

## **On the soundness of arguments for visa liberalisation**

*The European Commission's proposal of 15 July 2009, recommending visa liberalisation for three Western Balkan countries has triggered a wide-range of political and even emotional reactions, both in the region and within the European Union.*

*There is need for a more informed and holistic debate which also critically analyses the policy of the European Commission. Many statements by the European Commission, EU policy-makers, politicians and civil society have not been subject to objective scrutiny, which would also consider the broader political objectives of the European Union.*

*The following aims to confront the most commonly voiced concerns and even prejudices with some factual analysis of the situation.*

1) *“Are Albania and Bosnia and Herzegovina really lagging behind in the European integration process?”*

The Stabilisation and Association Agreement (SAA) with Albania came into force on 1 April 2009 and Albania filed an application for membership on 28 April 2009.

Bosnia and Herzegovina has signed the SAA on 16 June 2008, already 13 member states have ratified the agreement. An Interim Agreement came into force on 1 July 2008, as a means to gradually establish the common market with the European Community.

Montenegro has signed an SAA in October 2007 and filed an application for membership in December 2008, although the SAA is not yet in force.

The SAAs with Croatia and the former Yugoslav Republic of Macedonia are in force and the EU considers both countries as candidates. Accession negotiations with Croatia have started in 2005.

Serbia has not yet formally signed a Stabilisation and Association Agreement as it does not meet the conditions set by the Council, namely full cooperation with the International Criminal Tribunal for former Yugoslavia. Legally, Serbia is the least performing country in the Stabilisation and Association process.

2) *“Did Bosnia and Herzegovina make less progress in fulfilling the visa liberalisation road map requirements than her neighbours?”*

The current discussion about individual countries' progress on the visa liberalization road map is based on information of reports presented in 2008 and member states' experts visit carried out during spring 2009.

In the meantime, further progress has been achieved by all countries included in the visa dialogue. In particular, Bosnia and Herzegovina has stepped up efforts to fulfill outstanding technical requirements by 1 October 2009. Bosnia and Herzegovina is moving ahead in introducing bio-metric passports, in establishing an independent anti-corruption body and in enhancing internal police data exchange.

In July 2009, the European Commission requested that also Montenegro and Serbia still need to fulfill substantial requirements by the end of 2009.

Montenegro needs to strengthen the capacities in the area of law enforcement and the effective implementation of the legal framework for the fight against organised crime and corruption, including through allocation of adequate financial, human and technical resources. It also needs to implement effectively the Law on foreigners, in force since January 2009.

Also Serbia needs to implement effectively the legal framework for the fight against organised crime and corruption, including through allocation of adequate financial and human resources. It also needs to implement effectively the Law on Foreigners, in force since April 2009, and to adopt a migration management strategy.

Montenegro is required to define a sustainable solution regarding the status of displaced persons and internally displaced persons, including access to identity documents. Note that Bosnia and Herzegovina had been leading the return process in the region for years, ahead of all three of her neighbours.

Bosnia and Herzegovina adopted a strategy to fight organized crime and corruption in 2006, as one of the first countries in the region and has dedicated substantial resources in this sector, which brought significant operational results and the opening of many high-level investigations.

Different from her neighbours, Bosnia and Herzegovina has already a track record with regard to the implementation of foreigners and asylum legislation. Key legislation was adopted 2007 and is being effectively implemented, which includes the establishment of specialized services which are operational and adequately funded.

Qualitatively, Bosnia and Herzegovina's progress in key human rights and migration management issues is bringing tangible results as there are no significant numbers of asylum-seekers from Bosnia and Herzegovina registered in the EU (see table).<sup>1</sup>

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<sup>1</sup> Most recent available data at

[http://www.bamf.de/cln\\_092/nn\\_442496/SharedDocs/Anlagen/DE/DasBAMF/Publikationen/broschuere-asyl-in-zahlen-2007.html](http://www.bamf.de/cln_092/nn_442496/SharedDocs/Anlagen/DE/DasBAMF/Publikationen/broschuere-asyl-in-zahlen-2007.html)

*Asylum request in EU 2006 and 2007 (without Italy)*

<i>Rank</i>	<i>Country</i>	<i>2006</i>	<i>2007</i>	<i>Change</i>
1	<i>Iraq</i>	19.375	38.286	+97,6 %
2	<i>Russian Federation</i>	13.721	16.698	+21,7 %
3	<i>Pakistan</i>	6.284	13.193	+109,9 %
4	<b><i>Serbia</i></b>	<b>13.662</b>	<b>12.668</b>	<b>-7,3 %</b>
5	<i>Somalia</i>	5.996	9.327	+55,6 %
6	<i>Afghanistan</i>	7.612	7.653	+0,5 %
7	<i>Turkey</i>	7.427	5.817	-21,7 %
8	<i>Iran Islam. Rep.</i>	7.065	5.812	-17,7 %
9	<i>China Peoples' Rep.</i>	5.450	5.621	+3,1 %
10	<i>Bangladesh</i>	5.967	5.339	-10,5

*Source: UNHCR, situation as of 19 March 2008*

Visa free travel for Serbia is dependent on issues relating to Kosovo. Serbia needs to improve cross-border/boundary surveillance, which includes in particular the exchange of information with EULEX/Kosovo police. Furthermore, the integrity and security of the procedures followed in issuing new biometric passports to persons residing in Kosovo will need to be enhanced. The status and border of Kosovo is subject to controversy among EU member states, not all of them recognize Kosovo, let alone Serbia.

