

MEP Eugen Tomac opens legal action against EU Council, on non-acceptance of Romania in Schengen Area

MEP Eugen Tomac (EPP, the People's Movement Party, PMP) announced on Monday, in a video post on Facebook, that he decided, as a member of the European Parliament, to open an action against the Council of the European Union, at the Court of Justice of the European Union, in relation to Romania's non-acceptance of becoming a member of the Schengen area at the Justice and Home Affairs Council of December 8, 2022.

"We cannot accept for a single state to defy the Treaties of the European Union and the Schengen legislation and blocks, at the periphery of the European Union, a nation of over 20 million European citizens", justified the MEP, qualifying this act as "profoundly unfair and discriminatory".

The documents were submitted and registered on Monday, February 6 at the European Court of Justice (ECJ), which is a specialised court of the CJEU, based in Luxembourg.

Tomac explained that his action does not stop Romania's negotiation process with Austria, nor Bulgaria's with the Netherlands.

"It will only highlight the lack of loyalty of some European governments and institutions towards the Treaty and European legislation" and, he believes, "will compel the Council of the European Union to adopt the correct decision on the access of Romania and Bulgaria to the Schengen area, a process unjustifiably delayed for more than 12 years".

Eugen Tomac explains, in a press release, that it is an action for annulment, under Article 263 of the Treaty on the Functioning of the European Union (TFEU). He calls on the Court to declare the illegality of the implicit decision following the vote on December 8, 2022, by which the Council decides against the full application of the provisions of the Schengen acquis in Romania. This decision was not published in the Official Journal of the EU, as was the case with the decision to admit Croatia, but it still represents an actionable act as per Article 253 of the TFEU.

As a result, if the decision by which Romania is denied accession to the Schengen Area is considered illegal through its annulment by the Court, a new vote on the same decision will no longer be a political vote, but a technical vote, that will strictly take into account the Schengen evaluation conditions, which Romania fulfills, respectively it will be a positive vote.

Tomac claims that his main argument can be found in the Accession Treaty, which provides in protocol 1, Article 4 paragraph (2) that "The provisions of the Schengen acquis ... are applied on the territory of each of these member states only on the basis of a European decision adopted by the Council in this regard, after verification, in accordance with the Schengen evaluation procedures applicable in the matter, of the fulfillment on the territory of the respective state of the necessary conditions for the application of all relevant parts of the acquis".

He also invokes, among others, the principle of loyal cooperation between member states and the principle of loyal cooperation between the Union's institutions according to the TFEU, the freedom of movement of persons and goods from the same treaty, the principle of equal treatment and the principle of non-discrimination in the Charter of Fundamental Rights of the European Union.