a significant transformation after the Council of the European Union has put forward two Regulation proposals which are meant to strengthen the evaluation of the application of the Schengen acquis and provide a new set of measures for the temporary reintroduction of controls at the internal borders in the case of exceptional circumstances. By these Regulations, the EU will be able to effectively identify the deficiencies in the system and will have the capacity to take significant measures in order to deal with them.

The thesis sets out three objectives: to find out what is the theoretical approach that has led to the appearance of these Regulations and thus what is the theory that drives European integration in the field of free movement; to find out if the two Regulations will create the possibility of joining the Schengen area for Bulgaria and Romania, the two Member States of the EU which have complied with the Schengen acquis but even so, they still were not welcomed as full members; and finally, to discover why the EU needs these Regulations.

Through an analysis developed on three phases, each of them centred on one of the objectives, the project unveils that the theoretical approach which has built these Regulations is liberal intergovernmentalism and that the Member States of the EU are trying to push forward these Regulations, but there is an ongoing dispute between the Member States and the European institutions, a dispute which is based on the fact that both levels, the national and the supranational, want to control the decision-making power given by the proposals. However, if the Regulations will be enforced as they are right now, the national governments of the Member States will be the ones which drive further the European integration in the field of free movement in a pure liberal intergovernmentalist way. Further below, the analysis finds that one of the short run objectives of the proposals is to provide a solution to the problem of Greece, which has serious deficiencies in securing the external borders of the Schengen area. Currently, the active Bulgarian and Romanian border controls are used as filters to control the illegal immigration flow coming from Greece, but having the Regulations enforced, these filters may no longer be needed and this may provide the opportunity for Bulgaria and Romania to join the area without borders, but it all depends on the political will of the Member States. Subsequently, the project finds out that the Member States need the Regulations on the long run to respond to the requirements of their citizens who have become increasingly worried about the illegal immigration which, in the context of the economic recession, they consider a threat to their jobs and to their way of living in general. On the other hand, the European institutions are also looking to regain the trust of the European citizens, by playing a strong role in the activities provided by the Regulations

and this is what causes the above mentioned dispute. Finally, the thesis concludes that these Regulations have the necessary means of bringing stability to the area of free movement but also signals the fact that without any kind of supranational, neutral involvement, the power given by them can be used abusively by the national governments of the Member States which may lead to disruption in the Schengen area, or even worse, used for neorealist purposes, the Regulations may lead to the end of the European integration in the field of free movement.

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## Abbreviations

BG – Bulgaria

EC – European Community

ECSC – European Coal and Steel Community

EEC – European Economic Community

EP – European Parliament

EU – European Union

JHA – Justice and Home Affairs

MEP: Member of the European Parliament

MS – Member States of the European Union

RO – Romania

SCHEVAL – Schengen Evaluation Working Group

SIS: Schengen Information System

TFEU: Treaty of the Functioning of the European Union

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## 1. Introduction

On the 14<sup>th</sup> of June 2012, Europe has celebrated the 27<sup>th</sup> birthday of the Schengen area. Since 1985 when the first five members have agreed create an area without internal borders where free movement is guaranteed, the area has suffered many modifications, being introduced into the framework of the European Union and enlarging throughout almost all the territory of Europe, by welcoming another twenty one members. The area without borders is considered by many, the most tangible achievement of the EU, along with the

Euro currency, because it has offered the European citizens the possibility to travel freely around Europe. This fact has brought immense benefits for integration and social and cultural exchange, but also has brought valuable contributions to trade and businesses at the European level, participating at the process which has made the EU to become the most dynamic economy of the world. However, free movement also has its side-effects and the most important one of them is the fact illegal immigration is harder to control. This aspect was considered tolerable during the 1990's and early 2000's when Europe's economy was booming, the unemployment rate was very low and the living standards of the EU citizens were high. In the late 2000's, with the expansion of the economic recession things have changed dramatically and all Europe, starting with its citizens and continuing with the national governments of the Member States and the European Institutions, have become much more concerned about the illegal immigration. The prospect of losing their jobs in the favour of immigrants who are ready to work illegally and generally with less demanding standards, was considered intolerable by the European citizens and many voices at the national level have demanded measures for the control of illegal immigration. This year the Schengen area is on the verge of its most significant transformation since 1999 when it was introduced in the legal framework of the EU. Two new Regulation proposals were put forward by the Council of the EU in order to make the area without borders fit to deal effectively with the problem of illegal immigration. These Regulations were proposed by the Council after it has rejected the original proposals coming from the European Commission. The first proposal - *"Amended proposal for a Regulation of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis"* stands for updating the Schengen evaluation mechanism in order to become effective in its role of identifying problems at the external and internal borders of the area, and the second proposal, the *"Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances"* is meant to provide the tools for fixing the problems identified by the mechanism. These Regulations will bring the Schengen area into a new era of its existence, an era which can bring either stability or the end of free movement in Europe, but only the history will be able to judge the new journey which the EU is about to embark on.

### **1.1. Problem Formulation**

The project sets out three ambitious objectives: to find out why the EU needs to change the development of the free movement in Europe; what is the theoretical reasoning that drives the EU to change the Schengen area and if, following this change, the area will be ready to enlarge once again and welcome Bulgaria and Romania, the two Member States of the EU which are still not part of Schengen despite their achievement of complying with the Schengen acquis. To be able to find answers it will first be necessary to ask the proper questions and thus, the thesis proposes the following problem formulation, divided into one main question and two under questions:



Main question: **why does the European Union need two new Regulations which strengthen the Schengen evaluation mechanism and provide new measures for the temporary reintroduction of controls at the internal borders of the Schengen area?**

The under questions:

- **What is the theoretical approach that drives European integration further in the field of free movement in Europe, in case the two Regulations will be enforced?**
- **Are the new Regulation proposals coming from the Council of the European Union going to provide new possibilities for Bulgaria and Romania joining the area without borders?**

I have chosen this format because the main question addresses to a more wider objective, and to answer it I will require elements from the findings of the under questions. This does not alter the fact that I see all three objectives as equally important. Thus, the analysis will first concentrate on the first under question and subsequently on the second under question and the main question.

## 1.2. Descriptions

There is no doubt that, in order to fully understand this project, the reader needs to be familiar with some clear aspects regarding the functioning of the EU in general and the functioning of the free movement in particular. Thus, this second section of the introduction proposes an intrusion through the apparatus of the EU, intrusion which will provide all the necessary background knowledge required.

### 1.2.1. The European Union

The European Union is probably the most complex project of regional integration which the history has ever seen. Neill Nugent<sup>1</sup> has published in 2010 his seventh edition of the book *"The Government and Politics of the European Union"*. Therefore, to explain the EU in its full complexity would be impossible in a master thesis and thus, I will concentrate on presenting only the aspects relevant to this project, which in my view include a short historical background, a presentation of the main European institutions and the Member States.

#### 1.2.1.1. Historical background

The first step in European cooperation after the Second World War was taken in 1951, when West Germany, France, Italy, the Netherlands and Belgium and Luxembourg have signed a treaty establishing the European Coal and Steel Community (ECSC). By signing this treaty, the six countries have agreed to put their heavy industries under a common management. The objective of this agreement was, mainly, to provide the trust that none of the signatory countries will use their industries to manufacture weapons that could be used in a war. In the early years of the ECSC it has been credited as being a major economic success, helping

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<sup>1</sup> Neill Nugent is a Professor of Politics and Jean Monnet Professor of European Integration at Manchester Metropolitan University.

the industries to raise with some simple and effective measures such as the removal of customs tariffs and quotas. (Nugent, 2010: 20) The success of the ECSC has paved the way for further European integration and in 1957 the six countries have signed the “Treaty of Rome”, establishing the European Economic Community (EEC), which stood for the free movement of people, goods and services in a common market. (Europa.eu) Another treaty which was signed in Rome in March 1957 was the Euratom treaty, related to cooperation in the field of nuclear energy. These three (ECSC, EEC and Euratom) represent the founding treaties of the European Community, which was thus built in the 1950’s. (Nugent, 2010: 27). The 1960’s and the 1970’s were characterised by a period of economic growth for the newly created area of cooperation which, starting with 1973, included Denmark, Ireland and the United Kingdom, through the first enlargement. Subsequently other enlargements follow in the 1980’s and in 1986 the “Single European Act” was signed. This act represented the first major amending of the Founding Treaties, widening the policy prospects of the EC and providing changes in the decision-making process. (Nugent, 2010: 27) In 1992, the Treaty of the European Union is signed in Maastricht. This treaty has brought European integration at a new level, introducing the single currency and closer cooperation in policy areas situated very close to the core of national sovereignty, security and foreign policy, justice and home affairs. Also with this treaty, the name has changed from the European Community to the European Union. (Europa.eu) In 1997, a new treaty was signed in Amsterdam, further strengthening the European integration in fields such as employment and providing for a stronger role of the EU in the international environment. Finally, the last important landmark in the development of the EU is the signing and ratification of the Lisbon Treaty in 2007 and respectively 2009. This treaty has amended the previous treaties and it consisted in important changes in the organisation of the European institutions and in introducing the “co-decision procedure” in many legal aspects. This procedure is also called “ordinary legislative procedure” and it stands for the cooperation of the European institutions in the process of making and adopting EU legislation. (Europa.eu)

#### **1.2.1.2. The European Commission**

Situated at the heart of the EU system (Nugent, 2010:105), the Commission is also called the “guardian of the treaties” because of its role of overseeing that the EU legislation is properly applied. Its general attributions are to represent the interests of the EU as a whole, to draft proposals for EU legislation and to take care of the practical aspects of the EU development such as implementing policies and spending the EU funds. More precisely, the Commission plays the following roles: (Europa.eu)

- It proposes new laws to the European Parliament (EP) and the Council
- It manages the EU budget
- It enforces EU law
- It represents the EU internationally.

The Commission has the following organisational structure: (Europa.eu)

- A president, nominated by the Council of the EU and approved by the EP. The current president of the Commission is Jose Manuel Barroso, who has started his second term in office in 2010.
- 27 Commissioners which are appointed by the Council of the EU and approved by the EP. Each commissioner is coming from a different EU country and is responsible for a policy area assigned by the President of the Commission.
- Directorates-General which are composed by the Commission staff and take care of the everyday assignments which the Commission has to carry. Each Directorate-General is responsible for a different policy area.

#### **1.2.1.3. The Council of the European Union**

The Council of the European Union (not to be confused with the European Council<sup>2</sup>) provides the meeting forum for the ministers of the national governments of the Member States. It has the following attributions: (Europa.eu)

- passes EU legislation
- coordinates EU policies
- signs agreements between the EU and other countries
- develops the EU's foreign and defence policies
- coordinates the cooperation between courts and police forces of the Member States

The EU Council does not have a permanent composition. The participants at its meetings are represented by the ministers in office of the national governments of the Member States.

The Council's presidency is secured in rotation by all the Member States with a six months term. The current Member State which holds the presidency of the EU Council is Cyprus, which has taken the place of Denmark in July 2012. (Europa.eu)

#### **1.2.1.4. The European Parliament**

The European Parliament is the EU institution with the most democratic legitimacy, its members being elected directly by the European citizens for five year terms. Along with the Council of the EU, it passes the EU legislation through the above mentioned "co-decision" procedure. (Europa.eu)

The composition of the EP is given by the members elected in each Member State. The number of members (MEP's) for each country is calculated in relation to its population, but no country can have less than 6 or more than 96 MEP's. The MEP's are grouped by political affiliation and not by countries. (Europa.eu)

#### **1.2.1.5. Member States**

The EU is currently composed by 27 Member States (MS), which will soon become 28 after Croatia is scheduled to join in 2013.

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<sup>2</sup> The Council where the European leaders meet to decide the political trajectory of the EU

The Member States, organised by their adhesion, are the following:

- The founding Members: Belgium, France, Germany, Italy, Luxembourg and the Netherlands
- The Members joining at the first enlargement (1973): Denmark, Ireland and the United Kingdom
- Second enlargement (1981): Greece
- Third enlargement (1986): Portugal and Spain
- Fourth enlargement (1995): Austria, Finland and Sweden
- Fifth enlargement (2004): Czech Republic, Cyprus, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia
- Sixth enlargement (2007): Bulgaria and Romania

### 1.2.2. The Schengen area

The Schengen area is the territory within Europe where free movement of persons is guaranteed for the European citizens and for the non-EU citizens who have documents which allow them to enter the area. Through the Schengen agreement, the participant states have agreed to disable the controls at their national borders in the favour of a single external border and to cooperate through a set of common rules and procedures regarding visas for short stays, asylum requests and border controls. Furthermore, to ensure the security of the area, the agreement provides for a strong cooperation between police services and the judicial authorities of the signatory states. (Europa.eu) More precisely, the signatory states have agreed to participate in the following activities which establish the area of free movement: (Europa.eu)

- The removal of controls on persons at the internal borders
- A common set of rules regarding the entrance of Non-EU citizens through the external borders of the area
- The usage of the same rules when granting visas for short stays
- Strong police cooperation
- Strong judicial cooperation regarding the extradition system and the transfer of enforcement of criminal judgments
- The creation and development of the Schengen Information System (SIS)(an information system which gives the possibility of gathering and exchanging information on persons and objects between the MS)

The Schengen area came into existence in 1985 and it takes its name after the town in Luxembourg where the first five members – Belgium, France, Germany, Luxembourg and the Netherlands have signed an agreement to create a territory without internal borders. In the beginning the Schengen area was not part of the EC because not all the MS reached an agreement regarding the status of the area. The Schengen agreement was introduced in the

legal framework of the EU after the entry into force of the Amsterdam treaty in 1999. At that time, most of the Member States had already joined. (Europa.eu)

The legal status of the Schengen area is currently governed by the *Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders*, the so-called “Schengen Borders Code”. This Regulation lays down the common set of rules and measures which the participant states have to follow. Also, the Schengen Borders Code introduces the Schengen acquis, which provides the measures that a state has to take in order to be able to become a full member of the Schengen area, and to maintain after the adhesion.

Currently, the area without borders is composed by the following 26 states: (Europa.eu)

- States which are also part of the EU: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, the Netherlands
- States which are not part of the EU: Iceland, Liechtenstein, Norway, Switzerland

The other EU Member States which are not members of Schengen are Ireland, the United Kingdom, Bulgaria, Cyprus and Romania, out of which, the first two are participating in some parts of the Schengen agreement but do not wish to abolish their border controls while the last three are candidate countries. (Europa.eu)

### 1.2.3. Evaluation of the Schengen acquis

At this moment, the evaluation of the compliancy with the Schengen acquis for both states that want to join and states that are already part of the area is done in a strictly intergovernmental manner. In 1998 the Schengen Member States have set up a Standing Committee which had the purpose of maintaining the mutual trust among the members by verifying the correct application of the Schengen acquis by all the participants and to verify that the countries that want to join are complying with the acquis. (Regulation proposal no. 2010/0312 COD) After Schengen was integrated within the EU legal framework, the name of the committee became Schengen Evaluation Working Group (SCHEVAL). Its attributions remained the same and it took its place within the Council of the EU. Given its intergovernmental nature, the SCHEVAL includes the participation of the Commission only as an observer. (Regulation proposal no. 2010/0312 COD) The evaluations are currently developed mostly through peer reviews and best/worst practice workshops and the Commission has commented on several occasions since 1999 on the fact that the evaluations should become more efficient and that the Commission should have the right to be involved in the process, especially in the part regarding the evaluation of the states that are already part of Schengen. (Regulation proposal no. 2010/0312 COD) In 2010 the Council of the EU has acknowledged this comments and has requested to the Commission to come up with a Regulation proposal in order to strengthen the evaluation mechanism. On this basis, the European Commission proposed, on 16.11.2010, the *European Commission's proposal to the European Parliament and Council for the on the establishment of an evaluation mechanism to verify application of the Schengen acquis*. The Council has received

this proposal and after more than a year and half, on 04.06.2012, introduced an amended version of the proposal: *Amended proposal for a regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis*. This version is very much different from the original one and it includes the change of the article of the TFEU under which the Regulation should be introduced from article 77 to article 70. This change has offended the European Parliament which has suspended all the collaboration with the Justice and Home Affairs Council until the latter will change the proposal. Because of this blockage, the Regulation is not enforced at this time.

#### **1.2.4. The temporary measures to reintroduce controls at internal borders in exceptional circumstances**

The current procedures for the reintroduction of the controls at the internal borders of the Schengen area are provided by Chapter 2 of the Schengen Borders Code through the articles 23-31. The following aspects are presented:

- Article 23 provides that a Member State, if confronted with a serious threat to its public policy or internal security, may reintroduce its controls for a period of no more than 30 days or for the foreseeable duration of the threat.
- Article 24 lays down the procedure which a Member State has to follow in case it is planning to reintroduce its controls. The procedure includes the informing of the Commission and the other MS about the reasons of the planned reintroduction.
- Article 25 provides the procedure in case of a threat that requires the urgent reintroduction of the controls. In this case the Member State may reintroduce the border controls and inform the Commission and the other MS immediately afterwards.
- Article 26 sets the procedure for the extension of the 30 days period, which can only happen for terms of 30 days and with the proper information of the Commission and the other MS.
- Article 27 lays down the procedure regarding the information of the EP.
- Article 28 provides that where the reintroduction of the controls at the internal borders has been commenced, relevant provisions of the title 2 (External Borders) shall apply *mutatis mutandis*.
- Article 29 states that after the reintroduction has ceased, the concerned Member State has to present a full report to the EP, the Commission and the Council.
- Article 30 lays down the procedure about informing the public.
- Article 31 provides the procedures regarding the confidentiality.

Throughout the history of the Schengen area, the internal borders were only introduced in the case of sports competitions which presumed that large masses of people would travel into one MS for a determined period. Austria and Poland have done this during the European Football Championships in 2008 and 2012.

On 16.11.2011, the European Commission has presented a Regulation proposal closely linked to the one regarding the new evaluation mechanism - *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances*. This proposal was meant to provide measures more closely linked to the type of evaluation mechanism proposed by the Commission but it too was rejected by the Council. Subsequently the Council provided its own version of the Regulation proposal on 04.06.2012: *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances*. As in the case of the proposal regarding the evaluation mechanism, this too was very much changed and it is still not enforced because of the above mentioned deadlock.

