

Europe without Barriers

**How to achieve visa-free regime  
with the European Union?  
Western Balkans' experience  
for Ukraine**

Kyiv-2011

This publication discloses the peculiarities of the visa liberalisation process in the Western Balkan states, which are actual ones for Ukraine. The experience of the Road Maps implementation (2008–2010) by Serbia, Albania and Bosnia-Herzegovina is analyzed. Main attention is concentrated on the issues of documents' security, migration and border management, public order and fundamental rights. Lessons should be learned by Ukraine and other EaP countries are described.

**How to achieve visa-free regime with the European Union?  
Western Balkans' experience for Ukraine**

*Policy research*

**Authors:**

Iryna Sushko (Kyiv)  
Vladimir Petronijevic (Belgrade)  
Miroslava Jelacic (Belgrade)  
Sara Nikolic (Sarajevo)  
Gledis Gjipali, Blerta Hoxha (Tirana)  
Ilir Qorri (Tirana)

**Contributing NGOs:**

Public Initiative "Europe without Barriers" (Ukraine)  
Group 484 (Serbia)  
Association Alumni of the Centre for Interdisciplinary Postgraduate Studies (BiH)  
Macedonian Centre for European Training (Macedonia)  
European Movement in Albania

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Public Initiative "Europe without Barriers"  
[www.novisa.org.ua](http://www.novisa.org.ua)  
42 Volodymyrska str, office 21  
Kyiv 01030 Ukraine

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## FOREWORD

There was a significant event at the end of 2010 in the sphere of freedom of movement in Europe: the citizens of Bosnia and Herzegovina, Albania acquired the right to travel without visas to the Schengen states. A year earlier the citizens of Serbia, Macedonia and Montenegro won the right to travel without visas to the EU. These were the years of triumphal fall of artificial barriers for people-to-people contacts which confirmed the EU policy principle “strictly but fairly”, based on clear conditions. The effective implementation of such conditions opened the way to the visa liberalisation with the EU.

It took about two years for the governments and parliaments of the Western Balkan countries to implement technical criteria of the Road Maps successfully. However, the achieving of such impressive results would not be possible without comprehensive engagement by the NGOs activists, who invested their analytical and advocacy efforts for strengthening the relevant reforms and raising public awareness.

Public impact has become a powerhouse of visa-free prospects for the WB countries, an effective partner in the area of lobbying idea of freedom of mobility for the whole region and indispensable advisor, which professional expertise significantly strengthened the analytical background of the process.

Experience, acquired during the criteria implementation in the field of justice, freedom and security by the Western Balkan countries, is actual and very crucial for Ukraine and other EaP countries, which are now moving towards the visa liberalisation with the EU. The need to learn Balkan experience has been actualized with obtaining the Action Plan on Visa Liberalisation by Ukraine in November 2010. Its content, in most cases, resonates with the content of Balkan Road Maps. The tasks covered there include

documents' security, migration policy, public order and security, external relations and fundamental rights.

Continuing to strengthen expertise and lobbying the visa-free travel for Ukraine and entire Europe, EWB initiated a partnership with leading NGOs of the Western Balkans, this partnership gained a support by the International Renaissance Foundation (Open Society Network).

In December 2010, EWB in collaboration with famous Serbian NGO "Group 484" held a roundtable where the leading experts from Belgrade, Sarajevo, Skopje, shared their experience with Ukrainian colleagues.

This publication is a product of our multinational cooperation. It shows the Balkans' unique way towards visa-free regime with the EU and contains recommendations for overcoming the difficulties, which appear during the visa liberalisation process.

EWB experts were the first ones who offered a professional expertise, enhanced by international experience. We hope it will be useful and important guide for everyone who moves Ukraine and other EaP countries towards the visa-free regime with the EU.

*On behalf of Public Initiative "Europe without Barriers"*

Iryna Sushko

## **Iryna Sushko**

Europe without Barriers, Kyiv

# **BALKAN ROAD TOWARDS WHITE SCHENGEN LIST: EXPERIENCE FOR UKRAINE**

*In November 2010 European Union presented the Action Plan on Visa Liberalisation for Ukraine in order to introduce in the future visa free regime for short terms trips. It lists specific criteria and standards to be achieved by Ukraine. There still remain questions concerning the period when Ukraine will be able to cope with the “homework” and what is needed to achieve this.*

Where there the relevant experience has been accumulated? In this case all roads lead to the Balkans. The last three years were triumphal for five countries of the region as their way to the freedom of movement was not a gift from EU Member States but a result of the effective implementation of more than 50 criteria and tasks of the Road Maps.

Serbia, Macedonia and Montenegro needed about 2 years, from 2008 till 2010 in order to finally persuade the EU that their citizens have the right to cross borders without visas. Even after the achieved results, the three leaders of visa free race did not stand behind the problem of visa isolation of two other countries of the region, namely Bosnia and Herzegovina and Albania.

