



## The Schengen White List Project

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*The EU visa liberalisation process with the Western Balkans countries  
at a glance*

Brussels, December 2009

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*~ Contents ~*

Visa-free travel in the Balkans (op-ed 6 Dec. 2009)..... 3

A Visa Roadmap for Kosovo! Open Letter by the Schengen White List Project (20 July 2009)... 6

Welcome - and then change – the EU proposal on Balkan Visa (op-ed 16 July 2009) ..... 8

The Balkans and the Schengen White List – proposal for the way forward (1 June 2009) ..... 11

Strict but fair – The Declaration (19 March 2009)..... 14

Scorecard – Schengen White List Conditions (May 2009) ..... 16

Detailed European Commission Assessments (May 2009) ..... 17

Visa roadmap implementation in Albania Comparison May/October 2009 ..... 21

Excerpts from relevant EU documents..... 23

Visa Roadmap A to Z. All the key concepts and technical terms explained ..... 27

Chronology ..... 42

The EU decision-making process ..... 46

## Visa-free travel in the Balkans (op-ed 6 Dec. 2009)

Gerald Knaus and Alexandra Stiglmeier

6 December 2009

*EUOBSERVER / COMMENT - The recent EU decision to grant visa-free travel to Macedonians, Montenegrins and Serbians has brought celebrations to a region all too often trapped in gloom.*

"Europe opens its doors," announced a Montenegrin daily. "The Schengen Wall has fallen," rejoiced Serbia's public broadcaster. A Serbian airline promptly offered promotional flights to Schengen countries under the slogan "Europe for all of us".

After almost two decades of isolation, it is great news that citizens of these three countries will be able to travel without a visa to the Schengen zone from 19 December. The visa requirement was counterproductive for the EU members-in-waiting. It hampered business and created a psychological barrier that made citizens sceptical about a European future.

The EU is also getting a lot in return. As a condition of visa-free travel, the Balkan countries had to carry out far-reaching reforms in the areas of border control, passport security and the fight against organised crime, corruption and illegal migration. These measures make all of Europe safer.

However, Albania, Bosnia and Herzegovina and Kosovo are not yet part of this happy group.

With its international status still unresolved, Kosovo is the most burning issue. Until very recently, there was even no prospect of visa liberalisation for Kosovo. But last October, the Commission promised a "visa dialogue" with the perspective of eventual liberalisation, conditional on the necessary reforms. However, unlike for the other Western Balkan countries, the EU did not announce a visa roadmap setting out all the reforms that Kosovo will have to undertake. The process was left vaguer.

There are obvious reasons for beating around the bush. The Commission did not want to alienate those EU members that have declined to recognise Kosovo's independence, and who might be concerned that a visa dialogue amounted to implicit recognition, or would even open the floodgates to illegal migration.

These concerns are not justified. First, the experience with the other Balkan countries shows that a clear process centred on roadmaps with defined benchmarks has produced the swiftest reforms. Among other things, it requires a whole series of tough measures on migration control, including readmission agreements obliging the Balkan countries to take back any citizens found illegally residing in the EU. In addition, Kosovo is host to EULEX, the largest rule of law mission in the EU's history. EULEX is attempting to achieve many of the same reforms that would be set out in a road

map. The conditionality in the visa liberalisation process would greatly increase its prospects of success.

Second, visa liberalisation for Kosovo can be entirely status neutral. After all, the Commission is currently in talks with Taiwan about abolishing the visa requirement, showing that international recognition and visa policy are two quite separate issues. So, there are many reasons for the EU foreign ministers meeting on 7 and 8 December to invite the Commission now to draft a visa roadmap for Kosovo, making clear that this would be without prejudice to its status.

### **Encouraging Balkan rivalry**

The ministers could also accelerate the process of abolishing the visa requirement for Albania and Bosnia. When the EU proposed scrapping visas for Serbia, Montenegro and Macedonia last July, Albania and Bosnia were still dragging their feet on the conditions. Since then, however, they have made huge progress and will soon have ticked all the boxes. The question is thus no longer *whether* they will qualify for visa-free travel next year, but *when* next year.

There is everything to be gained from an early decision to preserve the momentum and ensure that Albanians and Bosnians do not feel discriminated against. The EU foreign ministers could set a target date for the start of visa-free travel well before the summer vacation, May or June 2010.

This would require the Commission to organise the assessment missions – there will probably be three to each country - as soon as possible. The first two are already scheduled for December, which is encouraging. Assuming a positive outcome of the mission, the Commission, Parliament and Council will then have to work swiftly to amend the relevant Regulation.

In the meantime, Serbia, Montenegro and Macedonia have to make sure that visa-free travel for the Balkans remains a success story. They must continue to press ahead with the roadmap reforms, leaving no doubt as to their continuing commitment to meeting EU standards.

They could also publicise the positive benefits of visa freedom. Is the number of Western Balkan students in the EU increasing? Is trade with the EU flourishing? Are there more cross-cultural events?

The visa liberalisation process has been an excellent example of EU soft power at work. There were very clear conditions, a rigorous process with milestones and deadlines, and a reachable, juicy carrot at the end. It created some very healthy competition among the five participating countries. When Albania and Bosnia realised last summer that they were lagging behind their neighbours, they redoubled their efforts.

There are lessons here that can be used for the wider Balkan enlargement process. Treating all countries alike in a single process, but rewarding them for their objective performance in a strict, but fair fashion, is the best way to foster national efforts to meet the demanding accession criteria. Transparent, merit-based competition works wonders, even in the Balkans. This is the kind of Balkan rivalry that citizens of the region – and across Europe - can benefit from. In fact, there cannot be enough of it.

Gerald Knaus is the Chairman, and Alexandra Stiglmeier a Senior Analyst, of the European Stability Initiative, a think-tank that has closely followed the visa liberalisation process for the Western Balkans. More information can be found [here](#).

## **A Visa Roadmap for Kosovo! Open Letter by the Schengen White List Project (20 July 2009)**

We welcome the recent European Commission proposal on visa liberalisation in the Western Balkans. It is an important step forward in a process that will allow people from the Western Balkans, like other Europeans, to travel freely around Europe.

We appreciate the fact that the visa liberalisation process is based on objective benchmarks. Governments in the region have a duty to implement wide-ranging reforms to enhance the EU's security and allay the concerns of EU citizens. The countries of the Western Balkans have been asked to improve control of their borders, introduce forgery-proof biometric passports, and put in place concrete strategies to combat organised crime, corruption and illegal migration.

Now the European Commission has found that three countries – Macedonia, Serbia and Montenegro – have largely met these conditions. We are glad that the European Commission is in a position to propose visa-free travel for them. This shows that the process works.

We also hope that the authorities in Albania and Bosnia-Herzegovina will soon fulfil the remaining criteria and gain visa-free access to the Schengen zone before the end of 2010. We welcome the fact that the European Commission is specifying in detail which conditions still have to be met by both countries, ensuring a rigorous and transparent procedure.

However, we are disturbed by the fact that Kosovo has been left out of this process, a blanket visa requirement having been proposed for all of its residents, including those with Serbian citizenship – this, without any mention of a process that could possibly lead to this requirement being lifted.

We know that EU member states currently disagree on the question of Kosovo's independence. However, all member states should agree that leaving Kosovo residents of all ethnicities trapped in a visa ghetto would be a serious problem – not only for Kosovo, but also for the entire Western Balkans and the EU's interests in the region.

We are convinced that it is in the EU's interest to encourage the same reforms in Kosovo as have already taken place in Macedonia and Montenegro. To do this, the EU should use the considerable human and financial resources it already deploys in Kosovo.

Bearing this in mind, we call on all EU member states – whatever their view on the status of Kosovo – to consider two changes to the Commission proposal.

First, Kosovo should also receive a visa roadmap. It must be given the opportunity to implement the same far-reaching reforms that the other five Balkan countries have set out to implement and to thus contribute to its own security, as well as to that of the entire region and the whole EU. Once Kosovo meets these conditions, the visa requirement should be abolished.

If Kosovo can be placed on the visa “black list” without an EU consensus on its status, then it can also be placed on the “white list” once it meets the necessary technical requirements. The visa liberalisation process

should be considered status neutral by the EU.

Second, there should be no discrimination against Kosovo residents. In line with the Commission's proposal, the 3.5 million Serbs living outside Serbia, including the Serbs of Bosnia, will be eligible to receive Serbian passports allowing visa-free travel within the EU. The residents of Kosovo, meanwhile, will not. We disagree with such thinking. It will have the unintended consequence of encouraging Kosovo Serbs (and Kosovo Bosniaks) to relocate and take up residence outside of Kosovo – in plain contradiction to the EU's stated objective of a multiethnic Kosovo.

For years, the countries of the Western Balkans have been waiting for visa-free travel. In the region's relationship with the EU, few issues have been as important. The EU has been on target with its policy of roadmap conditionality and strict but fair evaluations. In the interests of European – and Balkan – security, it must build on this success.

Signed:

**Giuliano Amato**, chairman of the Schengen White List Project Advisory Board, former Italian prime minister and interior minister

**Otto Schily**, former interior minister of Germany, member of the German Bundestag

**Radmila Sekerinska**, chairperson of the National Council for European Integration of Macedonia, former deputy prime minister of Macedonia

**Misha Glenny**, author of "McMafia: Crime without Frontiers" and several books on the Balkans

**Ivan Krastev**, chairman of the Centre for Liberal Strategies, Sofia

**Jordi Vaquer**, director of the Centre for International Relations and Development Studies (CIDOB), Barcelona

**Heather Grabbe**, former senior adviser to the European Commissioner for Enlargement



*Giuliano Amato – Otto Schily – Radmila Sekerinska – Misha Glenny  
Ivan Krastev – Jordi Vaquer – Heather Grabbe – Sandra Breka  
Gerald Knaus – Alexandra Stiglmayer*

## **Welcome - and then change – the EU proposal on Balkan Visa (op-ed 16 July 2009)**

Gerald Knaus and Alexandra Stiglmeier

16 July 2009

Yesterday, **the European Commission proposed for the EU** to move three West Balkan states - Macedonia, Montenegro and Serbia - from the Black onto the White Schengen List.

If the proposal is adopted by EU member states as planned before the end of this year, it will be a momentous step for the Balkan region. Macedonia was on the verge of civil war in 2001. Montenegro only became an independent state in 2006. For the citizens of all three countries, traveling visa-free to the EU from early 2010 onwards – for the first time since the collapse of socialist Yugoslavia – will be a cause for celebration. For reformers, it will be a much needed signal that their efforts are paying off.

Getting to this stage was anything but easy. The reforms required to **meet the almost 50 precise EU criteria** ranged from equipping border crossings to increasing document security and deepening police cooperation. As two former interior ministers, Italy's Giuliano Amato and Germany's Otto Schily, told us during a meeting of the advisory board of the ESI White List Project this week in Istanbul, such reforms make Europe safer *and* the visa requirement redundant. This is truly a win-win situation.

This is also a time of great political and economic uncertainty in the Balkans. In order for EU conditionality to deliver results, the European Commission must be *strict* when it comes to setting out conditions and *fair* when it comes to assessing progress and delivering on the EU's promises. Doing so goes a long way towards restoring the EU's credibility.

So far, so good... but incomplete.

The Commission's proposal leaves two countries – Albania and Bosnia-Herzegovina – on the Black List. It also adds Kosovo "under UN Security Council resolution 1244" to the negative list as an "entity and territorial authority not recognised as a state by at least one member state."

Influential critics in the European Parliament, led by Daniel Cohn Bendit and other European Greens, already complain that the EU is leaving some of the most fragile states, those who have experienced the worst tragedies of the last two decades, out in the cold. Is it morally justified to allow Serbian citizens in Belgrade visa free travel while denying it to the relatives of Bosniak victims of the Srebrenica genocide?