### **1.2.5. Background on Bulgaria's and Romania's struggle to join the Schengen area**

Bulgaria and Romania have issued their "*Declaration of readiness*" to join the Schengen area on 25.01.2008 in the case of the first and in 2007 and 2008 in the case of the latter. (EP Report) This was the first step in their attempt to join the area without borders. In the years that followed both countries have made massive investments to build the necessary infrastructure and training in order to comply with the Schengen acquis. After several evaluation visits, the MS have decided, on 05.11.2010, to invite both countries to participate in some parts of the Schengen cooperation, namely in the SIS. (EP Report) Six months later, the EP has gathered all the information provided by the previous evaluations in a Report that claimed that the efforts made by the two countries were satisfactory and that they now comply with all the provisions of the Schengen acquis. However, the decision to welcome or not BG and RO into Schengen belongs to the Council, and it has to be taken with unanimity. Thus, the two states were not allowed to join because the Netherlands has used its right of veto, arguing that even if the two countries comply with the acquis, they should not join Schengen because of their problems regarding the organised crime, in the case of BG and the corruption in the Romanian judicial system. Recently, Germany and France have proposed a compromise solution, where the two countries would join in two steps, first with their air and sea borders and afterwards with their land borders. Unfortunately for BG and RO, the Netherlands have rejected this solution as well, so at the current moment, the two countries are still not part of Schengen.

## **2. Methodology**

The methodology chapter is divided into four major sections: choice of the subject, project design, data collection and limitations. In the first section I will explain why I have chosen this subject. In the second section, all the development of the thesis will be explained, starting from the introduction and continuing with the methodology, theory, analysis and



conclusion chapters. In the third section, all the empirical data collected will be presented in detail. In the final section, the limitations of the project will be addressed.

## 2.1. Choice of the subject

The problem formulation of the thesis is situated in the introduction chapter. I have chosen to present the questions which the project attempts to find answers for, right in the beginning, for the purpose of creating a certain intrigue for the reader right from the start of the project. The main question of the project is *Why does the European Union need two new Regulations which strengthen the Schengen Evaluation Mechanism and provide new measures for the temporary reintroduction of controls at the internal borders of the Schengen area?* This question is followed by two under questions:

- *What is the theoretical approach that drives European integration further in the field of free movement in Europe, in case the two Regulations will be enforced?*
- *Are the new Regulation proposals coming from the Council of the EU going to provide new possibilities for Bulgaria and Romania joining the area without borders?*

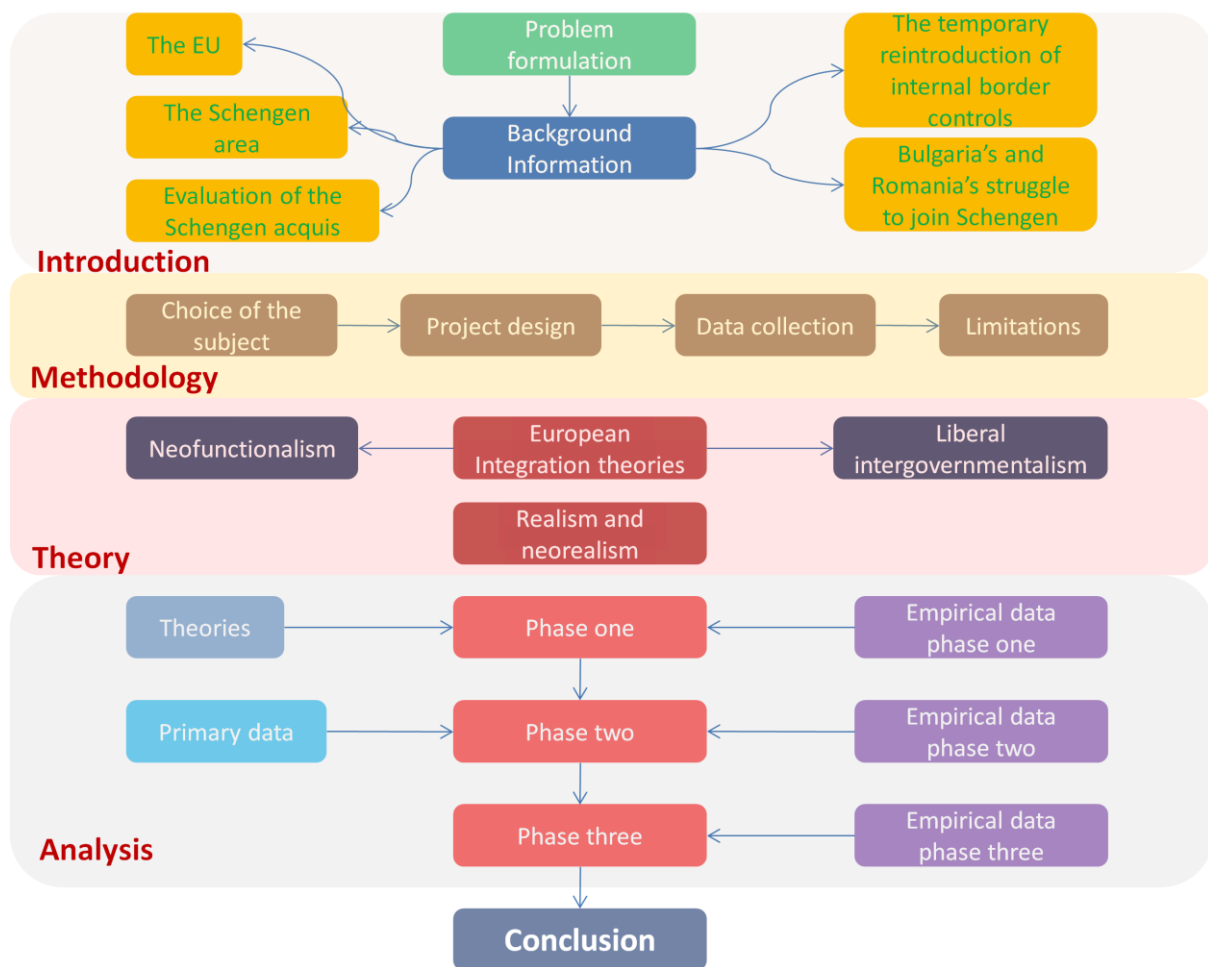
Originally, I have chosen a different theme for my thesis, also related to the Schengen area, but more focused on the technical compliancy with the Schengen acquis of the Romanian land border controls. During my preliminary research on that topic I have found out that the EU is preparing to introduce two new Regulations which will provide a new type of evaluation mechanism and new measures for the reintroduction of internal border controls. After a more in depth research I decided that it is much more interesting to find out how the area of free movement will change after the new Regulations and especially why does the EU need to change something that has been regarded for many years, one of the most concrete accomplishments of the European integration. Furthermore I believed it is very challenging, from a theoretical perspective to find out what is the theoretical reasoning which makes the EU to feel the need of a change in the area of free movement. Finally, I decided not to abandon my original interest related to Bulgaria and Romania not joining Schengen even if they comply with the acquis, and, after a closer look on the Regulation proposals I believed that the objective of the two countries to join the area might get a whole new perspective with the new Regulations enforced.

All these aspects have led me to the problem formulation presented above and to a research which, as the readers will see throughout the project, has provided me with some unexpected results.

## 2.2. Project design

This section will commence with the presentation of figure 2.1, a scheme meant to illustrate the development of the thesis. Based on this scheme, I will then proceed and explain each chapter, one by one.



**Figure 2.1: Project design scheme**

### 2.2.1. Introduction

Besides the problem formulation which was presented in the section concerning the choice of the subject, the introduction also contains background information which will provide the reader with the necessary knowledge, in order to understand the issues developed in this project. The following information is presented:

- A non-exhaustive presentation of the EU. This presentation will focus on the aspects which I believe to be important in this context, namely, a short historical background, the European Commission, the Council of the EU, the European Parliament and the Member States.
- A presentation of the Schengen area. This section explains what is the Schengen area and the Schengen acquis, it provides a historical background of its development and presents its legal status in the EU framework.
- A presentation of how the compliance with the Schengen acquis has been evaluated prior to the appearance of the new Regulations, and how it still is, since the Regulations have not been enforced yet.

- A presentation of the current provisions of the Schengen Borders Code regarding the temporary reintroduction of controls at internal borders in the case of exceptional circumstances.
- A presentation of the current status of Bulgaria and Romania regarding their adhesion to the Schengen area.

### 2.2.2. Methodology

The methodology chapter has the purpose of presenting the following information:

- Why I have chosen this subject
- How the project will be developed
- What empirical data I have collected for the analysis
- Limitations of the project

To this end, the methodology chapter is divided into four sections, namely: choice of the subject, project design, data collection and limitations.

### 2.2.3. Theories

This chapter presents the theories which will be used in the development of the project. It aims at providing the reader with all the necessary theoretical knowledge in order to understand how the theories are applied in the analysis.

The chapter is divided into two sections: European integration theories and realism/neorealism. The first section begins by presenting the meaning of European integration theory and afterwards it includes a thorough presentation of the two theories which explain European integration, neofunctionalism and liberal intergovernmentalism; the primary theories of the thesis. With the help of these theories I will identify in the first phase of the analysis, the theoretical foundation which drives European integration further in the field of free movement and subsequently provide an answer to the first under question of the problem formulation. The integration theories will not be essential only for the first phase of the analysis, because the findings of this phase will play a key role in the rest of the analysis since by knowing who dictates the tempo of European integration in this field, we will also know who has the decision-making power regarding the case of Bulgaria and Romania and who has the need of introducing the two Regulations.

In the development of this section I have used, as sources, some of the most established books in the European integration theories, including *“European Integration Theory”* (2004) by Antje Wiener and Thomas Diez or Moravcsik’s 1998 *“A choice of Europe: social purpose and state power from Messina to Maastricht”*. The whole list of books which I have used as sources can be found in the bibliography in the books section. Also I have used some online versions of several books, such as the 2009 second edition of Wiener’s and Diez’s *“European Integration Theory”* and Tranholm-Mikkelsen’s 1991 *“Neo-functionalism – Obstinate or*

*Obsolete*". The web links from where I collected these sources can be found in bibliography in the web sources section.

The second section includes a non-exhaustive presentation of realism and neorealism. The presentation of these theories is non-exhaustive because these theories will not be a subject of the analysis; they will be used only to show some possible perspectives which the area of free movement may be confronted with in the future. Therefore I believe that the explanation of these theories only needs to go as far as establishing their basic assumptions and, that they have nothing to do with regional integration. In the process of putting together this section I have used, as sources, a publication of the World Politics blog and a paper published by the German University of Muenster. Both links can be found in the bibliography, in the web sources section.

Also, the theory chapter includes some boxes in which, I present some key aspects of the theories and some personal clarifications. These boxes are meant to provide the reader with the key theoretical concepts, in case he or she will require a quick clarification regarding a theoretical aspect, when reading the project.

#### 2.2.4. Analysis

In this thesis, the analysis will be divided into three phases, each one of them having the aim of providing an answer to one of the questions in the problem formulation.

The **first phase** of the analysis will attempt to find an answer to the first under question of the problem formulation. In this phase, the empirical data presented below in the section 2.3.2.1., namely, the text of the original proposals coming from the Commission and the current proposals coming from the Council of the EU, will be analysed by selecting the articles which contain theoretical elements belonging to one or the other of the integration theories. Through this method I will be able to identify the theoretical nature of the proposals and subsequently the theoretical reasoning which, through these proposals, drives European integration further in the field of free movement in Europe. Following this result, I will continue by elaborating on what happens when European integration is led by this theoretical reasoning and what perspective may the free movement gain in the future.

The **second phase** of the analysis has the aim of providing an answer for the second under question of the problem formulation, more precisely, to find out how the enforcement of two Regulations will affect Bulgaria's and Romania's quest to join the area without borders. This phase will be developed by using the primary collected empirical data and the secondary collected empirical data presented below in section 2.3.2.2. To be able to find an answer to this question, it will be necessary first to contradict the official reasons why the two states have not joined Schengen so far. This will be done by questioning the logic of the official reasons. Once this contradiction has gained validity, I will introduce the assumption that Bulgaria and Romania have not joined so far because of the fact that Greece has a serious problem in guarding the Schengen's external borders against illegal immigration and

that the Bulgarian and Romanian border controls are acting as filters to control the illegal immigration flow. In the process of acquiring validity for this assumption I will present the main routes through which the illegal immigrants enter the EU, putting an accent on the fact that the most accessible way is through the thin border line between Turkey and Greece; I will demonstrate the fact that the illegal immigrants intend to travel further in the Schengen area and see Greece only as a transit country and I will present the alternatives which the illegal immigrants have to travel further, once they have reached Greece. After it will be established that Greece has a problem, I will then proceed to finding out why Greece has this problem and after this aspect will be cleared as well, it will then be possible to claim that the assumption presented above is valid. Afterwards I will carry on by investigating if and how the status of BG and RO can change once the two Regulations will enter into force.

In the **third phase** of the analysis, I will pursue to find an answer to the main question of the problem formulation, why does the EU need the two new Regulations. To find an answer to this question I will combine the knowledge gained in the first two phases of the analysis with the empirical data presented below in section 2.3.2.3. At this point, since we already established the theory that drives European integration in this field, we will also know whether the supranational level or the national level within the EU needs these Regulations. I will argue that both levels need these Regulations and that there is an ongoing dispute between them about who will call the shots after the enforcement, a dispute that, up until this moment, the national level is winning. I will then continue by presenting the reason and I will bring arguments supported by the above mentioned empirical data. I will not finalise this section without remembering that already, in the second phase of the analysis, one of the short run objectives of the Regulations has been identified.

### 2.2.5. Conclusion

The final chapter of the thesis will begin with a summary of the findings of the analysis. Afterwards, a discussion will be developed concerning the dispute between the national and the supranational on who gains the power to take the measures provided by the two Regulations and the future perspectives of the Schengen area in its new form.

## 2.3. Data collection

This section will present all the empirical data which has been collected for this project. The section has two parts, primary data and secondary data. The primary data part presents the empirical data I have collected directly, through an interview while the second part presents the empirical data I have collected from secondary sources.

### 2.3.1. Primary data

The primary data collected for this thesis is represented by the interview carried with Mr. Marian Tutilescu, who is the head of the European Affairs, International Relations and Schengen department in the Romanian Ministry of Administration and Interior. Mr. Tutilescu is a highly qualified expert in Schengen and its related fields, being the person who has coordinated all the aspects related to the preparation of Romania in order to comply

with the Schengen acquis. The interview will be mostly used in the second phase of the analysis, with the pluralistic purpose of using the expert's statements as arguments in certain situations and providing an expert point of view where the analysis demands it.

After the interview has been carried, I received Mr. Tutilescu's consent to use his statements in my project and to attach the English transcript of the full interview as an annex to the thesis.

### 2.3.2. Secondary data

Since there is quite a large amount of secondary empirical data collected for this project, I divided its presentation into smaller sections which will also show where the data will be used in the analysis.

#### 2.3.2.1. Data in phase one of the analysis

In the first phase of the analysis I will use, as secondary empirical data, the text from the four Regulation proposals coming from the European Commission and the Council of the EU:

- *European Commission's proposal to the European Parliament and Council for the on the establishment of an evaluation mechanism to verify application of the Schengen acquis, from 16.11.2010.*
- *European Commission's proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, from 16.09.2011*
- *Amended proposal for a Regulation of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, from 04.06.2012*
- *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, from 04.06.2012.*

Their articles will be used to identify what was the theoretical approach of building these Regulation proposals.

Their full text can be found in the bibliography, in the web sources section.

#### 2.3.2.2. Data in phase two of the analysis

The secondary empirical data which will be used in the second phase of the analysis is the following:

- *European Parliament's Report on the draft Council decision on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania.*  
Elements of this report will be used to demonstrate that the two states have complied with the Schengen acquis. The full version of the report can be found in the bibliography, in the web sources section.

- Video interview with Thomas Gammeltoft-Hansen on CNN I Report. In this interview, PhD in International Law and research fellow at the Danish Institute of International Studies Thomas Gammeltoft-Hansen explains that organised crime in the EU cannot be solved by only one state. I will use its statements in the contradiction of the official reasons of which Bulgaria and Romania are not joining Schengen. The full version of the interview can be found in a web link, in the bibliography.
- The *Council Directive 2001/51/EC*. This directive stands for heavy fines inflicted by the Member States to the carriers who are identified to transport an illegal immigrant. I will use this directive to show that it is difficult for the immigrants to travel by sea or air from Greece to other Schengen members. The full version of the directive can be found in the bibliography, in the web sources section.
- Eurostat statistics about non-EU immigration in Schengen Member States. I will use this statistic to show in which Member States the immigrants are interested to reside in. I have downloaded the statistic directly from the official Eurostat website, and the full version of the table can be found in the Annex 2 attached to the project.
- Frontex Risk Analyses 2011 and 2012. I will use the material provided by Frontex in various parts of the second phase of the analysis with both the purpose to present different aspects, such as, for example, the illegal migratory routes, and the purpose of argumentation in the case of, for example backing up a statement made by the head of the Romanian Schengen department. The full version of the analyses can be found in bibliography, in the web sources section.

#### 2.3.2.3. Data in phase three of the analysis

In the final phase of the analysis, the following secondary empirical data will be used:

- Eurostat statistics showing the development of the inflation in the Schengen members. This statistic will be used to show that the inflation rate has raised in the past few years and because of this, the European citizens cannot afford to have the same living standard which they had in the early 2000's. I have downloaded the table directly from the official Eurostat website and its full content can be seen in the Annex 2 attached to the project.
- Eurostat statistics showing the unemployment levels in the EU. This statistic is used to show that unemployment has raised in the past few years in the EU, making the citizens to fear for their jobs. I have downloaded the table directly from the Eurostat website and its full content can be found in the annex 2 attached to the project.
- *Eurobarometer 75 Spring 2011: Public opinion in the European Union*. I am using parts of this document to show, on the one hand, that immigration is seen as an important problem by the European citizens and on the other hand, to show that the trust in the EU and its institutions has decreased significantly in only one year. The full version of the document can be found in the bibliography, in the web sources section.