Lobbying the necessity to abolish visas and in the whole region on the high level and primarily providing expert assistance to each other, Balkan countries demonstrated the efficiency of the regional approach principle and once again attested the undeniable fact: democratic values, including the freedom of movement, are able to consolidate the society, healing the wounds of the past by the future perspectives.

Albania and Bosnia managed to cope with their tasks by the end of the year 2010.

Ukraine can also make use of the “platform” for productive competition and partnership within Eastern Partnership countries. Currently among six EaP countries Ukraine and Moldova are the leaders in terms of visa liberalisation. Moldova and Georgia take leadership in the sphere of biometric passports issuance. Moldova started producing them in 2008 and Georgia in 2010, while Ukraine, regardless technical readiness to produce biometric passports is still not launched the process. At the same time, Verkhovna Rada approved the Law on Personal Data protection, while similar draft law is just on the stage of public discussion in Moldova and Georgia.

Ukraine is not in the best position in implementing anti-corruption recommendations of GRECO, having implemented only 5 out of 22 requirements, while Armenia, for example, implemented 18 out of 24 and Moldova — 10 out of 15.

Success of Western Balkan countries is important not only for the citizens of the region, but for the EU itself. This fact was proved by the effective “pilot projects”, in particular, the Agreement on the Facilitation of the Issuance of Visas and Agreement on Readmission operating in Ukraine as well.

However, the enhancement of freedom in Europe became the most important achievement resulting from the struggle for visa liberalisation and the new vivid case will now serve as an example for those European States where the “velvet visa curtain” still exists.

## **Return to the familiar world**

At the present stage Balkan countries constitute a progressive region with the clear intention of integrating into European community and yet a heavy legacy from the recent 1990s.

Comparison with the “powder keg” of Europe that appeared in the first half of 19th century remained relevant until the end of the

century. Territorial and religious conflicts, post-communist public administration system and imperial syndrome, all these and other diseases of the 1990s entailed the strong association with Western Balkans as unstable region.

Now Balkan countries are mentioned much more often as a synonym for responsible attitude towards assumed obligations in relations with the EU and serve as an example of effective management in the sphere of security, migration management and fight against organized crime. Having gone through fundamental transformations, Balkan countries are very close to European standards in the sphere of security and democracy.

What was the impulse for the citizens who still remember well the economic and political crises caused by post-communist legacy and the war, to fight for their right to travel without visas to the EU?

The first incentive to eliminate artificial obstacles was the historical memory of the citizens who were able to cross the borders of most Western European countries freely before the disintegration of Yugoslavia and at least remotely feel as a part of European community.

However, inclination towards “old Europe” was mutual as common borders with the EU and geopolitical location of Balkans is an important argument for the movement of both parties towards each other. Reforming different spheres of social and political life in compliance with European values and standards was for the benefit of both Western Balkan countries and the EU in general.

Enhancing the capacity of the state to effectively confront such threats for national security as corruption, illegal migration, human trafficking and other types of cross-border crime — is just a short list of the changes that had to make quality upgrades within the society of Western Balkan countries and present a reliable and prosperous member of a single European family to the neighboring countries.

## From declarations to practical implementation

Like in Ukraine, the issue of freedom of movement of the citizens of Western Balkans countries to the EU Member States for a long time was within the public focus without any changes. The first signal of EU readiness towards positive advances was given at the Thessaloniki Summit (2003), where the EU Heads of the states and governments confirmed European perspectives for Western Balkans which were to start with the struggle for visa free regime with the EU and the necessity to implement reforms in such spheres as strengthening the rule of law, fight against organized crime, corruption and illegal migration as well as enhancing administrative capacity of the countries in maintaining border control and control over the document security.

Intensification of the process started only in 2007 when Western Balkan countries and EU signed the Agreements on Visa Issuance Facilitation and on Readmission. The Agreements entered into force on January 1<sup>st</sup> 2008, almost simultaneously with the similar Agreements signed between Ukraine and the EU.

During the same year of 2008 European Commission launched “visa dialogue” with all Balkan countries and in 1.5 years — with Ukraine. However later visa roads of the countries drifted apart: with the support of most EU Member States Balkan countries confidently and rapidly moved to further visa liberalisation; the Road Maps envisaged clear course for them, while Ukrainians were stamping until 2010, when in autumn they received individual Action Plan on Visa Liberalisation.

It is known that Ukrainian Action Plan on Visa Liberalisation contains one significant difference from Balkan Road Maps — it has two phases; it provides for two stages of evaluating the achieved progress in implementing the Action Plan tasks. It means that after Ukraine fulfills the tasks of the first phase of the Action Plan requiring the approval of the necessary legislation and planning the governmental actions, European institutions should

approve and agree on the transition to the second phase relating to practical implementation of the tasks envisaged in the blocks.

Thus the process of evaluation on behalf of the EU will be more rigorous and aimed at the specific results.

### **Secrets of Balkan success:**

#### ***What can civil society do for its own good?***

The society should be the main driving engine on the road towards the freedom of movement as ordinary citizens have to face the complicated procedure of obtaining visas to the EU and Schengen states.

