

The White List Project

EU Policies on Visa-Free Travel for the Western Balkans

Background Paper
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The Schengen Wall

When it comes to the EU, one of the greatest wishes of citizens of the Western Balkans, besides EU membership, is visa-free travel. It has also, for many years already, been one of the most elusive.

Currently citizens of all Western Balkan states have to obtain a short-stay visa from one of the embassies or consulates of the 24 Schengen zone countries in order to enter the Schengen area, which covers most of the EU.² Applying for a visa is time-consuming, costly and stressful. It involves long waiting times, the collection of a pile of documents and the very real risk of rejection. All this makes planning trips difficult.

There is also a high political cost attached to this policy for pro-EU reformer in the region and for Europeans interested in stabilising and integrating the whole Balkan region. Politically it is absurd that the EU has promised the Western Balkan countries a European future, but continues to make it difficult for their 20 million citizens to visit the EU and to learn what constitutes Europe. They perceive this as rejection, wondering whether their country's European perspective is real given that the EU does not even want them as tourists. They also perceive it as discriminatory: why was it never a problem for the citizens of Croatia to travel without a visa to the EU even in the early

¹ This version differs slightly from an earlier version because the table on p. 2 contained some incorrect figures.

² The 24 Schengen zone countries are all the EU member states except Ireland, the UK, Cyprus, Bulgaria and Romania; plus Iceland and Norway. Cyprus, Bulgaria and Romania will join once they have fully implemented the Schengen provisions. Ireland and the UK have decided to maintain border controls, hence they are not part of the Schengen zone; but they participate in other issues such as judicial and police cooperation. Two more countries will join at the end of 2008: Liechtenstein and Switzerland.

1990s, while it is an insurmountable problem for the people from small Macedonia or Albania today? Why can Bosnian Croats, who often have two passports, travel without restrictions with their Croatian passport, while their Bosniak neighbours cannot? Why was the EU able to lift visa restrictions for Bulgaria in 2001, but is still not able to do this for an official EU candidate such as Macedonia in 2008? As one of many frustrated citizens from the region, 30-year old Amila Celebic from Sarajevo sums up popular feelings in the region:

“The issue of the visa regime is one of those that our authorities have not managed to resolve for years. New generations like mine do not even know what visa-free travel means. Our parents had it, and perhaps they are even more embittered now... Most young people in Bosnia have never travelled to EU countries, so the logical question is: how can they develop a European vision if they have never experienced Europe, not even as tourists?”

Generally speaking, it is EU interior ministers who support maintaining the status quo. Foreign ministers are more open to visa-liberalisation for the Western Balkans. The two main reasons for the visa restrictions, according to interior ministries, are fears of an expansion of organised crime into the EU and illegal work migration. Both warrant a closer look.

Schengen visa applications denied in 2007³

	Austria	France	Germany	Greece	Italy
Albania	21% (2006)	21%	24%	26%	9%
BiH	19% (2006)	5%	15%	2%	1%
Macedonia	14%	9%	17%	3%	7%
Montenegro	-	-	-	5%	0.3%
Serbia	5% (2006)	6%	10%	3%	2%

Concerns about illegal work migration are often exaggerated given the relatively small number of citizens from the Western Balkans (20 million) and the fact that their diasporas in the EU have already helped many of those who wanted to work abroad to

³ The table relates to applications for, and denials of, visa to enter the Schengen area and stay there for a short period of time. This type of visa is the most frequently requested and issued Schengen visa, a so-called C visa. Most rejection rates have been calculated based on figures published annually by the EU Council Secretariat, in this case the figures for 2007 (<http://register.consilium.europa.eu/pdf/en/08/st08/st08215.en08.pdf>). They refer to visa requested at all the consular services of each covered Schengen country in the respective Western Balkan country. One exception is Austria, which submitted incomplete data for 2007 to the Council, so that in Austria's case the figures for 2006 were mainly used (<http://register.consilium.europa.eu/pdf/en/07/st10/st10700-ad02.en07.pdf>). The other exception is Macedonia since the Council statistics are misleading for Macedonia. In order to obtain the correct figures for Macedonia, the consular services of the five EU member states were contacted directly. The problem is the following: Greece does not recognise the constitutional name of the Republic of Macedonia and hence Macedonian passports and visa affixed to them. So, in the case of Macedonian citizens, Schengen countries issue so-called VTL visa – visa with a territorially limited validity, in this specific case “Schengen area minus Greece”. However, the Council statistics do not show that VTL visa are issued *instead* of C visa, so that the figures of C visa applied for and C visa issued show an incorrect picture. If Macedonian citizens want to travel to Greece, they need to apply for a visa at a Greek consular office, and it is issued on a piece of paper separate from the passport.

