



## Policy Paper Nr. 2

### Visa Liberalisation

#### *Implications of a proposal*

September 2009

European Movement in Albania (EMA) is a *think tank* devoted to improving the quality of the debate on the European Integration process. It is a forum for exchange of views on political, legal, economic and social challenges facing Albania in its path towards European Integration. By analyzing different aspects of European Integration process, EMA therefore aims to promote new ideas for improving this process.

*This policy paper is supported by*

*The Balkan Trust for Democracy, a Project of the German Marshall Fund and*

*Think Tank Fund, Open Society Institute*

*The opinions expressed do not necessarily represent the opinions of BTDF and OSI*

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## 1. From Thessaloniki to Luxembourg

On 15 July 2009 the European Commission decided to propose to the EU Member States amendment of the Regulation 539/2001 listing those countries whose nationals must be in possession of visas when entering the Schengen area and those whose nationals are exempt from that requirement. Three countries of the Western Balkans, respectively Macedonia, Montenegro and Serbia received the news long dreamt of. Starting from 1 January 2010, citizens of these countries may move freely within the Schengen area. Albania and Bosnia and Herzegovina did not benefit from the proposal of the European Commission, whereas, no visa liberalization dialogue has not been opened yet with the new state of Kosovo. The sequence of this process, which culminates with the proposal of the European Commission for the lifting of the visa regime with Macedonia, Montenegro and Serbia, is illustrated in the table below.

KEY DATES	PHASES OF THE VISA LIBERALIZATION PROCESS
February-May 2008	Visa liberalization dialogue with Western Balkans countries started
May-June 2008	Roadmaps towards a visa free regime for countries of the Western Balkans were introduced
September 2008	Readiness Reports submitted by Governments of the Western Balkan countries
24 November 2008	The first assessment of the European Commission is firstly discussed in COWEB and then forwarded to countries of the Western Balkans
January 2009	Required documentation is filled out by the countries. Governments of the Western Balkans countries updated information and submitted it to the European Commission
January-April 2009	European Commission and EU Member States' expert mission assessed the situation in all the countries of the Western Balkans
18 May 2009	A second assessment report by the European Commission was submitted to the EU Member States and then forwarded to countries of the Western Balkans
25 May 2009	European Commission and EU Member States discuss the Assessment Reports of the Western Balkans countries
15 July 2009	European Commission proposed to the Council of EU the lifting of the visa regime with Macedonia, Montenegro and Serbia and upholding of Albania and Bosnia and Herzegovina under the visa regime. Meanwhile, Kosovo is included into the Schengen negative list

Table 1: Steps taken up to now in the visa liberalization process with countries of the Western Balkans

The proposal of the European Commission did not drop unexpectedly out of a clear blue sky, but as a logical consequence of a process initiated with the Thessaloniki Summit in 2003,

which expressly reaffirmed the European perspective of the Western Balkans countries and at the same time connected the visa liberalization with the progress of reforms. As stated by Mr. Jacques Barrot, European Commissioner for Justice, Freedom and Security “This proposal is the result of intensive and hard work for the authorities and the people of these countries in meeting the conditions. I congratulate them for this achievement”<sup>1</sup>.

The EU decided in 2007 to start negotiations with the Western Balkans countries for a Visa Facilitation Agreement (VFA) “as a first concrete step towards a visa free regime”<sup>2</sup>. Even though announced as a successful instrument, the VFA failed to bring about substantial changes for the “agents of exchange” such as representatives of business community, athletes, journalists, representatives of civil society, etc, who need to travel frequently to the EU. Duration of the visa application procedure and number of required documents to be submitted to the consular offices remained almost unchanged. With the exception of the visa fee removal for some of the categories, the application for a Schengen visa continued to be an expensive process because supporting documentation takes up both time and money. Moreover, still, visa procedures in various consular representations of the EU Member States are not uniform<sup>3</sup>.

In parallel with the entering into force of the VFA, in spring 2008 European Commission decided to introduce roadmaps towards a visa free regime for all countries of the Western Balkans, with the exception of Kosovo. The Council asked the European Commission to set realistic benchmarks to be met by the Western Balkans countries, with the view of heading towards a visa free regime. More specifically, the Roadmap is organized in 4 blocks: Document Security; Illegal migration including readmission; Public order and Security; External Relations and fundamental rights.

