

How to launch the Visa Liberalisation Process with Turkey

Precedent and the role of the European Commission

Background Paper
ESI Ankara visit - 20 March 2012



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Summary of the Proposal

To break the current deadlock and get without delay to a situation where there is both a visa dialogue and a visa liberalisation roadmap process, and a readmission agreement in force between Turkey and the EU, ESI proposes the following steps:

- The Commission immediately launches a visa dialogue with Turkey. It should reassert its normal prerogative and seize the initiative on this. This should happen in April 2012.
- The Danish Presidency suggests Council conclusions for adoption by the Justice and Home Affairs Council in April which are similar to those adopted for the Western Balkan states in January 2008 and launch a visa dialogue with the goal of liberalisation mentioned.

Once this visa dialogue has been launched by the Commission, Turkey initials the readmission agreement.

The Commission hands over the visa roadmap on the day of signature of the readmission agreement by Turkey.

Turkey then proceeds swiftly to ratify the readmission agreement, since implementation of the readmission agreement is one of the central conditions of the roadmap.

The Commission begins the same process of assessing Turkish progress as it did in the case of the Balkans.

THE ARGUMENT FOR A COMMISSION INITIATIVE

The Western Balkan Precedent

To insist that no visa dialogue can start and that no roadmap can be handed over by the European Commission without a “mandate” being given by the Council appears to be another instance where Turkey is treated differently and in a disadvantageous manner from other countries in South East Europe. While there is a need for the Commission to receive a *mandate for negotiating a readmission agreement*, there has *never been such a need for launching a visa dialogue and visa liberalisation roadmap process*.

The European Commission designed the visa roadmap process in 2006, choosing the Western Balkans as the first group of countries to benefit from it. In a speech in May

2006, Franco Frattini, at the time the Commissioner for Justice, Freedom and Security, outlined his vision:

“As a first step, I will put on the table mandates on visa facilitation and readmission agreements for Western Balkan countries. [...] My plan is to bring forward negotiating mandates for all Western Balkan countries at the latest by July 2006.”¹

In order to negotiate visa facilitation and readmission agreements, which are international agreements, the Commission has to be given negotiating mandates by the Council. When the text is agreed between the parties, the Council adopts a decision authorising the signing of the agreement and, later on, another decision concluding the agreement. This is regulated in the Treaty on the Functioning of the EU.²

For Frattini, the next step was:

“In fact, visa facilitation coupled with readmission agreements are a short-term perspective to be accomplished by end of 2007. But I am aware that the full liberalisation of the visa regime is the ultimate desired goal for our partner countries. **And therefore I would like to declare here today that a further step I am planning to pursue as a mid- or long-term perspective with our partner Western Balkan countries is a Dialogue on modalities and conditions for visa free regime.**”³

What is very important to note: Frattini spoke in the **first-person**, indicating that it was the Commission’s decision to carry out what he called a “dialogue on the modalities and conditions for visa free regime”.

This was different from a negotiation of a visa facilitation agreement and a readmission agreement for which the commission needed mandates from the Council.

And so it happened. By November 2007, the visa facilitation and readmission agreements for the five Western Balkan states had been negotiated, initialled, signed and ratified by both sides. In a Communication dated 6 November 2007,⁴ the Commission proposed:

“The facilitation agreements are an important step towards full liberalisation of the visa regime. **The Commission considers that it is now time to gradually move towards visa liberalisation with the Western Balkan countries through further concrete steps.**

To that end the Commission proposes to open a dialogue with each of the countries concerned with a view to establishing a road-map on the conditions to be met.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF>

² Title V, Art. 216-218, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF>.