do so. A study for the United Nations Development Programme (UNDP), which analysed a wide range of migration-related data from governments as well as surveys in Southeast Europe, came to the following conclusion in 2005:

“The survey data points to two important conclusions. First, they show that many of those who wish to work in the EU have already done so, even if illegally. Second, they show that Southeast Europe’s migration potential in absolute numbers is relatively small [...]. A maximum estimate of temporary migrants from the Western and Eastern Balkans together — weighted by availability of contacts and work — might be 1.5 million. The Western Balkan countries’ contribution to this figure would be between 500,000 and one million altogether. This is a manageable figure for the European Union: Italy and Greece alone already have more migrants than this from the region.”⁴

With regard to organised crime emanating from the Western Balkans, all available evidence shows that it is receding as a major threat.

According to a recent report by the UN Office on Drugs and Crime (UNODC) the image of the Balkans as a hotbed of criminal activities is outdated. UNODC finds that “the Balkan region is one of the safest in Europe.”⁵ The levels of classic crime – crime against people and property, such as murder, robbery, rape, burglary and assault - are lower in the Balkans than in Western Europe. The smuggling of drugs, guns and human beings through the region is also in decline, although the Balkans remains a transit zone for heroin destined for Western Europe.

However, the main traffickers of heroin into Europe, unlike widely believed, are not ethnic Albanians. Based on an analysis of 18,749 heroin trafficking arrests made in 2004 in 15 European countries, *all* citizens of Albania, Serbia and Macedonia combined (as criminal statistics do not differentiate between the different ethnic groups within a country and there are ethnic Albanians in all three countries) represented only about 6% of the heroin trafficking arrestees. UNODC concluded:

“In short, the single most notorious Balkan organized crime phenomenon – the role played by ethnic Albanian traffickers in West European heroin markets – appears to be in decline. Similar trends are seen in the other major organised crime markets involving the region.”⁶

The governments of Western Balkan countries have continuously lobbied the EU to liberalise the visa regime. As far back as in 2003 at the EU/Western Balkans Summit in Thessaloniki, EU leaders promised them discussions with the European Commission about the reforms necessary to abolish the visa requirements.

“We acknowledge the importance the peoples of the Western Balkans attach to the perspective of liberalisation of the EU’s visa regime towards them. We recognise

⁴ Alina Mungiu-Pippidi, *Seeking the Virtuous Circle: Migration and Development in South Eastern Europe*. In: Development and Transition, A newsletter published by UNDP and the London School of Economics, Issue 2, November 2005, pp. 7-11, available at: <http://www.developmentandtransition.net/uploads/issuesAttachments/13/DevelopmentAndTransition2.pdf>. The article is based on a study done for UNDP.

⁵ United Nations Office on Drugs and Crime, *Crime and its Impact on the Balkans*, May 2008, p. 5, available at: http://www.unodc.org/documents/data-and-analysis/Balkan_study.pdf.

⁶ *Ibid.*, p. 14.

that progress is dependent on implementing major reforms in areas such as the strengthening of the rule of law, combating organised crime, corruption and illegal migration, and strengthening administrative capacity in border control and security of documents. The Western Balkan countries welcome the intention of the Commission to hold discussions, within the framework of the Stabilisation and Association Process, with each of them, regarding the requirements for how to take these issues forward in concrete terms.⁷

But for years nothing happened. In 2006, at last, the EU agreed to *ease* visa application procedures in return for agreements on the readmission of illegal migrants from, or having a clear link with, the Western Balkans. However, this had more to do with the EU's desire to be able to send back not only illegal migrants that hold the citizenship of a Western Balkan country, but also third-country nationals and stateless persons who have transited through the Balkans. The wish to simplify visa application procedures in order to increase people-to-people contacts was secondary. The resulting Visa Facilitation Agreements, which entered into force on 1 January 2008, have not changed much on the ground (see next chapter).