The above benchmarks constitutes a step of great significance taken by the EU, because it lines up Western Balkans countries in front of the same assessment criteria, sending a clear signal to the policymakers implying that the road towards a visa free regime passes through accomplishment of standards which are embodied in the Roadmap.

Following introduction of the Roadmap for the Western Balkans countries, work of the European Commission went through several phases, culminating with the final assessment and preparation of the proposal for the countries which had met the requirements. Firstly, governments were asked to submit a readiness report, for the European Commission to understand the situation in which each country stands, in compliance with the standards laid down in the Roadmap. Within autumn 2008, readiness reports were submitted to the European Commission. In some countries, the readiness reports were discussed in

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<sup>1</sup> See, Press Release of the European Commission Delegation in Albania [www.delalb.ec.europa.eu](http://www.delalb.ec.europa.eu)

<sup>2</sup> See, paragraph 3 of Preamble of the Visa Facilitation Agreement between European Communities and Albania.

<sup>3</sup> See the publication of the European Movement in Albania “One year from the Visa Facilitation Agreement. What has really changed?” January 2009. [www.em-al.org/viza.pdf](http://www.em-al.org/viza.pdf).

Parliament and made public prior to being sent to Brussels, while in other countries including Albania, the governments did not choose to make the reports public or involve in this process institutions other than the Executive. The Assembly was also left out of the discussions.

Based on the reports submitted by governments of the Western Balkans countries, the European Commission drafted the First Assessment report, which was discussed on 24 November 2008 in the meeting of EU Council on Western Balkans (COWEB). Although the European Commission did not employ a comparative methodology among the Western Balkans countries, its assessment gave a clear picture of the gap which existed among these countries with regard to the implementation of the benchmarks. Thus, Macedonia was considered as a frontrunner, followed by Montenegro and Serbia. Meanwhile, Albania and Bosnia and Herzegovina should put more efforts in this process, with the view of undertaking substantial reforms.

The European Commission preferred not to go public with the Assessment Report. Instead, it submitted it officially to the western Balkan countries. A fact worth mentioning is that the Assessment Report was published or quoted only by those governments in the region, respectively Macedonia, Montenegro and Serbia, for which apparently, the visa liberalization process was moving into the right track. The Albanian Government denied existence of an Assessment Report issued by the European Commission. At the same time, it ensured its citizens that the country was progressing with a resolute determination towards a visa free regime. In contrast with the denying official stance, the media gave a wide coverage to the European Commission report. However, the Assessment Report itself did not become subject to debate or analysis in the Government or Assembly, signalling a lack of seriousness with respect to Albania's commitments in the visa liberalization process. The Albanian Government submitted another report with additional information in January 2009.

In the beginning of 2009, the European Union organized the field assessment mission to the Western Balkans countries, with experts of the European Commission and EU member states, based on the blocks of the Roadmap's. The assessment mission tasked with the verification of the information submitted by governments of the Western Balkans and drawing of objective conclusions on the implementation of benchmarks laid down in the Roadmap, started off in January with Macedonia, the most advanced country in the visa liberalization process. Afterwards, in February the mission continued with visits in Montenegro and Serbia. The assessment missions were concluded during the March-April visits in Albania and Bosnia and Herzegovina.

The European Commission submitted a second Assessment Report on 18 May 2009, based on the field verifications and conclusions of the assessment mission experts, for discussion with the EU Member States. This Report marked the real progress of each country in

fulfilling the criteria of the Roadmap, serving as the basis for the European Commission proposal of 15 July 2009.

Once again, the European Commission decided not to make public the assessment report but to forward it officially to the countries of the Western Balkans. As with the first assessment of 24 November 2008, the European Commission second assessment of 18 May 2009, although crucial for those countries which would benefit from the lifting of the visa regime, encountered divergent reactions by the Western Balkan countries. Governments of Macedonia and Montenegro prized the Report of the European Commission and articulated confidence concerning the lifting of the visa regime, a stance that particularly for Macedonia was also confirmed by international institutions.<sup>4</sup> Meanwhile, the fever of electoral campaign of 28 June 2009 in Albania, apparently, forced a constant denying stance of the Albanian government in relation to the existence of an Assessment Report by the European Commission.

