

8. Tearing down the Schengen Wall

Alexandra Stiglmayer

Introduction

When the EU lifted the Schengen tourist visa requirement for Macedonians, Montenegrins and Serbians on 19 December 2009, street parties and celebrations erupted across all three countries. ‘Now I feel like a fully-fledged European,’ many people declared. The same jubilant mood was on show a year later when the EU lifted the visa barrier for nationals of Albania and Bosnia and Herzegovina.

The end of the visa requirement was greeted as evidence that the EU considered the Western Balkans part of Europe, as future members of the Union. At a time when the launch of accession talks with the EU looked very distant for these countries, it was a decision that strengthened the EU’s soft power in the region.

Yet EU interior ministers did not lift the visa requirement for political reasons only. They did so in exchange for a series of demanding reforms concerning border control, passport security and the fight against illegal migration, organised crime and corruption. These reforms have increased the EU’s internal security. The process that triggered them was a best-case example of EU conditionality at work. The EU subsequently made the same offer to its Eastern Partner Countries, Kosovo and Turkey.

This chapter tells the story of visa liberalisation in return for reforms – a new EU policy that was first tried in the Western Balkans and has become a foreign policy tool in its own right. It analyses the success of this policy and the challenges it has faced, and it presents possible solutions.

BACKGROUND

The origin of the EU's visa liberalisation policy

Western Balkan citizens who used to be nationals of Yugoslavia knew the value of the freedom of movement. They could travel freely to most countries in the world. This ended when Yugoslavia descended into war. The citizens of Croatia and Slovenia faced a visa requirement only briefly, but for all others – the citizens of Bosnia and Herzegovina, Serbia, the former Yugoslav Republic of Macedonia (FYROM), Montenegro and Kosovo – the visa requirement imposed by European countries was to remain in place for decades. Albanians had never known visa-free travel and longed for it as much as their ex-Yugoslav neighbours, having experienced decades of confinement during Communism. However, even after all the Balkan wars had ended with the 1999 Kosovo war, EU interior ministers did not want to hear of visa liberalisation. For them, the Western Balkans remained synonymous with conflict, refugees and organised crime.

A first, vague promise was made at the Thessaloniki Summit in June 2003 when EU leaders acknowledged 'the importance the peoples of the Western Balkans attach to the perspective of liberalisation of the EU's visa regime towards them' [Thessaloniki Declaration, 2003]. They held out the prospect of discussions with the European Commission on the necessary reforms. However, there was no serious follow-up.

A parallel development helped the Western Balkans inch closer towards visa-free travel. The EU had problems negotiating readmission agreements with other states. Such an agreement obliges a country to take back its citizens if they are detected in EU member states as irregular migrants. The country also has to accept irregular third-country nationals if there is evidence that they transited through it on their way to the EU.

In 2004, the EU decided to sweeten readmission agreements by offering visa facilitation in return [Council, The Hague Programme]. While visa facilitation does not eliminate the need for an entry visa, it makes the application procedure easier. This includes, among other things, simplified document requirements, a quicker decision-making procedure, a reduced Schengen visa fee of 35 euro instead of 60 euro, and long-term multiple-entry visas for reliable travellers.

Friends of the Western Balkans across the EU seized the moment. They demanded that the Western Balkans be among the first to benefit from visa facilitation. While this was agreed to in principle with relative ease [COREPER, 2005], it took lengthy discussions to convince the Council to actually authorise the Commission to negotiate the visa facilita-

tion and readmission agreements with Western Balkan states. The visa issue was still a touchy subject. The member states finally agreed in November 2006. This broke the ice.

During the negotiations of the visa facilitation and readmission agreements in 2006-2007, more and more member states realised that it was absurd to keep emphasising the Western Balkan countries' European vocation while making travel to the EU difficult for their citizens, with or without visa facilitation. Enlargement Commissioner Olli Rehn and Franco Frattini, the Commissioner for Justice, Freedom and Security, became supporters of visa liberalisation for the region. EU interior ministers also saw that the threat of migration and organised crime was diminishing [UNODC, 2008]. Eventually, Slovenia decided to champion the cause. Due to take over the EU Presidency in the first half of 2008, Slovenia negotiated Council conclusions in June 2007 that backed concrete efforts to achieve visa-free travel [GAERC, 2007]. This was followed by a Commission proposal in November 2007 to open 'visa dialogues' based on 'roadmaps' that would outline the conditions to be met [EC, 2007]. This move obtained the support of EU interior ministries.