Critics are rightly concerned about a new worst-case scenario: a situation where Bosniaks, Albanians and Kosovars find themselves imprisoned inside a new, even smaller enclave. Where Bosnia is torn

apart by centrifugal tendencies as Bosnian Croats and Bosnian Serbs obtain the passports of the neighbouring states, leaving Bosniaks isolated. As one Turkish paper titled today: "European Union leaves Bosnian Muslims out in the cold, once again."

At the same time, it is necessary to remember that the road to visa free travel is clearly marked out for all the countries involved. By judging all the countries by the same rules, the European Commission has made a fair proposal. Based on roadmap conditions, only those Balkan citizens who hold new biometric passports will be able to benefit from visa-free travel. Due to botched tenders, delays and lack of focus, however, BiH has delayed the introduction of such passports till early 2010! Albania, while ahead of Bosnia, is also behind its more successful neighbours in introducing them.

ESI analysts have in recent weeks **examined in great detail the implementation record of each country**. The good news is that, given the right focus, Bosnia-Herzegovina and Albania can reach Serbia's current record on implementation within the next 12 months.

Bearing this in mind, we call on EU member states to send a signal to the citizens of both countries by moving Bosnia and Albania onto the White List now, but with the actual application of visa-free travel suspended until all conditions are met. We also call on the EU to respond to suspicions of bias through full transparency of its decision making.

While Bosnian and Albanian citizens will certainly be disappointed today, they will hardly be surprised: the **EU's score card was, after all, known for weeks already**. They know that if certain conditions are met visa-free travel is within reach. Bosnians can also see that they have many friends in Europe, who protest at the very suspicion of discrimination.

There is no such hope for Kosovars, for whom the proposal is an unmitigated disaster. For the EU's credibility in Kosovo, it is devastating.

Witness the hypocrisy: for years, when it came to repatriation, the EU considered Kosovo residents Serbian citizens according to Serbian citizenship laws. Now the Commission requires Serbia to issue entirely separate passports to all Kosovo residents. Putting a big 'K' in all passports issued to Kosovars would have been a blatant mark of discrimination. The proposal, therefore, resorts to a gimmick: all passports for Kosovo residents are to be issued by one special office (*Koordinaciona uprava*) in Belgrade – and no such passport will have visa-free access.

Consider the consequences. For years, the EU preached the value of a multiethnic Kosovo. Now Kosovo Serbs are asked to get resident status in Serbia – abandoning Kosovo – if they want to have passports that allow them to travel in Europe.

Some Kosovars who consider the idea of their citizens applying for a passport in Belgrade as a form of treason have prematurely welcomed this. They ignore the fact that the decision to exclude Kosovars in this discriminatory manner is "motivated exclusively by objectively determined security concerns", as the Commission explains, not by any emerging European consensus on Kosovo status. While many Moldovans, Turkish Cypriots or Argentinians can obtain EU member state passports (in Romania, Cyprus or Spain) based on these countries' national laws on citizenship, and then travel

visa free to Europe, Kosovars holding dual citizenship cannot "in view of security concerns regarding in particular potential for illegal migration" (EC, *Explanatory Memorandum*).

What's more, the Commission does not even mention the possibility of a future roadmap for Kosovo. *All* Kosovars are seen as a security problem while *all* Bosnian Serbs can apply for Serbian citizenship, a Serbian passport, and then travel to the EU without raising any such concerns.

If adopted in its current form, the Commission's proposal undermines any notion that current EU members hold out a European perspective for Kosovo. After all, if putting Kosovo on the Black List does not require an EU consensus on its status, then neither should giving it a road map towards the White List.

"Strict but fair" conditionality has worked in Macedonia, Serbia and Montenegro. It is likely to work in Bosnia and Albania in the near future (and it is vital that civil society in Europe and the Balkans insist on transparency in the way these decisions are made). It is in the EU's interest that it also works in Kosovo.

The Commission proposal is a welcome first step. It needs to be modified, however, in order to prevent new tensions and problems.

*Gerald Knaus and Alexandra Stiglmeier are founders of and senior analysts with the European Stability Initiative, a think-tank that has been continuously monitoring the visa liberalisation process in the Balkans. [www.esiweb.org/whitelistproject](http://www.esiweb.org/whitelistproject)*



## **The Balkans and the Schengen White List – proposal for the way forward (1 June 2009)**

1 June 2009

Dear Friends,

In the coming weeks and months, the European Commission and the EU member states will decide which Western Balkan countries qualify for the lifting of the Schengen visa requirement. The EU's decision has the potential to restore the EU's credibility and its *soft power* in the region. It can also balance the hopes of the people in the Balkans with the concerns of those responsible for protecting the Schengen area against illegal migration and organised crime.

On the one hand, there are great expectations on the part of the governments and the citizens of the Western Balkan countries. The visa requirement has been a matter of frustration, contributing to doubts as to whether the Western Balkans' European perspective is real. Now, however, renewed enthusiasm and hope have appeared.

On the other hand, EU governments have stressed the importance of reassuring sceptical EU citizens that they will exercise fair, but strict conditionality when it comes to abolishing the visa requirement on Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia. The conditions were outlined in the EU visa roadmaps issued last year.

Based on what has been achieved so far (acceleration of reform efforts in the Western Balkans, numerous visits to the region by EU experts, and detailed analysis of progress by the European Commission), it is in fact possible to address both concerns – to be both strict and fair – at once.

We offer the following solution for your consideration:

## **Macedonia**

The Commission assessments and expert reports leave no doubt that Macedonia has earned the right to visa-free travel as soon as possible, i.e. from January 2010 at the latest. Such a decision would send a powerful signal to the region that conditionality is taken seriously, and that reforms pay off.

Notwithstanding the upcoming European Parliament elections and a new Commission scheduled to take office in November, the EU institutions must make sure that a decision to amend Council Regulation 539/2001 is taken quickly.

For Macedonians to travel visa-free as of next January, the Commission must make the relevant legislative proposal within the next few weeks. The new European Parliament should then treat the dossier as a priority after the summer break, so that the Council can take the vote on it in the autumn.

## **Montenegro and Serbia**

Montenegro and Serbia still have a few conditions to meet. However, as the Commission concludes, even in areas where the two countries have not yet achieved full implementation, "a large majority" or "the majority of the benchmarks" have been met.

Given that the Council will vote on visa-free travel in five months at the earliest (at the JHA Council of 23 October), possibly even later (at the last JHA Council of 2009 on 30 November/1 December), it is advisable for the Commission to include visa-free travel for Montenegro and Serbia in the forthcoming proposal, while making sure that this is conditional on further reforms.

The next five or more months are long enough to assess whether both countries are serious about meeting outstanding requirements. If doubts persist, the Council could invite the Commission to conduct a final assessment ahead of the vote.

## **Kosovo**

The Commission and the member states must refrain from demanding that Serbia prevent residents of Kosovo from acquiring Serbian passports. One of the roadmap conditions for Serbia clearly states:

*"Serbia should ensure full and effective access to travel and identity documents for all Serbian citizens including women, children, people with disabilities, people belonging to minorities and other vulnerable groups."*

As long as Serbian governments claim, and some EU member states accept, that Kosovars are Serbian citizens (regardless of ethnicity), any open or hidden discrimination will be a breach of the principle of non-discrimination.

The EU is justified in asking for security in the process, in particular as regards the civil registries and the breeder documents that are used. But Serbia must not make the process discriminatory. As

long as the EU does not offer Kosovo a visa roadmap or another process leading towards visa-free travel, it implicitly accepts that Kosovars are Serbian citizens. This means Kosovars have a right to Serbian travel and identity documents.

### **Albania and Bosnia and Herzegovina**

Albania and Bosnia and Herzegovina clearly have to do more work before they qualify for visa-free travel. Being strict is as essential to the success of this process as being fair.

The policy question now is how to ensure that both countries undertake the reforms already achieved in Macedonia, Serbia and Montenegro.

It would be counter-productive to exclude them from the current process. Seeing Serbia move ahead of it could prove destabilising for Bosnia – most Bosnian Croats use Croatian passports, which allow visa-free travel, and an unknown number of Bosnian Serbs have acquired, or are in the process of acquiring, Serbian citizenship and Serbian passports. This would leave the Bosniaks as the only community that is subject to the visa requirement. The new Albanian government, which will emerge from the elections at the end of June, also needs a concrete prospect. For this reason it is advisable to offer both Bosnia and Albania a new timetable.

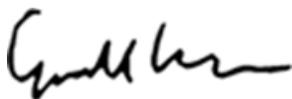
The best option would be to include the two countries in the forthcoming proposal to amend Council Regulation 539/2001 by moving them to the "white" Schengen list – but, in doing so, to stipulate that visa-free travel for Albania and Bosnia will remain pending until all conditions are met. The proposal should also include a specific date for a new assessment to be conducted by the Commission and EU national experts in early 2010.

The Council, at the same time, should continue to communicate clearly that it will take its decisions based on technical, not political, criteria – and that there will be no place in the process for discrimination or shortcuts.

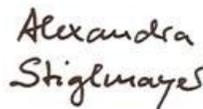
It is already obvious that spelling out clear conditions has inspired reforms throughout the region that have made both the region and the EU safer. A Council decision that includes all five countries – taking note of their progress to date – will ensure that this process continues.

ESI is grateful to the Robert Bosch Stiftung for its support of the "ESI Schengen White List Project".

Many best wishes,



Gerald Knaus,  
Chairperson of ESI



Alexandra Stiglmeier,  
Director "ESI Schengen White List Project"

## **Strict but fair – The Declaration (19 March 2009)**

19 March 2009

In the 1990s, Europe underwent a fundamental transformation: in the East, democracy and market economy replaced communist dictatorships, and the continent began to grow together once again. The political reunification culminated in the abolition of border controls: the Schengen Area now includes most of Central Europe.

During this period, the citizens of the Western Balkans had a very different experience. Yugoslavia fell apart. War, displacement and economic hardship became a daily routine. Sanctions busting and the smuggling of arms, drugs and people all flourished. The people of Albania fared only slightly better, their country descending into chaos in 1997.

For outsiders, the Balkans became synonymous with refugees and crime. To close borders and to restrict travel through visa requirements was a natural response for the EU. The citizens of former Yugoslavia, accustomed to free travel, suddenly found themselves confined.

Today the Balkans are changing. A decade has passed since the last regional war, in Kosovo. Reforms in the security and judicial sectors are making it increasingly difficult for criminals to operate. Whereas in 1997 foreign troops had to be dispatched to Albania to restore order, in 2009 Albania is joining NATO. Soldiers from Bosnia's unified professional 10,000-strong army, meanwhile, contribute to peace-keeping missions around the world.

As the Balkan region is turning from a security consumer to a security provider, it is high time to take another look at the EU visa regime. It was put in place under very different circumstances. Conditions have changed. Will the visa regime?

For the last two decades, Albanians, Bosnians and Herzegovinians, Macedonians, Montenegrins, Kosovars and Serbs have dreamt about being able to travel to the rest of Europe without a visa, like most of them did as Yugoslav citizens in the 1970s and 1980s. Today, this vision might become reality.

The EU has recently taken encouraging steps. It has outlined close to 50 conditions that the Western Balkan countries need to meet to join the Schengen White List. It has dispatched experts to the region to assess progress. This suggests that it is now in the hands of Balkan politicians to obtain the prize of visa-free travel – and that the EU has an interest in seeing them succeed.

The EU's conditions are demanding. To meet them requires money and effort. But their fulfilment will make the whole of Europe, not just the Western Balkans, safer. Having well-secured borders, regulated asylum procedures, forgery-proof passports and police structures able to cooperate with law enforcement agencies throughout Europe is a good in itself. It is cooperation, not exclusion, which works best in fighting organised crime and illegal migration.

