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NOTE

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| From: | Commission Services |
| To: | Delegations |
| Subject: | Follow-up to the Council Decision on the full application of the Schengen acquis in the Republic of Bulgaria and Romania |

Delegations will find attached a document on the "Follow-up to the Council Decision on the full application of the Schengen acquis in the Republic of Bulgaria and Romania", received from the Commission Services.

**Follow-up to the Council Decision on the full application of the Schengen *acquis*
in the Republic of Bulgaria and Romania**

On 30 December 2023, the Council unanimously agreed on the full application of the provisions of the Schengen *acquis* in the Republic of Bulgaria and Romania. From 31 March 2024, the Republic of **Bulgaria and Romania will be Schengen Member States applying the Schengen *acquis* in full** and the checks on persons at internal air and sea borders will be lifted.

Following questions received from the Bulgarian and Romanian authorities, as well as from other Member States, a number of legal and operational implications that will or may occur before and after 31 March 2024 require clarification.

The following clarifications provided by the Commission's services do not provide an authoritative interpretation of Union law, but aim to support a correct implementation of the Council Decision (EU) of 30 December 2023 (2024/210) on the full application of the provisions of the Schengen *acquis* in the Republic of Bulgaria and Romania as well as other relevant Union law.

Against this background, the Commission's services take the view that **until 31 March 2024** the following rules should remain applicable:

1. **Border checks** at air, land and sea borders between Schengen Member States and the Republic of Bulgaria and Romania

Until 31 March 2024, the border guards of the Member States of the area without controls at internal borders will continue to carry out border checks as prescribed by Articles 6 and 8 of the Schengen Borders Code, with a view to determining the right of entry of the persons coming from the Republic of Bulgaria and Romania. If the third-country national entering the Schengen area from the Republic of Bulgaria or Romania does not fulfil the entry conditions, the Member State concerned should refuse the entry to its territory in accordance with Article 14 of the Schengen Borders Code.

2. **Carriers' liability** based on national law or on Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention Implementing the Schengen Agreement.

The current regime applicable to the liability of carriers transporting foreign nationals into the territory of the Republic of Bulgaria and Romania should continue to apply until the controls at the internal air and sea borders are lifted on 31 March 2024.

3. **Advanced Passenger Information (API)**

The current regime applicable to API should remain in place until the controls at the internal air and sea borders are lifted on 31 March 2024.

4. **Return Directive**

Before 31 March 2024, the borders between the Republic of Bulgaria and Romania and between these Member States with the neighbouring Schengen States (Greece and Hungary, respectively) are considered external borders. Therefore, Schengen States as well as the Republic of Bulgaria and Romania can continue to make use of the derogations provided by Article 2(2)(a) of the Return Directive until the full accession of the Republic of Bulgaria and Romania to the Schengen area, *i.e.* until 31 March 2024.

In line with the Council Decision (EU) 2024/210, as of 31 March 2024:

- The Republic of Bulgaria and Romania will become **Schengen Member States fully applying the Schengen *acquis***.
- The Bulgarian-Romanian, Romanian-Hungarian, and Bulgarian-Greek land borders are to be considered as **internal borders where the checks on persons have not yet been lifted**.
- The time spent by third-country nationals in the Republic of Bulgaria and Romania is considered part of the **90 days allowed to stay in the Schengen area in any 180-day period**, irrespective of the border (air, land or sea border) those nationals has crossed to enter the territory of those Member States.

On that basis, the Commission services take the view that **as of 31 March 2024** the following rules should apply:

1. Tasks to be performed by the Republic of Bulgaria and Romania at the external borders of the Schengen area with non-Schengen Member States

Border controls

As of 31 March 2024, checks carried out by the Republic of Bulgaria and Romania at their external borders will be made in relation to the Schengen area and not only related to their own territory. As a consequence, the 90 days period of stay in the Schengen area in any 180-day period will start counting from the moment the third-country national enters the territory of the Republic of Bulgaria or Romania from outside the Schengen area.

If the third-country national does not fulfil the entry conditions required in Article 6 of the Schengen Borders Code when crossing the Bulgarian and Romania external borders, the Republic of Bulgaria and Romania shall apply Article 14 of the Schengen Borders Code on the refusal of entry valid for the whole Schengen area.

Registration in the Entry-Exit System (EES)

Once the EES is operational, all Schengen Member States, including the Republic of Bulgaria and Romania, will apply it in full. Thus, all third-country nationals (short-stay visa holders and visa exempt travellers) that enter the Schengen area (including via the external borders of the Republic of Bulgaria and Romania) will be registered in the EES. This registration should take place solely at the external Schengen borders and the exit record will only be created once the third-country national leaves the Schengen area.

