

Przyjazna Granica Friendly EU Border

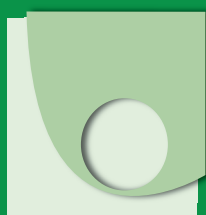
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Learning from the Western Balkans experience

Alexandra Stiglmeier

On 19 December 2009, the EU opened its borders to visitors from three Western Balkan states, Macedonia, Montenegro and Serbia. There were celebrations in all three countries. The first groups of travelers left for the EU as soon as the new day had started. From that date on, Macedonians, Montenegrins and Serbians have been able to enter the Schengen area as short-time guests without having to obtain a visa from a consulate beforehand.

This marked the first time that the EU lifted the Schengen visa requirement in return for a pre-defined process of internal security reforms in the countries concerned. It was EU conditionality at its best. The EU insisted that the governments of the Balkan states introduce new biometric passports, improve border security, step up the fight against illegal migration, organized crime and corruption, and launch serious cooperation with EU bodies such as Europol and Frontex. The conditions were outlined in "visa roadmaps" and follow-up documents. Experts from the European Commission and the EU member states rigorously monitored, verified and assessed progress in implementation until they were satisfied that the benchmarks had been reached.

The process is an exciting new approach to border control. The role of consulates, which usually act as the first line of protection against unwanted visitors – potential illegal migrants and criminals – is substituted by partnerships with neighboring countries, which help protect the EU from such and other threats. On balance, the EU is set to gain from this approach – its external borders will be better protected.

The Western Balkan countries (without Kosovo) are the first where the new approach has been tried. The next in line are the Eastern Partners. There are also Russia and Turkey, which regularly express their desire for visa-free travel to the EU. Now there is a blueprint in place for how to make it a reality. If these countries implement the required measures, in a few years the whole of Europe could become an area of free movement. Over 800 million people would be able to travel across the continent with few restrictions or formalities.

How it all began

This promising new policy is the result of a series of initially unrelated events and the longing of the people of the Western Balkans for visa-free travel.

Most were citizens of former Yugoslavia who could travel almost anywhere freely, so they were hit hard when EU countries imposed visa requirements during the violent disintegration of their country. While the visa requirement for Slovenia and Croatia was lifted again after a short while, it was kept in place for the other Yugoslav successor states: Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia. Albanians, too, suffered under a visa obligation imposed in 1992 due to social unrest and economic collapse in their country.

As soon as the situation stabilized, all the Western Balkan governments started lobbying the EU, which had developed a common visa policy in the meantime, for abolition of the visa requirement. An initial promise was made at the 2003 EU/Western Balkan Summit in Thessaloniki:

“We acknowledge the importance the peoples of the Western Balkans attach to the perspective of liberalisation of the EU’s visa regime towards them. We recognise that progress is dependent on implementing major reforms in areas such as the strengthening of the rule of law, combating organised crime, corruption and illegal migration, and strengthening administrative capacity in border control and security of documents. The Western Balkan countries welcome the intention of the Commission to hold discussions, within the framework of the Stabilisation and Association Process, with each of them, regarding the requirements for how to take these issues forward in concrete terms.”¹

However, there was no serious follow-up. Some EU foreign ministers were willing to think about

a change in visa policy given that all Western Balkan countries were considered potential candidates for EU membership. However, EU interior ministers clung to the visa requirement. The threat of organized crime and illegal migration from the Balkans, they believed, was still very real – and the visa obligation was keeping it at bay in their opinion.

Readmission and visa facilitation agreements

Meanwhile, amendments to the EU Treaty that entered into force in 1999 authorized the European Commission to negotiate readmission agreements on behalf of the EU. Such agreements envisage not only the deportation of citizens of the country with which the EU has concluded such a readmission agreement – for example, Albania – if they are found to be illegally residing in a EU member state; but also of nationals of other countries and stateless persons who have entered the EU via Albania’s territory, if the EU can prove this.

Not surprisingly, hardly any government was keen on concluding such an agreement with the EU.² To make readmission agreements more attractive, an incentive was needed. The EU found it in visa facilitation – a slightly simplified procedure of receiving a Schengen visa, within a 10-day deadline, at a lower cost, and with more possibilities to obtain multiple-entry visas.

The first country with which the EU started negotiating readmission and visa facilitation agreements as a package in 2003 was Russia. A year later, the same deal was offered to Ukraine, and in 2004/2005, the EU decided officially to make visa facilitation part of its readmission policy, “based on a case by case assessment of third countries, while bearing in mind the EU’s over-

¹ EU/Western Balkans Summit – Declaration, Thessaloniki, 21 June 2003, at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/misc/76291.pdf.

