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VISA AND ASYLUM Red Alert on Turkey – Unfair in Kosovo – Germany's problem



Pristina (Kosovo) – Berlin (Germany)

Dear friends,

Today the EU visa liberalisation process, launched with high hopes in 2012 for Kosovo and in 2013 for Turkey, is in crisis.

In 2014 there were more than 110,000 asylum applications in the EU from the accession seven (A7) countries – Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey.

In early 2015 international media coverage on Kosovo was dominated by news about tens of thousands of its citizens crossing the EU border illegally. Meanwhile the Turkish government is focused on dealing with more than 1.6 million Syrian refugees and pays little attention to the visa liberalisation process with the European Union.

Where is all this leading? If current trends continue, the answer seems obvious. By 2017, following a long agony, both Kosovo and Turkey break off their unsuccessful visa liberalisation talks with the EU. Their citizens are bitter. In both Kosovo and Turkey limited reforms of law enforcement and weak data protection laws make close cooperation with EU institutions in fighting international crime difficult. In the EU there is instead a push by some member states to *reintroduce* visa requirements for citizens from Serbia, Albania, Bosnia and Macedonia. The total number of asylum applications from the A7 reaches 150,000, with more than 80 percent submitted in Germany.



Facing a crisis: Dimitris Avramopoulos, Home Affairs Commissioner, visiting Kosovo this week

But there is also a different scenario, one where by 2017 the 105 million citizens of these countries are able to travel without a visa across the Schengen border, encouraging investment and tourism and reversing a decade long erosion of trust in the European Union; the total number of asylum applications from the A7 has fallen to below 10,000; and law enforcement institutions work closely with their counterparts in the EU to fight cross border crime and cooperate along the EU borders.

In recent weeks ESI analysts have discussed the future of visa liberalisation with senior EU officials, ministers and experts throughout South East Europe; we also presented policy proposals, in [Ankara](#) and [Istanbul](#), Sarajevo and [Pristina](#), Berlin and Brussels.

We identified three crucial steps.

The first step is a serious focus in Ankara on visa liberalisation at the highest level; the second a change in the way the European Commission monitors the visa process in Kosovo; and the third concerns reforms that EU member states, in particular Germany, need to make to the way they handle asylum applications from these countries.

If these steps are taken the vision of a safer South East Europe whose citizens can travel to the Schengen area visa-free by 2017 is within reach. Here is how.

Red Alert in Turkey



[ESI Istanbul Visa Briefing with key EU Commission officials](#)

On 16 December 2013, Turkey and the EU launched a visa liberalisation process. To qualify for visa-free travel Turkey has to improve border management, establish an asylum system complying with international standards, respect human rights and effectively fight illegal migration. All requirements are outlined in a [visa roadmap](#).

When the process was launched in late 2013, [then Prime Minister Erdogan](#) and [then Foreign Minister Ahmet Davutoglu](#) declared that by mid-2017 at the latest Turkish citizens would be able to travel to Europe without a visa. However, the way things are going in Turkey since then visa liberalisation will remain a dream for a very long time.

On 20 October 2014, the European Commission issued [a first progress report](#). Based on it, ESI has produced [a scorecard of progress](#).

It lists the 72 benchmarks from the [visa roadmap](#) and the Commission's assessment to which extent Turkey complies with each of them. For 27 benchmarks, the Commission found Turkey to be "far from meeting this benchmark" or saw "no particular positive developments to address them."

Some key benchmarks without any progress

	Implement readmission obligations existing with EU member states .
	Implement the EU-Turkey readmission agreement in all its provisions and have a solid track record
	Exchange passport specimens, visa forms and information on false documents , cooperate on document security with the EU
	Ensure cooperation with neighbouring EU MS , in particular on border management

Conclude and implement an Operational Cooperation Agreement with EUROPOL
Sign, ratify and implement relevant international data protection conventions
Adopt and implement legislation on the protection of personal data in line with the EU standards
Sign & ratify the Council of Europe Convention on Action against Human Trafficking , adopt and implement legislation in line with it and with the relevant EU <i>acquis</i> on prevention of THB, the prosecution of traffickers and protection and assistance to their victims
Provide adequate infrastructure and resources ensuring decent reception and protection of victims of trafficking and supporting their social and professional reintegration
Revise - in line with the ECHR and with the European Court of Human Rights (ECtHR) case law, the EU <i>acquis</i> and EU Member States practices - the legal framework as regards organised crime and terrorism, as well as its interpretation by the courts and by the security forces and the law enforcement agencies, so as to ensure the right to liberty and security, the right to a fair trial and freedom of expression, of assembly and association in practice

A [readmission agreement with the EU](#) was the EU's condition for launching the visa liberalisation process with Turkey. This agreement entered into force only on 1 October 2014.