Stamping of the travel documents:

To ensure consistency with the measures adopted following the full application of the Schengen acquis in Switzerland and in Croatia, the Commission services advise to follow the same approach as outlined in the Note circulated by the Council at the time of the accession of Switzerland. Accordingly, the third-country national should be asked about the final destination and the travel document should only be stamped at the first border crossing point when entering the Schengen area and not in subsequent internal border crossing points with other Schengen Member States, where border checks are still carried out. On exit, the stamp should be affixed at the last border crossing point before exiting the Schengen area via the external borders.

2. Situation at the internal borders

Third-country nationals crossing the internal borders, being air, sea or land, will not be considered as exiting the Schengen area and the rule of 90 days in any 180-day period will continue to apply. As abovementioned, no further registration in the Entry-Exit System (EES) should take place at the internal air, sea and land internal borders.

Furthermore, the travel document of the third-country national should not be stamped when crossing the internal borders, including the internal land borders where checks are still in place.

Air and sea borders to which controls with other Schengen Member States have been lifted

From 31 March 2024, any person, irrespective of their nationality, will be able to cross the internal air and maritime borders between the Republic of Bulgaria and Romania and the other Schengen Member States and between themselves without being subject to border checks in accordance with the rules laid out in Annex VI of the Schengen Borders Code. This is without prejudice to the rules referring to the checks on goods.

However, concerning extra Schengen maritime traffic¹, checks shall be carried out on passengers and crew on board of those ships in accordance with Article 8 of the Schengen Borders Code. There are, however, several exceptions depending on the type of shipping, including for the cargo connections between the same two or more Schengen ports under point 3.2.11 of Annex VI of the Schengen Borders Code². These connections are considered as intra Schengen maritime transport and therefore persons on board of these cargo ships will no longer be subject to border checks.

Situation at the internal land borders to which controls with other Schengen Member States have not yet been lifted

According to Recital 10 of Council Decision (EU) 2024/210 of 30 December 2023, a subsequent decision is required for the lifting of checks on persons at internal land borders.

¹ In accordance with the Schengen Borders Code Annex VI point 3.1. (general checking procedures on maritime traffic) all maritime traffic between Member States is considered to be extra Schengen maritime traffic.

² The cargo connections between the same two or more Schengen ports concern the fixed connections/itineraries, so-called Roll-on-Roll-off cargo ships that only sail from Schengen port A to Schengen port B and back and do not sail to any port outside the Schengen area.

Internal land borders include inland waterways (rivers and lakes). This means that the ferry connections between the Republic of Bulgaria and Romania³ are considered land border crossings under the Schengen Borders Code and any person, irrespective of their nationality, will still be checked when crossing these borders until a decision on the lifting of controls at the internal land borders is taken. This is without prejudice to the rules referring to the checks on goods.

3. **Visas** issued by the Republic of Bulgaria and Romania

Schengen visas

As from 31 March 2024, the Republic of Bulgaria and Romania will issue Schengen visas valid for the whole Schengen area. From this date, these two Member States will have full access to the Visa Information System.

A Schengen visa issued by the Republic of Bulgaria or Romania after 31 March 2024 will allow the holder to travel in the whole Schengen area, in accordance with the Schengen rules (no more than 90 days in any 180 days period), regardless of checks at internal land borders.

National short-stay visas already issued by the Republic of Bulgaria and Romania

In line with Article 2 of the Council Decision (EU) 2024/210, further explained in recital 8, national short-stay visas issued by the Republic of Bulgaria and Romania before 31 March 2024 shall remain valid during their period of validity. Nevertheless, holders of these national short-stay visas will only be able to travel in the Republic of Bulgaria, Romania and also to Cyprus, but not to other Schengen Member States⁴. Holders of a national short-stay visa issued by the Republic of Bulgaria or Romania wishing to travel to other Schengen Member States will need to apply for a Schengen visa.

4. **Residence permits and long-stay visas** issued by the Republic of Bulgaria or Romania

The residence permits and the long-stay visas issued by the Republic of Bulgaria or Romania will still be valid after 31 March 2024 and during their period of validity as specified in Article 2 of Council Decision (EU) 2024/210 of 30 December 2023.

Holders of residence permits issued by the Republic of Bulgaria and Romania in the uniform format in accordance with Council Regulation (EC) No 1030/2002 as modified by Council Regulation (EC) No 380/2008, or any other residence permits that have been already notified by the Republic of Bulgaria and Romania to the Commission in accordance with Article 39 of the Schengen Borders Code and published in Annex 22 of the Practical Handbook for Border Guards that are still valid after 31 March 2024, will be entitled to visa-free short stay in the other Schengen countries in accordance with the Schengen rules (no more than 90 days in any 180 days period) after 31 March 2024 and within the limits of the period of validity of those permits, regardless of checks at internal land borders.

³ For example, via de Danube river.

⁴ Decision No 565/2014/EU of the European Parliament and of the Council.

Holders of Bulgarian long-stay visas, issued by the Republic of Bulgaria and Romania still valid after 31 of March 2024 will be able to travel freely in the Schengen area in accordance with Schengen rules (no more than 90 days in any 180 days period) after 31 March 2024, regardless of checks at internal land borders.