The first dialogue, with Serbia, was opened on 30 January 2008. That it happened so quickly was due to early presidential elections in Serbia. The EU wanted to reach out to Serbians to help the incumbent pro-European reformer Boris Tadic remain in office. On 28 January 2008, the Council issued Conclusions welcoming 'the intention of the European Commission to launch soon a visa dialogue with all the countries in the region.' [GAERC, 2008.] It expressed its readiness to further discuss the issue 'to define detailed roadmaps setting clear benchmarks to be met by all the countries in the region in order to gradually advance towards visa liberalisation.' [GAERC, 2008] Two days later the dialogue with Serbia was opened. (Six days later Tadic won the elections.) At that stage, Kosovo had not yet declared independence and was excluded from the process.

STATE OF PLAY

Progress: conditionality at work

Even though politics and timing played a role in the launch of the process, the process itself was a merit-based and technical endeavour. It was a best-case example of EU conditionality.

First, there were clear criteria: during the first few months of 2008, the Commission opened 'visa dialogues' with all the Western Balkan countries. It presented each with a

roadmap. The roadmaps were almost identical, listing nearly 50 individual benchmarks. These were divided into four ‘blocks’: (1) document security (biometric passports, secure personalisation and distribution process, secure civil registries); (2) illegal migration and readmission (including Integrated Border Management, improved border surveillance, functioning asylum systems); (3) public order and security (fight against all forms of organised crime and corruption); and (4) fundamental rights (anti-discrimination and minority policies). In all areas, the countries had to establish close cooperation with EU member states and EU agencies such as Frontex, Europol and Eurojust. (A summary of the roadmap can be found in Table 1 below.) The requirements listed under blocks 1 to 3 were part of the Justice and Home Affairs *acquis*. Block 4, on access to personal documents, prevention of discrimination and protection of minorities, was created with the situation in the Western Balkans in mind.

TABLE 1: THE BENCHMARKS LISTED IN THE VISA ROADMAPS FOR THE WESTERN BALKANS

Block 1: Document security – Machine-readable biometric passports in accordance with EU and ICAO standards; secure personalisation and distribution process; anti-corruption training programmes for officials; reporting to Interpol’s Lost/Stolen Passports Database; secure breeder documents and ID cards .

Block 2: Illegal migration including readmission – Integrated Border Management; appropriate legal framework; fully equipped borders; anti-corruption training programmes for officials; working agreement with Frontex; legislation on carriers’ responsibility; appropriate asylum legislation and related procedures and facilities; monitoring of migration flows; returnee reintegration strategy; measures against illegal migration; law on foreigners; expulsion of illegal foreigners.

Block 3: Public order and security – Strategies and action plans to fight organised crime, corruption, human trafficking, money laundering, terrorism and the financing of terrorism; anti-drug policy; implementation of UN and Council of Europe Conventions and GRECO recommendations; judicial cooperation in criminal matters at international, EU and regional levels; working relations with Eurojust; law enforcement cooperation and exchange of information nationally and at regional and EU levels; use of operational and investigative measures to fight cross-border crime; operational cooperation agreement with Europol; personal data protection legislation.

Block 4: External relations and fundamental rights – Freedom of movement for all citizens; access to travel and ID documents for all citizens, IDPs and refugees; anti-discrimination legislation; law on citizenship/specified conditions for acquiring citizenship; investigation of ethnically motivated incidents in the area of freedom of movement; protection of minorities.

In addition, the visa roadmaps require:

- full implementation of the readmission agreement;
- full implementation of the visa facilitation agreement.

Source: Author's compilation based on the roadmaps for the Western Balkan countries. They can be found at: <http://www.esiweb.org/index.php?lang=en&id=352>.

Second, the reward was attractive: once the requirements were met, the Commission would propose lifting the visa requirement. In the meantime, the Commission stood by, providing explanations and helping identify financial support from the Instrument for Pre-Accession (IPA).