The isolation of the Balkans: Henley Visa Restrictions Index 2006	
<i>Number of countries to which the citizens of the mentioned country could travel without a visa in 2006</i>	
Denmark, Finland, US (most unrestricted)	130
Poland	106
Croatia	84
Serbia and Montenegro	32
Macedonia	31
Bosnia and Herzegovina	25
Albania	17
Burma (Myanmar)	15
Afghanistan (most restricted)	12

Henley & Partners is a firm specialised in international immigration, consular and citizenship law. Henley Visa Restrictions Index, see <http://www.henley-partner.com/citizenship/visa-restrictions/>.

Recognising that visa *facilitation* cannot be a substitute for visa *liberalisation*, more and more EU member states started advocating that the Commission begin discussions on visa-free travel with the Western Balkan countries. In the Council, where the EU member states come together to discuss and decide policy, there were heated discussions between the proponents and the opponents of visa liberalisation for the Western Balkans.

Slovenia, at the helm of the EU during the first half of 2008, pushed for the abolishment of the visa requirements, having made the Western Balkans one of its priorities. A decision was triggered by Kosovo's independence, which was finally to be declared in February 2008. This led the EU to look for a sweetener for Serbia. On 18 January 2008, then-Commissioner for justice, freedom and security Franco Frattini announced a

⁷ Thessaloniki Declaration, 21 June 2003, available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/misc/76291.pdf.

dialogue on visa-free travel with Serbia.⁸ Once the dialogue was established with Serbia, it could not be denied to its neighbours. Ten days later, on 28 January, the Council:

“welcomed the intention of the European Commission to launch soon a visa dialogue with all the countries in the region and expressed its readiness to further discuss this issue [...] with a view 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. This would enable the Council and the Commission to closely monitor progress in necessary reforms.”⁹

By 5 June 2008, the Commission launched had visa dialogues with all Western Balkan countries except Kosovo, and issued roadmaps for each of them.¹⁰ Concessions had to be made to the reluctant member states, which insisted on strict conditions in the roadmaps and their involvement in monitoring and evaluating.

On 4 September 2008, Jacques Barrot, the responsible European Commissioner in charge of justice, freedom and security issues, stated that visa-free travel for frontrunners like Macedonia, which is already meeting almost all necessary conditions, could be introduced as early as 2009.¹¹ However, other Commission officials consider this a bit too optimistic due to lengthy procedures in the EU institutions. They also point to EU members such as Germany and Belgium, at times also Austria, Italy, the Netherlands and Spain, that remain sceptical about lifting the visa requirements.

Nonetheless, Western Balkan countries now have a good chance to shake off the joke of visa restrictions. They obviously need to make progress in meeting the benchmarks set out in the visa roadmaps. Among other things, the required measures will alleviate the fears of sceptical EU member states. But independently of this, it is important that the two main arguments against visa liberalisation – illegal work migration and organised crime from the Western Balkans - are not abused by EU politicians to pander to populist sentiments.

Much ado about little: the visa facilitation agreements

The visa facilitation agreements with Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia entered into force on 1 January 2008, following their negotiation between the European Commission and the countries between November

⁸ Commission press release, Declaration of Vice-President Franco Frattini on the launch of a dialogue on visa free travel for Serbia, 18 January 2008, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/63&format=HTML&aged=0&language=EN&guiLanguage=en>.

⁹ Conclusions of the General Affairs and External Relations Council, 28 January 2008, p. 17, available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/98460.pdf.

¹⁰ Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia.

¹¹ BalkanInsight, *EU to Scrap Visas for Macedonia in 2009*, 4 Sept. 2008, available at: www.balkaninsight.com/en/main/news/12890/ and Southeast European Times, *Macedonia's EU progress stalled over name dispute, missed benchmarks*, 8 Sept. 2008, available at: www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2008/09/08/feature-02.

2006 and May 2007. These agreements are supposed to ease visa application procedures, but they do not abolish the requirement of a visa.