- Various media articles. I am using articles from the newspapers: *Daily Mail*, *The Guardian*, *BBC*, *The Telegraph*. These articles present the results of the elections that have taken place recently throughout Europe. With regard to the objectivity of the newspapers, this is of no concern for the project, because I am not making any kind of analysis on the articles, I am just collecting some known information from them. The information collected will be used to show a developing trend in the elections. The full version of the articles can be found in bibliography, in the web sources section.

## 2.4. Limitations

The only limitation I will present for the thesis is related to the lack of academic perspectives in the analysis. Ideally, together with the theoretical concepts and empirical data I used in this project, I would have included the views of the academics involved in the field of European integration and especially in the field of free movement. Unfortunately, after a thorough research carried both in the library and online, I could not find any academic writings about the changes in the Schengen area and the new Regulation proposals. Furthermore, my efforts to persuade an academic to participate in an interview have proved to be ineffective. I believe this is caused by the fact that these are very recent and ongoing events and most likely, the academics are waiting to see when and how the two Regulations will be enforced, before expressing their points of view. Nevertheless, I would like to invite the readers to look at my project as to a material which may trigger the academic debate. This is also one of my personal objectives when writing this thesis.

## 3. Theories

This chapter presents the theories which will be used in the thesis. As explained in the project design section of the methodology, the chapter includes two sections. The first one presents the European integration theories which will be used in the analysis of the project and the second section presents realism and neorealism, which will be used only to show some possible future perspectives. Because only the integration theories are used in the actual process of analysis, the chapter will put a strong emphasis on explaining the first section very thoroughly, while the second section will not have the purpose of being exhaustive.

### 3.1. European Integration theories

European integration is a process that started with the signing of the Treaty of Paris in April 1951. Back then, the six signatory countries, Belgium, France, Germany, Italy, Luxembourg and the Netherlands made a commitment to each other to commonly manage fields that were previously at the centre of the national sovereignty, such as their economies, in the beginning, and subsequently many others. Supranational institutions were created with the



purpose of providing a neutral stance and to participate in the new joint decision-making process.

The appearance of European Integration posed a serious challenge for the theorists of that time, because the existing theories were able to explain the process only to a very limited extent. (Wiener, Diez, 2009)

The further intrusion in the European integration theory requires a clarification of the meaning of integration theory. In their book, "European Integration Theory" (2004), Antje Wiener<sup>3</sup> and Thomas Diez<sup>4</sup> provide an explanation by taking each of the terms "integration" and "theory" one by one. Thus, the first term, "**integration**" may be seen from two perspectives – neofunctionalist and intergovernmentalist. (Wiener, Diez, 2004: 3). In the first one, integration is, as one of the fathers of Neofunctionalist theory, Ernst Haas<sup>5</sup> puts it: *"a process whereby political actors in several, distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions process or demand jurisdiction over the pre-existing national states"* (Haas, 1958, quoted in Wiener, Diez, 2004: 16). Alternatively, another definition of integration is provided by Leon Lindberg<sup>6</sup>, another theorist which contributed to the formation of the neofunctionalism. His definition is more or less similar to the one presented above, but it is, perhaps, more far-reaching: *"political integration is the process whereby nations forego the desire and ability to conduct foreign and key domestic policies independently of each other, seeking instead to make joint decisions or to delegate the decision-making process to new central organs; and the process whereby political actors in several distinct national settings are persuaded to shift their expectations and political activities to a new centre"*. (Lindberg, 1963: 149)

The intergovernmentalist perspective offers a more minimalist definition centred on the political processes and on denying the social aspects such as "the shift of loyalties" introduced by Haas. It is clear that the way in which students of European Studies understand the concept of integration is subjective, depending on their theoretical preferences, but what is certain is that both neofunctionalist and intergovernmentalist perspectives see the concept of integration first of all, as a process and secondly as a socio-political or political system created by integration. (Wiener, Diez, 2004: 3).

With regard to what "**theory**" means, Wiener and Diez acknowledge the existence of what they call a narrow definition of the term, where it is understood as *"a causal argument of universal, transhistorical validity and nomothetic quality, which can be tested through the falsification of a series of hypotheses"* (Wiener, Diez, 2004: 3). But they also offer a broader

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<sup>3</sup>Antje Wiener is a Professor of politics and international relations, PhD. Author and co-author of several EU politics and integration books.

<sup>4</sup>Thomas Diez is a Professor of political science and International relations, currently affiliated to the University of Tübingen. He was previously the head of the Department of Political Science and International Studies at the University of Birmingham.

<sup>5</sup>Haas (1924-2003) was a German-American political scientist. He has brought numerous academic contributions to international relations, being considered as one of the conceivers on neofunctionalism.

<sup>6</sup>Leon Lindberg is an American political scientist, who has participated, together with Haas to the formulation of neofunctionalism. Currently he is Professor Emeritus at the University of Wisconsin- Madison



definition tailored specifically for European integration. This definition has a more abstract nature; here, theory can be context-specific and can serve different purposes, such as explaining outcomes, behaviours or decision-making rationales. Finally, in the end of their explanation, Wiener and Diez conclude that European integration theory is, in the most objective view, a *“the field of systematic reflection on the process of intensifying political cooperation in Europe and the development of common political institutions, as well as on its outcome”*. (Wiener, Diez, 2004:3).

The two competing theories that emerged from International Relations to dominate the debate over the developments in European integration were neofunctionalism (Haas 1958; Lindberg 1963) and intergovernmentalism (Hoffmann 1964; 1966), with its ramification – liberal intergovernmentalism developed by Andrew Moravcsik.

### 3.1.1. Neofunctionalism

Neofunctionalism was developed by a group of American academics in the late 1950's and throughout the 1960's. The most important neofunctionalist theorists are Ernst Haas, Leon Lindberg and Philippe Schmitter<sup>7</sup>. Starting from Monnet's<sup>8</sup> federalism and Mitrany's<sup>9</sup> functionalism, they developed a theory of regional integration in which non-state actors play a decisive role. (Wiener, Diez, 2004: 46) Schmitter, in his chapter about neofunctionalism written in the first edition of the “European Integration Theory” book, further develops the statements of Wiener and Diez. He argues that the “secretariat” (European Commission) of the regional organisation provides the dynamic for further integration, together with different interest groups and movements which form at that level of the region, namely Europe. However, in the neofunctionalist view, MS remain important actors in the process of integration: *“They (Member States) set the terms of the initial agreement, but they do not exclusively determine the direction and the extent of subsequent change. Rather, regional bureaucrats in league with a shifting set of self-organized interests and passions seek to exploit the inevitable “spill-overs” and “unintended consequences” that occur when the states agree to assign some degree of supranational responsibility for accomplishing a limited task and then discover that satisfying that function has external effects upon other of their interdependent activities”* (Schmitter in Wiener, Diez, 2004: 46). Schmitter continues stating that, according to the neofunctionalist theory, regional integration is an *“intrinsically sporadic and conflictual process”*, which creates the premises for the national governments to solve their conflicts by giving more authority to the regional organisations they have created. This, in democracy, makes the governments entrust more and more in the regional level of cooperation and, in time, also their citizens start to shift their expectations from the state to region, and satisfying those expectations creates the probability that economic-social integration will “spill-over” into political integration. (Schmitter in Wiener, Diez, 2004: 46)

<sup>7</sup> Philippe Schmitter was an American political scientist born in 1936. He participated at the formulation of neofunctionalism and currently Professor Emeritus at European University Institute.

<sup>8</sup> Jean Monnet (1888- 1979) was a French political economist and diplomat. He is considered to be one of the founding fathers of the European Union, as he was one of the architects of the ECSC in 1951

<sup>9</sup> David Mitrany (1888 – 1975) was a Romanian- British theorist who, through his inter-war writings, has formulated the functionalist theory.

Neofunctionalism apparently has won the theoretical debate in the early years of European integration, because it was able to explain how and why the national governments have decided to lead their states in common, even if that required a high degree of sovereignty loss. (Haas, 1970 cited in Wiener, Diez, 2009) Wiener and Diez (2009) have identified four arguments of the neofunctionalist theory:

- The concept of the “state” is more complex than realists suggested
- The activities of interest groups and bureaucratic actors are not confined to the domestic political arena
- Non-state actors are important in international politics
- European integration is advanced through ‘spill-over’ pressures

The first argument argues that the state, contrary to how the realists see it, owes the product of its international activities to the pluralistic character of the government decisions which are influenced by many different actors in the international arena. Therefore, it was believed, by neofunctionalists, that if it is possible to identify the nature of the pressures on the international arena, then it is possible to predict how the government will behave in International Relations. (Wiener, Diez, 2009)

In the second and third arguments which refer to the importance of non-state actors in international politics, neofunctionalists see the European Commission as the most important non-state actor, which has the power of influencing both domestic and international aspects of government politics and, independently of the national government desires, to develop the process of European integration. (Wiener, Diez, 2009)

In the fourth argument, about the expansion of European integration through “spill-overs”, neofunctionalists refer to the fact that once the national governments took the initial steps for integration, the process started to develop on its own and touched upon fields which national governments did not expect to develop. (Wiener, Diez, 2009) Lindberg (1963: 10) offers maybe the most comprehensive definition of “spill-over”: *“In its most general formulation, “spill-over” refers to a situation in which a given action, related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and a need for more action, and so forth”*. In more concrete terms, the process of “spill-over” means that, for example, if integration is happening in the economic field, this will lead to integration in the judicial field and further in the social field and so on, because all the fields are interrelated and integration cannot progress in one field without affecting the other. This is called functional spill-over.

(Tranholm- Mikkelsen, 1991)<sup>10</sup>

Other main types of spill-over are the political and the cultivated spill-overs. The first one is represented by the fact that national elites, both governmental and non-governmental, such as politicians or trade union leaders, begin to realise that their interests may be better served by supranational institutions than by their nation states and, consequently, refocus their activities towards these institutions. (Tranholm, Mikkelsen, 1991) This results in a situation where the integration process is developed by a non-homogenous set of political interests, where the supranational organisations lead the way and national actors look to have their various goals accomplished by the influence of the supranational. The latter type,

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<sup>10</sup> Jeppe Tranholm-Mikkelsen is a Danish politician and political scientist. He is currently Ambassador of the Danish Permanent Representation to the European Union.

the cultivated spill-over grows from the fact that, in time, supranational institutions will develop their own identity, with independent ideas that are not always similar to the ideas of one or more MS. Therefore, supranational institutions may seek to conduct the integration process in a way which helps them to become stronger by encouraging cooperation in specific areas. As Schmitter claims (Schmitter in Wiener, Diez, 2004), the supranational institutions may achieve this *“by cultivating functional or political spill-over or by cultivating integration more generally”*.

Neofunctionalists expected that the Commission will be the primary supranational institution who will create and manipulate spill-over pressures in order to enhance European integration. Besides the Commission, other non-state pressure groups such as NGO's were expected to generate spill-overs by influencing the activity within the member states at different levels. (Tranholm-Mikkelsen 1991)

Lindberg and Haas also argue that there are two conditions for the spill-over to occur; first, there must be a shared belief that integration will lead to an increased satisfaction of needs and a belief at both mass and elite levels that problems can be solved in a mutually acceptable way and, secondly, that the tasks assigned to the supranational institutions are very much expansive, oriented towards development.

#### **Box 3.1: most important provisions of neofunctionalism:**

- European states decide to commonly manage some parts of their government apparatus and they create supranational institutions.
- The most important factor in European integration is the supranational institution of European Commission
- Member states decide to give up some of their leading capacities in the favour of the Commission, with the belief that, by doing so, they can develop better than they did by themselves
- European integration is happening through a process of spill-over, which means that once started into one field, it will also affect other interrelated fields

### **3.1.2.Liberal intergovernmentalism**

A good starting point for the explanation of liberal intergovernmentalism would be, perhaps, to have a look at **intergovernmentalism**, the theory from which it gets its roots.

Intergovernmentalism was developed by Stanley Hoffmann<sup>11</sup> (1964; 1966) and was seen as a reply to the already popular way of explaining European integration, neofunctionalism. Hoffmann's theory was strongly inspired by the realist point of view regarding the role of

<sup>11</sup> Stanley Hoffmann, born in Vienna in 1928 but French citizen since 1947, is the theorist who produced intergovernmentalism and the founder of the European Studies department at Harvard University. Currently he holds the title of “Paul and Catherine Buittenweiser University Professor” at Harvard University.

the national governments in international relations. He combated neofunctionalism with three major arguments (Wiener, Diez 2009):

- First, he claimed that European integration was only one of the many aspects of the global international system and that neofunctionalists had incorrectly seen the process of integration as inalterable based only on an internal dynamic, without taking into consideration the whole international dimension.
- Secondly, Hoffman argued that it was wrong not to consider the national governments as uniquely powerful factors in the process of integration, because actually the states were the ones who controlled the process in the way it served their national interests.
- Finally, he claimed that even if states would accept integration led by supranational institutions in technical fields, they would never give up their prerogatives in highly important areas such as security and defence.

Hoffmann acknowledged that there are other actors in the process of integration, besides national governments, but he claimed that these actors are playing a role only in the lower level of the politics such as social and regional policies, but even here they are not decisive because stronger forces such as government officials or politicians from the party in office may enforce their interests. Intergovernmentalism claims that national governments of the member states are the central figures of European integration because they are the ones who make the final decisions. They have this prerogative because they have legal sovereignty and because they have democratic legitimacy as the only actors<sup>12</sup> in the integration process elected by the citizens. Moreover, if the power of supranational institutions would increase, it would only happen so if the governments would believe this serves their own interest. (Wiener, Diez 2009)

**Liberal Intergovernmentalism** was developed by Andrew Moravcsik<sup>13</sup> during the 1990's through a series of academic materials which culminated in 1998 with the book "A choice of Europe: social purpose and state power from Messina to Maastricht". Starting from Hoffmann's intergovernmentalism and having the advantage of witnessing several decades of European integration since neofunctionalism and intergovernmentalism first appeared; Moravcsik validated the need of a new theory in the field by criticising neofunctionalism. Similar to Hoffmann, he stated that neofunctionalism is not able to fully explain the process of European integration, but having the above mentioned advantage, his critique was much stronger from a theoretical point of view. (Wiener, Diez, 2009) Moravcsik was able to identify three major critiques that neofunctionalists themselves brought to their theory over time, and he argued that these critiques have to be taken seriously: (Moravcsik, 1993)

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<sup>12</sup> When Hoffman developed his theory, the European Parliament did not exist.

<sup>13</sup> Andrew Moravcsik is the American political scientist who developed liberal intergovernmentalism. He is currently Professor of Politics and director of the European Union Program at Princeton University.

- Firstly, the fact that neofunctionalism by itself is not enough to explain European integration and that it needs to be supplemented by other theories of international relations
- Secondly, similar with above, but referring to what has become a very complex process of policy making in the European Community which cannot be explained by only one theory
- And thirdly, the fact that the shift of authority from the national to supranational level was not complete and in many cases, with no effect on the national governments sovereignty

Taking these arguments into account and incorporating many parts of intergovernmentalism, Moravcsik argued that European integration is a complex process developed at three levels, all having the national interest of the governments at their centre: (Moravcsik, 1993: 473)

- national interests or goals arise in the context of domestic politics;
- governments bargain with each other to further their national interest;
- governments make an institutional choice to secure credible commitment once a substantive agreement has been reached

More precisely, the three stages game is firstly played at a national level, where political forces of a member state identify and agree on what is their national interest on a given matter. The second stage is played against the other member states, where each of them follows their national interest and through bargaining they reach an agreement. Finally, in the third stage, once an agreement has been reached, member states show their commitment to their decision by building a supranational institution which has the purpose of securing the agreement. Moravcsik (1998: 21) gives the example of the monetary union, which follows this exact pattern: firstly, national governments agreed within domestic politics on what is their economic interest, secondly they negotiated within the European Council and after reaching an agreement, the European Central Bank was founded, as a guarantee to the commitment. Following the same rationale, one could speculate that even the European Commission is a result of the same process, having as an objective, the fostering of many other social or regional development agreements.

In the liberal intergovernmentalist view, the Council of the EU is the most important EU institution, because it provides the arena for the international bargaining and also because it has the decision-making power, once an agreement has been reached. However, the most essential role is played by the national governments and the most powerful integration catalysts are the national economic interests, as Moravcsik (1998: 18) states: *“EU integration can best be understood as a series of rational choices made by national leaders. These choices responded to constraints and opportunities stemming from the economic interests of powerful domestic constituents, the relative power of each state in the*

*international system, and the role of institutions in bolstering the credibility of interstate commitments”.*

In his 1998 book “A choice of Europe”, Moravcsik has tested liberal intergovernmentalism by applying it to five major events through which Europe has passed: (Wiener, Diez 2009)

- the negotiation of the Treaties of Rome (1955–58)
- the consolidation of the common market and the Common Agricultural Policy (CAP) (1958–83)
- the setting up of the first experiment in monetary co-operation and of the European Monetary System (EMS) (1969–83)
- the negotiation of the Single European Act (SEA) (1984–88)
- the negotiation of the Treaty on European Union (TEU) (1988–91)

Following his analysis, Moravcsik concluded that all the conducted case studies fit perfectly within the framework of liberal intergovernmentalism and that all these events which confound themselves with European integration are a result of the desires and objectives of the national governments, not of the supranational institutions; desires and objectives which have a very strong economical character. Furthermore, he claimed that, by looking at the developments of these events, it is possible to determine the balance of power between the member states by analysing who has managed to follow its national interest better in the bargaining. (Wiener, Diez, 2009)

### **Box 3.2: most important provisions of liberal intergovernmentalism**

- National governments of the member states are the most important factor in the process of European integration
- The process of integration is driven by the national interest of the member states
- The process goes through three stages. First of all, political forces within a member state agree on what is their national interest, secondly they pursue their interest in the intergovernmental negotiations, and finally, after reaching a commonly accepted agreement, member states build supranational institutions to acknowledge their commitment
- The most important supranational institution is the Council of the EU, because it provides the forum for intergovernmental bargaining and it has power of issuing decisions

Because of its very convincing arguments, liberal intergovernmentalism has quickly come in the centre of the academic debate about the theorisation of European integration.