We strongly support the visa liberalisation process, which creates real incentives for Western Balkan countries to undertake EU-guided measures that are effective in enhancing the security both of their

own citizens and the EU's. The process also promises to mobilise support in the Balkans for a wider European reform agenda and to enhance the EU's credibility in the region.

We call on leaders in the Western Balkans to carry out the required reforms. We are glad to see civil society in the region increase efforts to monitor progress. We call on EU leaders and institutions to take this process seriously. The EU must not postpone rewarding countries that have made serious efforts to meet its demanding conditions. **It is appropriate for the EU to be strict; it is incumbent upon it to be fair.**

**Giuliano Amato**, chairman of the White List Project Advisory Board, former Italian prime minister and interior minister

**Misha Glenny**, author of "McMafia: Crime without Frontiers" and several books on the Balkans

**Heather Grabbe**, former senior adviser to the European Commissioner for Enlargement

**Gerald Knaus**, ESI chairman

**Ivan Krastev**, chairman of the Centre for Liberal Strategies in Bulgaria

**Radmila Sekerinska**, chairperson of the National Council for European Integration of Macedonia, former deputy prime minister of Macedonia

**Otto Schily**, former interior minister of Germany

**Alexandra Stiglmayer**, director of the White List Project, ESI senior analyst



Giuliano Amato – Misha Glenny – Heather Grabbe – Gerald Knaus  
Ivan Krastev – Radmila Sekerinska – Otto Schily – Alexandra Stiglmayer

## Scorecard – Schengen White List Conditions (May 2009)

22 May 2009

Based on expert visits and internal assessments by the European Commission of the implementation of the visa liberalisation roadmaps by Western Balkan countries (18 May 2009)

- |    |            |                                 |                    |
|----|------------|---------------------------------|--------------------|
| 1. | Macedonia  | <i>meets the benchmarks</i>     | <i>score: 1</i>    |
| 2. | Montenegro | <i>meets most benchmarks</i>    | <i>score: 1.75</i> |
| 3. | Serbia     | <i>meets most benchmarks</i>    | <i>score: 1.75</i> |
| 4. | Albania    | <i>does not meet benchmarks</i> | <i>score: 3</i>    |
| 5. | Bosnia     | <i>does not meet benchmarks</i> | <i>score: 3</i>    |
| 6. | Kosovo     | <i>no evaluation</i>            | <i>score: -</i>    |

**Explanation:** In its assessments, the Commission uses six distinct phrases to describe the countries' progress in four main areas, ranging from "meets the benchmarks" to "does not yet fully meet the benchmarks". A number was allocated to each of these phrases:

- 1 = "meets the benchmarks" *and* "generally meets the benchmarks"  
 2 = "meets a large majority of the benchmarks" *and* "meets a majority of benchmarks"  
 3 = "on the right track, but..." *and* "does not yet fully meet the benchmarks"

	Albania	Bosnia & Herzegovina	Macedonia	Montenegro	Serbia
Document security	3	3	1	1	1
Illegal migration incl. readmission	3	3	1	2	2
Public order and security	3	3	1	2	2
External relations and fundamental rights	3	3	1	2	2

## Detailed European Commission Assessments (May 2009)

On 24 November 2008, the European Commission presented EU member states officials (from the Council working group on the Western Balkans and a working group on justice and home affairs) with draft assessments of the Western Balkan countries' progress in meeting the visa roadmap requirements. Judging by the Commission's assessments, the countries fell into three groups. Macedonia was the most advanced; Serbia and Montenegro made up the second group; Albania and Bosnia and Herzegovina made up the third. The assessments were based on ["readiness reports"](#) that the Western Balkan countries had submitted by September 2008. Later the Commission asked for additional information, clarifications and updates.

At the closed meeting in November, the Commission noted that it would be able to propose the lifting of visa restrictions in 2009 for the most advanced countries if the pace of reform was maintained. Enlargement Commissioner Olli Rehn made [similar comments](#). However, some member states' representatives, notably those from Germany, Spain and Belgium, objected, stating that 2009 might be premature. The Commission then invited the EU member states to nominate national experts for a series of fact-finding missions to all the Western Balkan countries. These took place between January and March 2009.

The reports from these missions, as well as additional information and updates supplied by the Western Balkan governments, [formed the basis for a new series of Commission assessments scheduled for May 2009](#). These have now been presented to the member states. These assessments conclude – based on the most thorough expert assessments ever undertaken in the fields of document security, border control, migration management and security – that Macedonia meets the conditions for visa-free travel, that Montenegro and Serbia meet most of the conditions for visa-free travel, and that Bosnia-Herzegovina and Albania do not (yet) meet the conditions for visa free travel. Kosovo, the sixth Western Balkan state whose citizens are required to obtain a visa to travel to the EU, is not yet included in this process leading to visa liberalisation and risks being left behind as an enclave in the region.

Next week, Monday, 25 May 2009, the Commission will discuss its findings with EU member states' officials. If EU member states follow the Commission's assessments and apply the strict conditionality they have themselves defined – then they will offer Macedonia visa-free travel, while (for the moment) denying it to Albania and Bosnia-Herzegovina. As for Montenegro and Serbia, the Commission and EU member states will need to weigh whether to reward the impressive recent progress made in both countries (particularly in recent months) or whether to hold out any concrete rewards until conditions are actually met in both. A third option, preferable to a negative decision, might be to make one more final assessment before the end of July.

The most problematic aspect of the current assessments is that they leave out Kosovo, the Western Balkan state where the European Union has assumed most direct responsibility. This creates problems not only for the citizens of Kosovo but also both Serbia and the EU. It is not clear why the EU would wish to forego such a powerful instrument to improve policing, border controls and the rule of law in Kosovo.

**Explanation:** In its assessments, the Commission uses six distinct phrases to describe the countries' progress in four main areas, ranging from "meets the benchmarks" to "does not yet fully meet the benchmarks". A number was allocated to each of these phrases:

- 1 = "meets the benchmarks" *and* "generally meets the benchmarks"
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- 3 = "on the right track, but..." *and* "does not yet fully meet the benchmarks"

	Albania	Bosnia & Herzegovina	Macedonia	Montenegro	Serbia
<b>Block 1: Document security</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>1</b>
	<p>"It appears that Albania <u>does not yet fully meet</u> all the benchmarks specified under block 1 of the Roadmap. The issuance of biometric passports under a secure personalisation procedure could not be assessed during the period covered by this updated assessment report." (Because too few passports issued so far.)</p>	<p>"It appears that Bosnia and Herzegovina <u>does not yet fully meet</u> all the benchmarks specified under block 1 of the Roadmap, inter alia due to the introduction of biometric passports foreseen only in January 2010."</p>	<p>"It appears that the former Yugoslav Republic of Macedonia <u>meets</u> the benchmarks set under Block 1 of the roadmap."</p>	<p>"It appears that Montenegro <u>meets</u> the benchmarks set under Block 1 of the roadmap."</p>	<p>"It appears that Serbia <u>generally meets</u> the benchmarks set under Block 1 of the roadmap. Further verification is necessary concerning the issuing of breeder documents to persons residing in Kosovo and the integrity and security of the procedures followed."</p>
<b>Block 2: Illegal migration incl. readmission</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>2</b>

	<p>“It appears that Albania <u>does not yet fully meet all</u> the benchmarks specified in block 2 of the Roadmap. Further progress remains to be made in particular in the areas of border and migration management.”</p>	<p>“It appears that Bosnia and Herzegovina <u>does not yet fully meet all</u> the benchmarks specified in block 2 of the Roadmap. Further progress remains to be made in particular in the areas of border and migration management.”</p>	<p>“The former Yugoslav Republic of Macedonia has made substantial progress on migration-related issues and appears to <u>generally meet</u> the benchmarks set under Block 2 of the roadmap.”</p>	<p>“It appears that Montenegro <u>meets a large majority of</u> the benchmarks set under Block 2 of the roadmap. Further verification is necessary on the implementation of the Law on Foreigners and additional information on a possible sustainable solution in the near future regarding displaced persons and IDPs.”</p>	<p>“It appears that Serbia <u>meets a large majority of</u> the benchmarks set under Block 2 of the roadmap. Further verification is necessary on the implementation of the Law on Foreigners and effective cooperation between different authorities at the boundary line with Kosovo needs to be ensured.”</p>
<b>Block 3: Public order and security</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>2</b>
	<p>“Albania has made some progress in the area of public order and security, but it appears that it <u>does not yet fully meet the</u> benchmarks under this block.”</p>	<p>“Bosnia and Herzegovina has made some progress in the area of public order and security, but it appears that it <u>does not yet fully meet the</u> benchmarks under block 3.”</p>	<p>“It appears that the former Yugoslav Republic of Macedonia <u>generally meets</u> the benchmarks set under block 3 of the roadmap.”</p>	<p>“It appears that Montenegro <u>meets the majority of</u> the benchmarks set under block 3 of the roadmap. Further efforts are needed regarding implementation of the legal</p>	<p>“It appears that Serbia <u>meets the majority of</u> the benchmarks set under Block 3 of the roadmap. Further efforts are needed regarding implementation of the legal framework,</p>

				framework, including through allocation of adequate financial and human resources.”	including through allocation of adequate financial and human resources.”
<b>Block 4: External relations and fundamental rights</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>2</b>
	“It appears that Albania is <u>on the right track</u> to meet the benchmarks under this block. Additional efforts should be concentrated on protection of minorities and fight against discrimination.”	“It appears that Bosnia and Herzegovina is <u>on the right track</u> to meet the benchmarks under this block. Additional efforts should be concentrated on protection of minorities and fight against discrimination.”	“It appears that the former Yugoslav Republic of Macedonia <u>meets</u> the benchmarks set under block 4 of the roadmap.”	“It appears that Montenegro <u>meets a large majority</u> of the benchmarks set under Block 4 of the roadmap.”	“It appears that Serbia <u>meets a large majority</u> of the benchmarks set under Block 4 of the roadmap.”

## Visa roadmap implementation in Albania Comparison May/October 2009

16 November 2009

	May 2009	Oct. 2009
<b>Block 1: Document security</b>		
<b>EMA/ESI assessment: Albania generally meets the benchmarks under block 1.</b>		
1.1 Issue biometric passports in line with ICAO and EC standards	2-	1
1.2 Ensure integrity and security of the personalisation & distribution process	3+	1
1.3 Establish anti-corruption training & ethical codes for officials (passports, visas)	3+	2
1.4 Report lost and stolen passports to Interpol/LASP database	2+	1
1.5 Ensure a high level of security of breeder documents and ID cards, incl. issuance procedures	2+	1
<b>Block 2: Illegal Migration including readmission</b>		
<b>EMA/ESI assessment: Albania generally meets the benchmarks under block 2.</b>		
2.1.1 Adopt and implement legislation on movement of persons at the external borders, legislation on border authorities in line with 2007 National Strategy of Integrated Border Management	3	2-
2.1.2 Take budgetary & other measures ensuring efficient infrastructure, equipments, IT at borders	3	2
2.1.3 Establish anti-corruption training & ethical codes for officials (border management)	2	2
2.1.4 Conclude working arrangement with FRONTEX	1	1
2.2.1 Adopt and implement legislation on carrier's responsibility	1-	1-
2.3.1 Adopt and implement asylum legislation, which is in line with internat. Standards	1-	1
2.3.2 Provide adequate infrastructure (reception centres for asylum seekers) & strengthen bodies responsible for asylum procedures	1	1
2.4.1 Mechanism to monitor migration flows (incl. migration profile), set up responsible bodies	1	1
2.4.2 Implement the 2005 National Migration Strategy and its Action Plan	1-	1-
2.4.3 Conduct inland detection, improve capacity to investigate org. facilitated illegal migration	2	2
2.4.4 Adopt and implement a law on the admission and stay of third-country nationals	1-	1-
2.4.5 Ensure expulsion of illegally residing third-country nationals	1-	1-
<b>Block 3: Public order and security</b>		
<b>EMA/ESI assessment: Albania meets a large majority of the benchmarks under block 3.</b>		
3.1.1 Adopt and implement draft strategy to fight organised crime (in particular cross-border aspects) by adopting and implementing an action plan	3+	2-