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF>

⁴ Commission Communication, Enlargement Strategy and Main Challenges 2007-2008, 6 November 2007, COM (2007) 663 final

These would cover effective implementation of readmission agreements, as well as progress on key areas such as border management, document security, or the fight against organised crime. Such road-maps will allow the countries concerned to better focus their reform efforts, while also reinforcing the visibility of the EU's commitment to the peoples of the region.”⁵

The Commission soon followed suit on the proposal and took the initiative. On 18 January 2008, Frattini opened the first visa liberalisation dialogue, with Serbia. The press release read:

“Declaration of Vice-President Franco Frattini on the launch of a dialogue on visa free travel for Serbia

*Vice-President Franco Frattini, Commissioner responsible for Justice, Freedom and Security announced today that **the European Commission launches a dialogue on visa free travel for Serbia**. The first meeting at technical level will take place in Belgrade on 30th January 2008.*

‘Considering that people to people contacts are key elements towards closer cooperation between EU and Serbia and seen the fact that technical preparations are sufficiently advanced, **I have decided to launch a structured dialogue** with the Serbian authorities on a future visa free regime for Serbian citizens travelling to the European Union ...’”

The Council approved this approach afterwards, which shows that it was the Commission's competence to open the dialogue.

On 28 January 2008, ten days after the launch of the dialogue with Serbia, the General Affairs and External Relations Council stated in its conclusions that it welcomed the opening of the dialogues with all the Balkan countries:

“The Council also 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, based on the Commission's forthcoming Communication on the Western Balkans, 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.”⁶

In a Communication dated 5 March 2008,⁷ the Commission elaborated:

“Towards visa-free travel

⁵ http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/strategy_paper_en.pdf

⁶ http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/98460.pdf

⁷ Commission Communication, Western Balkans: Enhancing the European perspective, 5 March 2008, COM (2008) 127 final

... In its enlargement strategy paper of November 2007, the Commission announced **its intention to start a dialogue with each country with a view to establishing road-maps** on the conditions to be met for lifting the visa requirement.

The Council in its conclusions of 28 January 2008 **welcomed the intention of the European Commission to launch soon a visa dialogue** with all the countries in the region. It expressed its readiness to further discuss this issue, based on the present Communication, with a view to defining detailed roadmaps setting clear benchmarks to be met by all the countries in the region in order to gradually advance towards visa liberalisation.

The Commission started visa liberalisation dialogues with Serbia in January and with the former Yugoslav Republic of Macedonia and Montenegro in February. The dialogue with Albania will start in early March. Bosnia and Herzegovina will follow.

Road-maps will be drawn up by the Commission in consultation with the Council. The Western Balkan countries will provide input in this context. The road-maps will cover four sets of issues: document security, illegal migration, public order and security as well as external relations. The road-maps will be tailor-made to allow each country to focus reform efforts and address the EU's requirements. The Commission's intention is to finalise the roadmaps as soon as possible after the launching of each dialogue, in order for the necessary reforms to start being implemented promptly.

... The Commission and the Council will closely monitor progress in the relevant reforms. Once the conditions for each country have been fulfilled, the Commission will propose to the Council the lifting of the respective visa obligation, by amending Council Regulation 539/2001.⁸

The five Western Balkan countries were given their visa roadmaps between 7 May and 5 June 2008. They then implemented the necessary reforms. This was verified by several expert missions comprising experts from the Commission and the EU member states on the ground. The visa requirement for Macedonia, Montenegro and Serbia was lifted as of 19 December 2009, and that for Albania and Bosnia as of 15 December 2010.

The Council has since tried to secure a greater role in visa liberalisation processes. However, it has **always left the opening of the visa dialogues and the drafting of the roadmaps to the Commission**, the latest example being Kosovo.

Conclusions of the General Affairs Council on 5 December 2011:⁹

"The Council reaffirms that Kosovo will also benefit from the perspective of eventual visa liberalisation once all conditions are met. The Council underlines that further progress in the area of justice, freedom and security is essential. Considering Kosovo's progress on readmission and reintegration and in line with Council

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http://ec.europa.eu/enlargement/pdf/balkans_communication/western_balkans_communication_050_308_en.pdf

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http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/126578.pdf

conclusions of December 2010, **the Council welcomes the intention of the Commission to launch a visa dialogue**, without prejudice to the Member States' positions on status, towards the end of the year, if all conditions are effectively fulfilled, to fully associate the Council and EU Member States to each step of the dialogue and to present regular reports on Kosovo's progress in adopting and implementing the appropriate reforms, including on the basis of Member States experts' reports on the ground. "