There are several types of Schengen visas, but the most frequently used to enter the Schengen zone is a short-stay single-entry visa. This visa can be valid for up to three months and does not entitle to any kind of employment. While the EU has prescribed some of the conditions to qualify for a visa, other requirements and the types of proof that need to be furnished are at the discretion of the issuing country and also depend on the personal circumstances of the applicant.

The applicant must justify the purpose and conditions of the intended trip. Before the visa facilitation agreements, a consular service could request various documents to demonstrate the purpose of the journey, for example a letter of invitation, a letter from the sending entity (employer, university) and a hotel reservation or a statement issued by a local authority guaranteeing that the applicant will be accommodated by a private person or institution. Since 1 January 2008, usually only one document has been necessary to justify the purpose – e.g. a businessperson needs a document from the host company or organisation endorsed by the Chamber of Commerce of the applicant's country, a student needs a letter or proof of enrolment from the host university or school, a tourist needs a certificate from a travel agency etc.

However, other requirements have remained in force. The applicant must demonstrate adequate financial means to finance the journey including the return trip with cash, travellers' cheques, credit cards and/or bank statements. As a rule, applicants must have proof of adequate health insurance covering repatriation and medical care for a minimum of 30,000 €. The consular service can also require the applicant to produce proof of place of residence, of ties with the country of residence (family, employment, business, property) and proof of their social and professional status. In case of refusal, the visa-issuing country does not have to provide any explanation.

Other changes that the visa facilitation agreements have brought are a reduced visa fee of 35 € instead of 60 €, an exemption of the fee for many groups of applicants (such as pensioners, students, sportspeople, journalists etc. – in Macedonia's case, the Commission claimed that 80% of the applicants are exempted,¹² and in Bosnia's case, that up to 50% are exempted¹³), a deadline for decisions on applications to be made within 10 calendar days, and clear conditions who qualifies for multi-entry visas. What was up for negotiations with the concerned countries were the groups of people who would benefit from the reduced number of documents to justify the purpose of the visit and the exemption from the visa fee, so that the five visa facilitation agreements differ in that.

¹² Commission press release, *Roadmap on visa free travel for all citizens of the former Yugoslav Republic of Macedonia*, 8 May 2008, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/724>.

¹³ Commission press release, *Roadmap on visa free travel opens EU doors to Bosnia and Herzegovina*, 5 June 2008, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/874&format=HTML&aged=0&language=en&guiLanguage=en>.

According to hotline surveys¹⁴ conducted by the European Citizen Action Network (ECAS) in partnership with regional NGOs, the visa facilitation agreements have not improved much on the ground.

“There is a huge gap between the declaration by the European Council [meeting of the EU heads of state or government] on 20 June [2008] that ‘promoting people-to-people contacts between the Western Balkans and the EU is of the utmost importance’, and what is actually happening on the ground. So far we can find no positive response to visa facilitation from across the Region, except as an idea. Most people do not perceive the difference between the situations before and after the entry into force of the agreement.”¹⁵

Examples of the problems include: Some embassies and consulates have introduced call-based procedures to make appointments managed by subcontractors, where the caller pays an increased telephone rate (up to 1 €/minute); although decisions on visa applications have to be made within 10 days now, in Tirana the waiting time for an appointment with the Greek and Italian consulates are sometimes 2-3 months; respect and politeness towards applicants are still often lacking. A well-known Albanian academic, Professor Ylli Popa, was asked by an Albanian employee of an Italian consulate: “Are you going to sleep under the bridge?”, when he delivered the supporting documents for his visa application.¹⁶

The light at the end of the tunnel: visa liberalisation

The visa roadmaps are almost identical, listing around 50 individual activities by a rough count, but they take into account the specific situation in each country in terms of existing legislation and practice. The conditions range from purely technical matters, such as the issuance of machine-readable passports with a gradual introduction of biometric data (fingerprints), to the adoption and implementation of a raft of laws and international conventions, to very broad matters such as progress in the fight against organised crime, corruption and illegal migration.

The required actions fall broadly into these categories:

- Implementation of the readmission agreement
- Implementation of the visa facilitation agreement
- Passports, document security & biometrics
- Border management
- Carrier’s responsibility
- Asylum policy
- Migration management
- Preventing and fighting organised crime, terrorism and corruption
- Judicial cooperation in criminal matters (internationally and with the EU)

¹⁴ People in the five Western Balkan countries could call a local phone number advertised in the local media during two weeks.