3.1.2 Adopt and implement draft strategy and action plan to fight trafficking in human beings	3	1-
3.1.3 Adopt and implement a strategy to fight money laundering and financing of terrorism, implement legislation on confiscation of assets of criminals	2-	2+
3.1.4 Implement 2004-2010 National Strategy and National Drug Action Plan, make info on drug seizures and persons involved accessible at BCPs, develop cooperation with relevant int. Bodies	2+	1-
3.1.5 Implement 2007-2013 National Anti-corruption Strategy, adopt and implement Anti-Corruption Action Plan, take additional measures	2	2+
3.1.6 Implement relevant UN and CoE conventions as well as GRECO recommendations in the areas listed above and the fight against terrorism	3+	2
3.2.1 Implement internat. conventions on judicial cooperation in criminal matters	3+	2-
3.2.2 Improve judicial cooperation in criminal matters with EU MS and regional countries	1-	1-
3.2.3 Develop working relations with Eurojust	1	1
3.3.1 Improve law enforcement co-operation among relevant national agencies	3+	2
3.3.2 Set up coordination mechanisms for information exchange between national agencies	2+	2+
3.3.3 Improve law enforcement cooperation and info exchange regionally and with EU MS	1-	1-
3.3.4 Improve operational and special investigative capacity of law enforcement services to tackle cross-border crime	2-	2+
3.3.5 Prepare for the conclusion of operational cooperation agreement with Europol	1-	1-
3.4.1 Implement March 2008 Personal Data Protection Law, set up supervisory authority	2-	1-
3.4.2 Sign, ratify and implement internat. conventions on personal data protection	1	1
<b>Block 4: External Relations and Fundamental Rights</b>		
<b>ESI/EMA assessment: Albania generally meets the benchmarks under block 4.</b>		
4.1.1 Ensure freedom of movement for citizens without discrimination	1-	1-
4.2.1 Ensure access to travel and identity documents for all citizens	1-	1-
4.2.2 Ensure access to identity documents for refugees	unclear	1-
4.3.1 Adopt and enforce legislation against discrimination	2	2+
4.3.2 Specify conditions and circumstances for acquisition of Albanian citizenship	1-	1-
4.3.3 Ensure investigation of ethnically motivated incidents in the area of freedom of movement	1-	1-
4.3.4 Ensure that constitutional provisions on protection of minorities are observed	1-	1-
4.3.5 Implement relevant policies regarding minorities, including Roma	2	2+

\*based on Albania's updated second readiness report of 2 November 2009 including all annexes. The grading system uses 3 grades, from 1 (top) to 3, and the corresponding colours.

## Excerpts from relevant EU documents

### European Commission proposal for visa-free travel for Western Balkan countries (15 July 2009)

Proposal for a  
**COUNCIL REGULATION**  
**amending Regulation (EC) No 539/2001 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**

Brussels, 15.7.2009  
COM (2009) 366 final

#### **Explanatory Memorandum (...)**

##### **1. Context of the proposal**

(...)

##### ***Next Steps***

In parallel with the examination of its proposal in the EP and the Council, the Commission will continue to assess the implementation of the open benchmarks for Serbia and Montenegro and it will share its assessment in a timely manner with the EP and the Council.

(...)

For Serbia, the remaining open benchmarks relate to:

- the improvement of cross-border/boundary surveillance, which includes in particular the exchange of information with EULEX/Kosovo police;
- the effective implementation of the Law on Foreigners in force since April 2009 and the adoption of the Migration Management Strategy;
- the effective implementation of the legal framework for the fight against organised crime and corruption, including through allocation of adequate financial and human resources;
- the integrity and security of the procedures followed in issuing new biometric passports to persons residing in Kosovo.

Since 1999 Serbia has not had the possibility to make on the spot verifications regarding persons residing in Kosovo under UNSCR 1244/99. Regarding the issuance by Serbia of the new biometric passports to persons residing in Kosovo, given the absence of a visa liberalisation dialogue, the Commission and the Member States experts were not in a position to verify (in particular through expert missions) the issuing of breeder documents and the integrity and security of the procedures followed by the Serbian authorities for the verification of the correctness of data submitted by persons residing in Kosovo when applying for new Serbian biometric passports. In order to prevent

abuse of this situation in applications for biometric passports, the Serbian authorities announced the establishment in July in Belgrade of a specific Coordination Directorate (in Serbian: *Koordinaciona uprava*), solely in charge of processing all passport applications received from persons residing in Kosovo and persons whose citizenship certificate has been issued for the territory of Kosovo under UNSCR 1244/99.

Therefore, in view of security concerns regarding in particular potential for illegal migration from persons residing in Kosovo and persons whose citizenship certificate has been issued for the territory of Kosovo under UNSCR 1244/99 and in the absence of any verification of the passport issuing procedures followed by the Serbian authorities for this category of persons, the Commission considers that holders of Serbian passports issued by the specific Coordination Directorate (in Serbian: *Koordinaciona uprava*) should be excluded from the visa free regime for Serbia.

(...)

### **Kosovo under UNSCR 1244/99**

The European Council of 19 and 20 June 2008 emphasised the EU's 'willingness to assist the economic and political development of Kosovo through a clear European perspective, in line with the European perspective of the region'. Following the declaration of independence by the Kosovo Assembly on 17 February 2008, the Council declared Kosovo as constituting a *sui generis* case and left it to EU Member States to decide on their relations with Kosovo in accordance with international law and national practice. To date 22 EU Member States have recognised Kosovo as an independent state.

The version of Council Regulation (EC) No 539/2001 currently in force contains no reference to Kosovo. At present the Commission has not opened a visa liberalisation dialogue with Kosovo. Therefore, in line with Article 1(3) of the Regulation (EC) No 539/2001 a reference to Kosovo under UNSCR 1244/99 shall be added to Annex 1 of Regulation so that persons residing in Kosovo shall be submitted to the visa requirement. This proposal is motivated exclusively by objectively determined security concerns regarding in particular the potential for illegal migration stemming from and transiting through Kosovo under UNSCR 1244/99. This is without prejudice to the current status of Kosovo under UNSCR 1244/99.

\*\*\*\*\*

## **Communication from the Commission to the European Parliament and the Council: “Kosovo - Fulfilling its European Perspective”**

Brussels, 14 October 2009

### **Bringing Kosovo Citizens Closer to the EU**

A number of countries in the region have made substantial progress in the area of freedom of movement. In return for agreements on re-admission, they have been able to benefit from visa facilitation agreements with the EU. Visa liberalisation roadmaps have provided crucial guidance on issues such as the security of documents, the fight against organised crime, migration and border security. Progress has been monitored and evaluated through dialogue at senior official level. The prospect of visa-free travel has been a powerful incentive for these countries to carry out reforms. As a result, the Commission has proposed the relevant Council Regulation<sup>11</sup> be amended to make citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia eligible for visa-free travel to the EU as from January 2010. Citizens from Albania and Bosnia and Herzegovina could also benefit from this as soon as these countries meet the remaining requirements.

Kosovo started issuing its own passports in July 2008. The process for individual Kosovo citizens to apply for visas has been made easier. Most EU Member States use the flexibility offered by EU legislation to simplify procedures to issue short-stay visas to individual Kosovo residents.

Kosovo citizens need to share further in the benefits of EU approximation, including the possibility to travel visa-free in the EU. This is only possible if Kosovo can ensure that relevant reforms are implemented and rules and procedures are respected so as to minimise the associated security risks for EU Member States. The starting point for these reforms is properly functioning readmission arrangements. Kosovo needs to adapt its legislation, strengthen its administrative capacity to process readmission requests and implement an effective reintegration strategy. It also needs to enhance the security of its borders and secure the management of civil registries and the issuance of documents.

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. 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 will regularly assess Kosovo's progress in the implementation of the strategy, drawing on evaluation missions by Member State and Commission experts. The Commission will support Kosovo in the implementation of its strategy through technical and financial assistance. In addition, within the wider framework of the rule of law and as a corollary to EULEX's activities, the Commission will explore the possibility of involving Kosovo in judicial cooperation initiatives at the regional level. The arrangements for Kosovo to cooperate and be associated with the work of Europol, Eurojust and Frontex require further examination, including through the possible involvement of EULEX.

\*\*\*\*\*

# General Affairs Council – Conclusions on Enlargement/ Stabilisation and Association Process

Brussels, 7-8 December 2009

## Western Balkans

29. The Council stresses that Kosovo should also benefit from the perspective of eventual visa liberalisation<sup>1</sup> once all conditions are met and invites the Commission to move forward with a structured approach to bring the people of Kosovo closer to the EU.

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<sup>1</sup> Without prejudice to Member States' positions on status

## Visa Roadmap A to Z. All the key concepts and technical terms explained

This glossary explains all the key concepts and technical terms that appear in the **visa roadmaps** for Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia. By understanding them, it becomes clear how far-reaching the reforms are that these states have to undertake to qualify or visa-free travel with the Schengen countries. It also becomes evident that these reforms will be beneficial not only to the Balkan countries, but also help protect the EU against crime and illegal immigration from all over the world.



*Young people, like these students in Bosnia, wait impatiently for visa-free travel to the EU.  
Photo: University Tuzla*

### **Breeder documents**

Basic documents that are used to obtain other documents like passports, ID cards and driver's licenses. Typical breeder documents are birth certificates, marriage certificates, death certificates, divorce certificates and – in some countries – social security cards. Since breeder documents are the basis for other documents, it is crucial to safeguard their security and prevent their falsification or manipulation.

Making breeder documents secure requires a complex set of arrangements. This includes protecting the breeder documents against falsification and securing the various civil registries where personal data (such as birth and death data) is stored. Typically, such measures include strict limits on access to civil registers, adequate security controls, security design features that make it difficult to falsify certificates, adequate and securely stored duplicates (including central electronic databases), direct links to source databases to verify information, and comprehensive and continuous training programmes for staff involved in the verification or identification of documents (including courses on corruption awareness and fraud detection).

As with the **personalisation of travel documents**, the "four-eyes principle" and "separation of duties" need to be observed at all stages of the process.

#### **ID cards**

The visa roadmaps require Western Balkan states to ensure "a high level of security of breeder documents and **ID cards**" and define "strict procedures for their issuance". ID cards are included because they can function as travel documents, can on occasion be used as breeder documents, and are needed to identify a person when they request certificates, such as birth certificates.

#### **Carriers' responsibility**

Carriers' responsibility refers to the obligation of carriers (persons, companies and organisations that provide passenger transport by air, sea or land) to ensure that passengers have valid and recognised travel documents, including visas or residence permits where required. Carriers that fail to adequately control travel documents and allow unauthorised foreigners to enter a country are obliged to repatriate them at their own expense. They are also liable to fines.

Carriers' responsibility is enshrined in Article 26 of the 1990 Schengen *Convention*, which clarifies the implementation of the 1985 **Schengen Agreement**. An EU Directive adopted in 2001 (2001/51/EC) supplements Article 26 and explains legislation on carriers' responsibilities as a measure "aimed at curbing migratory flows and combating illegal immigration." To achieve these aims, the visa roadmaps demand that the Western Balkan countries implement legislation – and define sanctions – pertaining to carriers' responsibility.

#### **Confiscation of assets of criminals**

Legislation on this issue is necessary to ensure that criminals are not allowed to keep the proceeds generated through criminal activities. In general, criminal assets can also be seized, without compensation, if they have been transferred to another person. The confiscation of criminal proceeds must be based on a court decision which establishes that a crime was committed. Within the EU, a member state can request the freezing and confiscation of property related to the commission of an offence in any other EU member states.