² Although the Council authorized negotiations with 11 countries between 2000 and 2002, talks were successfully concluded only with three (Hong Kong, Macao and Sri Lanka) by the end of 2002. European Commission, Readmission Agreements, Memo for the press, 5 Oct. 2005, at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/05/351&format=HTML&aged=1&language=EN&guiLanguage=en>.

all relationship with candidate countries, countries with a European perspective and countries covered by the European Neighbourhood Policy as well as strategic partners.”³

That “countries with a European perspective” were mentioned was the result of a determined campaign by the friends of the Western Balkans inside the European Commission and among EU member states. Their main argument was that it would be counterproductive to relax the visa regime with the EU’s neighbors in the East, but not with countries that were official or potential candidates for EU membership. For many EU interior ministries it was not easy to agree to modify the hitherto “untouchable” visa requirement for the Western Balkans, in this case Albania, Bosnia, Macedonia, Montenegro and Serbia. The discussions were heated and protracted. However, in the end the interior ministers gave in. This made it much easier to agree on visa liberalization later on.

As it happens, the Western Balkan countries did not rejoice when the Commission came to make the offer, fearing that it would replace visa liberalization, their actual goal. When the Commission approached Macedonia as the first country in early 2006, the government in Skopje demanded that the EU commit in writing that visa facilitation was “a first concrete step towards the visa free travel regime.” The phrase was to figure in the preamble to every visa facilitation agreement with the Western Balkan countries.⁴ Now, functioning readmission agreements (and to a lesser extent visa facilitation agreements) are the precondition for any talks on visa-free travel with the EU.⁵

The visa facilitation and readmission agreements with the five Western Balkan countries entered into force on 1 January 2008, the same day as the agreements with Ukraine and Moldova. To the surprise of many, the Council launched a visa liberalization process with the Western Balkans four weeks later.

The turning point

During the 2006/2007 negotiations of the visa facilitation and readmission agreements with the Western Balkan countries, the European Commission and a growing number of EU member states realised that visa facilitation could only be an interim solution and that it was time to offer the Western Balkans more.

There were several reasons for this change of heart. Above all, the EU began to acknowledge that it was absurd to keep emphasizing the Western Balkans’ European vocation, but to subject their citizens to a stressful, time-consuming, and often expensive procedure to enter the EU – which it remained even with visa facilitation. EU interior ministers also realized that the threats of migration and organized crime were diminishing as normalcy and the rule of law were returning to the Balkans.⁶

Slovenia, which was due to take over the EU Presidency in the first half of 2008, decided to champion the cause of visa liberalization for the Western Balkans. Having already started to work on the issue in 2007, it secured the support of the Commission and managed to negotiate Council conclusions that backed concrete efforts to achieve visa-free travel.⁷

³ Common Approach to Visa Facilitation, adopted by EU member states at the level of the Committee of Permanent Representatives, Brussels, 20 Dec. 2005.

⁴ Preamble to the Agreement between the European Community and the Former Yugoslav Republic of Macedonia on the facilitation of the issuance of visas, signed 18 Sept. 2007, entered into force 1 Jan. 2008, at <http://ec.europa.eu/world/agreements/download/File.do?fullText=yes&treatyTransId=11741>.

⁵ Communication from the Commission to the European Parliament and the Council, Eastern Partnership, COM(2008) 823 final, 3 Dec. 2008, p. 7, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0823:FIN:EN:PDF>.

⁶ Concerning crime, see United Nations Office on Drugs and Crime, Crime and its Impact on the Balkans, May 2008, at http://www.unodc.org/documents/data-and-analysis/Balkan_study.pdf. Based on data from 2006, UNODC concluded in May 2008 that “most of the region is safer than West Europe” when it came to conventional crime (murder, rape, assault, robbery, burglary, theft etc.) (p. 9). Concerning organized crime, UNODC stated that it had been linked to the past armed conflicts and that the situation seemed to be changing for the better (pp. 12–20).

⁷ General Affairs and External Relations Council, Conclusions, Luxembourg, 18 June 2007, at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/94804.pdf.