¹⁵ ECAS press release on the project “Does it really matter? Visa facilitation in the Western Balkans: Monitoring of the new agreements”, 6 August 2008, available at: <http://www.ecas-citizens.eu/content/view/138/146/>.

¹⁶ Ibid.

- Law enforcement cooperation (nationally and internationally)
- Data protection
- Freedom of movement for the country's nationals
- Non-discrimination in the issuance of ID documents
- Citizens' rights including protection of minorities
- Rate of refused visa applications for the entry into Schengen should approach 3% (this provision caused a lot of discussion since both consular practices – e.g. the availability of good and clear information - and the intellectual capabilities of applicants have an impact on the rate)
- Measures to implement EU travel bans

As announced in the Council conclusions of 28 January, not only the Commission will monitor progress, but also the member states, which is unusual. In its regular implementation reports, the Commission has to take into account “input from experts including Member States’ experts.”¹⁷ A Commission official said: “It wasn’t easy. The member states were very clear that they wanted to be inserted in determining the criteria, monitoring and evaluation.”¹⁸

Once a country meets the conditions, the Commission will make an official proposal to the Council to lift the visa restrictions for this country by amending Council Regulation 539/2001.¹⁹ This law lists all the countries whose nationals require a visa to enter the Schengen area (“black list”) as well as the countries whose nationals are exempt from this provision (“white list”). The Council will vote by majority,²⁰ which means that opposing member states could be outvoted. However, it is unlikely that the Commission would even go so far as to make a proposal against opposing member states if they represent a significantly influential or large group.

According to the Commission, Macedonia and Serbia are the countries most advanced in meeting the roadmap benchmarks. Despite announcements that they could enjoy visa-free travel as early as 2009, it is more likely that it will be 2010 provided that they maintain the speed of reform. The period between the moment when the Commission arrives at a positive assessment to a formal decision by the Council to lift the visa requirement can easily be six months, if not longer. This means that Macedonia would have to be declared fit for visa liberalisation in the spring of 2009 for the amended Regulation to enter into force before the end of the year. However, much will depend on the political atmosphere once Macedonia – or one of the other countries – can demonstrate concrete progress.

¹⁷ Paragraph A in the roadmaps.

¹⁸ The official spoke on condition of anonymity. Interview on 30 May 2008 in Brussels.

¹⁹ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, available at: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32001R0539&model=guichett.

²⁰ The voting mechanism is called *qualified majority voting*. It requires for a proposal from the Commission to pass 255 out of a total 345 votes. Each member state has a number of votes that roughly correspond to population, but are weighted in favour of smaller states. A member state may also request verification that the qualified majority represents at least 62% of the total EU population. In the case of visa issues, the figures are slightly different as Ireland and UK are not part of the Schengen zone.

While Macedonia and Serbia believe that they can fulfil the conditions even before the end of *this* year, other countries plan for a longer implementation period. Bosnia and Herzegovina, which has already adopted an action plan, envisages all requirements to be implemented by the end of 2009; Montenegro by mid-2009.

Towards inclusion in the white Schengen list?

By early September 2008, the five Western Balkan submitted readiness reports and action plans to the Commission, detailing where they stand with each requirement and which measures they intend to take when in order to fulfil the requirements.

Following an analysis by the Commission, Commissioner Barrot is scheduled to provide a short assessment of progress at the EU-Western Balkan Justice and Home Affairs Forum on 6-7 November 2008 in Zagreb. A more detailed assessment will be conveyed to the national authorities in mid-November. The Commission will then also present information on the field missions it considers necessary to obtain more detailed information. Experts from the EU member states will be invited to these field missions. Throughout the process, there will be further meetings between the Commission and the Western Balkan countries.

A second round of assessments is tentatively scheduled for spring 2009. The Czech Republic, which will hold the EU Presidency during the first half of 2009, plans to push the issue along since it places great importance on people-to-people contacts between the EU and the Western Balkans, while the Swedish Presidency in the second half of 2009 hopes to be able to present the Council with proposals to amend the relevant EU Regulation and abolish the visa requirements for the Western Balkan countries.