The Council of Europe has passed two conventions on the confiscation of assets of criminals (the conventions of 1990 and 2005), based on which the EU has passed **legislation** that is even stricter than the conventions.

#### **Council of Europe Conventions**

The **Council of Europe** (CoE) is a separate and older European institution than the EU. Founded in 1949, the organisation is based in Strasbourg and has 47 member states including the five Western Balkan states which participate in the visa liberalisation process (Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia).

The Council of Europe works mainly through conventions. By drafting conventions and international treaties, its member states agree common legal and other standards. The CoE conventions become legally binding in the member states if they sign and ratify them, and incorporate their provisions into national legislation. Several Council of Europe conventions have also been opened for signature to non-member states.

There are **205 Council of Europe treaties**, according to the CoE's Treaty Office. The

Western Balkan countries are required to implement the conventions in various fields, ranging from corruption to **personal data protection** and judicial cooperation in criminal matters (see next entry).

**Council of Europe conventions relating to judicial cooperation in criminal matters**

The two original Council of Europe treaties on judicial cooperation in criminal matters – occasionally called the "mother conventions" – are the **1957 European Convention on Extradition** and the **1959 European Convention on Mutual Assistance in Criminal Matters**. In total, however, there are **31 conventions and protocols** concerning judicial cooperation in criminal matters, such as the supervision of conditionally sentenced or conditionally released offenders, transfer of proceedings in criminal matters, transfer of sentenced persons, corruption, suppression and prevention of terrorism, money laundering and seizure of assets of the proceeds of crime, statutory limitations, human trafficking, compensation of victims of violent crime and cyber crime.

The Western Balkan countries are asked to implement international conventions concerning judicial cooperation in criminal matters, in particular the Council of Europe conventions; and to take measures aimed at improving the efficiency of judicial co-operation in criminal matters of judges and prosecutors with the EU countries and countries in the region.

**Corruption**

Combating corruption is a priority for the EU. As disputes about the membership of Bulgaria and Romania have shown, many EU member states fear that the accession of 'corrupt' countries might water down the integrity standards of the Union.

Transparency International's **Corruption Perception Index** – probably the best-known global index on corruption – gives fairly bad grades to the countries of the Western Balkans. On a scale of 1 to 10, where '10' signifies 'highly clean' and '0' 'highly corrupt', Western Balkan countries received ratings of 3.6 (Macedonia, the least corrupt in the group) and 3.2 (Bosnia and Herzegovina, the most corrupt in the group) in 2008. In comparison, Slovenia was rated 6.7; Denmark, the least corrupt country in the world according to TI, received 9.3 points, and Somalia was the most corrupt with 1.0.

The EU is thus keen for the Western Balkan states to implement measures against corruption by drafting and implementing anti-corruption strategies, and related action plans and legislation. The visa roadmaps also require specific measures to tackle corruption in border management agencies (e.g. border police, customs) and other bodies or institutions that handle travel documents and visas.

The roadmaps also require the Western Balkan states to implement relevant UN and Council of Europe conventions such as: the 2003 **UN Convention on Corruption**, the 1999 **Council of Europe Civil Law Convention on Corruption** and the **Council of Europe Criminal Law Convention on Corruption** from the same year.

**EU joint action on travel ban**

A "Joint Action" is a legal instrument of the EU's **Common Foreign and Security Policy** (CFSP). It is an action coordinated between the 27 EU member states to attain specific objectives derived from generally formulated policy goals

(guidelines) set by the European Council (EU heads of state or government). If a joint action is agreed, various resources (human resources, expertise, funding, equipment, etc.) can be mobilised.

The EU has adopted several joint actions imposing travel bans on specific individuals coming from non-EU states. An example is the travel ban on senior figures of the regime in Zimbabwe, including President Robert Mugabe. The measure was motivated by the Zimbabwean government's continuing engagement "in serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly." (For further information about the EU's Foreign Policy, click [here](#).)

## **EU legislative instruments**

The EU uses a variety of legislative instruments, the most important being:

**EU Regulation:** This type of EU law is applicable in its entirety, without any changes, in the EU member states. It becomes applicable on a specified date, usually within a short period after publication in the EU's Official Journal. In case of any conflict with national laws, the Regulation prevails.

**EU Directive:** This type of EU law sets objectives that have to be achieved, but leaves the EU member states to decide on the form and method of achieving them. Each Directive sets a deadline, usually two or three years after adoption at EU level, by which time member states must have transposed its provisions into national legislation.

**EU Decision:** Both the EU Council (where all the member states are represented) and the European Commission can adopt Decisions. They are fully binding on those to whom they are addressed.

## **Eurojust**

**Eurojust** is an EU body established in 2002. Based in The Hague, it is a permanent network of judicial authorities tasked with enhancing the effectiveness of the investigation and prosecution of serious cross-border and organised crime in EU member states. Eurojust has 27 national members, one from each EU member state – usually a senior prosecutor, judge or police officer – who have access to the judicial authorities and case files within their country. There are also 31 Eurojust contact points in non-EU countries (2007), including all Western Balkan countries. Eurojust works with them on cases involving the countries they represent.

In April 2009, for example, the organisation facilitated several **coordinated and simultaneous arrests in Italy, the Netherlands and Columbia** in a large human- and drug-trafficking case. Eurojust's role in the investigation was to organise coordination meetings between the judicial authorities from Colombia, the Netherlands and Italy.

The visa roadmap requires the Western Balkan countries to develop working relations with Eurojust, mainly through the Eurojust contact points. The goal is enhanced cooperation in fighting serious forms of transnational crime, including terrorism. Macedonia even signed a **judicial cooperation agreement with Eurojust**

on 28 November 2008.

**European Police Office (Europol)**

**Europol** is a "service organisation" to EU member states with no coercive powers and no police force of its own. Its establishment was agreed in the Maastricht Treaty (effective 1993), and the agency – based in The Hague – has been fully operational since 1999.

Europol's main task is to facilitate cooperation between EU law enforcement agencies "in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international organised crime." It achieves this through information exchange, intelligence analysis, expertise and training.

**Strategic cooperation agreements**

Europol cooperates closely with all Western Balkan countries and has concluded **strategic cooperation agreements** with them to enhance cooperation in fighting serious forms of international crime including drug trafficking, money laundering and illegal immigration. The agreements provide for the following:

The exchange of strategic and technical information; *strategic information* includes e.g. information on enforcement actions, routes and methods used by smugglers, threat assessments and crime situation reports; *technical information* refers to issues of police methodology, administrative measures undertaken by police forces, etc.

A capacity building element with regard to how the relevant authorities of the Western Balkan states can cooperate with Europol,

A gap analysis helping to identify problems regarding the "cooperation infrastructure" between the two parties,

The possibility to exchange liaison officers.

**Operational cooperation agreements**

The next step envisaged by the visa roadmaps for Western Balkan countries is "to prepare for the conclusion of **operational cooperation agreements** with Europol with special emphasis on data protection provisions." The current cooperation agreements with Western Balkan states are limited to structural and strategic issues such as the exchange of information on enforcement actions or threat assessments. Operational cooperation goes a step further and includes, among other things, the exchange of specific data on criminals, illegal migrants, etc. This, however, requires that Western Balkan states first implement adequate measures for **personal data protection**.

**FRONTEX**

**FRONTEX** is an EU agency based in Warsaw, which has been fully operational since October 2005. FRONTEX' main purpose is to coordinate operational cooperation between EU member states in the field of border security. It achieves this through a number of complementary activities. At the core of these activities is risk analysis: the identification, assessment and prioritisation of risks related to the security of the EU's external borders. The aim is to ensure the "right" amount of protection to counter an identified risk, without under-protecting, but also without over-protecting.

FRONTEX' activities include the coordination of operational activities of member states related to the security of external borders, assistance in training border

guards, the establishment of common training standards, and research in the area of border control and surveillance. The agency also supports member states in identifying best practices regarding the acquisition of travel documents and the removal of illegal third country nationals.

FRONTEX has working agreements with non-EU countries in the EU's neighbourhood. Cooperation focuses on joint operational activities in the field of border control, training, as well as technical cooperation in the field of research and development. As of the end of April 2009, FRONTEX had established formal cooperation with the law enforcement authorities of nine non-EU countries, including four of the five countries participating in the visa liberalisation process (Albania, Bosnia and Herzegovina, Macedonia and Serbia). The remaining five were Croatia, Georgia, Moldova, Russia and Ukraine. The conclusion of a working arrangement with FRONTEX is one of the requirements of the visa roadmaps.

**Group of States  
against  
Corruption  
(GRECO)**

**GRECO** is an anti-corruption monitoring body of the **Council of Europe**. It was established in 1999 and is located in Strasbourg, France. Membership in GRECO is not limited to European states (e.g. the US is also a member), though all member states of the Council of Europe are also GRECO members. All five Western Balkan countries participating in the visa liberalisation process are members of the Council of Europe and GRECO.

The organisation's task is to identify deficiencies in member states' anti-corruption policies, particularly with regard to Council of Europe anti-corruption standards, and to suggest legislative, institutional and practical reforms.

GRECO aims to reduce corruption not by imposing sanctions, but by mutual evaluation, persuasion and peer pressure. GRECO works in cycles, so-called evaluation rounds, which last three to four years. Specific themes are chosen for each evaluation round, which are then examined on a state-by-state basis. The current round, launched in 2007, deals with bribery and political party financing. At the end of an evaluation round, GRECO evaluates the implementation of its recommendations by each member country.

The visa roadmaps require the Western Balkan countries to implement all GRECO recommendations.

**Inland detection  
of illegal  
migrants**

Inland detection is a strategy used by authorities to search for and apprehend illegal migrants within the borders of a country after they have illegally crossed state borders. The concept of inland detection is crucial for the prevention of illegal migration, as even in the case of highly sophisticated border control measures a large number of illegal migrants manage to cross state borders.

Inland detection is not random. It focuses on so-called "nexus points" – areas where illegal migration routes converge or pass through, or where services – such as safe houses and clandestine transport – are offered to illegal migrants.

The Western Balkan states are requested to define and apply inland detection in order to prevent the transit of illegal third-country migrants to the EU.

**Integrity and security of the passport personalisation and distribution process**

Personalisation is a process by which empty (blank) passport documents – which are not usable as they are – are loaded with the information (including biometric data) of the person to whom the passport will be issued.

Security in the personalisation process is critical in order to ensure that the data loaded onto the document cannot be tampered with, modified or stolen by fraudsters and criminals. Similar precaution is necessary during the entire distribution process to prevent unauthorised persons from getting hold of either the blank or the issued (personalised) passport document. This is achieved through systematic controls throughout the entire personalisation and distribution process, including the consistent application of the "four-eyes" principle (whereby a critical task is always shared by two or more people, the idea being that it is more difficult to corrupt two individuals than one) and the application of "segregation of duties" (whereby different tasks of a larger process are assigned to different individuals, so that no single person has full control of the process thus making it more difficult to commit fraud). Technical controls such as encrypted communication are also used, as well as a high degree of automation with minimal human intervention – once again reducing possibilities of fraud.

**LASP/SLTD database**

**Interpol** maintains a so-called **SLTD database** (Stolen and Lost Travel Documents). The database holds records of millions of passports, identity cards and visas that were reported as stolen or lost. It enables border authorities worldwide to check instantly whether somebody is trying to enter a country using a stolen travel document and a false identity. The database is thus a key measure for detecting criminals and illegal migrants. The Western Balkan countries are required to report to Interpol's SLTD database.