Despite the regional approach of the process and having all countries on equal footing as regards assessment of the implementation of standards, the decision-making, according to the conclusions of the General Affairs and External Relations Council (GAERC) of 15 June 2009, is made based on “own merits of each country”<sup>5</sup>. The table below reflects the path of the visa liberalization process for the Western Balkan countries.

KEY DATES	FURTHER STEPS TO BE TAKEN
September-December 2009	European Commission continues to closely monitor the situation
September-November 2009	Parliament discusses the Proposal of the Commission and submits its opinion to the Council
30 November 2009	Justice and Home Affairs Council votes on the Proposal
1 January 2010	Visa Liberalization with Macedonia, Montenegro and Serbia expected to enter into force
During 2010	Commission continues to monitor the situation for the other countries in the region which continue to be in the negative list as regards implementation of the Roadmap standards: Albania and Bosnia and Herzegovina

Table 2: Further steps to be taken in the visa liberalization process for countries of the Western Balkans.

<sup>4</sup> Prime Minister of the Czech Republic Mr. Mirek Topolánek, in the capacity of the President of the European Council, during a visit in Skopje in 11 March 2009 stated that “We expect and we are going to encourage the Swedish presidency that the cancellation of the visa regime comes into force on 1 January 2010” [www.eu2009.cz/en/](http://www.eu2009.cz/en/). Jacques Barrot Commissioner for Justice, Freedom and Security declared: “Macedonia has fulfilled all the necessary conditions for visa liberalisation”. See the quoting of the Commissioner Barrot in the Press Conference held in Luxembourg in 5 June 2009 following the informal meeting with the Ministers of Interior of Member States at [www.albanianeconomy.com/news/2009/06/07/three-balkan-states-eye-visa-free-travel](http://www.albanianeconomy.com/news/2009/06/07/three-balkan-states-eye-visa-free-travel).

<sup>5</sup> See the Council conclusions on the Western Balkans, Luxembourg, 15 June 2009, at [www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/gena/108525.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/108525.pdf), page 12.

## 2. Albania, a NATO member state but still with visa in EU

Non inclusion of Albania in the list of countries which would benefit from the lifting of the visa regime was sad news for the public opinion. The opposition criticized the government for failure to implement reforms which would enable lifting of the visa regime. Meanwhile, Prime Minister Berisha for the first time following general elections of 28 June 2009 admitted that "it is an undeniable fact that in certain areas we are suffering delays, as for example with biometric passports and accomplishment of any other requirement. These requirements are neither penalizing nor discriminating"<sup>6</sup>. It is true that the biometric passports are a crucial prerequisite, but it needs to be stressed that this is not the only condition. These benchmarks, which the Roadmap contains in a detailed manner, for Albania, unlike the other countries of the region, have been laid down as its own commitments in the Stabilization and Association Agreement (SAA). Moreover, the joint declaration concerning Article 80 of the SAA with Albania stipulates that "the parties are aware of the importance the people and the Government of Albania attach to the perspective of liberalization of the visa regime. Meanwhile, progress is dependent on Albania implementing major reforms in areas such as **the strengthening of the rule of law, combating organized crime, corruption and illegal migration, and strengthening her administrative capacity in border control and security of documents**"<sup>7</sup>.

Although such criteria were laid down five years ago, Albania is assessed by the European Commission as not having a satisfactory level of the implementation of the Roadmap benchmarks. In order to avert any suspicion on the objectivity of the assessment of the Western Balkan countries, Lars Wahlund, on behalf of the EU Swedish Presidency states that "Albania and Bosnia and Herzegovina had to implement the same benchmarks, the same 'roadmap', as Serbia, Montenegro and other countries. These countries had to commit to reforms. The European Commission experts visited those countries and noticed that they did not fulfill the required standards"<sup>8</sup>.

For a part of the media, confused by the government rhetoric, it was hard to believe that Albania, a NATO member state, did not fulfill the standards, whereas the very same standards were fulfilled by Macedonia, Montenegro and Serbia, which are not part of the NATO, thus, casting a shadow of doubt on the impartiality of the EU decision-making. In fact, this is an easily rebutted argument because unlike the lifting of the visa regime, for which EU has laid down specific benchmarks, the NATO membership was the result of combined reforms and geo-strategic decision-making by the Western Allies. It should not be

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<sup>6</sup> Interview of the Prime Minister of Albania, Mr. Sali Berisha for Deutsche Welle, 18.07.2009. See website [www.dw-world.de/dw/article/0,4497656,00.html](http://www.dw-world.de/dw/article/0,4497656,00.html).