In November 2007, the European Commission proposed a visa liberalization process based on a roadmap that would outline a number of conditions the countries would have to meet. The conditionality was important to obtain the support of the interior ministries:

*"[...] the Commission proposes to open a dialogue with each of the countries concerned with a view to establishing a road-map on the conditions to be met. These would cover effective implementation of readmission agreements, as well as progress on key areas such as border management, document security, or the fight against organised crime. Such road-maps will allow the countries concerned to better focus their reform efforts, while also reinforcing the visibility of the EU's commitment to the peoples of the region."*⁸

The first dialogue, with Serbia, was opened on 30 January 2008. That this happened so quickly was due to political considerations. The United Nations had failed to agree on Kosovo's future status in 2007, and it had become clear that Kosovo would declare its independence with the backing of the United States and many EU member states sometime in early 2008. The EU was looking for something to offer to Serbia in order to prevent a nationalist backlash in Serbia and to strengthen the pro-European candidate in Serbian presidential elections that took place in January and February 2008. This was the prospect of visa-free travel.

On 28 January 2009 the Council kick-started the visa liberalization process with the Western Balkans.

"The Council also welcomed the intention of the European Commission to launch soon a visa dialogue with all the countries in the region and expressed its readiness to further discuss this issue [...] with a view to define detailed roadmaps setting clear benchmarks to be met by all the countries in the region in order to gradually advance

*towards visa liberalisation. This would enable the Council and the Commission to closely monitor progress in necessary reforms."*⁹

Two days later, the Commission launched the visa dialogue with Serbia.

The visa dialogues and the roadmaps – the process

While the timing of the launch of the liberalization process with the Western Balkans had been determined by political considerations, the actual process was overall meritocratic. As such, it was an excellent example of EU conditionality. All countries that will go through the same process should insist that it be conducted in the same manner as with the Western Balkan countries.

During the first few months of 2008, the Commission opened visa dialogues with all the Western Balkan countries and presented visa roadmaps to all five. The last to receive a visa roadmap, on 5 June 2008, was Bosnia and Herzegovina.

The roadmaps¹⁰ were almost identical, listing nearly 50 individual benchmarks, the same for all countries. However, the language of each differed slightly depending on existing legislation, practice and implementation records. The criteria were divided into four blocks (see text box). The conditions listed under blocks 1 to 3 were part of the Justice and Home Affairs (JHA) acquis, while block 4 – on access to documents, prevention of discrimination and protection of minorities – was created on an ad hoc basis.

⁸ Commission Communication, Enlargement Strategy and Main Challenges 2007-2008, 6 November 2007, COM(2007) 663 final, at http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/strategy_paper_en.pdf.

⁹ General Affairs and External Relations Council – Conclusions, Brussels, 28 January 2008, at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/98460.pdf.

¹⁰ The roadmaps are available on the ESI website at <http://www.esiweb.org/index.php?lang=en&id=352>.

The benchmarks listed in the visa roadmaps for the Western Balkans

Block 1: Document security – Machine-readable biometric passports in accordance with EU and ICAO standards; secure personalization and distribution process; anti-corruption training programmes for officials; reporting to Interpol's Lost/Stolen Passports Database; secure breeder documents and ID cards.

Block 2: Illegal migration including readmission – Integrated Border Management; appropriate legal framework; fully equipped borders; anti-corruption training programmes for officials; working agreement with FRONTEX; legislation on carriers' responsibility; appropriate asylum legislation and related procedures and facilities; monitoring of migration flows; returnee reintegration strategy; measures against illegal migration; law on foreigners; expulsion of illegal foreigners.

Block 3: Public order and security – Strategy and action plan on organized crime, corruption, human trafficking, money laundering, financing of terrorism and terrorism; anti-drug policy; implementation of UN and Council of Europe Conventions and GRECO recommendations; judicial cooperation in criminal matters at international, EU and regional levels; working relations with Eurojust; law enforcement cooperation and exchange of information nationally and at regional and EU levels; use of operational and investigative measures to fight cross-border crime; operational cooperation agreement with Europol; personal data protection legislation.

Block 4: External relations and fundamental rights – Freedom of movement for all citizens; access to travel and ID documents for all citizens, IDPs and refugees; anti-discrimination legislation; law on citizenship/specified conditions for acquiring citizenship; investigation of ethnically motivated incidents in the area of freedom of movement; protection of minorities.

In addition, the visa roadmaps require:

- full implementation of the readmission agreement;
- full implementation of the visa facilitation agreement;
- a “decreasing trend in the refusal rate, which should progress towards 3% for visa [applications] and 1,000 persons per year refused for entry into the common Schengen area” (however, this request was later dropped since the EU did not manage to obtain in time the relevant information);
- measures to implement EU travel bans.