**Machine-readable biometric travel document**

A travel document that contains computer-readable biometric information about its holder. Biometric information relies on physiological characteristics (fingerprints, iris shape, hand geometry, face, voice, ear shape) or behavioural characteristics (signature), allowing authorities to rapidly and precisely authenticate a person's identity proving that the holder of the identification is indeed who he claims to be. Biometric information can also provide border services, or any other investigative body, with a means to search for matches in a database; for instance, to verify whether a person has previously entered the Schengen area under a different name. Biometric travel documents are thus seen as a key part of the fight against organised crime, terrorism and illegal immigration.

In 2004 the EU member states adopted Council Regulation **2252/2004**, according to which all new EU passports must be machine-readable and include (from 2006 onwards) digital photos of the holder and (from 2009) fingerprints. The biometric information is stored on a chip in passports and in national databases as well as in the Schengen Information System II (SIS II). SIS II is the modernised and improved successor to SIS, both allowing national authorities in Schengen countries to share information on policies and persons trying to cross the border or to obtain a visa.

**Migration**

Migration is increasingly perceived as a central feature of the global economy. This realisation has led to a conceptual shift regarding the strategic goals of

**management**

migration policies - from *controlling and restricting* migration to *managing* it.

The **International Organisation for Migration (IOM)**, the leading inter-governmental organisation in the field of migration, describes the goal of **migration management** as helping to harness the social and economic potential of migration to the benefit of *individual migrants* as well as *societies as a whole*. The model calls for "managing migration in an orderly way" while also "controlling irregular migration." This involves the development of a comprehensive migration management policy based on extensive empirical data on migration movements and supported by appropriate legislation and administrative structures. The gathering of information for migration management purposes requires extensive national cooperation between various in-country services and ministries, as well as international cooperation.

**Monitoring of migration flows**

The visa roadmaps require Western Balkan states to put in place mechanisms for the **monitoring of migration flows**, to regularly update the **migration profiles** of their countries and to establish bodies responsible for the collection and analysis of data on migration stocks and flows. The obligation to monitor migration flows implies keeping records of the numbers and structure of legal and illegal migration.

**Migration profiles**

**Migration profiles** gather and analyse all information relevant to migration in any given country. They usually include data on immigrants, emigrants, remittances, migrant communities, and irregular migration; they also provide an overview of migration policies and the legal framework in place. In preparation for its EU presidency in 2008, the Slovenian government requested the IOM to draft **migration profiles for all the Western Balkan countries** as well as for Turkey. These documents were finalised in 2007 and now need to be kept up-to-date by the Western Balkans governments.

**Money laundering**

Money laundering is the act of concealing the true origins of money acquired by illegal means. If successful, the laundered money loses its "criminal identity" and appears legitimate. The criminal act of money laundering is *not* limited to concealing the origins of the proceeds of organised crime (such as the sale of drugs, arms trafficking and prostitution), but also relates to assets and values generated through illegal financial transactions (corruption, tax evasion, false accounting).

A typical example of money laundering is "smurfing". A large amount of cash, e.g. 100,000 €, is broken down into smaller amounts such as 10,000 € and deposited by a number of individuals in various accounts: these amounts are then transferred to the account of the original owner of the illegal money. Breaking down a large amount of money into smaller amounts is crucial, as cash payments to bank accounts below a certain limit are not reported to financial oversight bodies. Other forms of money laundering are more complex, and can use false loan repayments or forged invoices as a cover; yet other forms include depositing large amounts of cash in offshore banks that are not under a strict anti-money laundering regime (there are number of such offshore financial centres, for

example Barbados, the Cayman Islands, Belize, etc.).

The main EU law on money laundering is the Directive on "**Money laundering: prevention of the use of the financial system**" adopted in 2005. The Directive's aim is to prevent the use of the financial system for money laundering or terrorist financing. It requires financial institutions to apply customer due diligence, meaning that they have to investigate a potential financial customer's background. They also have to monitor and report all suspicious transactions to their country's Financial Intelligence Unit (FIU). The setting up of FIUs is stipulated in the EU Directive.

The Western Balkan countries are required to adopt and implement national strategies on the prevention and fighting of money laundering, including legislative measures where necessary, and to implement the relevant UN and Council of Europe conventions in this field.

**National  
Integrated  
Border  
Management**

National Integrated Border Management is a concept to integrate and optimise national and international cooperation within, and between, the various agencies and services responsible for border management. These agencies include the border police, customs administration, and veterinary and phyto-sanitary inspection.

The two main goals of efficient border management are: (a) to facilitate the movement of legitimate persons and goods, while (b) preventing the entry of smuggled goods, narcotics, arms, illegal migrants, and trafficking in human beings; halting the spread of infectious diseases to people, animals, and plants; and countering terrorist threats.

In order to achieve these two central aims, the National Integrated Border Management concept for the Western Balkan states postulates improved cooperation and integration on three levels:

- Intra-service co-operation
- Inter-agency co-operation
- International co-operation

Integration at, and between, these three levels is achieved through a comprehensive package of activities and tools that include measures regarding the legal and regulatory framework, organisational structures and management, procedures, human resources and training, communication, information technology, infrastructure and equipment, and budget.

The concept of integrated border management is also implemented in Schengen zone countries, though here the emphasis is on interstate cooperation between the various national border authorities and on the establishment of a common legal framework. It goes back to a European Commission **Communication from 7 May 2002** (a policy paper) on the integrated management of the EU's external borders, primarily in order to curb illegal migration and fight terrorism (more information from the European Commission is available [here](#)). Based on the

Communication, a series of legislative measures were passed. The EU is currently discussing a **new generation** of border management tools to improve border checks and register who enters the EU.

### **National Strategy for Reintegration of Returnees**

Under the **readmission agreements** concluded between the EU and the states of the Western Balkans, the Western Balkan countries are obliged to undertake measures to reintegrate returnees who have been sent back by the EU. These measures include the issuance of personal documents, temporary accommodation and social protection, health protection and education for children.

Activities related to the reintegration of these returnees necessitate cooperation between different ministries and government bodies. Important government bodies in this respect include the Ministry of Interior, the Ministry of Labour and local administrative bodies. The National Strategy for Reintegration of Returnees – whose adoption is required by the visa roadmap – coordinates these actors in providing basic support for returnees.

### **Personal Data Protection Law**

Personal data protection is an area of law that deals with the individual's right to privacy regarding the collection and storage of personal data. The concept of personal data protection is founded on basic human rights principles on the right to privacy, such as Article 8 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms**.

The challenge of data protection legislation is to strike a balance between a high level of protection of privacy and the free movement of personal data for legitimate purposes, mostly in the field of commerce (e.g. information on customers) and administration (e.g. data on citizens for tax purposes, pension funds, social benefits). The level of personal data protection is further restricted "in order to safeguard aspects such as national security, defence, public security, the prosecution of criminal offences."

In the EU a number of Directives deal with the issue, the most important of these being Directive **95/46/EC** on "the protection of individuals with regard to the processing of personal data and on the free movement of such data" and Directive **2002/58/EC** "on privacy and electronic communications". The former amplifies the **1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data** and its **Additional Protocol** from 2001, which the Western Balkan countries are requested to sign, ratify and implement. (For more information about personal data protection in the EU, click [here](#).)

When processing personal data, Directive **95/46/EC** requires that "appropriate measures [must be implemented] to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access." The Directive further states that the transfer of personal data from EU member states to countries outside of the EU is only authorised if the country in question has put in place "an adequate level of protection" of personal data.

Establishing operational cooperation between the law enforcement bodies of Western Balkan states and EU countries – so that personal data on criminals,

illegal migrants, etc. can be exchanged – is thus preconditioned on the Western Balkan states' putting in place adequate data protection systems.

### **Readmission agreement**

An agreement between the EU and a non-EU country pertaining to the readmission of persons who do not, or no longer, meet the conditions of presence or residence on the territory of one of the two parties and are (a) nationals of the other party or (b) nationals of a third country, but have transited through the other party's territory.

Despite the reciprocal character of readmission agreements, the real issue is the illegal presence of non-EU nationals in the EU, and not vice versa. In practical terms, readmission agreements facilitate the expulsion of illegal residents to their country of origin or transit. They are part of the EU's strategy to combat illegal immigration.

### **Bilateral readmission agreement**

The **European Commission started to negotiate readmission agreements** on behalf of the EU in 2000. The first *Community* readmission agreement, with Hong Kong, entered into force on 1 March 2004. Previously, individual EU member states concluded **bilateral readmission agreements** with non-EU countries.

The issue of readmission gradually **pervaded other EU policy areas** such as trade, development aid and external relations as the EU looked for leverage to convince countries from where migrants enter the EU to conclude readmission agreements. Between 2004 (**Hague Programme**) and 2005 the EU finally decided to offer *visa facilitation* in certain cases as an incentive to achieve readmission agreements.

The EU also decided to offer this package to countries with a European perspective, such as those of the Western Balkans (even though most EU countries already had bilateral agreements with these countries). The main reason was one of diplomacy and equal treatment: it would have been strange – even unfair – to offer easier visa application procedures to distant countries, but not to potential EU candidates.

The EU readmission and visa facilitation agreements with Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia entered into force on 1 January 2008, with the exception of the readmission agreement with Albania, which had become effective on 1 May 2006. (For more information about the agreements with the Western Balkan countries see *The Origin* and *Visa Facilitation and Readmission Agreements*.)

### **Implementing protocols**

The precise procedures for readmission are detailed in so-called **implementing protocols** between individual EU member states and the non-EU country in question. The implementing protocols typically include issues such as defining the competent authorities, the available border crossing points, details of communication (e.g. language), conditions for escorted returns and the documents necessary for the readmission to be carried out.

### **EU standard travel documents**

Persons whose readmission has been accepted by the country of origin or transit may receive **EU standard travel documents for expulsion purposes**, which the countries of origin or transit are obliged to accept. There is a need for such

<b>for expulsion purposes</b>	travel documents if the persons to be readmitted have destroyed their ID documents and refuse to disclose their identity or if the receiving country cannot technically, or refuses to, issue the necessary identity and/or travel document.
<b>Refugees and Internally Displaced Persons (IDPs)</b>	The United Nations High Commissioner for Refugees (UNHCR), the lead UN agency responsible for the protection of refugees, defines a <b>refugee</b> as "someone who has been forced to flee his or her country because of persecution, war, or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group." Critical for the definition of a refugee is that the person has crossed an international border. The legal status of <b>refugees</b> is governed by the 1951 <b>Refugee Convention and a Protocol from 1966</b> (also known as the <i>Geneva Convention with New York Protocol</i> ). The roadmaps demand that the Western Balkan countries implement this convention. One of its most important provisions is that no state can expel or return a refugee against their will to a place where the refugees fears prosecution (principle of <i>non-refoulement</i> ).
<b>Refugees</b>	
<b>IDPs</b>	<b>IDPs</b> are persons who have been forced to flee their homes for the same reasons as refugees. However, unlike refugees, IDPs remain in their home country and thus have not crossed an international border. International refugee law thus does not apply to IDPs, who remain subject to the laws of their home country. As there is no international legislation that would specifically address the issue of IDPs, the UNHCR has compiled <b>Guiding Principles on Internal Displacement</b> that summarise the rights and guarantees for the protection of IDPs. These guiding principles reflect, and are consistent with, international human rights law and international humanitarian law.
<b>Schengen Agreement</b>	An agreement signed in 1985 by Belgium, France, Germany, Luxemburg and the Netherlands abolishing border controls and establishing a zone of free movement of people and goods. The Agreement was followed in 1990 by the <b>Schengen Convention</b> , which defined the measures necessary for implementation. Since its establishment, the Schengen zone has expanded several times. It now encompasses 25 European states and covers a population of approximately 400 million people.  While the original Schengen Agreement was simply a treaty signed between five countries, from 1999 onwards the agreement and all related legal acts have been part of the EU body of law (EU <i>acquis</i> ). These provisions are binding on EU accession countries.  However, not all EU member states fully participate in the agreement: Ireland and the United Kingdom have chosen to maintain border controls, while Bulgaria, Cyprus and Romania still have to implement some provisions to become fully integrated. Denmark has the right to choose whether or not to apply certain measures. At the same time, three non-EU members – Iceland, Norway and Switzerland – are fully integrated.  The abolition of internal border controls has gone hand in hand with strengthened controls at the external borders of the treaty area. In order to create greater

efficiency and security with regard to the border regime of the Schengen zone, it was also necessary to harmonise policies and administrative measures in other relevant policy areas as well, such as immigration and visa policy, cross-border policing and judicial cooperation.