After a transitional three-year period – from 1 October 2017 onwards – Turkey will have to accept back irregular *third-country nationals* if there is evidence that they reached the EU via Turkey. The EU asks for a "solid track-record" in the implementation of the EU-Turkey readmission agreement. If Turkey starts implementing it only in October 2017, visa-free travel will take a very long time to become reality.

But there is worse. In 2014 the signal from Ankara was that even existing readmission agreements with individual EU member states are taken less seriously than ever. Since 2002 a [Turkey-Greece readmission agreement](#) has been in force. In 2014, the first year of the visa liberalisation process, Greece asked for the readmission of 9,700 irregular migrants. Turkey accepted 470, a very low number, and worse than in previous years. In the end, 6 migrants were actually returned to Turkey from Greece all year.

This obstruction of a binding agreement is all the more striking as Turkey hosts at least 1.6 million refugees from Syria; accepting a few thousand refugees from Greece would hardly register.

Greece-Turkey readmission agreement – recent years

	requested	granted	readmitted
2012:	20,464	823	113
2013:	3,741	370	35
2014:	9,619	470	6

Or take personal data protection. A data protection law in line with EU standards is a key benchmark. The aim of such legislation is to protect personal data, whether people make online purchases, open a bank account or have dealings with the police and judiciary. Without data protection rules, such information could fall into anybody's hands.

The current Turkish draft law on the protection of personal data, which is about to be adopted by the Turkish parliament, does not meet EU standards. It does not ensure the independence of a crucial supervisory board. It exempts the police and intelligence services from the application of the law. The European Commission has told Turkey this, but to no avail.

This also undermines police cooperation. Europol (the EU's police agency) and Eurojust (a network of EU judicial authorities) are legally barred from exchanging personal data with countries that do not have EU-standard data protection laws. Many EU member states have similar rules. Thus Turkey cannot establish the required working agreements with the EU agencies.

Turkey, visa and human rights



Visa decisions in Ankara?

A third example: the roadmap conditions concerning human rights. One of the key conditions is:

"Revise - in line with the ECHR and with the European Court of Human Rights (ECtHR) case law, the EU acquis and EU Member States practices - the **legal framework as regards organised crime and terrorism**, as well as its interpretation by the courts and by the security forces and the law enforcement agencies, so as to **ensure the right to liberty and security, the right to a fair trial and freedom of expression, of assembly and association in practice.**"

In its October 2014 report, the Commission saw "no particular positive developments" in Turkey to address this benchmark. Turkey had not to set up "an independent and impartial body to investigate police offences." (See here: Visa-free Turkey: Priorities for action, December 2014).

The Commission recommended that Turkey ensure implementation of its March 2014 [Action Plan for the Prevention of Violations of the European Convention on Human Rights](#) (ECHR). In 2014, Turkey was, after Russia, the country with [the highest number of judgments by the European Court of Human Rights that found that it had violated the ECHR](#) (94 judgements). Turkey had violated the right to liberty and security 45 times, to a fair trial 31 times and to freedom of expression 24 times.

Human rights matter for visa liberalisation. EU countries do not want to face a wave of successful claims once the visa barrier is lifted. In 2014 almost 5,000 Turkish citizens applied for asylum in the EU. In the 4,600 individual cases that EU asylum offices decided last year, 760 Turkish citizens were granted international protection for fear of prosecution or risks of serious harm at home. This makes a recognition rate of 17 percent.

This is the highest recognition rate for Turkish citizens since Eurostat started collecting this data. With this recognition rate, Turkey looks worse than Azerbaijan (16 percent) and Ukraine (16 percent) and is close to Pakistan (19 percent) and Egypt (21 percent).

For Turkey to achieve visa-free travel in 2017, it has to make addressing the red alert issues a priority. So far it has not done so, and the clock is ticking.

Needed: fairness in Kosovo



Pristina

On 14 June 2012, Kosovo received its much awaited [visa liberalisation roadmap](#). The roadmap lists all the reforms – very similar to Turkey's – that Kosovo needs to complete in order to qualify for visa-free travel to the Schengen area.

In July 2014 the European Commission issued a [report on Kosovo's progress](#). However, this report is strikingly and worryingly different from the visa progress reports that Kosovo's Balkan neighbours received 2008-2010. It is also very different from the report on Turkey.