According to Frank Schimmelfennig<sup>14</sup> (Schimmelfennig quoted in Wiener, Diez, 2009) *“liberal intergovernmentalism has acquired the status of a “baseline theory” in the study of regional integration: an essential first cut explanation against which other theories are often compared (...) it has achieved this dominant status due to its theoretical soundness, empirical power, and utility as a foundation for synthesis with other explanations”*. However, liberal intergovernmentalism also has its critics in the academic world. The critique claims that liberal intergovernmentalism fails to explain the whole picture of European integration, because Moravcsik, in his analysis, has only touched upon major events in the history of the EU, events in which it was clear that member states would never have given up their sovereignty, without considering other situations where the approach was maybe less intergovernmental (Wiener, Diez, 2009). Additionally, one could argue that liberal intergovernmentalism fails to acknowledge the position of the European Parliament, especially after the Treaty of Lisbon and the co-decision procedure.

### Box 3.3 : Authors note on European Integration Theories

In my opinion, neither neofunctionalism nor liberal intergovernmentalism can fully explain the highly complex field of European integration. It is possible that one of the theories to explain a certain aspect better than the other, or maybe when analysing a given period of time, it is more valid to choose one and not the other, but what is certain is that:

- Neofunctionalists claim that integration is made by the supranational institutions while liberal intergovernmentalists claim that integration is made by the national governments of the member states
- Neofunctionalism claims that supranational institutions build their own interests and direct the integration process according to those interests, while in liberal intergovernmentalism the drivers of integration are the national interests of the member states
- For neofunctionalists, the most important institution is the European Commission, while for the liberal intergovernmentalists, the most important supranational institution is the Council of the EU.

## 3.2. Realism and neorealism

Realism was the dominant approach in international relations in the 1950's. It is important to acknowledge from the beginning of the description that realism is not a theory of regional integration. It presumes that the primary objective of the states is accumulating power and that cooperation between two or more states is only happening when they are

<sup>14</sup> Frank Schimmelfennig is a German professor of European politics at the Center for Comparative and International Studies at the Swiss Federal Institute of Technology in Zurich, Switzerland



looking to make alliances with the purpose of combating a common enemy or threat. (World Politik blog, 2005)

Having established this, it is possible to have a look on how realism was created and what are its fundamental principles. Realism is used to explain international relations since the time of ancient Greece, when Thucydides analyzed the Peloponnesian War, and throughout the history, many famous figures, such as Machiavelli or Sun Tzu, have brought contributions to the theory. However, it was Hans Morgenthau<sup>15</sup>, in his 1948 book "Politics among Nations", who has laid down the fundamentals of realism as a modern international theory. In Morgenthau's view, states are unique and competitive, looking to survive in the global community (which is in a constant state of anarchy) by increasing their power in relation to other states. Morgenthau also claims that there are two types of states, powerful states which are looking to maintain their status and weaker states which are looking to gain more power and become powerful. (World Politik blog, 2005)

Morgenthau based his views on six principles<sup>16</sup> developed in his book:

- *"Political realism believes that politics, like society in general, is governed by objective laws that have their roots in human nature"*. The first principle clarifies the character of the politics, which are designed by mixture of objective laws and human nature.
- *"The main signpost that helps political realism to find its way through the landscape of international politics is the concept of interest defined in terms of power"*. Here, Morgenthau highlights the fact that the interest of nation states is to gain power.
- *"Realism recognizes that the determining kind of interest varies depending on the political and cultural context in which foreign policy is made. It does not give 'interest defined as power' a meaning that is fixed once and for all"*. Signifying that even if the goal of all states is to gain power, that doesn't mean that all the states will make the same actions, because it very much depends on what each state understands through power and what strategy it adopts in order to gain it.
- *"Realism maintains that universal moral principals cannot be applied to the actions of states in their abstract universal formulation, but that they must be filtered through the concrete circumstances of time and place"*. This principle establishes that the moral nature of states and their actions has to be judged depending on a given situation.
- *"Political realism refuses to identify the moral aspirations of a particular nation with the moral laws that govern the universe"*. This means that states have to depart themselves from universal moral laws, as for example, religious deeds, because history shows that this kind of actions have never led to positive results for nations.

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<sup>15</sup> Hans Morgenthau (1904-1980) was one of the leading theorists in international relations of the 20<sup>th</sup> century. His elaboration of realism from 1948 is considered to be the most complete version of classical realist theory.

<sup>16</sup> The quotations are paraphrased from the 5<sup>th</sup> edition of "Politics among nations" – 1978, 4-15



- *“The political realist maintains the autonomy of the political sphere”*. Meaning that politics have to be conducted in an independent manner with regard to any outside pressures. (World Politiks blog, 2005)

In 1979 Kenneth Waltz<sup>17</sup>, in his book “Theory of International Politics” built on the work of Morgenthau to put together a new form of realism: neorealism or structural realism. Through a more scientific approach, Waltz departed from the ideas of classical realism by stating that international relations are not only driven by the interaction between states and that there is another level above this. These two levels form a system which a precisely defined structure. State actions and objectives are influenced by this system as a whole and not by national factors only. (Muenster University paper) Neorealism doesn’t have, among its assumptions, aspects related to human nature or morality and power is not seen as the ultimate goal of the state. Power is seen as a means to acquire the ultimate goal for the rational state, which in this case is security. (Muenster University paper)

## 4. Analysis

The analysis represents the core of the thesis. Here, theory will be combined with the empirical data with the aim of finding answers for the questions proposed in the problem formulation. The analysis is divided into three phases, the first one looking to provide an answer for the first under question, the second one looking to find an answer for the second under question while the last phase will be developed with the purpose of answering the main question of the project.

### 4.1. Phase one – finding the theoretical character of the EU integration in the area of free movement

As mentioned above, in the project design section of the methodology chapter, the first phase of the analysis will attempt to answer the first under question in the problem formulation, to establish the theoretical foundation that drives European integration further in the field of free movement in Europe. To accomplish this goal, the analysis at this level will be developed through an in-depth examination of the text contained by four documents:

- European Commission’s proposal to the European Parliament and Council for the on the establishment of an evaluation mechanism to verify application of the Schengen acquis, from 16.11.2010
- European Commission’s proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, from 16.09.2011

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<sup>17</sup> Kenneth Waltz was born in 1924 and he was one of the founders of neorealism. He is currently Emeritus Professor of Political Science at UC Berkeley and Adjunct Senior Research Scholar at Columbia University.

- Amended proposal for a Regulation of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, from 04.06.2012
- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, from 04.06.2012

Having the theories that will be used in the analysis process properly explained in the above theory chapter, I will examine the provisions of each document with the purpose of identifying within what theory it fits, neofunctionalism or liberal intergovernmentalism. It is important to note from the beginning that the first two documents, which are a result of the European Commission's work, have already been rejected by the Member States, while the last two documents are proposals coming from Council of the EU, which have replaced the first two. Therefore, the analysis will be developed by starting with the examination the first two proposals. After this it will be possible to establish the theoretical nature of the original proposals. Once this aspect is clear, it will be possible to move on with the examination of the proposals coming from the Council, and establish their theoretical nature. Afterwards, a discussion will be developed with the purpose of answering the first under question of the project, and further elaborating on the theory that drives EU integration in this field and on the theoretical perspectives which the proposals may gain in the future.

Before proceeding with the analysis it is highly important to remember that in neofunctionalism, the European Commission is the most decisive factor that drives EU integration further, while the liberal intergovernmentalists see the Council of the EU as the most important supranational institution, because it gives the national governments of the MS the power of controlling the EU integration. In the light of this, the fact that the first set of proposals regarding the evaluation mechanism and the reintroduction of border controls is coming from the Commission, while the other set is coming from the Council, could be considered as a first sign showing the theoretical nature of the proposals.

Another aspect that needs to be mentioned at this point is related to the current deadlock that keeps the proposals from being enforced. The deadlock was caused by the fact that the Council has decided to change the legal status of the proposal regarding the evaluation mechanism from article 77 of the Treaty of the Functioning of the European Union (TFEU) to article 70 of the TFEU<sup>18</sup>. Because of the legal status change, the European Parliament has suspended all the collaboration with the Council on Justice and Home Affairs matters until a solution will be reached. Article 77 of the TFEU, proposed by the Commission as a legal base for the proposals, stands for the use of the ordinary legislative procedure (co-decision procedure) of the European Parliament and the Council in adopting measures regarding free movement and border control in Europe. Article 70 of the TFEU, chosen with unanimity by

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<sup>18</sup> More information on the deadlock can be found in the European Policy Centre paper: [http://www.epc.eu/pub\\_details.php?cat\\_id=3&pub\\_id=1408](http://www.epc.eu/pub_details.php?cat_id=3&pub_id=1408) and in the EP debate that followed after the Council changed the legal status: <http://www.europarl.europa.eu/ep-live/en/plenary/video?debate=1339484371384>

the Ministers of Internal Affairs of the Member States in the JHA Council on 07.06.2012, stands for the sole decision-making of the Council, based on proposals from the Commission. (Official Journal of the EU) In this article, the Council only needs to inform the European Parliament about the decision it makes. This change clearly shows that Member States are not willing to give up their sovereignty rights on such a sensitive matter and clearly sends the message that it is the responsibility of the national governments to drive the European integration in this field, in complete accordance to the liberal intergovernmentalist concepts.

#### 4.1.1. The original Regulation proposals coming from the European Commission

The two aspects presented above have provided a good starting point for the first phase of the analysis and it is now possible to proceed with the identification of the theoretical nature of the proposals coming from the Commission. The first document which is going to be analysed is the *European Commission's proposal to the European Parliament and Council for the on the establishment of an evaluation mechanism to verify application of the Schengen acquis*, from 16.11.2010. The proposal is composed by twenty one articles out of which I will select and elaborate on the ones which contain identifiable theoretical aspects. Afterwards, I will briefly note and explain the articles that do not contain such aspects.

**Article 3, Responsibilities** - In this article it is stated that the European Commission will be responsible for the evaluation mechanism. Member States are supposed to fully cooperate with the Commission, by allowing it to carry out the tasks conferred by the Regulation. This article shows who will respond for the implementation of the mechanism, namely the European Commission. This strongly reflects the neofunctionalist concept where supranational institutions have the leading role in implementing EU policies. The fact that the Member States have a cooperation role, which basically means that they have to assist the European Commission as far as they can, is also in accordance with neofunctionalism, where national governments create supranational institutions which have to direct the EU integration according to their own reasoning.

**Article 5, Multiannual programme** – With this article, the European Commission is in charge with establishing a multiannual programme after which evaluation will take place. This is another attribution to the neofunctionalist institution of the European Commission.

**Article 6, Risk Analysis** – This article is related to the Frontex risk analyses. Each year, Frontex has to send the Commission a risk analysis and recommendations for evaluations in the form of announced visits, for the next year. The Commission has to pass on this information to the MS. However, Frontex also has to send to the Commission another set of recommendations regarding evaluations in the form of unannounced visits. The Commission will not pass on this information to the MS; again, leading role for the Commission.

**Article 7, Questionnaire** – The Commission is in charge of producing an evaluation questionnaire which will be sent to the MS, as another form of evaluation. The member state which receives such a questionnaire is to reply back to the Commission and after this; the Commission will make the information available for all the Member States.

**Article 8, Annual programme** – As in the case of article 5, the Commission is also in charge of producing an annual programme. Member States have no implication in the drafting of the programme.

**Article 9, List of experts** – This article refers to a creation of a list of experts which are to participate in on-site evaluation visits. The procedure here goes as following: MS have to propose several experts and the Commission is in charge with selecting experts from the proposed ones and generating a list from which it will designate experts for on-site evaluation visits. Here, even if the Member States are allowed to propose experts, it is still the Commission who has the leading role, because it has the attribution of selecting the experts who will participate in the visits.

**Article 10, Teams responsible for on-site visits** – What is to be observed here is, first of all, the fact that the Commission is responsible for putting together the team. The team will be composed by Commission representatives, experts from the MS which are appointed in accordance with article 9, and possibly observers from European Agencies such as Frontex or Europol. The team must not exceed eight persons in the case of announced visits and six persons in the case of unannounced visits, but there is no specification on how many Commission representatives or MS experts are to be in the team. The leadership of the team is to be secured jointly by one Commission representative and one MS expert. Also here, the Commission is in a very strong position, because it decides on the composition of the team and there is no provision which keeps it from building a team with, for example, six Commission representatives and two MS experts, situation where it is assumable that the majority of the group can impose its point of view in front of the minority.

**Article 12, Verification of the free movement of persons at internal borders** – This is perhaps the most significant article which suggests the neofunctionalist nature of this Regulation proposal. By this article, the unannounced visits concerning the verification of the absence of controls at internal borders will be carried by teams composed only by Commission officials. This means that MS can have no implication whatsoever in this type of evaluation.

**Article 13, Evaluation reports** – This is another important article, concerning the reports that follow-up the evaluation visits. Here, the Commission holds the responsibility of drawing up the report if the evaluation was in form of a questionnaire or unannounced visit. If the evaluation had the form of an announced visit, the report is produced by the team, during the visit, but still, one of the Commission representatives has the responsibility of keeping the report accurate. In the activities that follow after the report, the Commission has the leading role in producing a remedy strategy together with the concerned MS, if deficiencies were identified. In case of serious deficiencies that could affect the security level of one or more Member States, the Commission has to report that to the European Parliament and Council, in order for them to act according to the co-decision procedure.

**Article 15, Committee** – This article refers to the establishment of a committee which is supposed to assist the Commission in carrying out its tasks. The committee shall be chaired by a Commission representative and composed by representatives of the MS. The authority of the Commission is once more confirmed by the application of articles 4, 7 and 8 of the 1999/468/EC decision, in all the cases where reference is made to this article. The above mentioned articles of the 1999/468/EC decision lay down the grounds on which a committee chaired by the Commission is to be managed.

The other articles contained by this proposal refer to the more practical aspects of a Regulation as following:

- Article 1: lays down the purpose and scope of the Regulation

- Article 2: provides a definition of the Schengen acquis for the purpose of this Regulation
- Article 4: presents the methods of evaluation, respectively questionnaires, announced on-site visits and unannounced on-site visits
- Article 11: presents the practical duties of conducting on-site visits
- Article 14: provides the procedure referring to sensitive information
- Article 16: presents the time framing of different procedures
- Article 17: refers to the responsibility of the Commission to inform the European Parliament
- Article 18: refers to the responsibility of the Commission to prepare an annual report for the European Parliament and Council
- Article 19: presents which decision would have been repealed by this Regulation
- Article 20: refers to the right of the Council to conduct the current ongoing Schengen evaluations in accordance with this Regulation
- Article 21: presents the procedure of the entry into force of the Regulation

As it can be seen, it is clear that the European Commission is in charge with carrying out the vast majority of the provisions of this Regulation. One last aspect needs to be settled, regarding this proposal, the fact that the Commission has seen Article 77 of the TFEU appropriate for the legal status, which foresees that the European Parliament and Council of the EU take the decisions together, through the co-decision procedure.

The next step is to move forward with the analysis of the European Commission's *proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances*, from 16.09.2011. This Regulation was supposed to replace articles 23 to 30 of the Schengen Borders Code, referring to the temporary reintroduction of border controls in exceptional circumstances. It was planned to be enforced together with the proposal on the Schengen evaluation mechanism. The Regulation proposal is composed by two articles, out of which, the second refers to the time frame procedure of the entry into force. The first is a wider article which presents how the above mentioned articles in the Regulation (EC) 562/2006 (Schengen Borders Code) will be amended. As the articles from the Schengen Borders Code have been presented in the introduction chapter, in section 1.2.4. I will not remind them and instead I will focus on the amendments proposed by the Commission. Furthermore, as I have done above, I will only elaborate on the provisions that signify a theoretical concept and briefly note the other provisions that do not offer a theoretical angle.

Therefore, the new **article 24** is setting up the procedure for the temporary reintroduction of controls at internal borders. The procedure goes as following: if a member state considers that it faces a challenge which requires the reintroduction of its internal border controls, it has to submit a request to the European Commission. Subsequently, a decision will be taken by the Commission based on the information provided by the member state or other relevant sources. So basically, through this article, all the decision-making power in the matter of temporarily reintroducing the controls at internal border of the MS is held by the European Commission. There is also an exception to this rule, provided by the new **article 25** which gives the possibility for a Member State to solely take the decision to reintroduce

its controls at internal borders, but no more than for five days, in case there is a serious threat that demands immediate action. However, the concerned MS has to notify the Commission and the other MS right away, and the Commission will decide if the posed threat requires the extension of the five days or not.

The new **article 26** gives the Commission the power to reintroduce controls at internal borders of a MS without receiving such a request from the concerned MS. This action is to be taken in case the evaluations did under the Schengen Evaluation Mechanism reveal serious deficiencies that can endanger the public policy or the internal security of one or more members. Such a measure can be taken for an initial period of no more than six months; with the possibility of extending the term with no more than three sets of six months, in case the deficiencies have not been remediated.

Article 1 of this Regulation proposal also provides other new amended articles, namely article 23 (with a new article 23a introduced), article 27, article 29 and article 30, but these articles concern the more practical descriptions about how the new measures regarding the temporary reintroduction of controls at internal borders will be conducted:

- Article 23 – provides the general framework for the temporary reintroduction of border control at internal borders.
- Article 23a – provides the criteria for the temporary reintroduction of border control at internal borders.
- Article 27 – refers to the procedure of informing the European Parliament and Council.
- Article 29 – states that a member state that has carried out a reintroduction of border controls has to present a report to the European institutions.
- Article 30 – presents the procedure of informing the public.

Following this analysis, it is possible to draw the idea that the European Commission has proposed a Regulation where the possibilities of reintroducing controls at internal borders of the Schengen area are far more vast than they were in the Schengen Borders Code and where the supranational institution has all the decision-making power in both the cases where a MS wants to take such a measure or when a serious deficiency might jeopardise the security of the borderless area, and the measure is taken without the consent of the MS.