**Schengen  
White and  
Black Lists**

An EU law ([Council Regulation 539/2001](#)) lists the countries whose nationals need a visa to enter the Schengen area ("**Schengen Black List**") and those whose nationals do not ("**Schengen White List**"). A computerised information system (**SIS** - Schengen Information System) allows the national authorities of the Schengen countries to share information related to border security (including persons trying to enter the EU or obtain a visa) and law enforcement. A similar system is being set up to enable Schengen countries to share information on the entry and exit of persons under visa obligation (**VIS** - Visa Information System).

**SIS and VIS**

More information about the Schengen area, from the European Commission, is available [here](#).

**Trafficking in  
human beings**

Human trafficking involves the act of recruiting, transporting, harbouring or receiving a person for the purpose of forced labour, slavery – including sex slavery – and various forms of bonded labour. (Bonded labourers work to repay a loan, such as the fee they are charged for being smuggled into the EU. The relationships between bonded labourers and their patrons are typically highly exploitative with no fair payment for the labour delivered.) Victims of human trafficking are usually recruited through force, deception or fraud; often they are in a situation of debt bondage.

Human trafficking is different from illegal migration or the smuggling of migrants. Central to the definition of human trafficking is the notion of coerced exploitation of the migrant after he or she has crossed a border. This is not the case when migrants are smuggled into a country or enter a country illegally on their own and seek illegal employment there.

Human trafficking is closely linked to organised crime and is often described as a modern form of slavery. The majority of victims are women, with sexual exploitation the most common reason for their trafficking.

In the EU, framework legislation on human trafficking ([Council Framework Decision 2002/629/JHA of 19 July 2002](#)) deals with such issues as criminalisation, penalties, aggravating circumstances, jurisdiction, extradition, and police and judicial cooperation. (More information about EU action against trafficking in human beings is available [here](#).)

A number of international conventions also deal with human trafficking, most importantly the [UN Convention against Transnational Organised Crime](#), adopted in 2000, and the [Council of Europe Convention on Action against Trafficking in Human Beings](#), adopted in 2005. Advocacy groups and even some UN organisations increasingly describe human trafficking as a crime against humanity.

**Visa Facilitation Agreement**

An agreement, aimed at simplifying the visa application procedure, between the EU and a non-EU country whose citizens are under visa obligation. In the case of Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia, the conclusion of visa facilitation agreements was linked to the conclusion of **readmission agreements**. The visa facilitation and readmission agreements entered into force on 1 January 2008, except the readmission agreement with Albania, which entered into force on 1 May 2006.

The visa facilitation agreements with the Western Balkan countries offer a number of improvements as compared to the normal visa regime: (a) a deadline of 10 calendar days to process visa applications; (b) a clearly specified list of documents needed to demonstrate the purpose of the trip; (c) a reduced visa fee of 35 Euro (a Schengen visa normally costs 60 Euro) along with a fee waiver for many groups of applicants, such as close relatives, children, pensioners, students, athletes, journalists, etc.; and (d) the possibility of receiving multi-entry longer-term visas, in particular for frequent travellers. For more information see *The Origin* and *Visa Facilitation and Readmission Agreements*.

**Visa refusal rate and refusal rate of entry**

In a section called "Final remark", the visa roadmaps state that the European Commission, in assessing a country's readiness for visa-free travel, will also take into account criteria "such as the visa refusal rate for visa applicants and the refusal rate of entry into the common Schengen area for [the country's] nationals. In this context, the decreasing trend of the refusal rate, which should progress towards 3% for visas and 1,000 persons per year refused for entry into the common Schengen area, will be used as an indicative reference."

Both requirements have been contentious among EU member states, and it is questionable whether compliance with them can and will be considered.

**Visa refusal rate**

The **visa refusal rate**, expressed as a percentage, is simply the rate of negative decisions on visa applications. In theory, a low refusal rate could indicate that the citizens of a Western Balkan country are generally not perceived as posing any risk: that they are not likely to overstay their visa and remain in the Schengen area as illegal migrants; and that they are not likely to commit any offences.

Relying on the refusal rate as a benchmark is problematic, however. Firstly, Schengen countries are obliged to collect visa statistics and make this data available to the Council, **which publishes it annually**; the data, however, sometimes does not add up (e.g. the number of visa applications is not equal to the total number of visas granted and denied). Up-to-date data from recent months would also be very difficult for the Commission to obtain.

Secondly, the statistics do not always reflect the situation in an individual country. For example, many EU countries do not have consular offices in Kosovo: Kosovars, therefore, apply for visas at consulates in Macedonia, thus "distorting" the statistics for Macedonia. Thirdly, the visa refusal rate often hinges on different countries' different visa policies (statistics show that Germany and Austria turn down a higher rate of visa applications than, say, Italy) and on whether consulates provide sufficient information (well-briefed applicants, aware of the

exact visa requirements, have a higher chance of obtaining one).

**Refusal rate  
of entry**

The **refusal rate of entry into the common Schengen area** is the rate of persons who are denied entry at the external borders of the Schengen area (because they do not have the necessary visa, for example, or because the border police or customs services detected irregularities). However, there is a fundamental problem with the EU's insistence that the refusal rate for the nationals of each Western Balkan country progress towards 1,000 persons per year. Serbia has 7.4 million citizens. Montenegro has 650,000. It is not fair to expect both to have the same total number of refused entries. Apart from this, in this case too it would be a tremendous challenge for the Commission to obtain the relevant information in time.

## Chronology

- 21 June 2003 EU/Western Balkans Summit in Thessaloniki acknowledges "the importance the peoples of the Western Balkans attach to the perspective of liberalisation of the EU's visa regime towards them" and promises discussions with the Commission about the necessary reforms and requirements, but there is no serious follow-up.
- 5 Nov. 2004 EU leaders endorse the Hague Programme, a new 5-year programme for justice and home affairs, and decide to examine the possibility of offering visa facilitation to third countries in exchange for readmission agreements.
- 20 Dec. 2005 Council decides to account for "the EU's overall relationship with candidate countries, countries with a European perspective and countries covered by the European Neighbourhood Policy as well as strategic partners" when launching negotiation of visa facilitation and readmission agreements, opening the way for the negotiation of such agreements with the Western Balkan countries.
- May 2006 European Commission requests the Council to authorise it to negotiate visa facilitation and readmission agreements with Macedonia, presenting the required negotiating mandate for adoption by the Council.
- 20 July 2006 Commission presents to the Council draft mandates to negotiate visa facilitation and readmission agreements with Albania,<sup>1</sup> Bosnia and Herzegovina, Montenegro and Serbia, too.
- 13 Nov. 2006 Council gives go-ahead for the negotiation of the visa facilitation and readmission agreements with all five Western Balkan countries.
- 13/14 Nov. 2006 GAERC (EU foreign ministers) mentions that "visa facilitation and readmission agreements will be an important and necessary step forward" with regard to the visa issue.
- 20 Nov. 2006 Negotiations of the visa facilitation and readmission agreements with the Western Balkan countries are launched.
- 13 April – 16 May 2007 Visa facilitation and readmission agreements are agreed and initialled with all five Western Balkan countries.
- 18 June 2007 GAERC "acknowledged the importance the people of the Western Balkans attach to the perspective of visa-free movement. In this context, it welcomed the intention of the Commission to take these issues forward in concrete terms". This is the first clear indication that visa facilitation

	will be followed by visa liberalisation.
Sept.-Nov. 2007	Visa facilitation and readmission agreements are signed, approved by the Parliament, concluded by the Council and ratified by all Western Balkan countries.
6 Nov. 2007	In its Enlargement Strategy, the Commission proposes to open visa liberalisation dialogues and establish visa roadmaps.
1 Jan. 2008	Visa facilitation and readmission agreements enter into force in the Western Balkan countries.
28 Jan. 2008	GAERC welcomes the Commission's intention to launch visa dialogues and define "detailed roadmaps setting clear benchmarks to be met by all the countries in the region in order to gradually advance towards visa liberalisation."
30 Jan. 2008	Launch of the visa dialogue with Serbia.
21 Feb. 2008	Launch of the visa dialogues with Macedonia and Montenegro.
7 March 2008	Launch of the visa dialogue with Albania.
7 May 2008	Visa roadmap presented to Serbia.
8 May 2008	Visa roadmap presented to Macedonia.
26 May 2008	Launch of the visa dialogue with Bosnia and Herzegovina.
28 May 2008	Visa roadmap presented to Montenegro.
3 June 2008	Visa roadmap presented to Albania.
5 June 2008	Visa roadmap presented to Bosnia and Herzegovina.
By 1 Sept. 2008	Western Balkan countries have to submit "readiness reports" and do so with a small delay.
24 Nov. 2008	Commission presents assessments of visa roadmap implementation by the Western Balkan countries to a joint Coweb/justice and home affairs Council working group in Brussels and subsequently presents the assessments to the Western Balkan governments.
Dec.-Jan. 2009	Western Balkan governments answer additional questions.
Jan.-March 2009	Expert missions including experts from the EU member states verify the situation on the ground in the Western Balkan countries, and seminars

with MS experts discuss the Block 4 requirements.

- 18 May 2009 Commission finalises its updated assessments of roadmap implementation by each Western Balkan country and sends them, together with the reports from the expert missions, to the EU member states.
- 25 May 2009 Commission and representatives of EU member states (Coweb and JHA issues Council working groups) begin discussions of the assessments and the forthcoming Commission proposal.
- 15 July 2009 Commission submits proposal to introduce visa-free travel for Macedonia, as well as Serbia (without Kosovo residents) and Montenegro if the two countries meet a few outstanding requirements; no change for Albania and Bosnia and Herzegovina since they do not yet fulfil the roadmap conditions; Kosovo (which has not been part of the visa liberalisation process) to be added to the black list.
- 25 Sept. 2009 Montenegro and Serbia submit reports whether they meet the outstanding requirements.
- 29 Sept. - 19 Oct. 2009 Responsible European Parliament committees discuss Commission proposal and adopt their opinions.
- 1 Oct. 2009 Albania and Bosnia submit updated progress reports.
- 12 - 16 Oct. 2009 EU national expert missions to Serbia and Montenegro examine the situation on the ground.
- 4 November 2009 Slovenia proposes to grant visa-free travel to Macedonia, Serbia and Montenegro as of 19 December 2009.
- Early Nov. 2009 Commission issues positive assessments concerning Serbia's and Montenegro's compliance with the outstanding roadmap requirements.
- 12 Nov. 2009 European Parliament plenary adopts its (non-binding) opinion on the Commission proposal. It approves visa-free travel for Macedonia, Serbia and Montenegro; urges a quick decision-making process for Albania and Bosnia and their symbolic placing on the white list already now; and demands a roadmap for Kosovo.
- 30 Nov. 2009 Justice and Home Affairs Council voted on the Commission proposal (qualified majority voting), giving visa-free travel to Macedonia, Montenegro and Serbia
- 8 – 9 Dec. 2009 EU General Affairs Council “stresses that Kosovo should also benefit from the perspective of eventual visa liberalisation (without prejudice to Member States' positions on status) once all conditions are met and

invites the Commission to move forward with a structured approach to bring the people of Kosovo closer to the EU”.