3) *“The decision to grant visa-free travel is purely technical or isn't it political?”*

Recital 5 of the preamble of respective EC Regulation (No 539/2001) reads, *“the determination of those third countries whose nationals are subject to the visa requirement, and those whose nationals are exempt from it, is governed by a considered, case-by-case assessment of a variety of criteria relating inter alia to illegal immigration, public policy and security, and to the European Union's external relations with third countries, consideration also being given to the implications of regional coherence and reciprocity”*

Technical requirements are only part of the decision to grant visa free travel to citizens of another country.

The EU started the visa dialogue with the Western Balkans for political reasons in view of its commitment of eventual membership of these countries in the EU. Prior to important parliamentary elections, the first visa dialogue was opened with Serbia in January 2008.

Different technical requirements are being applied for different countries. For instance, biometric passports are an important part of the Western Balkans visa liberalization road maps. However, most EU countries have not introduced them fully. Croatia will only start issuing biometric passports fully in 2010. Switzerland, part of the Schengen zone, will start issuing biometric passports in spring 2010. Mexico and Honduras enjoy visa-free-travel without meeting several key requirements of the Western Balkan visa roadmap and have not fully introduced bio-metric passports.

The visa liberalization process for the Western Balkan countries is an important political tool for supporting change. In this perspective, the road maps need to be considered as an instrument similar to the convergence criteria used for the introduction of the single currency. Not all countries who finally formed the EURO did meet all criteria but there was a political will to take a decision for higher policy objectives.

Many analysts point out that a purely technical assessment risks undermining the EU's own broader political objectives for the Western Balkans. There is concern that the current proposal's regional implications have not been properly considered, which is particularly disturbing for Bosnia and Herzegovina.

Historically, it needs to be recalled that visa liberalization has always been perceived and used as a highly political act. In the early 1990s, Germany lifted the visa regime for Poland as an act of political good will to support the growth of democracy and exchange. Today, it should be easy for a Union of almost 500 million to allow a few million citizens of the Western Balkan countries equitable access to the European way of living and travelling.

4) *“There are no double-standards! Is there a coherent EU policy?”*

EU can justify its policy bureaucratically. The Stabilisation and Association process, for instance, is not necessarily linked to the visa policy. Politically, this is more difficult as the many reactions to the Commission proposal have shown.

No SAA could be signed with Serbia because of the failure of the Serbian authorities to have full control over the security sector, parts of which helped preventing the arrest of Radovan Karadzic for more than ten years and which may still support Ratko Mladic. On the other hand, this very problem did not constitute an obstacle for the Commission when it assessed that Serbia meets the requirements set out in block 3 - relating to public order and security - of the visa liberalization road map.

Commissioner Jacques Barrot pointed out that the EU should “not punish the Serbian youth due to poor conduct of Milosevic”.<sup>2</sup> MEP Lojze Peterle (EPP) stressed the same point, albeit with a view to Bosnia and Herzegovina “the fact that the government failed to do all that it could, should not be an excuse for the punishment of the entire population.”<sup>3</sup>

The European Community is establishing the common market with Bosnia and Herzegovina and the other countries of the region. For a common market to function it is important to have equal rights of persons to travel and undertake business. EU citizens can travel freely to the Western Balkan countries while their citizens face high market entry hurdles because of travel restrictions.

The EU is actively supporting the two multi-national states in the Western Balkans, Bosnia and Herzegovina and Kosovo. The problem of double-citizenship is pressing for both of them. The proposed visa policy will disenfranchise citizens from these two countries. Once visa liberalization is granted to Albania and Macedonia, why should citizens of Kosovo not apply for their passports?

In particular, for multi-national countries passports are a symbol of citizenship and common identity. An EU visa policy rendering these passports “less valuable” than those of neighbouring countries contradicts the overall EU efforts in the region.

State building efforts are may be undermined for technical reasons, although the EU is aware of the complex decision-making system in Bosnia and Herzegovina which can be blocked any time through entity voting and other mechanisms and therefore can cause delays in fulfilling European conditions.

5) *“Is there a problem of double-citizenship in Bosnia and Herzegovina?”*

More than 500,000 Croatian passport holders permanently reside in Bosnia and Herzegovina. To date, several thousand citizens are in possession of a Serbian passport. The 2008 citizenship law of Serbia (passed after the opening of the visa dialogue) does facilitate double-citizenship for Serbs living outside Serbia. This constituted a policy shift by the Serbian government.