At this point of the first phase of the analysis, after the examination of the two interrelated Regulation proposals coming from the European Commission, it is possible to draw a conclusion regarding their theoretical nature. The supranational institution has followed, in the elaboration of these proposals, a neofunctionalist reasoning, without any doubt. In the first proposal, regarding the evaluation mechanism it has tried to take the leading role in carrying out the tasks of evaluation, demanding full cooperation from the Member States and expecting them to participate in the process, as far as it believed it is necessary. In other words, the Commission tried to assume responsibility for driving European integration further in matters concerning the evaluation of the compliance with the Schengen acquis of the current MS and the states which look to join the area. This fits perfectly in the neofunctionalist assumption that the European Commission should be in charge of controlling the European integration according to its reasoning, and also justifies to a large



extent, the position of the Commission within the frame of the EU as “guardian of the treaties”. The second proposal, regarding the temporary reintroduction of controls at internal borders, represents a “state of art” neofunctionalist thinking. Here the Commission has tried to take upon itself the right to dictate when and how the Member States should reintroduce the controls at internal borders. Of course, this goes in accordance with the Commission’s neofunctionalistic nature, but maybe it has went a bit too far with this objective, touching upon highly sensitive sovereignty issues, and maybe this is the reason why both of the proposals were rejected in the Council.

#### 4.1.2. The Regulation proposals coming from the Council of the European Union

The analysis will be developed further with the purpose of establishing the theoretical nature of the current Regulation proposals, coming from the Council of the EU subsequently after the proposals from the Commission have been rejected. These proposals have not been enforced yet, due to the above mentioned deadlock between the Council and the European Parliament.

The first document which I will look upon is the *Amended proposal for a Regulation of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis*, from 04.06.2012. It is important to note that this proposal was built on the frame of the Commission’s proposal regarding the evaluation mechanism, but as its title also states, the proposal is amended. Therefore, while some articles remain unchanged, others have been fundamentally transformed. The analysis will follow the same pattern as in the case of the first set of proposals. More precisely, I will identify and elaborate on the articles which contain indication of theoretical aspects and afterwards, briefly note the articles which do not contain such aspects.

**Article 3, Responsibilities** – This article has suffered a very significant transformation. If in the Commission’s proposal, the European Commission was responsible for the implementation of the mechanism, here the MS and the Commission shall be jointly responsible for the implementation of the mechanism; already a major aspect to be taken under consideration.

**Article 5, Multiannual programme** – There are no major changes here, the Commission will still be in charge with the drawing of the multiannual programme of evaluations.

**Article 6, Annual programme** – The former article 8 provides no changes, the Commission will still be in charge of preparing the Annual programme.

**Article 7, Frontex risk analysis** – Former article 6. In the new proposal, Frontex will have to send its annual risk analysis and recommendations regarding the announced evaluation visits to both Commission and MS, instead of only to the Commission. However, the recommendations regarding unannounced visits are to be sent only to the Commission and the MS will have no access to this information.

**Article 8, Questionnaire** (former article 7) – According to the new proposal, the questionnaire will be drafted by the Commission in close cooperation with the MS, and not solely by the Commission, as it was previously. The fact that MS will have ten weeks instead of six to respond is a notable aspect as well.

**Article 9, Teams responsible for on-site visits** (former article 10) – In this article, the changes are major. First of all, the Commission is no longer in charge of drawing a list of experts from the MS because they will designate the experts which will participate in the visits themselves. Secondly, the MS will be allowed to designate up to eight experts for the announced visits and up to six experts in the case of unannounced visits, while the number of Commission representatives shall not exceed two persons, regardless of the type of visit. The team will still be led jointly by a Commission representative and a MS expert. It is clear that by modifying this article, the Council has secured a majority for the MS experts, which could represent an important advantage in the case of disputes within the team.

Also here, a new article 9a has been introduced. It refers to the composition of the teams in the case of a questionnaire evaluation. Also in this case there will be a maximum number of eight MS experts and two Commission representatives. Previously, this type of evaluation was conducted only by Commission officials.

**Article 12 (deleted)** – The former article 12 which referred to the fact that the teams for unannounced visits to verify the absence of controls at the internal borders shall be composed by Commission representatives only, has been erased from the current proposal. This change is fundamental, because by deleting this article, the Council has deprived the Commission of this very important attribution.

**Article 13, Evaluation reports** – This is another article which has been much amended. First, the report will be drafted by the MS experts and the Commission representatives jointly in all the types of evaluation. Formerly, the report was drafted by the Commission in the case of unannounced visits and questionnaire and jointly only in the case on announced visits. The article also states that in case of disagreement, the team shall endeavour to reach a compromise. Here, as noted above, the fact that MS experts are a majority in the team may be decisive.

Secondly, the Commission no longer has the responsibility of adopting the report. After a report has been concluded, the Commission has to send it to the Council, which is in charge of the adoption.

**Article 17, Committee** – The committee article is very much changed as well. It is stated that a committee shall assist the Commission, but the chair of the committee is no longer held by a Commission representative. Furthermore, the committee will no longer be governed by the Decision 1999/468/EC; instead it will be governed by Article 5 of Regulation (EU) No 182/2011, which “lays down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers”. This basically means that all the opinions delivered by the committee will be adopted following a majority vote within the committee.

**Article 19, Information of the European Parliament** – The Council and not the Commission will have the responsibility of informing the European Parliament about the adopted evaluation reports. This makes sense, since the Council is the one who adopts the reports, according to article 13 (5) of this Regulation.

Very briefly, the other articles contain the following provisions:

- Article 1: Provides the purpose and scope of the Regulation.
- Article 2: Defines the meaning of the “Schengen acquis”
- Article 4: Explains the methods through which evaluations will be carried, namely questionnaires and announced or unannounced on-site visits.



- Article 10: Lays down the qualifications that the evaluation experts need to have.
- Article 11: Explains the practical procedures of the conduct of on-site visits.
- Article 14: Was deleted.
- Article 15: Was deleted.
- Article 16: Lays down the procedure regarding sensitive information.
- Article 18: Lays down the time frame of the multiannual programme and the Frontex risk analyses.
- Article 20: refers to an annual report that the Commission has to present to the Council and European Parliament.
- Article 21: refers to which Regulation will be repealed by this one.
- Article 22: Was deleted.
- Article 22a: Refers to a review of the Regulation which the Commission has to carry out six months after the entry into force.
- Article 23: Refers to the procedure of entry into force of the Regulation.

At a first glance it is possible to say that the Council, by providing this amended Regulation proposal has put a balance in the attributions of the Commission and Member States. Many of the important articles contain phrases such as “joint responsibility” or “close cooperation” between the Commission and MS. Furthermore, the Commission still has attributions such as preparing the multiannual and annual programmes or organising the unannounced visits. However, at a closer look upon the articles, it looks more likely that the Council, through this proposal, has given the Member States the control over the evaluations regarding the Schengen acquis, because of several important provisions: Firstly, the Commission no longer makes any evaluations on its own. Secondly, the MS directly designate their experts for evaluations, which indicates that MS are free to decide which experts are better suited for a specific evaluation, and the Commission has no say in this. Thirdly, in the evaluation teams, the MS experts have a solid majority. It is hard to believe that two Commission representatives can impose their point of view against eight or six MS experts; it is more likely to be the other way around. Fourthly, even if the responsibility of drafting the follow-up reports is joint, the provision which states that in “case of disagreement, the team shall endeavour to reach an agreement” speaks for itself. Again, it is more likely that the majority of the team will enforce its point of view against the minority. Fifthly, the committee meant to assist the Commission is no longer controlled by the supranational institution. The MS are likely to have a majority here as well, and the opinions delivered by this committee are adopted after a majority vote. And finally, the evaluation reports are going to be adopted by the Council, probably only after the MS have agreed on their contents.

In the light of these arguments it is clear that the Member States play the leading role in the Schengen evaluation mechanism and the Commission looks more like a tool, meant to assist the MS, or metaphorically speaking, the Commission looks more like a secretary who is responsible with drawing the weekly schedule of the CEO, in a multinational company.

It is now possible to move on with the analysis of the second proposal coming from the Council, the *Proposal for a Regulation of the European Parliament and of the Council*

*amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances*, from 04.06.2012. Similar to the Regulation proposed by the Commission, the proposal contains two articles. The first article explains how the Schengen Borders Code will be amended and the second article refers to the practical procedure of the entry into force of the Regulation. As I have done above, I will proceed by identifying and elaborating on the amendments which contain theoretical aspects, and finalise by briefly noting the ones which do not contain such aspects.

To begin with, the **title two (External Borders)** of the Schengen Borders Code is supplemented with an additional chapter five: *Specific measures in case of serious deficiencies related to external border control*. Here the newly introduced **article 19a** states that, in the case where evaluations carried under the Schengen evaluation mechanism identify serious deficiencies at the external border points of a MS, the Commission may recommend to the concerned MS to take specific measures such as the deployment of European Border Guard teams. If the specific measures fail to remediate the situation, and the deficiencies threaten the internal security or public policy of one or more Member States, the Council can recommend (following a proposal from the Commission) to the concerned MS to reintroduce its internal border controls for a total period of no more than two years.

Moving on to the **title three (Internal borders)** of the Schengen Borders Code, the amendment which draws the attention is **article 23** and subsequently **article 23a**. These articles set the general framework and the criteria for the temporary reintroduction at the internal border points. They clearly state that if a MS believes that in the area without internal border controls there is a threat which can endanger its public policy and internal security, it can decide, on its own, to temporarily reintroduce its internal border controls for an initial period of 30 days. If the problem persists, the MS, still on its own, can decide to extend that period for no more than six months. Furthermore, if the MS considers that the threat may endanger the whole functionality of the Schengen area, it can decide to prolong the period for no more than two years. Of course, the MS, before taking such decisions, has to carefully assess what the likely impact of such a measure is in solving the problem and the likely impact on the free movement in the area without borders.

**Article 24** lays down the procedure to be followed in case a MS is planning to temporarily reintroduce its internal border controls. As it looks like, the procedure is quite complicated, the MS has to forward to the Council, the Commission and the other Member States a full explanation of why such a measure is necessary, than it has to go through a series of consultations, but there is no provision that states that the decision is made by anyone other than the concerned MS, nor that any other MS or supranational institution can stop such a decision.

**Articles 26 and 26a** lay down the procedure and the criteria to be followed in case of exceptional circumstances putting the overall functioning of the area without internal border controls at risk. The procedure goes as following: the Commission makes a proposal to the Council (Member States may request to the Commission to make such a proposal). Following this proposal, and after assessing all the aspects and consequences, the Council

may decide to recommend to one or more MS to reintroduce their border controls for a maximum period of two years.

The other amended articles contain the following provisions:

- Article 25 - Procedure to be followed in cases requiring immediate action: The procedure is more or less similar to the one described by article 24, only it is developed more urgently.
- Article 27: lays down the procedure that MS and the Commission have to follow in order to inform the Council and the EP.
- Article 29: says that after maximum four weeks after the internal border control was lifted, the MS concerned has to send a report to all the supranational institutions.
- Article 30: procedure about informing the public.

Following this analysis, it looks like the Council gives full power to the Member States to temporarily reintroduce their internal border controls if they believe that such a measure is necessary.

With regard to the measures that can be taken if the Commission or other MS (following the evaluations under the Schengen evaluation mechanism) believe that a MS is seriously neglecting its duties in securing the external borders, the Council is the one who recommends that MS to reintroduce its internal border controls. The same procedure applies in the case of a serious threat that can endanger the public policy or internal security of one or more Member States. It is important to underline the fact that the Council adopts a softer approach, by recommending and not dictating. Therefore, the final decision still belongs to the concerned MS. Similar to the proposal regarding the Schengen evaluation mechanism, the Commission plays a role, but certainly not a leading one. Basically its only real attribution is the fact that it can make a proposal to the Council, regarding the recommendation to reintroduce the controls.

After both proposals coming from the Council have been analysed, it is now possible to draw a conclusion regarding the theoretical nature of Regulations.

It is very clear, that the Council, by proposing these Regulations, has decided to give to the Member States the control over the evaluation regarding the compliancy with the Schengen acquis and the decision-making power in the measures that can be taken in case the evaluations find deficiencies. In other words, through these proposals, the European integration in this field is progressing mainly on an intergovernmental basis, which already suggests liberal intergovernmentalist concepts. Moreover, the Council of the EU does exactly what liberal intergovernmentalists expect it to do; it is the catalyst that supports the objectives of the Member States. It is already assumable that the approach here is liberal intergovernmental, but to be certain it would be suitable to apply Moravcsik's "three level game" to this specific issue:

- At the first level, political forces agree on the national interest. Here, the national interest is, on one hand, to be able to identify when a MS has problems in securing the external borders and to identify a possible threat to the country, and on the other hand to have the necessary means to deal with these problems effectively.
- At the second level, national governments bargain with each other to pursue their national interest. This has happened in the JHA Council prior to the appearance of

the proposals. There is no doubt that strong negotiations have taken place in the Council because certainly not all 27 Member States had the same interest. Some have more reasons to desire a strong evaluation mechanism; others may have less or actually may be affected by this<sup>19</sup>; but through bargaining, MS have agreed on this form of the proposals.

- Finally, at the last level, through the desire to introduce these Regulations in the European legislation, the MS make a legal commitment that they will respect what was agreed upon.

As the appearance of the proposals fits perfectly into Moravcsik's "three level game", it is now possible to state that the Council has followed a clear liberal intergovernmentalist approach when it has proposed these Regulations.

#### 4.1.3. Conclusions on the first phase of the analysis

Throughout this phase of the analysis, we have seen that the European Commission has tried to put forward two neofunctionalistic proposals and has failed, because in the current global and European context and given the fact that the control of the external and internal borders of Schengen is a field situated very close to the internal security of the Member States, and it would have required a huge amount of trust to let someone else, even the European Commission, to have control over these matters. Subsequently, the Council has amended these proposals and presented a new version, a version that is completely liberal intergovernmentalist. By these proposals, the MS have almost a complete control over this field; the Commission plays a role which in the best case can be called supportive while the European Parliament plays absolutely no role. This sends me back to one of the critiques of the liberal intergovernmentalism, which fails to explain the position of the EP after the Lisbon Treaty. Maybe it doesn't fail; maybe it just doesn't recognise the European Parliament.

**However, even if the two proposals are a product of liberal intergovernmentalism, it is not possible to answer the first under question of the project by saying that the theoretical foundation that drives European integration further in the field of free movement is liberal intergovernmentalism, or at least not yet, because these Regulations have not been enforced yet. Only when these Regulations will enter into force and only if they will remain unchanged, it will be possible to state, without any doubt, that European integration here is led by liberal intergovernmentalism.**

Looking at one of the statements of the head of the Romanian Schengen Department, Mr. Tutilescu, made during the interview, that it is impossible that MS will make any kinds of compromise regarding the measures to reintroduce border controls, I would assume that, in order to reach an agreement with the EP, the Member States will have to give up something in the area of evaluation, but judging from a liberal intergovernmentalist perspective, there is not much to give up. Nevertheless, let's not forget that the European world doesn't only evolve around Schengen, so maybe the Council will decide to give up on something from other fields, in order to gain this. But I am not in the best position to make such predictions,

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<sup>19</sup> Here, using also one of Moravcsik concepts, by looking at who has the most to win following the proposals, it is possible to understand who has the stronger influence in the Council.

and instead I would like to focus on another matter that may arise following the enforcement of these Regulations.

The fact that in the democratic world governments change, population masses can be influenced by emotional messages and due to an unforeseeable event, or for example, due an extension and aggravation of the economic crisis, extremist parties might find themselves elected. The power to reintroduce border control is a very powerful weapon and, as Mr. Tutilescu states, in the current proposals, there is almost no option of protection in case of abuse. So it is very feasible to fear that the provisions of these Regulations could, one day, to be used no longer to develop European integration in a liberal intergovernmentalistic way and instead to be used for realistic and neorealistic purposes, namely gaining power and security. If gaining power through reintroducing the border controls is debatable, gaining security is possible for certain, but in this case we can no longer discuss about integration, about commune participation or cooperation.

## **4.2. Phase two – Effects of the Regulation proposals on Bulgaria and Romania**

The aim of this phase is to answer the second under question of the problem formulation. To be able to provide an answer on how the two Regulations will affect Bulgaria's and Romania's efforts to join the Schengen area, it will be necessary to go through a complex process which will begin by confirming that the two states have complied with all the requirements of the Schengen acquis. The analysis will continue through combating the official reasons of why BG and RO have not been admitted into Schengen so far. Once this will be established, I will introduce the assumption that there is another reason why the two countries have not been admitted and I will proceed to an investigation with the aim of validating this assumption. Only after that it will be possible to see if and how, the two Regulation proposals will affect Romania and Bulgaria.

### **4.2.1. Contradiction of the official reasons for Bulgaria and Romania not joining the Schengen area**

The first step of the process presented above will start from Mr. Tutilescu's statements from the interview. Mr. Tutilescu, who has been in charge with Romania's preparation for the adhesion at the area without borders, has declared that "(...) *both Bulgaria and Romania have fulfilled all the requirements in the Schengen acquis (...)*". Furthermore, he has completed by informing that both states are fully operational and active in the SIS for almost two years. The statements of the head of the Romanian Schengen Department are backed up by the EP report from 04.05.2011, on the "*full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania*". This report presents the findings of Mr. Carlos Coelho, MEP and the official rapporteur of the EP in Schengen related matters. The report first presents the criteria under which the potential new members of Schengen are evaluated and then continues with the conclusions drawn on each specific part of the Schengen acquis, following the evaluations carried in BG and RO. The conclusions on BG were the following:

- The evaluation on data protection was positive. Bulgaria is using SIS since 05.11.2010.
- Most of the preparatory work regarding police cooperation has been finalised.
- The evaluation regarding visa issuance has been mainly positive and in some aspects, an example of best practice.
- The air borders correspond to the requirements of the Schengen Borders Code. However, there are some minor aspects still to be worked on.
- The sea borders fully correspond with the Schengen Borders Code requirements and the evaluation has shown excellent results in some aspects.
- After several re-visits, the land borders also fully correspond to the Schengen requirements.

The conclusions on RO were the following:

- Positive evaluation result on data protection. Romania is using SIS since 05.11.2010.
- All preparatory work regarding police cooperation has been completed.
- With regard to the visa issuance, RO has implemented all the necessary requirements and in some cases it can be seen as an example of best practice.
- The air borders correspond to the Schengen requirements.
- The sea borders have fulfilled all the requirements after all the shortcomings have been remediated.
- Finally, the evaluations at the land borders have detected a good level of border checks and after all the shortcomings have been remediated, RO complies with all the requirements.

