

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

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The Schengen short-stay visa requirement was lifted for Macedonians, Montenegrins and Serbians on 19 December 2009, and for Albanians and Bosnians on 15 December 2010. Their passports are now simply stamped when they cross the border to one of 28 European countries, and they can stay for up to 3 months (to be precise: 90 days) within a 6-month period (180 days) in the Schengen zone. The abolition of the visa requirement was the reward for meeting a series of tough conditions in the areas of border control, personal document security, public order & security, and human rights. On a technical level, it was 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. Amending Council Regulation 539/2001 takes a bit of time since three EU institutions are involved. The process for Macedonia, Montenegro and Serbia was also different from that for Albania and Bosnia. The reason was the entry into force of the Lisbon Treaty on 1 December 2009, which changed the decision-making procedure for visa policy. Let's take a look at how this decision-making process works.

Amendments of Council Regulation 539/2001 require the cooperation of three EU institutions: the European Commission, the European Parliament and the Council. Their roles are the following:

- The European Commission is the only institution that has the right to propose amendments to Council Regulation 539/2001.[2] 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, and for Albania and Bosnia on 27 May 2010.
- 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.[3] 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). It voted on the amendment lifting the visa requirement for Albania and Bosnia on 8 November 2010.

For both groups of Balkan countries, it took seven months to amend the Visa Regulation, from the moment when the Commission presented the legislative proposal until the citizens could really travel visa-free. Another six to eight weeks is to be added for the preceding work within the Commission (see below). This shows that amending the Visa Regulation is by no means a quick affair.

### **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: Cecilia Malmstrom, the Commissioner for Home Affairs (who succeeded Jacques Barrot, Commissioner for Justice, Liberty and Security on 10 February 2010), and the Directorate-General for Home Affairs (DG HOME); and the Commissioner for Enlargement and European Neighbourhood Policy Stefan Fule (who succeeded Enlargement Commissioner Olli Rehn on 10 February 2010) and the Directorate-General for Enlargement (DG ELARG). DG HOME has the lead since visa policy falls under its competence.

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 (DG Justice, Liberty and Security, the predecessor to DG HOME) 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. 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 were 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".[4] For the visa proposals, the oral procedure was chosen, which means that the proposals were discussed and adopted "orally" at the weekly meeting of all the 27 Commissioners – on 15 July 2009 for Macedonia, Montenegro and Serbia, and on 27 May 2010 for Albania and Bosnia.

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

The Commission's legislative proposals for the Western Balkan countries were transmitted to the Council and the European Parliament on the day of adoption by the Commission, on 15 July 2009 (Macedonia, Montenegro and Serbia) and 27 May 2010 (Albania and Bosnia). In 2009, the so-called "consultation procedure" still applied, so the European Parliament had to deliver an opinion on the Commission's proposal for Macedonia, Montenegro and Serbia before the Council could take a vote on 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 *rapporteur* 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 and draft a report that is voted on at the end, receive and incorporate opinions of other interested committees, and to pave the way for a plenary vote.

The rapporteur appointed for the Commission's visa proposals for both groups of Balkan countries 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 at which a deadline for amendments, which can be put forward by any member, is given; followed by debate and discussion of the proposed amendments; followed by a vote on the amendments). This can take months. However, the procedure can also be sped up, which it was for the visa proposals. .

LIBE and AFET committees discussed the Commission's proposal for Serbia, Montenegro and Macedonia 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). The discussion and vote in plenary took place on 12 November 2009. For Albania and Bosnia, the committee work started on 2 September 2010 when Tanja Fajon presented its draft report, and the plenary vote took place on 7 October 2010.

While the Parliament's (positive) opinion on visa-free travel for Serbia, Montenegro and Macedonia was non-binding, this changed when the assembly dealt with visa-free travel for Albania and Bosnia following the entry into force of the Lisbon Treaty on 1 December 2009. The Lisbon Treaty envisages the "ordinary legislative procedure" (which used to be called "co-decision procedure" under the old EU Treaties) for decisions on visa policy, which means that the Council and the European Parliament share decision-making power on an equal footing. 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). In the case of the 27 May 2010 proposal for Albania and Bosnia, the Parliament and Council agreed on lifting the visa requirement for these two countries in the first reading. The Parliament voted on 7 October 2010 and the Council on 8 November 2010.

### **The vote by the Council**

Before the Council took the final vote on visa-free travel for Macedonia, Montenegro and Serbia on 30 November 2009, 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 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 2009. The last meeting was the only feasible since the Parliament needed time to deliver its opinion. In the case of Bosnia and Albania, the Council voted on 8 November 2010.

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 with Macedonia, Montenegro and Serbia added on the "white list" was published in the Official Journal of 18 December 2009 (L 336) and the next version with Albania and Bosnia added was published in the Official Journal of 14 December 2010 (L 329/1).

Most legal acts enter into force on the 20th day following the date of their publication in the EU's Official Journal, but in both cases the ministers stipulated that the amendment of Council Regulation 539/2001 should enter into force on the day following that of its publication in the Official Journal. And so the visa obligation for Macedonians, Montenegrins and Serbians was lifted on 19 December 2009, and for Albanians and Bosnians on 15 December 2010.