Following the handover of the roadmaps, each of the countries set up a task force and mechanisms to implement the requirements. The requirements were broken up into individual tasks that were given to the relevant departments, which were placed under a common umbrella and given deadlines.

As a first step, the Commission asked each country to provide a “readiness report”,¹¹ outlining the state of implementation of every roadmap requirement, by 1 September 2008. Based on this information, the Commission issued its assessments¹² on 24 November 2008. The assessments identified not only progress but also shortcomings and steps that needed to be taken to reach the relevant benchmarks, and they asked for further clarifications. Macedonia, a candidate for EU membership since 2005, was the most advanced country, next came Montenegro and Serbia, and Albania and Bosnia were the least advanced.

As the next step, while the countries were sending additional information to Brussels, the Commission organised assessment missions on the ground. Between January and March 2009, there were seven missions for each country: one for block 1, three for different aspects under block 2, and another three for different aspects

¹¹ All the government reports are available on the ESI website at <http://www.esiweb.org/index.php?lang=en&id=359>.

¹² All the Commission assessments are available on the ESI website at <http://www.esiweb.org/index.php?lang=en&id=353>.

of block 3. The criteria mentioned in block 4 were discussed in meetings. The field missions included experts nominated by the EU member states. This had been agreed from the outset to reassure the EU member states. In the area of justice and home affairs issues, such peer reviews are standard practice to build confidence as the issues at stake are sensitive.

On 18 May 2009, the Commission issued updated assessments that included findings from the expert missions. The overall picture remained the same. Macedonia was in the lead, Montenegro and Serbia were doing quite well, albeit with room for improvement, and Albania and Bosnia still had some work to do. Based on these assessments, the Commission proposed on 15 July 2009 visa-free travel for Macedonia with no further conditions; and for Serbia and Montenegro on condition that they reach three remaining benchmarks each in the coming months. Albania and Bosnia received letters specifying the areas they should focus on, and were asked to provide new progress reports by 1 October 2009.

This sequence of events – Commission sets conditions, government outlines progress, expert mission verifies situation, Commission issues assessment – was completed for Montenegro and Serbia in 2009. Bosnia and Albania went through it two more times, from December 2009 to September 2010. In November 2010, the Council was due to abolish the visa requirement for these two countries after the European parliament had already voted in favor of it in October. The only Western Balkan country that remains missing is Kosovo, which, however, should be offered some kind of visa liberalization process soon.

The EU's approach to visa liberalization has proved to be very successful. Western Balkan officials and governments involved in the process¹³ told ESI that they appreciated the clarity of the conditions and the dynamism of the whole

process. When benchmarks were not clearly defined, the Commission was always ready to provide further explanations. The Commission also helped identify relevant EU funding – mostly under the Pre-Accession Instrument (IPA) – that would help the countries finance some of the more expensive measures. The deadlines that the Commission set drove the process forward.

The regatta principle produced healthy competition. However, this only worked because ESI's Schengen White List Project succeeded in creating transparency and accountability. We systematically collected all documents related to the process, from the initial roadmaps to the European Commission progress assessments, and published them on the Internet. The Commission and EU member states had planned to conduct the process behind closed doors, which would have allowed for unfair deals and excluded civil society and the public from following and monitoring it.

The case of Bosnia illustrates why transparency and a dose of competition were necessary. In May 2009, ESI published the Commission assessments of 18 May 2009 and an "ESI scorecard" comparing the countries' progress. These documents showed that Bosnia and Albania trailed behind, with no chance to obtain visa-free travel in 2009 like the other three countries. In Bosnia, this served as a wake-up call. The media and the public started to ask why Bosnia was so far behind, putting pressure on the government. In response, the political parties agreed in June to adopt four relevant laws that had been stuck in parliament, and the government created dozens of new working groups to implement the roadmap requirements. Bosnia's implementation record quickly began to improve.¹⁴

Competition could also play a positive role in Eastern Europe. While there are significant differences in the technical preparedness of the six Eastern Partner countries, the two countries that are at about the same level are Moldova

¹³ ESI organized a conference with senior Western Balkan officials on 19 November 2009 in Amsterdam, the Netherlands. At that conference, the lessons learnt from the visa liberalization process were discussed.