The final conclusion of the rapporteur is that both Romania and Bulgaria are sufficiently prepared to apply all the provisions of the Schengen acquis in a satisfactorily manner. One last argument that confirms that BG and RO have fully complied with the requirements of the Schengen acquis is the fact that no national government, official or politician of any MS has issued any statements meant to contradict the conclusions of the EP report; all the negative statements regarding the adhesion of the two states being related to other issues and not to their compliancy with the Schengen acquis.

Having established this, there is here a situation where two states are in full compliancy with the Schengen acquis, and additionally, they already participate in some parts of the agreement (the SIS), but still, they are not welcomed in the area without borders and thus they are not allowed to enjoy the benefits of the free movement. The official reasons (detailed in the introduction chapter) given by the MS that oppose Bulgaria's and Romania's adhesion to Schengen, The Netherlands, Germany and France<sup>20</sup>, are that the efforts to combat organised crime and corruption in the judicial system were not strong enough. The next step of the analysis is to prove that these arguments are not valid.

Regarding the efforts that BG has to make in order to combat organised crime, Thomas Gammeltoft-Hansen, PhD in International Law and research fellow at the Danish Institute for International Studies, has put an accent on the transnational character of the organised crime in his video interview for the CNN I Report. He states that the kind of organised crime

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<sup>20</sup> Germany and France have agreed to the adhesion with the air and maritime borders, but not with the terrestrial borders.



which Europe has problems with is related to activities such as identity theft, drug trafficking and human smuggling and because these crime networks are extended through all Europe and outside Europe, there is not much to do, for a state acting on its own. Following this perspective, it is possible to issue the idea that BG, regardless of how much effort will put in combating organised crime, regardless of how focused and well equipped the Bulgarian Police will be on this matter, it will still not manage to solve this problem, because the problem is not a national one and to efficiently counter the organised crime, it will take a much more commune effort among the MS, and therefore it is possible to conclude that this reason is not valid.

With respect to the Romania's problem with the politically controlled judicial system and without taking into account the positive aspects related to the judicial system highlighted by the European Commission in the spring 2012 report under the "Cooperation and Verification Mechanism for Bulgaria and Romania"; it is hard to see the relation of the corruption in the judicial system with the Schengen area, which, by definition, is an area where the free movement is guaranteed and where there are no internal borders. The only judicial related provision of Schengen acquis refers to judicial cooperation between the MS for a faster extradition system and transfer of enforcement of criminal judgments; and Romania is clearly ready to take part in that, according to the EP and Commission's reports. Of course, there is no doubt that if RO has a corrupt justice system it is a huge problem for the national state and for the EU as a whole. But the problem is much more related to other fundamental principles of the EU, such as the rule of law or the respect for human rights, and if the problems are so severe, this would have been something to take under consideration before the EU enlargement in 2007; but the fact that RO has a corrupt judicial system or not has hardly any relation to its adhesion to Schengen. So it is possible to conclude, as in the Bulgarian case, that this reason is not valid.

#### **4.2.2. The Greek problem**

After it has been established that the official reasons for BG and RO not joining the Schengen area are not valid, it is now possible to move on by generating the assumption that the states have not joined yet because of another reason. The reason proposed in this analysis is the fact that Greece has serious deficiencies in securing the external borders of the Schengen area and because of this, Bulgaria's and Romania's terrestrial border controls are used as filters to stop the illegal immigrants travelling further in the area without borders. Figure 4.1 illustrates the fact that Greece is currently isolated terrestrially from the other Schengen members and in order to reach them, the illegal immigrants have to pass through at least three border controls. Also in this figure it can be seen that if BG and RO would join the area, there would be no border controls to stop the illegal immigrants from moving freely in the area without borders once they have reached Greece.

**Figure 4.1: Schengen area map**

Source: <http://www.gibney.com/practice-areas/immigration/global-immigration-services/emea>

After putting forward an assumption as the one presented above, which may be seen as very bold, I will pursue to acquire validity for it, by demonstrating that Greece has a problem with securing the borders. The investigation will begin by clarifying three important aspects: what are the routes of illegal immigration towards the EU, which are the states where the illegal immigrants want to go and what are the possibilities for them to reach those states.

First, it is necessary to present the routes through which the illegal immigrants enter the Schengen area. The Frontex Risk Analyses from 2011 and 2012 claim that the two most significant migratory routes are the Central Mediterranean route and the Eastern Mediterranean Route.

The first one has been considered for many years the most popular route for illegal immigrants coming from Northern Africa with the purpose of reaching France, acquiring the

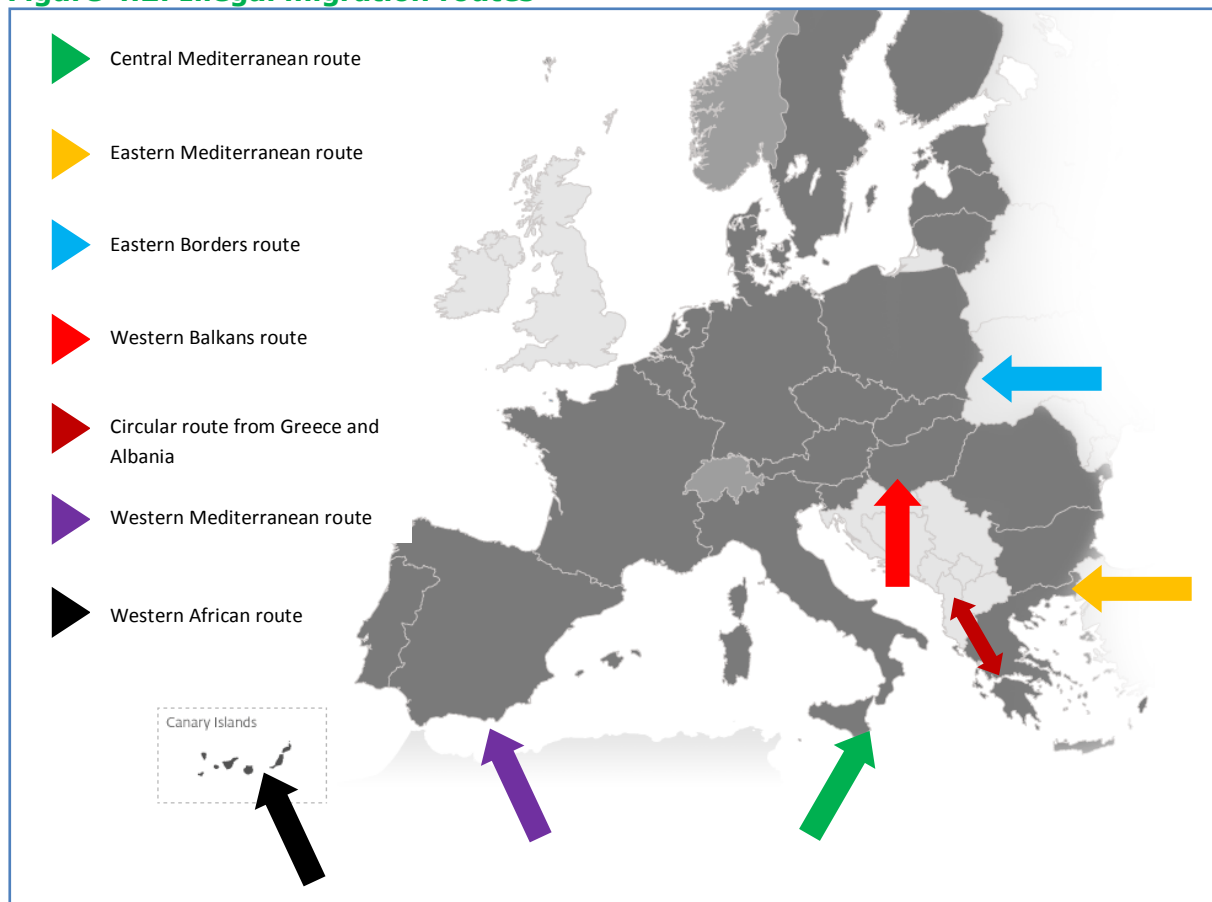


status of a traditional route for illegal immigration. Here, the immigrants enter the Schengen area through the coastline of Italy and Malta and, in the past few years (2009 and 2010) Frontex has reported a decrease of illegal attempts to enter the EU, which suggests that the efforts made by the MS which secure the external borders in this area have resulted in a stabilisation of the situation. In 2011 the figures have exploded, with more than 64.000 illegal detected attempts, a huge number in comparison to the figures of 2010 when only 5000 attempts were detected. This development is explainable in the context of the Arab Spring which has happened in 2011.

In the case of the second route, the Eastern Mediterranean one, illegal immigrants enter the Schengen area through the thin border line between Turkey and Greece or by reaching one of the many islands of Greece. This route is considered by Frontex (2011 analysis) *“undoubtedly the main challenge at the EU level”* regarding illegal immigration. Frontex reports that from 2009 to 2010 the number of illegal detected crossing attempts has increased with 45% representing a number of more than 47.000 detections only at the land border between Turkey and Greece. In 2011 the figures have gone up as well, with more than 57.000 detections at the same land border. In the 2012 analysis, Frontex has called the land border between Turkey and Greece *“an established illegal-entry point for irregular migrants and facilitation networks”*. Looking at the numbers and at the Frontex signals it is now fair to claim that the Eastern Mediterranean route retains the status of the most popular illegal immigration route at this moment.

Figure 4.2 illustrates the map of Europe and the migratory routes identified by Frontex.

**Figure 4.2: Illegal migration routes**



Source: Frontex

The second aspect which has to be cleared is the fact that the illegal immigrants are not looking to remain in Greece, which they see only as an intermediary step in the quest of reaching the state where they want to reside in. According to the Frontex Risk Analysis from 2011, with the exception of a small number of Pakistani immigrants which are identified to illegally reside in Greece, all the illegal immigrants that cross the border between Turkey and Greece are immediately looking to continue their journey towards other Member States. Mr. Tutilescu, in one of his interview statements, claims that the immigrant targeted countries are the most economically developed MS, such as Germany, France, the Nordic states, Austria or the Netherlands. This statement is backed up by the Eurostat statistic about immigration in Europe, presented in table 4.1.

The table presents the numbers of legal immigrants coming from outside the EU in 2008, 2009 and 2010. It would have been more relevant to present a statistic of illegal non-EU immigrants, but such a statistic is impossible to put together. However these numbers are able to show what are the country preferences of the Non-EU legal immigrants and it is valid to assume that their preferences correspond to the ones of the illegal immigrants. As it can be seen in the table, the numbers in the states brought up by Mr. Tutilescu are among the highest in Schengen if we consider the rapport between immigrants number/state size/population, and the fact that most of these states are not direct neighbours with the countries which provide most of the immigrants, which are situated in Northern Africa, Western Asia and the Middle East, according to the 2011 Frontex Risk Analysis.

**Table 4.1. Non-EU Immigration in Schengen Member States**

GEO/TIME	2008	2009	2010
Belgium	:	:	49,761
Czech Republic	60,476	37,718	14,811
<b>Denmark</b>	<b>14,192</b>	<b>13,092</b>	<b>13,986</b>
<b>Germany</b>	<b>194,226</b>	<b>120,865</b>	<b>138,593</b>
Estonia	913	1,141	657
Greece	47,966	53,556	35,311
Spain	495,541	321,324	281,644
<b>France</b>	<b>81,097</b>	:	<b>82,447</b>
Italy	274,863	262,960	299,748
Latvia	877	1,024	1,213
Lithuania	2,426	1,338	882
Luxembourg	2,647	2,477	2,904
Hungary	16,399	10,364	:
Malta	3,265	2,041	713
<b>Netherlands</b>	<b>34,706</b>	<b>30,688</b>	:
<b>Austria</b>	<b>30,227</b>	<b>19,382</b>	<b>18,721</b>
Poland	8,552	:	:
Portugal	15,973	10,209	5,398
Slovenia	21,041	21,000	8,519
Slovakia	7,511	7,105	6,143
Finland	11,724	10,733	10,378
<b>Sweden</b>	<b>47,804</b>	<b>51,457</b>	<b>49,049</b>
Liechtenstein	46	82	83
Norway	18,708	19,980	20,486
Switzerland	43,571	42,640	44,135

Source: Eurostat

The fact that the Netherlands, France and Germany are among the states which have to face a very big illegal migratory pressure can only confirm that they have all the interest in keeping Bulgaria's and Romania's land border controls into place, further contradicting the official reasons for not welcoming the two states in the area without borders.

Finally, with regard to the possibilities of travelling from Greece, one may think about why the illegal immigrants would go through all that risk of passing so many terrestrial border controls when they can take advantage of the other possibilities and travel from Greece to their targeted state by air or sea, where there are no other borders. This is why the EU has enforced the Council Directive 2001/51/EC. This directive applicable in all the MS provides for heavy fines inflicted to the carriers who transport illegal immigrants across the area without borders. Furthermore, the carriers are obliged to support the costs of sending back the immigrants to their countries. Thus, the carrier companies have all the interest in checking the visa and passport of a non EU citizen before issuing a travel ticket. Of course, this doesn't mean that there are no illegal immigrants travelling from Greece to the other MS through air or sea, because they can do that with the help of forged documents, phenomena which, according to Mr. Tutilescu, has really grown in the past few years. There are now very experienced criminal networks of document forgers which have formed in Greece with ramifications across all Europe. Mr. Tutilescu also explains the terrestrial options of the illegal immigrants which are on one hand travelling with forged documents in personal cars or transport lorries or, on the other hand, the most frequently used method, hiding into transport vehicles.

However, if BG and RO would join Schengen, the illegal immigrants would not have to bother anymore to acquire forged travel documents, because they would have a clear terrestrial path towards the other Member States.

In the light of the three aspects presented above the analysis at this point has acquired the following knowledge:

- The most popular entry point for illegal immigrants is at the land border between Turkey and Greece;
- Illegal immigrants coming from outside Europe intend to reach one of the well developed Western European states;
- Their possibilities to travel further from Greece are air, maritime or terrestrial. In the case of the first two, they can only succeed by acquiring forged travel documents and once they have them, they do not have to pass any border controls. In the terrestrial case they can either travel with forged documents or by hiding in transport vehicles, in any case having to pass through at least three border controls (or none, if BG and RO would join Schengen).

Therefore, after being aware of the huge number of detected illegal crossing attempts at the border between Turkey and Greece, and assuming that the number of undetected illegal crossings is far bigger<sup>21</sup>, it is fair to ask the question why the Greek border is so vulnerable.

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<sup>21</sup> This assumption will gain validity further below.

Both sources, the head of the Romanian Schengen Department and the Frontex Risk Analyses offer the same two arguments to answer this question.

Firstly, according to Mr. Tutilescu, Turkey's visa liberalisation policy with the other countries in the region is a very big facilitator of this situation. The Frontex Risk Analysis also draws attention on the fact that Turkey's so-called visa-free neighbourhood policy allows for the nationals of 60 countries to travel to Turkey without any visa requirements and among these countries are Iran, Afghanistan, Pakistan and Iraq. The last three countries have provided the biggest number of immigrants in 2010 according to Frontex. So basically, by looking at the world map it is possible to see that it is fairly easy for these immigrants to reach Turkey, where they enjoy free passage and subsequently reach the border with Greece, which represents the quickest way to enter the Schengen area. This fact puts a tremendous pressure on the Greek border system.

Secondly, Mr. Tutilescu states that following the economic crisis that hit Greece, the police forces designated to secure the borders were decreased and there is also a lack of motivation among the police forces, because of several salary cuts. In other words, in spite of facing a huge migratory pressure, Greece has decreased the numbers of the police forces meant to secure the external borders of the Schengen area in this sensitive situation and also has diminished their salaries several times. The Frontex Risk Analysis from 2012 confirms that Greece is among the MS that have taken austerity measures in the area of border controls and also draws attention to the fact that, because of these measures, the problem of corruption among police border forces might become exacerbated. This lack of motivation among the police border forces also validates the assumption raised above, that the number of undetected illegal border crossings is far greater than the number of the detected ones.

These arguments have provided a very considerable answer to the question of why Greece is unable to properly secure its section of the external borders of the Schengen area.

Thus, after showing that Greece has a problem with securing the external borders of the Schengen area, and why it has this problem, it is now very valid to consider that the true reason for BG and RO not joining the area without borders until now is because their border controls are used as filters to stop the illegal migratory flow from Greece to the other MS. This option is justifiable to a large extent, because if the two states would have joined Schengen, it would have been extremely difficult to control the huge migratory pressure and this could have caused immense problems not only to the targeted MS, but to the whole principle of free movement.

#### **4.2.3. The possibilities for Bulgaria and Romania**

It is now possible to proceed in the analysis with the purpose of seeing how Bulgaria and Romania will be affected by the potential enforcement of the two new Regulations coming from the Council of the EU and subsequently answer the second under question of the project's problem formulation. Or, in other words, (after establishing the liberal intergovernmentalist character of the Regulation proposals, in the first phase of the analysis), it is now possible to determine the plan of the Member States to deal with a situation where two states have complied with the Schengen acquis but they cannot join the

area without borders because their active border controls are essential in keeping the stability in the area of free movement.

I will propose two scenarios of what will happen with BG and RO when the two Regulations will be enforced. In both scenarios it will be assumed that the evaluations carried under the new Schengen evaluation mechanism will identify serious deficiencies that may be considered *“exceptional circumstances putting the overall functioning of the area without internal border controls at risk”*, at the Greek external borders. This is without any doubt considering the facts presented above, in the section regarding Greece’s problem.

In the first scenario, after the two Regulations will be enforced, the MS will recommend to Greece, through the Council, to maintain<sup>22</sup> the internal border with BG and subsequently Bulgaria and Romania will join the Schengen area. This means that the illegal migratory flow will still be guarded by one border control and probably by other additional measures around the Greek-Bulgarian border, while BG and RO will finally be able to enjoy the deserved right of free movement.

The second is a status quo scenario, where, after the Regulations will be enforced, Bulgaria and Romania will still not join the Schengen area. In this case, MS will decide that it is better to have three border controls instead of one (as in the above scenario) to face the serious threat of illegal immigration.