Third, the process was dynamic and hands-on: by 1 September 2008, each country had to provide a 'readiness report', outlining the state of implementation and plans concerning each of the roadmap requirements. On 24 November 2008, the Commission issued assessments. It pinpointed progress, shortcomings and the necessary next steps, and asked for further clarifications. Between January and March 2009, it organised assessment missions on the ground – seven for each country, to look at border crossing points, passport production and distribution, reception centres for asylum seekers, newly created police units and a lot more. So as to appease the anxieties of EU governments, the field missions included experts nominated by the EU member states.

On 18 May 2009, the Commission issued updated assessments that included findings from the expert missions. In its view, FYROM had met the conditions, Serbia and Montenegro had to do a little more work, while Albania and Bosnia and Herzegovina were still far behind. Based on these assessments, the Commission proposed in July visa-free travel for the citizens of FYROM, as well as Serbia and Montenegro, provided that each of these two countries would meet three pending benchmarks in the coming months. They did; and in November 2009 the Justice and Home Affairs Council voted to lift the visa requirement for FYROM, Montenegro and Serbia.

The EU's approach to visa liberalisation had proved successful. The first three countries had fulfilled the conditions faster than anyone had expected. The governments had made roadmap implementation the national top priority. The 'regatta principle' in combination with transparency established by NGOs such as the European Stability Initiative (ESI), which systematically collected and published all documents from the roadmaps to the Commission assessments, also proved useful. When it became known in Albania and Bosnia and Herzegovina that the governments had done little to im-

plement the roadmaps, and that the EU would abolish the visa requirement for the other three countries, but not for Albania and Bosnia and Herzegovina, public pressure forced the governments to change course. In June 2009, Bosnia and Herzegovina quickly adopted several outstanding laws, set up a plethora of working groups to meet all the other roadmap requirements, and even cut the summer holidays of the concerned officials. The Albanian government began to work on roadmap implementation seriously following the June 2009 elections. In September 2010, the Commission declared that both countries had met the requirements for visa-free travel.

Initially the European Commission had intended to conduct the visa liberalisation process behind closed doors. It did not even publish the roadmaps and asked the Balkan governments to do the same. Such secrecy, however, would have excluded civil society in the region from monitoring the process, even though visa-free travel was an issue of keen public interest. It would have allowed the Balkan governments to make little effort and blame Brussels for the lack of reward. It would have made it possible for member states to make decisions based on political considerations and not on implementation records.

The challenge: the increase in asylum claims

In 2009, before visa liberalisation, the number of EU asylum claims submitted by citizens of the five Western Balkan countries was 10,000, according to Eurostat. In 2010, when Macedonians, Montenegrins and Serbians were able to enter the EU without a visa, it rose to 30,000. After a small dip in 2011, it reached 43,000 in 2012 (see Table 2 opposite). In Germany, Serbians made up the largest group of asylum seekers in 2012, ahead of Syrians and Afghans.

Almost all the claims from citizens of the five countries have been rejected. Germany granted refugee status or subsidiary protection (which is similar) only to 0.2 percent of the claimants during the 2009 to 2011 period. The overall EU recognition rate was 2.1 percent in 2011.

Almost all the asylum seekers are members of the Roma community and other marginalised groups such as Albanians in southern Serbia and northwest FYROM. They cite discrimination, unemployment, poverty and lack of healthcare as reasons for their claims. However, these are not considered sufficient grounds for asylum.

TABLE 2: ASYLUM CLAIMS BY WESTERN BALKANS CITIZENS IN THE EU

	2009	2010	2011	2012*
	(No visa-free travel for the five WB states)	(Serbia, FY-ROM, Montenegro visa-free)	(All five WB states visa-free)	(All five WB states visa-free)
Serbia	5,290	17,715	13,980	18,915
the Former Yugoslav Republic of Macedonia	940	7,550	5,545	9,565
Albania	2,060	1,905	3,060	7,445
Bosnia and Herzegovina	1,320	2,105	2,595	5,765
Montenegro	250	405	630	1,260
Total of the 5 WB countries	9,860	29,680	25,810	42,950
All asylum seekers in the EU	266,395	260,835	303,105	322,275
Share of WB citizens	3.7%	11.4%	8.5%	13.3%

* As of 27 May 2013, the Netherlands had not yet provided any data for 2012.