In the case of the Western Balkans, the Commission had very precise formulations to describe progress or the lack of it for each point included in the roadmap. This made it possible to create precise scorecards. The Commission used six distinct phrases:

"meets the benchmarks" and "generally meets the benchmarks" (ESI grade 1)

"meets a large majority of the benchmarks" and "meets a majority of benchmarks" (grade 2)

"on the right track, but..." and "does not yet fully meet the benchmarks" (grade 3)

This, for example, was the scorecard for Albania: [ESI Scorecard for Albania and Bosnia: Meeting the roadmap conditions](#) (26 April 2010).

In the [October 2014 Turkey report the Commission](#) used the following five formulations to describe progress under each benchmark:

- *"Requirement fulfilled"* (ESI **grade 1**)
- *"Almost fulfilled (i.e. only some limited work still needs to be done to entirely fulfil the requirement)"* (**grade 2**)
- *"Fulfilled partially, but with good prospects for further progress (i.e. much work still needs to be done, but the results achieved and the work done by the Turkish authorities are substantial, and developments so far are encouraging)"* (**grade 3**)
- *"Only partially fulfilled (i.e. much work still needs to be done to fulfil the requirements of the benchmark, no particular positive developments to address them were observed)"* (**grade 4**)
- *"Requirement not fulfilled (i.e. Turkey is far from meeting this benchmark)"* (**grade 5**)

This made it possible to produce another scorecard: [Turkey's visa liberalisation roadmap: the scorecard \(December 2014\)](#).

So far, there have been seven roadmaps (five for the first five Western Balkans countries, one for Kosovo, one for Turkey) and numerous assessment reports by the Commission, including two for Kosovo. These two look different from all others in the way they are written.

Lack of precision means that progress is not measured fairly. In the Kosovo report there is no discussion of each benchmark. There is no precise description of progress. The language is vague. It makes it harder for reformers to target priority areas and for civil society to pressure leaders.

The experience of recent years is clear: a strict, but clear and fair process of monitoring and assessing progress is key.

Asylum and the German problem



Thomas de Maiziere

"Interior Minister Skender Hyseni advocated for visa liberalisation for Kosovo. De Maiziere showed himself to be reluctant, noting that the number of Serbian asylum seekers increased strongly, after visas were lifted for Serbia" (Frankfurter Allgemeine Zeitung, 5. 3. 2015)

But how, some may ask, can visas ever be lifted for Kosovo if there is a risk of tens, if not hundreds of thousands of people applying for asylum in the EU?

Last year, the number of asylum claims by Kosovars was 36,000 – and this required most of them to illegally cross borders since they need visas. What would the number be if there was no visa requirement?

In fact, this very problem already exists today for Kosovo's neighbours Albania, Bosnia, Macedonia, Montenegro and Serbia which were granted visa-free travel in 2009/2010. Asylum applications from these countries jumped from 10,000 before visa liberalisation to 70,000 last year.

However, only 3.6 percent qualified in 2014 for international protection due to a well-founded fear of persecution or risks of serious harm. This rate was 94 percent for Syrians, 52 percent for Afghans and 22 percent for Russians.

What can be done? As we have suggested before, the answer is obvious and the key lies in Germany. In 2014, almost 80 percent of the Balkan asylum seekers went to Germany. No wonder: Germany's asylum system is generous and the processing of asylum claims takes a long time. In 2014 it took between 4 and 5 months for Western Balkan nationals. If they appealed against the first-instance decision, the asylum procedure even lasted up to 8 months.

The problem in the Western Balkans is not human rights abuses. The overwhelming majority of the Balkan asylum seekers have no jobs and no prospects of jobs. They are poor. Many are Roma whose living conditions are difficult. They welcome the opportunity to spend a few months in the EU as asylum seekers. This offers free accommodation and food, medical care and some cash benefits. Some manage to find jobs on the black market and save some money for back home.

The solution is obvious. When Germany reduced the average length of the asylum procedure to 9 days at the end of 2012 – after case workers prioritised Balkan claims – the number of claims dropped to one-sixth within weeks. When the length of the procedure for Balkan claimants increased again, so did the number of claims.

Last year, Germany declared Serbia, Macedonia and Bosnia safe countries of origin. However, this affects only deadlines for appeal and return *after* a negative first-instance decision. As long as claimants wait for months for their interview and the decision, they will keep coming. The German authorities must find a way to decide these claims within days.

The Swiss experience

Switzerland, which permanently introduced a short procedure in 2012, managed to do just that.

In Switzerland – not an EU member state, but a Schengen country – the first-instance asylum procedure for Balkan applicants initially also took some 4 months. Switzerland also received a high number of Western Balkan asylum claims.