19 Dec. 2009

Macedonia, Montenegro and Serbia begin to enjoy visa-free travel to Schengen countries

Dec. 2009

EU national expert missions examine situation with regard to document security in Albania and Bosnia

Jan./Feb. 2010

Further EU expert missions planned in Albania and Bosnia

2010

ESI will work on ensuring that Albania and Bosnia are granted visa-free travel latest by July 2010 and that a visa dialogue with Kosovo, based on a roadmap, is launched.



European Parliament

*21 December 2009*

## **The EU decision-making process**

From 19 December 2009, Macedonians, Montenegrins and Serbians travelling with new biometric passports no longer need a visa to travel to 28 European countries.<sup>[1]</sup> Their passports are simply stamped when they cross the border to a Schengen country. The stamp entitles them to stay for up to 3 months (90 days) within a 6-month period (180 days) in the Schengen zone.

This is the result of a series of tough conditions that the three countries had to meet in the areas of border control, personal document security, public order & security, and human rights, and the subsequent decision by EU member states to abolish the visa requirement. On a technical level, it is the result of an amendment of **Council Regulation 539/2001**.

This EU law determines whether the citizens of a country can freely enter the Schengen zone, or whether they have to obtain a Schengen visa from an embassy or consulate beforehand. Annex I, the so-called "black list", lists all the countries and territories whose nationals must have a visa to cross the border into the Schengen area, and Annex II, the "white list", lists all the states whose nationals are exempted from the visa obligation.

More than half a year passed from early June 2009 when the European Commission started drafting the legislative proposal until 19 December, the day when the amendment of Council Regulation 539/2001 began to apply.

This means that in 2010 Albania and Bosnia-Herzegovina will need to factor in some time for the legislative process once the Commission will determine that they have met all requirements for visa-free travel. The same goes for Kosovo, which yet has to receive a visa roadmap setting out the conditions it needs to fulfil to qualify for visa-free travel.

Amendments of Council Regulation 539/2001 require the cooperation of three EU institutions: the **European Commission**, the **European Parliament** and the **Council**. Due to the entry into force of the **Lisbon Treaty** on 1 December 2009, the decision-making procedure will be slightly different in the future from what it was for Serbia, Montenegro and Macedonia.

The roles of the three EU institutions are the following:

- ▶ The **European Commission** is the only institution that has the right to propose amendments to Council Regulation 539/2001.<sup>[2]</sup> The Lisbon Treaty has not changed anything in this regard. This means that the Commission has to put forward a legislative proposal if the Regulation is to be amended. In the case of visa-free travel for Macedonia, Montenegro and Serbia, the Commission issued **its proposal** on 15 July 2009.

- ▶ The **Council of the EU**, where all 27 EU member states are represented, has to adopt the proposed amendment. Before the entry into force of the Lisbon Treaty, the Council was the *only* body that had to adopt the proposed amendment, voting by qualified majority.<sup>[3]</sup> For Macedonia, Montenegro and Serbia, it **did so on 30 November 2009**. Now, under the Lisbon Treaty, the Council shares its legislative power equally with the European Parliament (and continues to vote by qualified majority).
- ▶ The **European Parliament** is now co-decision-maker on equal footing with the Council. Previously, the Parliament had only to be *consulted* before the Council could take a vote, but the Council was not bound by the Parliament's opinion. The Parliament issued **its opinion** of the 2009 Commission visa proposal for Macedonia, Montenegro and Serbia on 12 November 2009. The decision-making procedure that the two bodies follow now is called "ordinary legislative procedure". This means that the proposed amendment of Council Regulation 539/2001 will go through one or two readings, usually always with the Parliament looking at the proposal first, and, if the two bodies cannot agree on it, it will go before a conciliation committee, which will try to pave the way for adoption.

### The procedures at the European Commission

At the Commission, two Commissioners and the departments under their authority have been in charge of the visa liberalisation process for the Western Balkans, which was launched in January 2008: **Jacques Barrot**, Commissioner for Justice, Liberty and Security, and the **Directorate-General for Justice, Liberty and Security** (DG JLS); and Enlargement Commissioner **Olli Rehn** and the **Directorate-General for Enlargement** (DG ELARG). DG JLS has had the lead since visa policy falls under its competence.



Jacques Barrot – Olli Rehn

After January 2009, **a new Commission** will be in place,<sup>[4]</sup> and the responsibilities of the Commissioners will slightly change. Visa policy will be part of the portfolio of Cecilia Malmstrom, Commissioner-designate for Home Affairs, and the Directorate-General for Home Affairs; as well as Commissioner-designate for Enlargement and European Neighbourhood Policy Stefan Fule and the Directorate-General for Enlargement and European Neighbourhood Policy.

The process of amending Council Regulation 539/2001 does not start with the Commission officially presenting its proposal. First the Commission has to draft the proposal and agree on it internally. So when on 15 July 2009 the Commission put forward its **legislative proposal** to give visa-free travel to Serbia, Montenegro and Macedonia, it had already worked on it for more than six weeks.

DG JLS started drafting the proposal in early June 2009, in parallel to conducting the final discussions with EU member states to obtain their agreement on the proposal. The actual legislative proposal was very short since it only mentioned the deletion of the three countries from Annex I and their inclusion in Annex II, as well as Kosovo's inclusion in Annex I. This was introduced by a 2-page preamble. However, the explanatory memorandum accompanying the proposal was another 7 pages (excluding the front page).

When the draft was finished, it had to be agreed with Commissioner Rehn and DG ELARG and then it had to go through an "inter-service consultation". During this process, other Directorates-General of the Commission (there are 40 in total in 2009) are invited to provide comments and suggest changes to the proposal. The Commission's Legal Service is always part of an inter-service consultation, as to ensure that every document is legally sound. When the document is shorter than 20 pages, like in the case of the visa proposal, an inter-service consultation lasts 10 working days.

The proposed amendment also had to be translated into all official EU languages (there are 23 official EU languages), which took many weeks. However, as long as there are translations into English, French and German, the three working languages of the Commission, the Commission can adopt the proposal internally, giving it official status.

The Commission mainly uses two ways to adopt proposals and other documents: by "written procedure" or by "oral procedure".<sup>[5]</sup> For the visa proposal, the oral procedure was chosen, which means that the **proposal** was **discussed and adopted "orally"** at the weekly meeting of all the 27 Commissioners on 15 July 2009.

In the meantime, EU member states had publicly expressed their support of the visa liberalisation process and asked the Commission to put forward a legislative proposal, so that the Commission was sure that its proposal would not be rejected. This had happened at the **EU foreign ministers meeting in Luxembourg** on 15/16 June 2009. The conclusions stated:

*"The [assessment] reports reflect the clear progress made by these countries in meeting the benchmarks set out in the visa liberalisation roadmaps. In this context, the Council encourages the European Commission to present as soon as possible a legislative proposal amending Regulation (EC) No 539/2001, as it applies to the Member States, in order to achieve a visa free regime ideally by the end of 2009 with those countries that will have met all the benchmarks."*

This was the go-ahead for the Commission to finalise and put forward its proposal.

### **The opinion of the European Parliament**

The Commission's legislative proposal was transmitted to the Council and the European Parliament on the day of adoption by the Commission, on 15 July 2009. Under the so-called "consultation procedure", the European Parliament had to deliver an opinion on the Commission's proposal before the Council could take a vote on it, so it was now the Parliament's turn to deal with it.

Due to the elections for a new European Parliament on 4-7 June 2009, it took some time for the new assembly to turn its attention to the proposed amendment. The weeks after the elections were devoted to establishing the new Parliament and its committees and filling all the positions, and

then summer break started. The *rappporteur* for the visa proposal was only appointed on 2 September 2009. The task of the rapporteur is to manoeuvre the proposal through the lead committee, receive opinions of other interested committees, and to pave the way for a plenary vote.



Tanja Fajon

The rapporteur appointed for the Commission's visa proposal was **Tanja Fajon** (Progressive Alliance of Socialists and Democrats), a Slovenian member of the **Committee on Civil Liberties, Justice and Home Affairs (LIBE)**, which was the responsible committee. The **Foreign Affairs Committee (AFET)** provided input, and AFET's rapporteur was Sarah Ludford from the UK (Group of the Alliance of Liberals and Democrats for Europe).

In the current Parliament, there are seven political groups, which are coalitions of the national political parties from the EU member countries. The largest is the **European People's Party (Christian Democrats)** (265 MEPs out of 736; 36%), followed by the **Progressive Alliance of Socialists and Democrats** (184 MEPs; 25%), the **Alliance of Liberals and Democrats for Europe** (84 MEPs; 11.4%), the **Greens** (55 MEPs; 7.5%) and the **European Conservatives and Reformists** (54 MEPs; 7.3%). The remaining two groups have 35 and 32 members, respectively, and there are also 27 independent MEPs.

EP committees usually discuss a dossier over the course of at least three separate meetings (presentation, followed by debate and discussion of amendments, followed by a vote), which can take months. However, the procedure can also be sped up, like it was for Commission's visa proposal of 15 July 2009.

LIBE and AFET committees discussed the Commission's proposal on 29 September (AFET) and 30 September (LIBE) and voted on the **draft reports** from the rapporteurs on 6 October (AFET) and 15 October (LIBE). Before the plenary vote, the MEPs were briefed by the Commission on Serbia and Montenegro's progress in meeting the outstanding benchmarks, which the Commission considered satisfactory. The discussion and vote in plenary took place on 12 November 2009. The result showed overwhelming support across all political groups for the **Fajon report**: 550 MEPS voted in favour, 51 against, and there were 37 abstentions.

The Parliament's opinion was non-binding in November, but in the future the Parliament will have the same legislative power as the Council. Under the "ordinary legislative procedure" (called "co-decision procedure" under the old EU Treaty), the two bodies have to agree on a text. As a rule, the Parliament is the first to examine a proposal from the Commission. It then goes to the Council with the Parliament's amendments. If the Council agrees to this text, the proposal is adopted in first reading. If it does not, then the proposal goes to second reading, again first to the Parliament and then to the Council. If the two bodies cannot agree, a conciliation committee is formed with representatives from the Parliament, the Council and the Commission who try to arrive at a

mutually acceptable text. If they succeed, the text is sent to the Council and the Parliament for another vote. If they accept it, it is adopted; if either body rejects it, the proposal is withdrawn (which happens extremely rarely).

### The vote by the Council

Before the Council took the final vote on 30 November, Slovenia - one of the most supportive member states concerning visa liberalisation for Western Balkans countries - proposed moving the date of the start of visa-free travel for Serbians, Montenegrins and Slovenians to 19 December 2009. This was the earliest day possible under the rules applying to publication of the amended Council Regulation 539/2001 in the EU's Official Journal. Member states supported this change as it would allow the Balkan citizens to travel during the holiday season.

The Council that took the final vote on the proposal was the Justice and Home Affairs Council, which is made up of interior and justice ministers from the 27 EU member states. This Council meets around six times per year, so there were only three sessions in the second half of 2009 during which it could adopt the proposal: during its meetings on 21/22 September, 23 October or 30 November/1 December. The last meeting was the only feasible since the Parliament needed time to deliver its opinion.



The Council of the European Union and the ministers for internal affairs from Albania, Bosnia, Macedonia, and Serbia on 30 November 2009 in Brussels. Photo: Council of the European Union

The Council votes on visa issues by qualified majority, which means that a proposal must garner 228 out of 309 votes. (The normal number of votes in the Council is 345, but the UK and Ireland are not voting on visa policy. The number of votes per country corresponds to its population.)

Following a Council's vote, the legal act adopted is published in the **Official Journal** of the European Union: it usually takes around three weeks, but can also happen a bit faster if needed. This presupposes that the Council sent the text to lawyer-linguists before adoption so that they had enough time to check it and make sure it is legally sound. The amended Council Regulation 539/2001 was published in the **Official Journal of 18 December 2009 (L 336)**.