<sup>7</sup> See Law No. 9590, dated 27 July 2006 "on the Ratification of the Stabilization and Association Agreement between the Republic of Albania and European Communities and Member States thereof", Official Journal, No. 87, 14 August 2006.

<sup>8</sup> Interview of Mr. Lars Wahlund, Deputy Director of the European Union Department of the Swedish Ministry of Foreign Affairs, for BBC. [www.bbc.co.uk/albanian/regionalnews/2009/08/090805\\_wahlund.shtml](http://www.bbc.co.uk/albanian/regionalnews/2009/08/090805_wahlund.shtml).

forgotten that the Euro-Atlantic integration processes of Albania, converge with each other, but are not necessarily the same.

Implementation of the Roadmap benchmarks implies a long and difficult path for Albania. This requires determination in carrying out reforms in the area of security of travel documents, freedom and fundamental rights, integrated border management, illegal migration and readmission, organized crime, trafficking and corruption and cooperation among various agencies involved in the fight against these phenomena. The Assembly of the Republic of Albania should put an overriding importance to the use of its constitutional monitoring instruments in order to give an impetus to the executive power for the fulfillment of specific benchmarks set out in the Roadmap. To this end, status report which the Albanian government should submit to the European Commission until October this year must be considered as a working document both for the Albanian government and for the Assembly.

Only tangible progress and not Albania's plain rhetoric would make the European Commission willing to send another assessment mission in the field, next year. A positive assessment would trigger a proposal to the EU Member States for the lifting of the visa regime with Albania. At the same time, the Albanian government needs to work closely with the governments of Macedonia and Montenegro, which after the lifting of the visa regime in the Schengen area from 1 January 2010, have a potentially paved way to introduce the visa regime with Albania, with the justification that they are aligning their visa policies with those of the Schengen countries, which would mean isolation of Albania from its neighbors.

### **3. Conditionality upon benefiting countries**

Macedonia has constantly been considered as the frontrunner in meeting benchmarks towards a visa free regime. At the time when Roadmaps were submitted to the respective governments of the region in April-June 2008, Macedonia had met a considerable number of benchmarks. When compared to other countries of the region, it's worth mentioning that Macedonia was more advanced in the process of personalizing of biometric passports. This is also the case for reforms in the area of integrated border management. For this reason, in the assessment Report of 18 May 2009 as divided in the blocks, the European Commission drew the conclusion that Macedonia has made "a very good progress" or "substantial progress" towards fulfillment of all benchmarks of the Roadmap<sup>9</sup>. Macedonia performed very well in the production and personalization of biometric passports and other identification documents. The number of issued biometric passports is approximately 417.000. Macedonia has also achieved tangible results as regards the integrated border

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<sup>9</sup> See [www.esiweb.org](http://www.esiweb.org).

management, combat against organized crime and trafficking. The cooperation between various law enforcement agencies was also given importance. All the above mentioned facts allow Macedonia to top the list of countries which will benefit from a visa free regime.

Unlike Macedonia, in the assessment of Montenegro and Serbia, the European Commission noted that there are still some benchmarks to be met by these countries prior to benefiting from a visa free regime with the Schengen countries. Montenegro has another three benchmarks to meet (effective implementation of law on foreigners, defining a sustainable solution for the displaced persons and strengthening capacities in the combat against corruption and organized crime). Serbia has four benchmarks to meet (improvement of the cross-border cooperation, particularly with the Kosovo police/EULEX, effective implementation of the law on foreigners, improvement in the combat against corruption and organized crime as well as ensure special procedures for the issuing of biometric passports for residents of Kosovo)<sup>10</sup>. Hence the lifting of the visa regime in the case of Montenegro and Serbia is materialized through a policy of conditionality, which means that these countries shall benefit from it only if they are to meet the remaining benchmarks.

Interesting is the fact that the proposal of the European Commission anticipates lifting of the visa regime with the abovementioned countries, only for those persons who are in possess of a biometric passport<sup>11</sup>. This means that citizens who do not possess such passport shall not benefit from the lifting of the visa regime. This condition will apparently affect also those countries which have not benefited by the lifting of the visa regime, pushing governments of the respective countries to concentrate efforts in equipping citizens with reliable travel documents.