The Minister of Interior of Serbia announced to the media that citizens of the Republika Srpska (part of Bosnia and Herzegovina) will be able to receive passports of the Republic of Serbia.<sup>4</sup>

Serbia was unable to inform the Commission about the exact number of passports issued in neighbouring countries under the new provisions, world-wide they were already 100,000 in one year.

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<sup>2</sup> [http://www.novinite.com/view\\_news.php?id=105641](http://www.novinite.com/view_news.php?id=105641)

<sup>3</sup> <http://www.slobodnaevropa.org/content/news/1820387.html>

<sup>4</sup> Press conference of 15 July 2009,

<http://www.danas.org/archive/news/20090715/500/500.html?id=1777647>).

6) *“Isn’t it all about a systematic introduction of biometric passports?”*

The introduction of biometric passport is a key requirement of the European Union. The proposal of the Commission specifies that the visa waiver should only apply to those citizens holding a biometric passport.

This renders void the argument about the lack of issued biometric passports in Bosnia and Herzegovina and Albania, as they could be included in the decision on visa free travel regime now. The new rules would then only come into effect for those citizens who hold a biometric passport. It is now being reported that since July 2009, Bosnia and Herzegovina has issued more than 40,000 biometric passports.

If the Commission proposal is not changed, citizens of Sarajevo may face the following situation. A Sarajevan with a Croatian *non-biometric* passport can travel visa free to the EU, another citizen with a Serbian or Montenegrin *non-biometric* passport cannot travel visa free and a citizen only with a *biometric* passport of Bosnia and Herzegovina would still have to apply for a visa.

At the same time, the countries of the Western Balkans had to grant visa free entry for EU and EEA citizens, without the requirement of a biometric passport.

7) *“Are the borders of Bosnia and Herzegovina not secure?”*

Croatia, Montenegro and Serbia share a number of remote border crossings with Bosnia and Herzegovina and vice versa, which date from their common history in Yugoslavia. The management of these border crossing points is a joint responsibility. As the border of Croatia, Montenegro and Serbia are assessed as sufficiently secure by default the borders of land-locked Bosnia and Herzegovina are as secure. Furthermore, Bosnia and Herzegovina has signed agreements with all her neighbours on joint border control mechanisms.

There are no significant numbers of illegal migrants arriving in Bosnia and Herzegovina. Those who arrive from countries outside Europe must either have passed through Croatia, Montenegro and Serbia, whose borders are assessed as sufficiently secure, and possibly those illegal migrant would have passed an EU Member State as well before entering Bosnia and Herzegovina. This means that border security cannot be the responsibility of an individual country.

8) *“The Western Balkan countries harbour terrorists and are full of criminals”*

EUROPOL Terrorism and Organised Crime Assessments<sup>5</sup> and reports of the United Nations Office on Drugs and Crime (UNODC) do not confirm this widely spread prejudice. There are no significantly worrying trends in the region, in particular when compared to the situation in the EU member states.

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<sup>5</sup> <http://www.europol.europa.eu/index.asp?page=publications&language>

The UNODC Executive Director, Antonio Maria Costa, stated in the foreword to his organisation's regional report: "*While dispelling a few myths and raising the profile of the Balkans as a low-crime region, the main aim of this report is to stimulate the delivery of technical assistance that can further encourage the positive trends and reduce the likelihood of a return to trouble in the Balkans. The highest priority is, of course, Kosovo, where stabilization started later, and where crime remains a problem.*"<sup>6</sup>

Generally, the Western Balkan countries offer an overall picture of a low-crime region that is normalising after a period of acute vulnerability. In line with the declining murder figures, it appears that Balkan organised crime is also diminishing in importance (UNODC). In particular for Bosnia and Herzegovina there is a multi-annual trend of decreasing politically and ethnically motivated violence, a low level of violent criminal acts and property related crimes, all indicators remaining far below EU average.

The current and proposed visa policy almost exclusively affects legitimate travelers. Persons with illegitimate and criminal interests have no impediment to travel freely or to gain citizenship of other countries.

Organized crime networks in the Western Balkans are operating trans-nationally and comprise members from different countries, including, EU member states, countries with visa-free travel (Croatia) and those soon-to-have visa free travel (Serbia, the former Yugoslav Republic of Macedonia and Montenegro) as well as from Albania, Bosnia and Herzegovina and Kosovo. The visa policy has no impact at all on regional and national crime fighting strategies.

9) "*Visa free travel will result in huge migration flows*"

Visa free travel does not mean the right to entry into any EU country nor does it grant a permanent right to stay. Indeed, travelers can be denied entry at the border without reasons thus unwanted person will not be able to enter the Schengen zone.

Visa free travel allows for short-term visits of the Schengen zone in order to facilitate economic, cultural and social activities and to allow for people-to-people contacts, a key tool for development, reconciliation and lasting peace.

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<sup>6</sup> [http://www.unodc.org/documents/data-and-analysis/Balkan\\_study.pdf](http://www.unodc.org/documents/data-and-analysis/Balkan_study.pdf)