¹⁴ ESI report "Bosnian Visa Breakthrough May 2009 – September 2009", 16 October 2009, at http://www.esiweb.org/pdf/schengen_white_list_bosnian_visa_breakthrough.pdf.

and Ukraine. They have just received “action plans for visa liberalisation” (roadmaps under a different name) – Ukraine in November 2010 and Moldova in January 2011. If there is enough transparency, they will compete with each other, which will speed up implementation. And once Georgia’s visa facilitation and readmission agreements with the EU go into effect and the country embarks on visa liberalization, it will certainly try to catch up with Ukraine and Moldova, making it the third contender. This will make for a good regatta.

Visa-free travel in practice

The first ten months of visa-free travel for Macedonia, Montenegro and Serbia appear to have gone smoothly. Apart from a few isolated incidents, travelers from the Balkans have not experienced problems at EU borders. Initial data from the three countries indicated that there had been only a small increase in trips to the EU during the first few months, possibly due to the economic and financial crises that have hit the Balkans. This may have changed over the summer.

The emotional gain is enormous. According to a survey conducted by the Serbian government in December 2009, 57% of respondents saw visa liberalization as “the opportunity to travel freely even if I would not travel in the near future” and 43% said that the freedom to travel gave them “a feeling of dignity” and “self-respect”.¹⁵

However, there were also developments that gave some EU member states cause for concern. In January 2010, citizens from Macedonia and Serbia, most of them Albanians from poor regions, began to arrive in Belgium in higher numbers than usual to request asylum. A similar development took place in Sweden – there, it was mostly Serbian citizens of Roma background. Altogether, 998 people from Serbia and Macedonia applied for asylum in Belgium

in January–March 2010, compared with 715 during the whole year of 2009.¹⁶ In Sweden, 1,515 Serbian nationals applied during the same period, compared with 567 during the whole year 2009.¹⁷ EU governments became nervous. Had it been a mistake to lift the visa obligation?

In the end, the problem was quickly resolved thanks to smooth cooperation between the Belgian, Swedish, Macedonian and Serbian authorities. The most important measure they took was to inform the asylum seekers in the EU as well as potential asylum seekers in Serbia and Macedonia that their chances to be granted any kind of protection in Belgium and Sweden were minimal.¹⁸ Belgium also offered free transport home. Had it not been for visa-free travel, it is doubtful whether the Western Balkan governments would have made any effort to inform their citizens about asylum practices in the EU. (In September 2010, the number of Serbian asylum seekers in Sweden started to rise again. It is to be hoped that the Serbian government will react again.)

Conclusions

The new approach – internal security reforms in the countries neighboring the EU and partnership with them instead of strict visa regimes – will improve the EU’s image and its leverage in the countries concerned. It will also lead to improved protection of the EU’s external borders. It is therefore important that the EU continue with this approach not only in Eastern Europe, but also in Turkey and Russia.

The Western Balkans countries have shown that the “visa roadmap approach” works. They have

¹⁵ European Integration Office of the Government of Serbia, European Orientation of Serbian Citizens – Trends, December 2009. The survey was conducted between 15 and 22 December 2009; surveyed was a stratified sample of 1.039 citizens in face-to-face interviews.

¹⁶ Information to ESI from the Belgian General Secretariat for Refugees and Stateless Persons, by email, 2 April 2010.

¹⁷ Information to ESI from the Swedish Migration Board, by email, 27 October 2010

¹⁸ During the 2007–2009 period, a total of 362 Macedonians applied for asylum in Belgium. During the same period, only 6 Macedonians were granted protection. The rejection rate for Serbian asylum seekers in Belgium in 2009 was similar: 97.5%. In 2009, Sweden rejected 96% of all asylum requests of Serbian nationals in first instance, and 93% in second instance.

reacted to the carrot of visa liberalization, prioritized implementation and proven that the necessary reforms can be achieved. This does not mean that corruption and organized crime have been eliminated. It does mean, however, that the countries of the Western Balkans have established new and stronger mechanisms, which should yield results over time. They are monitoring migration flows, dealing with asylum seekers, and respecting their obligations towards readmitted persons. They have concluded working agreements with EU agencies

such as Frontex, Europol and Eurojust, and they are cooperating with EU member states on a range of judicial and criminal issues. All these processes should produce better results than the screening of visitors that consulates used to conduct.

Alexandra Stiglmayer is a founder and Senior Analyst with the European Stability Initiative, a think tank that has closely followed the visa liberalization process for the Western Balkans. www.esiweb.org/whitelistproject.