Source: Eurostat interactive database, Asylum and new asylum applicants by citizenship, age and sex, Annual aggregated data (rounded) [migr_asyappctza], retrieved on 27 May 2013. See: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en.

In response to the rise in unfounded applications, EU interior ministers have suggested restoring the visa requirement. ‘The increasing abuse of our asylum system is not acceptable,’ declared Germany’s interior minister Hans-Peter Friedrich in October 2012. ‘The massive influx of Serbian and Macedonian citizens must be stopped immediately. For this, it must be possible that the EU suspends visa-free travel with these countries as quickly as possible.’ [Federal Interior Ministry, 2008]

Interior Minister Friedrich was referring to a May 2010 legislative proposal to introduce the possibility of suspending visa-free travel under a fast-track procedure. This is one of several proposed amendments of the Visa Regulation. It has not yet been adopted. The envisaged mechanism presents a greater chance to arrive at a visa requirement than a process to move the countries back onto the ‘black list’ of the Visa Regulation. There might not be a majority in the Council for such a move, and the European Parliament, which is traditionally in favour of visa liberalisation, might also reject it.

PROSPECTS

Any suspension or termination of visa-free travel would have very negative repercussions in the Western Balkans. It would make people angry, damage the EU's image and undermine the accession process. It would also increase resentment against Roma, who would be considered scapegoats.

The Commission has put the responsibility for resolving the problem on the Western Balkan governments. It has advocated a series of measures, which, however, are either ineffective or controversial. They include information campaigns and investigations into whether travel agents or bus companies mislead people (ineffective), an improvement of the living conditions of Roma (necessary, but long-term) and exit controls (controversial since they target members of the Roma community).

A closer look at the available data shows that there is a better solution. Western Balkan asylum seekers have overwhelmingly chosen EU member states where the first-instance asylum procedure takes 3 months or longer. During this time asylum seekers are entitled to benefits including housing, food, medical care and some cash payments. Up until mid-2012, the main target countries were Germany, Sweden, Belgium and Luxembourg.

Member states like Austria, France, and the Netherlands, all of which processed Western Balkan claims within 3 to 4 weeks, experienced a much smaller increase in claims or no increase at all.

At the end of 2012, Germany could decrease the volume of applications by shortening the decision-making time. Between October and December 2012, the asylum office tasked its case workers to focus on Western Balkan claims, bringing the average processing time from 3 months down to 9 days. Claims dropped from 6,600 in October to 1,000 in December.

A shorter procedure does not infringe on the right to asylum. Both France and Austria, which have short procedures for Western Balkan citizens, have higher recognition rates for Western Balkan claims (5.9 and 7.4 percent, respectively) than Germany and Sweden (both 0.2 percent). A short procedure should always include a full interview with the claimant to identify those who are in need of protection.

The EU could also proactively encourage member states to shorten procedures by declaring all third countries that have successfully passed a visa liberalisation process – including all the human rights requirements in Block 4 – ‘safe countries of origin’ at the

EU level. EU member states regard each other as safe countries of origin, and Bulgaria and Romania were declared as such in 2005, two years before they joined the EU.

Visa-free travel for the Western Balkan countries is an important achievement. For the people of the region, it has arguably been the most concrete benefit of the EU integration process. The visa liberalisation process itself has been an excellent example of conditionality. The regatta principle and the transparency of the process (even if not initially intended) could be elements to improve accession negotiations in the future. Reform efforts in the field of justice and home affairs in the Western Balkans have continued, increasing security both across the region and in the EU.

Kosovo was finally given a visa roadmap in 2012. Moldova and Ukraine are currently also involved in visa liberalisation processes. Georgia will soon receive its own action plan, and the EU has held out the prospect of a new visa regime for Turkey. Europe is slowly becoming less of a 'fortress'. Visa-free travel for citizens of neighbouring countries is complementing the freedom of movement in the Schengen area. Given that the volume of asylum claims can be controlled, abandoning visa liberalisation would be a great loss for the EU and the Western Balkans alike.