I am not to say which is the more plausible scenario, but what is certain is that, once the Regulations will enter into force, in case the first scenario will apply, since the reintroduction of the controls can only go as up to two years, the EU will still have to find an effective solution to the Greek problem. On the other hand, in case the second scenario will apply, it is going to become harder and harder for the MS to justify why Bulgaria and Romania are not welcomed in Schengen and undoubtedly they will have to face a much stronger pressure coming from all sides, from the two states, from the media and from the European institutions. **In my opinion, remembering the two step admission proposed by Germany and France (presented in the introduction chapter), a combination of the two scenarios will be the most probable solution which will be chosen by the Member States. More precisely, Bulgaria and Romania will join Schengen with their air and maritime borders but not with their land borders. In this way, the Bulgarian and Romanian citizens will enjoy the right to travel freely in the area without borders mainly by air (because by sea, they can only travel from Bulgaria to Romania and vice versa, because the Black Sea doesn’t offer any other possibilities), and still, the land border controls will continue to act as filters meant to control the illegal migratory flow.** It remains to be seen if the two countries on one side and the other Members besides Germany and France, on the other side, will accept this compromise solution.

**Therefore, the answer proposed by this analysis for the second under question of the problem formulation is the following:**

**If and after the Regulation regarding the new Schengen evaluation mechanism and the Regulation regarding the temporary reintroduction of the controls at internal borders will be enforced, Bulgaria and Romania may, in the best case scenario for them, join the**

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<sup>22</sup> Maintain and not reintroduce, because the border control is currently active, given the fact that Bulgaria is not in Schengen.

**Schengen area; may not join the area, in the worst case scenario for them; or may only partially join the area without borders, in the most likely scenario.**

Also from this phase of the analysis a preliminary answer for the problem formulation's main question can be extracted. The fact that the Council has put forward these proposals can be seen as the intergovernmental solution offered by the MS to solve the problem of Romania and Bulgaria not joining the area without borders which means that this is one of the short run objectives of the Regulations. Since both states have demonstrated that they comply with the Schengen acquis, their adhesion, in this manner, can only signify that European integration is successfully led further by a liberal intergovernmentalist approach. Of course, this answer is only valid if the first scenario presented above will apply.

#### **4.3. Phase three – why do the Member States need the new Regulations?**

This final phase of the analysis has the purpose of finding an answer to the project's main question of the problem formulation. In the light of what was discovered earlier in the analysis, that the theoretical character of the two Regulation proposals is liberal intergovernmental and since the European Union doesn't participate, in its full complexity in the activities that will follow after the enforcement of the two proposals, it is valid to claim that the investigation which will be developed below has the objective of finding why the national governments of the MS need these two Regulations. So, perhaps the question should suffer a slight modification, in order to be completely accurate: **Why do the Member States need two new Regulations which strengthen the Schengen Evaluation Mechanism and provide new measures for the temporary reintroduction of controls at the internal borders of the Schengen area?**

There is no doubt that the short run objectives of the two Regulations is to bring a solution to the situation at the Turkish-Greek border and possibly to provide a solution for the adhesion of Bulgaria and Romania at the Schengen area, but we cannot know that until we will see if the two states will actually join the area after the enforcement of the proposals. However, since liberal intergovernmentalism presumes that the national governments lead the European integration according to their own national interest; in order to find the real important, long run objectives it will be necessary to dig much deeper in the core of what currently happens in the social and political spheres at the national and European levels.

The economic recession through which Europe is going has deeply affected the European citizens well being and trust in both European institutions and national governments. The inflation rate has constantly risen in most of the MS which means that the European citizens cannot afford to maintain the same living standard which they had in the beginning of the 2000's. Table 4.2 illustrates the development of the inflation rate in the EU as a whole and in selected Member States.

**Table 4.2: Inflation rate in the EU:**

GEO/TIME	2004	2005	2006	2007	2008	2009	2010	2011
European Union (27 countries)	2.3	2.3	2.3	2.4	3.7	1.0	2.1	3.1
Belgium	1.9	2.5	2.3	1.8	4.5	0.0	2.3	3.5
Denmark	0.9	1.7	1.9	1.7	3.6	1.1	2.2	2.7
Germany	1.8	1.9	1.8	2.3	2.8	0.2	1.2	2.5
Greece	3.0	3.5	3.3	3.0	4.2	1.3	4.7	3.1
Spain	3.1	3.4	3.6	2.8	4.1	-0.2	2.0	3.1
France	2.3	1.9	1.9	1.6	3.2	0.1	1.7	2.3
Italy	2.3	2.2	2.2	2.0	3.5	0.8	1.6	2.9
Luxembourg	3.2	3.8	3.0	2.7	4.1	0.0	2.8	3.7
Netherlands	1.4	1.5	1.7	1.6	2.2	1.0	0.9	2.5
Austria	2.0	2.1	1.7	2.2	3.2	0.4	1.7	3.6
Poland	3.6	2.2	1.3	2.6	4.2	4.0	2.7	3.9
Portugal	2.5	2.1	3.0	2.4	2.7	-0.9	1.4	3.6
Finland	0.1	0.8	1.3	1.6	3.9	1.6	1.7	3.3
Sweden	1.0	0.8	1.5	1.7	3.3	1.9	1.9	1.4

Source: Eurostat

Furthermore, the economic recession has deeply affected both public and private sectors so many austerity measures were taken, while many companies have gone bankrupt or had to relocate to other places of the world, in order to survive. The effects of this development were devastating especially in the end of the 2000's when, in some cases the unemployment rates have reached historical high figures. Table 4.3 presents the development of the unemployment rates in some of the Member States and EU as a whole, according to Eurostat:

**Table 4.3: Unemployment in the EU:**

GEO/TIME	2007	2008	2009	2010	2011
European Union (27 countries)	7.2	7.1	9.0	9.7	9.7
Belgium	7.5	7.0	7.9	8.3	7.2
Denmark	3.8	3.4	6.0	7.5	7.6
Germany	8.7	7.5	7.8	7.1	5.9
Estonia	4.7	5.5	13.8	16.9	12.5
Greece	8.3	7.7	9.5	12.6	17.7
Spain	8.3	11.3	18.0	20.1	21.7
France	8.4	7.8	9.5	9.7	9.6
Italy	6.1	6.7	7.8	8.4	8.4
Luxembourg	4.2	4.9	5.1	4.6	4.9
Netherlands	3.6	3.1	3.7	4.5	4.4
Austria	4.4	3.8	4.8	4.4	4.2
Poland	9.6	7.1	8.2	9.6	9.7
Portugal	8.9	8.5	10.6	12.0	12.9
Finland	6.9	6.4	8.2	8.4	7.8
Sweden	6.1	6.2	8.3	8.4	7.5

Source: Eurostat



The raise of the unemployment rate has provided a serious fear for the European citizens that their job positions are threaded and the raising numbers of illegal immigration in the EU has made them believe that they are in danger of losing their jobs in the favour of foreigners who are maybe more likely to accept harsher work conditions and lower salaries, conditions which, in the context of the crisis, many employers were tempted to take under consideration, in order to assure their survival. The Eurobarometer 75 from spring 2011 presents the fact that European citizens see as the first two problems at the European level, the economic situation and unemployment and, as the main problem not related to the economy, they identify immigration.

These facts linked with other aspects, such as the raise and popularisation by the Media of the transnational organised crime frequently involving non-EU immigrants; have made the European citizens to believe that nor the European institutions nor their national governments are doing enough to protect them and they have started showing their lack of satisfaction towards both levels.

A good way of identifying the European citizens' unhappiness with the European institutions is by having a look at the development of the level of trust they have in them.

Eurobarometer 75 from spring 2011 shows that the trust in the European institutions and in the EU as a whole has decreased significantly, all the institutions losing relevant percentages in the level of trust:

- In the case of the European Parliament, 45% of the Europeans say they trust the EP and 38% say they do not trust the institution, while 17% do not have any opinion. This shows a 3% drop in the trust since 2010 while the distrust has gained 1%.
- The European Commission has gained the trust of 40% of the European citizens and the distrust of 37%, while the percentage of the don't knows is 23%. This means that the level of trust has lost four percentages while the level of distrust has won one percentage since 2010.
- The Council of the EU has lost four percent in the trust of the citizens since 2010, reaching a figure of 36%. The distrust level has reached 35%, winning one percent since 2010.
- Finally, the EU as a whole has the trust of 41% of the European citizens, with less than two percent than in 2010 while the distrust level has reached 47%, winning two points since 2010. The figure of the citizens who have no opinion is rated at 12%. (Eurobarometer 75 Spring 2011; 42, 43)

In this context, it can be considered that the European Commission has attempted to show that the EU can handle the illegal immigration problem in a supranational way, by trying to enforce the original proposals for the Schengen evaluation mechanism and for the reintroduction of border controls. This would have been a communitarian answer to the concerns of the European citizens which, without any doubt, would have raised the level of trust regarding the EU. However, since the two proposals coming from the Commission have been rejected, this strategy to regain the trust of the European citizens has failed.

Regarding the national level, here, citizens throughout Europe have been much harsher in showing their lack of satisfaction and this situation can be observed by having a look at the recent elections in Europe, where, in numerous states, parties from the far right or the far

left have started to put their mark on the political environment through emotional, populist programmes and slogans which in several cases refer to anti-immigrant policies.

In **Greece**, in the parliamentary elections from June 2012, the radical left coalition “Syriza” has won over 26% of the votes, being the second choice of the Greeks after the “New Democracy” who has won over 29% of the votes. Syriza has managed to become the second most voted party in the country by using a very strong anti-European message.

Furthermore, the extreme far right party, “Golden Dawn” came in fifth with over 6%, winning 21 seats in the Parliament. This party has an extreme anti-immigrant message, being linked with several violent attacks on African and Asian immigrants. (Daily Mail, 2012)

In **France**, in the first round of the presidential elections in May 2012, the candidate from the far right party “Front National”, Marine Le Pen came in third with 17.9% of the votes, the highest score in the history of this anti-European party. (The Guardian, 2012)

In **the Netherlands**, parliamentary elections were held in early September 2012 after the anti-immigration, extremist party, “Freedom party”, managed to bring down the centre-right government, by withdrawing its support earlier this year. In the elections, the extremist party has lost some seats in the Parliament (won only 15 and previously had 24), but still, it came in third place in the elections. (BBC News, 2012)

In **Austria**, in the parliamentary elections from 2008, two far right parties with anti-immigrant messages took 29% of the votes. The Freedom Party had 18% and the Alliance for the future of Austria had 11% of the votes. (The Telegraph, 2012) In the upcoming parliamentary elections, from 2013, the Freedom Party is expected to be very successful, situated on the second place in the polls after the Social Democrats.

Furthermore, extremist parties have good positions in the polls also in other MS such as Belgium or Denmark, where parties such as Vlaams Belang or Danish Peoples Party are persuading important percentages of the population with anti-immigrant messages.

This development in the recent elections has certainly suggested to the politicians that currently form the national governments of the MS that they could lose their positions in the near future if they do not prove they are able to deal with the problem of illegal immigration effectively. Of course, the national governments had to be very careful in thinking through the measures which they can take in order to demonstrate that they can handle the illegal immigration problem, because they have to do that without affecting the right of free movement, which is the second thing that comes in the mind of the European citizens when asked what they understand when thinking about the EU, after the Euro currency, according to Eurobarometer.

Thus, through the new proposals, the MS would like to show that there can be free movement in Europe, but in the same time there is also security at the external borders of the Schengen area. Through the Regulation regarding the evaluation mechanism, the MS show that they are the ones who are able to efficiently identify where there are deficiencies in guarding both external and internal borders and through the Regulation regarding the reintroduction of border controls, the MS want to show that they have the means to, on one hand, protect their citizens in case it is needed and on the other hand, take measures in case one state is not doing its job good enough in securing the borders.

**Therefore, the answer to the main question of the problem formulation, proposed by this analysis is that the national governments of the Member States need the two Regulations which strengthen the Schengen evaluation mechanism and provide measures for the temporary reintroduction of controls at the internal borders of the Schengen area,**

**because they need to show to their citizens that they can continue to move freely in Europe, but in the same time, they do not have to fear about the side effect which free movement brings, namely a more prominent illegal immigration, because the Member States have the necessary means to efficiently control the illegal immigration;** with a near future sight on solving the problem of Greece which may also mean that Bulgaria and Romania may be able to finally join Schengen.

## 5. Conclusion

The final chapter of the thesis will begin by summarising the findings of the three phases of the analysis. This will be followed up by a discussion about the future perspectives of the Schengen area with the new Regulations in place.

During the first phase of the analysis it has been established that the Regulation proposals coming from the Council of the EU have a liberal intergovernmentalist character which means that the national governments of the Member States have taken upon themselves the responsibility of developing the European integration in the field of free movement within Europe. Previously to the actions of the Council we have seen that the European Commission has tried to impose its neofunctionalistic approach to develop European integration in this field, but has failed; its proposals being rejected by the Council, most likely because the MS were not willing to let the supranational institution to call the shots in these matters which are very close to their national sovereignty rights.

In the second phase of the analysis it has been found that these new Regulations can have a decisive effect in the adhesion of Bulgaria and Romania to the Schengen area, but in the same time, they can have almost no effects. The Regulations provide the necessary means to solve, at least temporarily, the problem of Greece, and once this problem will be solved, the Bulgarian and Romanian border controls will no longer be essential in controlling the illegal immigration flow. But, whether the two countries will join Schengen or not following the enforcement of the two Regulations is hard to predict. It all depends on the political will of the Member States, who have the only say in this matter.

In the final phase of the analysis it has been established why the national governments of the MS need these Regulations. After in the second phase it has been found that the Regulations are needed in the short run, to provide the necessary means of dealing with the Greek problem and possibly to allow Bulgaria and Romania to join the area without borders. On the long run, the national governments need these Regulations to demonstrate to their citizens that they are capable of dealing with the problem of illegal immigration even if it is difficult to do so in an area with no internal borders. Basically the message sent by the MS with these regulations is twofold: on the one hand they are transmitting that there can be free movement within Europe but with rules which all the Member States have to obey. If someone doesn't carry out its duties as it should be, the MS have the necessary means to

identify and take measures. On the other hand they are transmitting directly to their citizens that they don't have to worry in case something extraordinary will hit their country, because they can protect them by reintroducing the controls at the borders until that something will be dealt with.

Looking retrospectively, it can be considered that the EU has tried to send, through the original Commission's proposals, the same message to the European citizens that the Member States are trying to send now. There is no doubt that the European Institutions have to justify the huge public budgets which they spend each year and it would have been a very good opportunity to show that free movement, one of the fundamental principles of the EU, can be properly controlled by the supranational. This is why the matter is so important for the EP (surely backed up by the Commission) that it has seized all the cooperation with the JHA Council until the issue will be solved. After the entry into force of the Regulations, by looking at their content, we will be able to see what theory drives European integration forward in this field and also whether the supranational or the national has won this dispute and thus provide the protection which the European citizens need. At this point it looks like the Member States have managed to impose their point of view over the EP and the Commission, but the dispute is not over yet.

With the current content of the Regulations, it looks like the MS will have all the necessary means to bring stability to the area of free movement, an area which, without any doubt, needs more control, given the huge illegal migratory pressure which it faces. However, these Regulations represent a very powerful tool in the hands of the national governments. Without any neutral, supranational involvement, the national governments can use this tool in the way it suits their own interest, and the primary interest of any political party which is in chair is to get re-elected. Being established earlier, in the analysis, that immigration is a very important issue in the eyes of the European citizens, the fact that a national government may, at some point before the elections, decide to abusively reintroduce the border controls and accompany this measure with a slogan like for example "we protect our citizens, the jobs in our country belong to our citizens", can provide a serious advantage in the electoral race. Therefore, there is a huge risk that these Regulations may no longer be used, at some point, to bring stability to the area of free movement, and instead, the national governments may use them for populist purposes, situation which, at the end of the day, can only bring disruption and not stability in the area of free movement.

A far worse situation in my opinion is given by the changeable character of the national governments. More precisely, if in one or more Member States the elections will be won by a more radical party; it may decide to use these Regulations in a neorealist way, in order to gain security for its state. This basically means that a state will reintroduce its border controls, by the power provided by the Regulations, and decide to seize all cooperation with the other states in the field of free movement, in order to secure its borders. This situation may lead to the end of European integration in the area of border controls, police

cooperation and the other aspects provided by the Schengen acquis. Of course, it is difficult to imagine such a situation at this point, and the two Regulations alone cannot lead to such a development, but if they will be accompanied by other decisions which will also provide such small “exits”, through which neorealism can enter, it is valid to consider such a scenario in the future.

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## Annex 1: interview with the head of the Romanian Schengen Department

English Version

Dan Bodunescu (DB): Good afternoon Mr. Tutilescu, if you would agree, let's begin with a short presentation of yourself.

Marian Tutilescu (MT): My name is Marian Tutilescu, I am a Police Quaestor-in-Chief, I am the head of the European Affairs, International Relations and Schengen department in the Romanian Ministry of Administration and Interior. This department has the role of coordinating the whole field of police cooperation and more precisely the cooperation which involves the participation of all the structures of the Ministry of Administration and Interior, respectively the Police, the Border Police, the General Inspectorate for Emergency Situations and the Gendarmerie. So, it is a larger field from which I would select a subsequent field, the coordination of all the activities related to the preparation of Romania's adhesion to the Schengen area, and, of course, after the adhesion, the coordination of all the activities provided by the Schengen Acquis, as it is known that the activities of evaluation and monitorization will continue after the adhesion, as well.

DB: I would like to start with the Schengen Evaluation Mechanism, the new mechanism which is about to be introduced within the Schengen frame. How do you believe that this mechanism will change the Schengen area?