#### **4. Kosovo, the *sui generis* case**

Since the Commission submitted its proposal to the Council of EU, the *sui generis* case of Kosovo drew immediately the attention. The proposal suggests adding of Kosovo to the Schengen negative list. By doing so, the EU places Kosovo among several other countries which are listed either in the positive or negative list. This will cause new implications connected to the legal status of Kosovo as an independent state, because by means of this proposal, the EU itself has determined to treat the Kosovo citizens separately from those of Serbia. Such proposal of the European Commission, provoked the reaction of two European personalities such as Giuliano Amato, former Prime Minister and Minister of Interior of Italy and Otto Schily, former Minister of Interior of Germany, who through an open letter addressed to the EU, underlined that "Kosovo should also receive a visa roadmap. It must be given the opportunity to implement the same far-reaching reforms that the other five

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<sup>10</sup> See, Proposal of the Commission sent to the Council, dated 15.07.2009, COM (2009) 366 final.

<sup>11</sup> Idem.

Balkan countries have set out to implement. The visa liberalization process should be considered status neutral by the EU<sup>12</sup>.

Moreover, citizens of Kosovo find themselves in a more complicated situation because at this time, even if they were Serbian passport holders, they would not benefit from the visa free regime due to the provisions of the proposal which excludes residents of Kosovo, despite the fact that Serbia claims Kosovo as its territory and as a result citizens who reside in Kosovo are formally residents of Serbia. More is added to this paradox by the fact that some of the EU Member States have not recognized Kosovo. As a corollary, the Schengen visas issued in Kosovo are specifically validated only for the Schengen area excluding countries which have not recognized Kosovo as independent.

Recognition of Kosovo as an independent state by only 22 out of 27 EU Member States, the EU dismay from the Kosovo migratory potential and maybe a certain gap that exists between Kosovo and the rest of the region as regards accomplishment of the required standards connected to the lifting the visa regime, might be some of the reasons for the exclusion of Kosovo from the visa liberalization process. An interim measure of the European Commission might be a *feasibility study* which is to establish all reforms that need to be carried out by the Kosovar authorities, with the view of opening the visa liberalization dialogue. This would constitute the clearest signal for a real European perspective of Kosovo.

## 5. What comes next?

Although there exists a regional approach due to the placement of the Western Balkan countries, with the exception of Kosovo, the visa liberalization process which puts these countries in front of the same assessment criteria, is based in the principle of individual merit, that is, progress of each country. As illustrated herein, the European Commission and EU Member States continue to be committed to move ahead with this process by entangling their synergies in the assessment of implementation of the Roadmap benchmarks by the Western Balkans countries.

As a corollary, Albania needs to concentrate in the fulfillment of the reforms which enable the lifting of the visa regime. For the purpose of meeting those Roadmap benchmarks which are still not met, a detailed action plan needs to be prepared. The action plan must be transformed into a working document for the Albanian Assembly and Government. This would ensure not only higher quality reforms but also a transparent process for the public opinion.

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<sup>12</sup> See [www.esiweb.org/index.php?lang=en&id=382#letter](http://www.esiweb.org/index.php?lang=en&id=382#letter).

Only if the Commission finds out those reforms have marked progress, will it be in the position to initiate together with the EU Member States another assessment mission during next year. Meanwhile, the experience of Macedonia, Montenegro and Serbia during their first year of the visa liberalization process, will serve as a lesson to Albania, Bosnia and Herzegovina and Kosovo. Free movement in the region must have no turning back as a result of implications deriving from the proposal of the European Commission, which creates a new division between the Western Balkan countries, with regard to the visa regime.

Whereas the EU has drawn a distinction between the two processes: EU accession and visa liberalization with the countries of the Western Balkans, the same logic must also be valid for the case of Kosovo, which must be included in the visa liberalization process, drawing the line between this process and Kosovo's legal status. Citizens of Kosovo must not be left out of the loop and isolated by other citizens of other countries at regional level.

The experience in the visa liberalization process, which is based in the intertwining of processes of regional approach and own merits of each individual country, shall serve to Albania and other countries of the region as a warm-up exercise for the future, when the accession negotiations with EU will be the items on the agenda.