A Commission Communication on Kosovo from October 2009 specified:

“The Commission proposes to move forward with a structured approach to bring Kosovo's citizens closer to the EU through a visa dialogue with the perspective of eventual visa liberalisation when the necessary reforms will have been undertaken. Based on a thorough assessment the Commission proposes to draft a comprehensive strategy to guide Kosovo's efforts to meet the EU's requirements for visa liberalisation.¹⁰ This strategy will set benchmarks to measure Kosovo's progress in the context of a visa dialogue and **will be presented to the Council for information.**”

The Commission planned to show it to the Council “for information” only. On 19 January 2012, Home Affairs Commissioner Cecilia Malmström traveled to Pristina to open the visa dialogue with Kosovo. The press release left no doubt that this was her competence:

“Commission launches dialogue with Kosovo on visa free travel

Brussels, 19 January 2012 – Today, European Commissioner for Home Affairs Cecilia Malmström launched a visa liberalisation dialogue with Kosovo in Pristina. The aim of this dialogue is to eventually lift the visa obligation for citizens of Kosovo. This will only be possible, however, once the Government of Kosovo has implemented substantial reforms in key areas such as the security of travel documents; border, migration and asylum management; public order and security issues (notably the fight against organised crime and corruption) and fundamental rights issues related to the freedom of movement.”¹¹

Of course, in the end the role of the Council in this process is crucial: it is to agree to lift the visa obligation following a legislative proposal by the Commission to do so.

This decision is taken by a vote based on a qualified majority. Since the UK and Ireland are not voting on amendments to Council Regulation 539/2001, an amendment requires 228 out of 309 votes. (For more on this see *ESI Background Paper Seven Steps to 228 votes* - Ankara 21 March 2012)

¹⁰ “Strategy” was the term the Commission used for the roadmap due to the sensitivities concerning Kosovo's status

¹¹ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/32>

The European Parliament is co-decision maker on an equal footing. It votes by simple majority. This procedure is called “ordinary legislative procedure”, and usually the Parliament is the first to take a vote, followed by the Council.

In the case of Turkey, however, some member states have suggested (for instance at a meeting of the Council SCIFA working group in February 2012) that they do not want to see the Commission launch a visa dialogue and hand over a roadmap without formal approval. At that SCIFA meeting, there was a debate on who in fact had the responsibility to launch a visa dialogue.

ESI suggests that in the case of Turkey **the Commission shows the same determination and initiative that it showed in the case of the Balkans.**

Conclusion and recommendation

Insisting that no visa dialogue can start and that no roadmap can be handed over by the European Commission without a “mandate” being given by the Council appears to be another instance where Turkey is treated differently and in a disadvantageous manner from other countries in South East Europe.

To break the current deadlock and get without delay to a situation where there is both a visa dialogue and a visa liberalisation roadmap process and a readmission agreement in force between Turkey and the EU ESI proposes the following steps:

- The Commission immediately launches a visa dialogue with Turkey. It should reassert its normal prerogative and seize the initiative on this.
- The Danish Presidency suggests Council conclusions for adoption in April which are similar to those adopted for the Western Balkan states in 2008:

“The Council welcomes the launch of a visa dialogue with Turkey by the European Commission and expresses its readiness to further discuss this issue with a view to define a detailed roadmap setting clear benchmarks to be met by Turkey in order to gradually advance towards visa liberalisation.”¹²

The Council could add:

“The Council calls on Turkey as soon as possible to initial, sign and ratify the readmission agreement, implementation of which is an essential step of the roadmap process.”

Once a visa dialogue has been launched by the Commission Turkey could initial the readmission agreement. The Commission could hand over the visa roadmap on the day of signature of the readmission agreement by Turkey.

¹² http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/98460.pdf

Turkey would then proceed to swiftly ratify the readmission agreement.

The Commission would begin the same process of assessing Turkish progress as it did in the case of the Balkans.

There are then no possibilities for the Council to stop the process until the Commission issues its proposal to amend Council Regulation 539/2001 by putting Turkey on the White List – and this decision is taken by qualified majority, thus no single member state can veto it.