MT: The enforcement of the new mechanism will definitely raise the level of security within the Schengen area, because it contains a set of measures which were not even foreseen up until now, like, for example, the limitation of the right of free movement for certain periods of time and for more reasons than the ones already existing. At this very moment, there is only one possibility in which the right of free movement can be limited within the Schengen area, when a Member State faces a threat to the public security, it can decide to temporarily, for no more than 30 days, to limit the right of free movement. In this case, a Member State can reintroduce its border controls if there is a risk of threat for its internal security. This happens especially in the case of sports events, Poland has done it during the European Football Championship, and Austria has also done it during the previous football championship, and there are other examples as well. The new mechanism provides other circumstances in which the right of free movement can be limited. The Member States can decide, with the approval of the European Commission, or they can be compelled to reintroduce their internal border controls for a period of up until two years. Of course, here there is a friction of opinions between certain political groups within the European

Parliament, regarding the fact that the most valuable gain of the Schengen area, the right of free movement shouldn't be affected or at least it should be affected only in the most sensible circumstances. However, in the European Council of Internal Affairs, an agreement was reached regarding the circumstances when such a decision should be taken. Of course, at this very moment there is, still, a conflict between the European Parliament and the Council; the situation is still blocked, but important steps were made, including through a letter sent by Martin Schulz, the president of the European Parliament, to the Cyprus Presidency of the European Union and clearly the situation is much less tensed. I would like to remind you that the tension was built by the change of the judicial basis of the mechanism, change that was done by the Council and which transforms the mechanism from a community based mechanism into an intergovernmental mechanism, without any participation from the European Parliament and with very little involvement of the Commission.

DB: Do you consider that this blockage will be solved without any alteration of the proposal, as it is right now?

MT: I don't think that the proposal will be changed, at least not in the area of the limitation of the right of free movement. The problems are rather related to the set of measures regarding the evaluation. There is, on one hand the problem of the legal status of the mechanism and on the other hand, a problem regarding the involvement of the European Parliament and European Commission in the procedures of evaluation. I believe that a compromise will be reached, but as far as the set of measures related to the reintroduction of border controls is concerned, there is only one debatable situation, when a state decides to reintroduce its controls as soon as it believes that its internal security could be threaten. Here, several Member States have raised concerns that there is a risk of abuse or that this decision could be taken in a political context or that the circumstances might not be sufficiently justified.

DB: Ok, I would like to get back to the measure of compelling one state to reintroduce the border controls if it faces problems. How will this procedure take place? Following the evaluations of the European Commission?

MT: Exactly, the European Commission, through its external agencies, Frontex and Europol, makes the evaluations and sends a proposal to the Council who is in charge of making a decision.

DB: And this decision will require unanimity in the Council?

MT: It is certain that the state in cause will be against such a measure, but so far the set of measures has not reached the stage of becoming the subject of a political vote in the Council. It should reach this stage in September, but, because of the already mentioned blockage, I believe we will not reach an agreement before October. Anyway, we can only

talk about unanimity if it's going to be decided that the state in cause will not have the right to vote.

DB: I would like to ask why you believe that such a mechanism is needed.

MT: There are two circumstances which led to the enforcement of such a mechanism. On one hand there is the huge migratory wave generated by the Arab Spring and the situation created in the South-Eastern Europe, more exactly at the border between Turkey and Greece, where a very strong migratory phenomenon has been created. On the other hand, there is a necessity of building a common European asylum system because at this very moment, several Member States are extremely affected by the differences between the national procedures of granting asylum. These two circumstances have led the European Union in a very sensible context which has had some extremely unpleasant consequences like the appearance of a feeling of distrust within the citizens of the EU regarding the functionality of the EU as an entity, regarding the principle of free movement, and regarding the capacity of the European institutions to provide the social necessities required by the European citizens. This situation has led to the raise of several extremist parties in the elections that have taken place recently within the EU, even in states with a very old democratic tradition such as The Netherlands or Finland. Therefore, at a state level but also from within the European Parliament, more and more voices have asked for a higher level of security of the Schengen area.

DB: So it can be said that both at state level and at a European level there is a demand for higher security and a tendency of closure between the Member States...

MT: Because of the scepticism towards the capacity of the European institutions to secure the borders of the borderless state, there have been developments, including in the political spheres of several Member States, endorsing for a strictly intergovernmental approach, on the principle "I shut down my borders when I believe I have a problem". This leads to the possibility of committing an abuse and can jeopardise the benefits of the right of free movement. For example, have a look at the slogan of a Dutch party: "Brussels is theirs, The Hague is ours".

DB: The Frontex Risk Analyses in the last two years show that on the traditional routes of illegal migration, the Central and West Mediterranean routes, a decrease in the migratory process was registered, while the South-Eastern Mediterranean route, respectively the route from Turkey to Greece is becoming more popular within the ranks of the illegal immigrants. What causes this development?

MT: First of all because of the vulnerability of the Greek frontiers. Let's keep in mind that Greece has a huge number of islands which are very hard to secure and because of this, the Greek maritime borders are extremely penetrable. Basically, an immigrant can reach any of these islands using different ways and from here; he/she is already in Schengen with various

possibilities of continuing the journey towards the targeted state. Another cause is represented by Turkey's policy to liberalise its visa regime with the neighbouring Arab countries, most of them being significant immigrant donors, such as Irak, Afghanistan or smaller states, including a significant number of Palestinian immigrants which choose this path in their purpose to reach the West European countries. Moreover, starting with last year, the side effects of the Arab Spring are very strongly felt. These effects have not passed; they are still very significant because of the conflict in Syria, so this is how an unforeseeable event has caused a domino effect in several Member States. The first affected states were Greece, Malta and Italy, because of their geographical position, and afterwards, France which represented the main destination for the Northern African immigrants. Actually, in 2011, there was a tension between Italy and France because of the fact that all the immigrants who were reaching Italy were heading for France and because of this, the French actually reintroduced their controls in a rather masked fashion.

DB: So France is one of the targets of the illegal immigrants. What other European states are in the same position?

MT: The well developed states, because in these economically developed states there are very attractive social security systems which allow the individual to gain social benefits which sometimes can be even bigger than the salary that can be earned in other places of the world for qualified labour. So, of course, there is a natural economical interest that makes the citizens of less developed countries to try and relocate in the more developed ones. So, as target countries I would include Germany, Austria, the Northern states, especially Sweden, the Netherlands.

DB: Ok, if we could return to the situation of Greece, what alternatives have the illegal immigrants to travel further towards the target states, after they arrive in Greece?

MT: There are the maritime routes, with the ferry directly to Italy or France, or the air routes, and even if these routes are quite difficult, some of them are successful, with the help of forged travel documents. Right now this phenomenon is really growing; there are experienced networks of document forgers which are able to send significant numbers of immigrants across Europe through air routes. And finally there are the terrestrial routes, and here there are two main situations: crossing through border points with forged travel documents and crossing with the help of guides. Guides who either form groups of immigrants and smuggle them across the borders through other points than the organised border points or they hide them in transport vehicles, attempting to cross the border through the designated border points. These guide networks usually have a transnational component. Unfortunately, with the economic and financial crisis that hit Greece, its frontier line is quite vulnerable because the police forces designated to secure the borders were decreased and there is also a certain lack of motivation because of the several salary cuts. These would be the main possibilities for illegal immigrants to cross the borders. I would like to mention that, at the Romanian borders with Hungary, with the help of the

modern equipment possessed by the Border Police and the Customs Office, respectively the mobile x rays scanners, which scan the cargos of the transporters and identify the human beings hidden in them, we were able to spot significant numbers of illegal crossing attempts.

DB: Further, I would like to focus towards Bulgaria and Romania. Do you believe that the possible adhesion to the Schengen area of the two states, in the near future, will simplify the trip of the immigrants, given the fact that basically, after the adhesion, there will be no border controls from Greece to the Western Europe?

MT: Looking from this perspective, it is obvious that this thing will happen. That is exactly why the adhesion in two steps was conceived (n.r. first step, the adhesion with the maritime and air borders and second step, the adhesion with the terrestrial borders). This will allow Romania and Bulgaria to join the Schengen area, bearing in mind that all the requirements in the Schengen acquis were fulfilled and that there is only an unfair reason which keeps the two states outside the Schengen area. But in this context, the adhesion in two steps follows a certain logic and can also be beneficial. First of all, it gives the opportunity for the other Member States to see, through the first step, the way Romania and Bulgaria fulfil their responsibilities. In my opinion, there will be no problems here; I am absolutely convinced that both countries will successfully manage all the issues related to the securing of the borders. Actually, both countries are already connected at the Schengen Information System (SIS); we are active for more than one year and ten months, more exactly since the 5<sup>th</sup> of November 2010 and our results are extremely positive. Another aspect of the adhesion in two steps is the fact that a solution must be found for the perspective of lifting the controls at the terrestrial borders. At this very moment, if a full adhesion would happen, there would be an enormous migration flow from Greece towards the other European states. But, of course, we are thinking ahead about what can be done for us to join with the terrestrial borders. First of all, the new Schengen Evaluation Mechanism has to be enforced, so that measure of compelling a state to reintroduce the border controls to become active. There are, in my opinion, two scenarios:

- In one of the scenarios, Romania and Bulgaria will fully join Schengen in a relatively short time frame, and their border controls will be lifted. Of course, by then, Greece would not have solved its problems so there will still be large numbers of immigrants in the country. We, together with our Bulgarian colleagues, have invited the new Greek Internal Affairs Minister in Romania for a trilateral meeting at the level of Internal Affairs Ministers, with the purpose to discuss compensatory measures to deal with the problem. In other words, we would like to develop, separately from the border points, barriers that, one way or the other, will allow us to control the migration flow. Of course, we are prepared to take these measures knowing that this will generate a huge pressure on our asylum systems.

- The other scenario will suppose that, once Romania and Bulgaria have fully joined Schengen, Greece will be compelled to reintroduce its border controls.

DB: It can be said that so far, the border controls of Bulgaria and Romania have acted as security filters to prevent the illegal immigrants from travelling to the Western European states. Given the opportunities brought by the new mechanism, do you believe in the existence of a scenario where the two countries would fully join the Schengen area, but, at the same time, they would be compelled to maintain the controls at the borders? Because, as things stand right now, the immigrants have to pass at least over three controls (eg. Greece-Bulgaria, Bulgaria-Romania, Romania-Hungary), while in the case of the adhesion of the two states and the reintroduction of the Greek controls, they will only have to pass one obstacle, at the Greek border with Bulgaria.

MT: I don't believe that's the case. There is only the possibility that, following a proposal from the Commission, the Council would decide to reintroduce the Greek border controls. It would be much less complicated for us not to be welcomed in the Schengen area than to join and be compelled to maintain our controls.

DB: Mr. Tutilescu, we have reached the end of the interview, I would like to thank you very much for your cooperation and for the openness with which you have treated this interview.

## Annex 2: Eurostat statistical collection

1. Full table of the legal Non-EU immigration figures in the Schengen Member States between 2008 and 2010.

GEO/TIME	2008	2009	2010
Belgium	:	:	49,761
Czech Republic	60,476	37,718	14,811
Denmark	14,192	13,092	13,986
Germany	194,226	120,865	138,593
Estonia	913	1,141	657
Greece	47,966	53,556	35,311
Spain	495,541	321,324	281,644
France	81,097	:	82,447
Italy	274,863	262,960	299,748
Latvia	877	1,024	1,213
Lithuania	2,426	1,338	882
Luxembourg	2,647	2,477	2,904
Hungary	16,399	10,364	:
Malta	3,265	2,041	713
Netherlands	34,706	30,688	:
Austria	30,227	19,382	18,721
Poland	8,552	:	:

Portugal	15,973	10,209	5,398
Slovenia	21,041	21,000	8,519
Slovakia	7,511	7,105	6,143
Finland	11,724	10,733	10,378
Sweden	47,804	51,457	49,049
Liechtenstein	46	82	83
Norway	18,708	19,980	20,486
Switzerland	43,571	42,640	44,135

2. Full table showing the inflation rate levels in the EU between 2002 and 2011.

GEO/TIME	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
European Union (27 countries)	2.5	2.1	2.3	2.3	2.3	2.4	3.7	1.0	2.1	3.1
Euro area (17 countries)	2.3	2.1	2.2	2.2	2.2	2.1	3.3	0.3	1.6	2.7
Belgium	1.6	1.5	1.9	2.5	2.3	1.8	4.5	0.0	2.3	3.5
Bulgaria	5.8	2.3	6.1	6.0	7.4	7.6	12.0	2.5	3.0	3.4
Czech Republic	1.4	-0.1	2.6	1.6	2.1	3.0	6.3	0.6	1.2	2.1
Denmark	2.4	2.0	0.9	1.7	1.9	1.7	3.6	1.1	2.2	2.7
Germany	1.4	1.0	1.8	1.9	1.8	2.3	2.8	0.2	1.2	2.5
Estonia	3.6	1.4	3.0	4.1	4.4	6.7	10.6	0.2	2.7	5.1
Ireland	4.7	4.0	2.3	2.2	2.7	2.9	3.1	-1.7	-1.6	1.2
Greece	3.9	3.4	3.0	3.5	3.3	3.0	4.2	1.3	4.7	3.1
Spain	3.6	3.1	3.1	3.4	3.6	2.8	4.1	-0.2	2.0	3.1
France	1.9	2.2	2.3	1.9	1.9	1.6	3.2	0.1	1.7	2.3
Italy	2.6	2.8	2.3	2.2	2.2	2.0	3.5	0.8	1.6	2.9
Cyprus	2.8	4.0	1.9	2.0	2.2	2.2	4.4	0.2	2.6	3.5
Latvia	2.0	2.9	6.2	6.9	6.6	10.1	15.3	3.3	-1.2	4.2
Lithuania	0.3	-1.1	1.2	2.7	3.8	5.8	11.1	4.2	1.2	4.1
Luxembourg	2.1	2.5	3.2	3.8	3.0	2.7	4.1	0.0	2.8	3.7
Hungary	5.2	4.7	6.8	3.5	4.0	7.9	6.0	4.0	4.7	3.9
Malta	2.6	1.9	2.7	2.5	2.6	0.7	4.7	1.8	2.0	2.5
Netherlands	3.9	2.2	1.4	1.5	1.7	1.6	2.2	1.0	0.9	2.5
Austria	1.7	1.3	2.0	2.1	1.7	2.2	3.2	0.4	1.7	3.6
Poland	1.9	0.7	3.6	2.2	1.3	2.6	4.2	4.0	2.7	3.9
Portugal	3.7	3.3	2.5	2.1	3.0	2.4	2.7	-0.9	1.4	3.6
Romania	22.5	15.3	11.9	9.1	6.6	4.9	7.9	5.6	6.1	5.8
Slovenia	7.5	5.7	3.7	2.5	2.5	3.8	5.5	0.9	2.1	2.1
Slovakia	3.5	8.4	7.5	2.8	4.3	1.9	3.9	0.9	0.7	4.1
Finland	2.0	1.3	0.1	0.8	1.3	1.6	3.9	1.6	1.7	3.3
Sweden	1.9	2.3	1.0	0.8	1.5	1.7	3.3	1.9	1.9	1.4
United Kingdom	1.3	1.4	1.3	2.1	2.3	2.3	3.6	2.2	3.3	4.5
Iceland	5.3	1.4	2.3	1.4	4.6	3.6	12.8	16.3	7.5	4.2
Norway	0.8	2.0	0.6	1.5	2.5	0.7	3.4	2.3	2.3	1.2
Switzerland	:	:	:	:	1.0	0.8	2.3	-0.7	0.6	0.1



3. Full table of unemployment rate in the EU and Non-EU Schengen Member States between 2002 and 2011.

GEO/TIME	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
European Union (27 countries)	8.9	9.1	9.3	9.0	8.3	7.2	7.1	9.0	9.7	9.7
Euro area (17 countries)	8.5	9.0	9.3	9.2	8.5	7.6	7.6	9.6	10.1	10.1
Belgium	7.5	8.2	8.4	8.5	8.3	7.5	7.0	7.9	8.3	7.2
Bulgaria	18.2	13.7	12.1	10.1	9.0	6.9	5.6	6.8	10.3	11.3
Czech Republic	7.3	7.8	8.3	7.9	7.1	5.3	4.4	6.7	7.3	6.7
Denmark	4.6	5.4	5.5	4.8	3.9	3.8	3.4	6.0	7.5	7.6
Germany (including former GDR from 1991)	8.7	9.8	10.5	11.3	10.3	8.7	7.5	7.8	7.1	5.9
Estonia	10.3	10.0	9.7	7.9	5.9	4.7	5.5	13.8	16.9	12.5
Ireland	4.5	4.6	4.5	4.4	4.5	4.6	6.3	11.9	13.7	14.4
Greece	10.3	9.7	10.5	9.9	8.9	8.3	7.7	9.5	12.6	17.7
Spain	11.4	11.4	10.9	9.2	8.5	8.3	11.3	18.0	20.1	21.7
France	8.3	8.9	9.3	9.3	9.2	8.4	7.8	9.5	9.7	9.6
Italy	8.5	8.4	8.0	7.7	6.8	6.1	6.7	7.8	8.4	8.4
Cyprus	3.6	4.2	4.7	5.5	4.7	4.1	3.8	5.5	6.4	7.9
Latvia	12.8	11.3	11.2	9.6	7.3	6.5	8.0	18.2	19.8	16.2
Lithuania	13.8	12.4	11.4	8.3	5.6	4.3	5.8	13.7	17.8	15.4
Luxembourg	2.6	3.8	5.0	4.6	4.6	4.2	4.9	5.1	4.6	4.9
Hungary	5.6	5.8	6.1	7.2	7.5	7.4	7.8	10.0	11.2	10.9
Malta	7.4	7.7	7.2	7.3	6.9	6.5	6.0	6.9	6.9	6.5
Netherlands	3.1	4.2	5.1	5.3	4.4	3.6	3.1	3.7	4.5	4.4
Austria	4.2	4.3	4.9	5.2	4.8	4.4	3.8	4.8	4.4	4.2
Poland	20.0	19.7	19.0	17.8	13.9	9.6	7.1	8.2	9.6	9.7
Portugal	5.7	7.1	7.5	8.6	8.6	8.9	8.5	10.6	12.0	12.9
Romania	7.5	6.8	8.0	7.2	7.3	6.4	5.8	6.9	7.3	7.4
Slovenia	6.3	6.7	6.3	6.5	6.0	4.9	4.4	5.9	7.3	8.2
Slovakia	18.8	17.7	18.4	16.4	13.5	11.2	9.6	12.1	14.5	13.6
Finland	9.1	9.0	8.8	8.4	7.7	6.9	6.4	8.2	8.4	7.8
Sweden	6.0	6.6	7.4	7.7	7.1	6.1	6.2	8.3	8.4	7.5
United Kingdom	5.1	5.0	4.7	4.8	5.4	5.3	5.6	7.6	7.8	8.0
Norway	3.7	4.2	4.3	4.5	3.4	2.5	2.5	3.2	3.6	3.3