In August 2012, the Swiss Federal Migration Office introduced "special measures" for safe European countries with visa-free travel. Now asylum seekers from such countries were sent to a reception centre in Basel. There a dedicated team conducts preliminary interviews within two days of the newcomers' arrival.

Within the next 48 hours the authorities carry out a full interview and issue a first-instance decision. A rejected claimant has 5 days to leave Switzerland. In case of an appeal, the Federal Administrative Court issues a decision in 2 to 4 weeks. As soon as the measures took root, the Swiss experienced a drastic drop in applications:

Asylum claims in Switzerland after new procedure

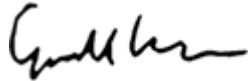
	Aug. 2012	Sept. 2012	Oct. 2012	Nov. 2012	Dec. 2012
Serbia	410	200	60	35	30
Macedonia	260	45	20	10	10
Bosnia	95	80	20	35	15
Albania	15	5	5	10	10
Montenegro	0	5	0	5	0
Total WB5	780	335	105	95	65

Numbers have remained low. In 2013, just 770 citizens of the five Balkan countries filed asylum requests in Switzerland during the whole year. In 2014 the number was 620.

In conclusion, the vision of a Europe in 2017 with more visa free travel, fewer Balkan asylum claims, better police cooperation and better respect for human rights is realistic. However, for an outcome where everyone wins leaders in Turkey and Kosovo, in the European Commission and in Berlin must take the right decisions today.

For more updates, the history of the visa liberalization process and more evidence and statistics on which to base rational policy, please visit www.whitelistproject.eu.

Yours sincerely,



Gerald Knaus

Further reading:

- [European Commission, July 2014 report assessing Kosovo visa progress](#)
- [European Commission, October 2014 report assessing Turkey visa process](#)
- ESI website on the visa issue in Turkey: [Turkey – the European promise](#). In Turkish: [Türkiye – Avrupa Vaadi](#)
- [Turkey's visa liberalisation roadmap: the scorecard](#) (December 2014)
- Excerpts from the Commission report: [Visa-free Turkey: Priorities for action](#) (December 2014)
- ESI briefing in Istanbul: [The end of visas for Turkish citizens - Where are we today?](#)(17 December 2014)
- ESI report: [Cutting the Visa Knot – How Turks can travel freely to Europe](#) (21 May 2013). In Turkish: [Vize Kördüğümünü Çözmek – Türkler Avrupa'ya Nasıl Serbestçe Seyahat Edebilir?](#) (21 Mayıs 2013).

Surprising facts – striking tables on visa and asylum

All data is from Eurostat, extracted on 9 March 2015, with the data from Austria missing, unless stated otherwise)

First-instance asylum recognition rates - EU 2014

	Decisions made	Refugee status - Geneva Convention	Subsidiary protection	Recognition rate (Refugee status + subs. protection)
Syria	69,810	35,760	29,575	94%
Eritrea	15,885	9,675	4,275	88%
Iraq	10,585	4,980	1,960	66%
Iran	8,685	4,730	230	57%
Somalia	9,415	2,175	3,180	57%
Afghanistan	17,845	4,970	4,235	52%
Libya	1,335	405	130	40%
Belarus	470	100	30	28%
Russia	12,355	2,275	405	22%
China	5,110	1,060	60	22%
Kazakhstan	570	100	25	22%
Egypt	2,895	510	85	21%
Pakistan	15,810	1,980	1,065	19%
Turkey	4,590	585	175	17%
Azerbaijan	2,225	340	10	16%
Ukraine	2,985	105	365	16%
Lebanon	885	85	35	14%
Moldova	170	10	10	12%
Morocco	1,835	120	35	8.4%
Armenia	3,900	200	95	7.6%
Bangladesh	7,370	410	80	6.6%
Algeria	2,995	110	85	6.5%
Albania	13,390	215	560	5.8%
Kosovo	13,220	440	290	5.5%
Tunisia	1,450	40	35	5.2%
Georgia	6,145	180	70	4.1%
Bosnia	7,210	155	55	2.9%
India	1,695	25	20	2.7%
Montenegro	1,355	5	20	1.8%
Serbia	22,085	260	55	1.4%
Macedonia	8,195	30	15	0.5%

Top 30 nationalities – asylum claims – EU 2014

Country	No. of asylum claims
1. Syria	115,060
2. Eritrea	36,880
3. Afghanistan	36,230
4. Kosovo	35,970
5. Serbia	30,450
6. Pakistan	21,525
7. Iraq	20,225
8. Nigeria	19,280
9. Russia	17,685
10. Albania	16,740
11. Somalia	15,745
12. Ukraine	13,585
13. Mali	12,885
14. Bangladesh	11,530
15. Gambia	11,415
16. Bosnia and H.	10,475
17. Macedonia	10,170
18. Iran	10,145
19. Georgia	8,140
20. D.R. Congo	7,020
21. Senegal	6,405
22. Guinea	6,220
23. Algeria	6,140
24. Sudan	6,130
25. Armenia	5,340
26. Sri Lanka	5,295
27. Turkey	4,960
28. China	4,955
29. Ghana	4,090
30. Morocco	3,960
TOTAL	598,755

Asylum claims by Western Balkans citizens in the EU

	2009 (visa)	2011 (visa-free)	2012	2013	2014 (Austria missing)
Serbia	5,460	14,105	19,055	22,375	30,450
Albania	2,065	3,080	7,500	11,075	16,740
Bosnia	1,330	2,655	5,835	7,075	10,475
Macedonia	930	5,555	9,625	11,065	10,170

Montenegro	270	635	1,260	945	1,825
Total of the WB5 states	10,055	26,030	43,275	52,535	69,660

It is all about Germany now
Asylum claims from the five Balkan countries in Germany

	2009 (visa)	2011 (visa-free)	2012	2013	2014
WB5 claims in the EU	10,055	26,030	43,275	52,535	69,660
WB5 claims in Germany	1,450	9,360	22,715	33,935	53,905
German share	14%	36%	52%	65%	77%

Source: Antwort der Bundesregierung auf eine Kleine Anfrage der Linksfraktion, 28 Jan. 2014

Positive asylum decisions in Germany in 2014

	Refugee status	Subsidiary	Humanitarian	TOTAL
Serbia	1 person (0%)	17 persons (0.1%)	25 persons (0.1%)	0.2%
Macedonia	2 persons (0%)	5 persons (0.1%)	7 persons (2%)	0.3%
Albania	2 persons (0.3%)	11 persons (1.6%)	-	2.6%
Bosnia	-	-	6 (0.2%)	0.3%
Kosovo	-	-	5 persons (0.5%)	0.5%
ALL claimants in Germany	13,053 (30.3%)	456 (1.1%)	577 (1.3%)	

Source: Antwort der Bundesregierung auf eine Kleine Anfrage der Linksfraktion, 28 Jan. 2014

	First-instance 2014	First-instance + court Jan-June 2014
Albania	3.6 months	5 months
Bosnia	3.9 months	5.5 months
Serbia	4 months	6.7 months
Kosovo	4.7 months	9.5 months
Macedonia	5.3 months	7.7 months

All claimants in Germany	7.1 months	11.1 months
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Source: [Antwort der Bundesregierung auf eine Kleine Anfrage der Linksfraktion](#), 28 Jan. 2014

Length of the asylum procedure in Germany - from first application to court decision

	First-instance 2014	First-instance + court Jan-June 2014
Albania	3.6 months	5 months
Bosnia	3.9 months	5.5 months
Serbia	4 months	6.7 months
Kosovo	4.7 months	9.5 months
Macedonia	5.3 months	7.7 months
All claimants in Germany	7.1 months	11.1 months

TERMINOLOGY CONCERNING INTERNATIONAL PROTECTION IN THE EU

Refugee status (persecution) is the highest form of international protection. Under EU asylum legislation, which is based on the 1951 UN Geneva Convention relating to the Status of Refugees and its 1967 Protocol, EU member states are committed to offering refugee status to third-country nationals that have “[a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group](#)” in their home country.

Subsidiary protection (risks of serious harm) is accorded to people who face “risks of serious harm” at home, but who do not meet the UN definition of refugee. The [relevant EU Directive](#) defines “serious harm” as “(a) death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.”

Humanitarian shelter: Some asylum seekers are allowed to remain in an EU country “[for reasons not due to a need for international protection, but on a discretionary basis on compassionate or humanitarian grounds](#)”. It is at the discretion of EU member states to grant this status, so it is regulated by national legislation. Most often it is offered to people with medical problems that cannot be treated in their home country. Several EU member states do not submit data on whether they grant such protection since authorities other than asylum authorities deal with it (Austria, Belgium, Bulgaria, Croatia, France, Ireland, Latvia, Lithuania, Luxembourg, Portugal and Slovenia).

At first instance, asylum claims are decided by administrative bodies. Rejected asylum seekers have a right of appeal before a court, so this is the next instance.