Elimination of visa barriers will actually open the real Europe for them with its opportunities to travel, discover, study, visit family and friends. Stable contacts between people can bring integration to the EU faster than the attempts of authorities to join EU community institutionally.

How did the representatives of civil sector in Western Balkan countries contribute to this issue?

Non governmental organization offered their platform to unite politicians in one coordinated force; on the basis of conducted researches they offered quality expertise of the state policies related to the tasks of the Road Maps. Public actors and experts lobbied the approval of important decisions among European officials responsible for making decisions and within the society as “people’s diplomacy” is often better perceived in the EU than official authority representatives.

#### ***The myths regarding visa free regime***

Third sector in Balkan countries was the first to focus attention on informational campaigns aimed at raising awareness and removing the myths relating to Ukraine-EU visa and migration relations.

Some typical wrong beliefs often hindering the effective movement towards visa liberalisation are listed below:

Visa free regime is the lack of control over the movements and the possibility to stay on the EU territory as long as people want. In fact we speak about introduction of visa free regime for the bearers of biometric passports entitling them to short term trips for the period of 90 days.

Practically implementation of Road Map tasks contributed to the enhancement of security and coordination of all services at the borders for faster flows of people and goods.

Adopting the system of Integrated border management by Balkan countries (IBM), signing the Agreement on Strategic Cooperation with European Police Office (EUROPOL) and working agreement to set up cooperation with European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX), memorandums on understanding with such international organizations as the Center for Democratic control of Armed Forces (DCAF), International Organization for Migration (IOM) and Organization for Security and Cooperation in Europe (OSCE) is only a partial list of the requirements implemented in order to strengthen the border security level. Adoption of the Declaration signed with the UN Office on Drugs and Crime relating to the cooperation in the sphere of fighting drugs and organized crime (UNDOC) was also important.

Currently Ukraine has the Concept of integrated border management and it requires the adoption of the Action Plan on its implementation.

Another existing stereotype is that the abolition of visa regime will entail mass flows of people abroad.

Firstly, visa regimes are not the main obstacle for labor migrants on the way to European markets and that is why the flows do not depend directly on existence or openness of borders but rather on economic situation in the country.

Experts should study migration risks for Ukraine and carry out awareness raising work explaining that visa free regime does not provide auto-

matic right for employment in the EU. In the past Macedonia that was one of the first countries in the region to cope with Road Maps requirements faced the problem of mass exit abroad of asylum seekers to the countries of Western Europe.

Europe being overloaded with the citizens from third countries was concerned about the increasing migration flows. Together with the government of Balkan countries it focused its efforts on returning the citizens back to their home countries. In order to avoid similar problems together with the EU Member States the government should work on facilitation of the conditions for legal employment and implement effective economic reforms creating favorable climate to decrease the outflow of labor force.

In order to control migration flows the governments of Western Balkan countries adopted the strategy for migration management; its implementation was a serious challenge, especially for Serbia, as its migration profile is still in the stage of improvement.

The issue of effective functioning of migration services is also a challenge for Ukraine: creation of the State Migration Service was stipulated by the President's decree of December 9, 2010, but the real office and personell does not function yet.

Typical wrong judgments include the belief that introduction of visa free regime is the final and irreversible point.

In fact, the right to visa free short term trips can be lost, as it happened in the case with Ecuador in 2005 due to numerous detected illegal manipulations with the passports of this country.

In order to decrease the number of corrupt examples in this sphere Balkan countries and Serbia in particular, approved the Law on the Agency for Fight against Corruption, the Law on Responsibility of Legal Entities for Crimes, the Law on Seizure of the Illegally Obtained Property, the Law amending the Law on Financing Political Parties, the Law on State Procurement and a number of judicial laws.

Now Ukrainian parliament just adopted a new anti-corruption law to replace those cancelled in January 2011. There are some doubts expressed if the new law meets all the GRECO recommendations.

### **Young people are the main driving force for visa free regime: “Life is too Short to Wait for a Visa”**

Public and political campaigns carried out by the students and young people from Western Balkan served as another manifestation of social action aimed at supporting visa free regime.

Attracting the attention of the society, politicians from the EU to the visa and visa regime problems, young people organized public actions, initiatives, collected signatures that turned into effective means for promoting the freedom of movement as one of the most important democratic values of Europe.

Macedonian youth organizations were especially active. They organized protests near the premises of the European Commission in Brussels demanding from the EU to take further steps in visa regime liberalisation for their country.

However, public efforts here are of long term and systematic nature. The experience of Western Balkans shows that those initiatives are most effective that are of international character and rely on existing and well known international networks.

Unfortunately, Ukrainian youth and students are not active as only from time to time they emotionally point out to visa limitations and obstacles for freedom of movement.

The feeling of isolation due to visa regime with the EU deeply affected Balkan youth. The International Commission on the Balkans reported that: “Among the most discouraging findings of the Commission is that the European generation of the Balkans, young men and women under 30 who share the values of Europe most keenly and who vote for pro-European

parties most regularly, are those who experience the greatest difficulties in visiting the EU”.

As Serbian experts stated, more than 70% of students in Serbia have never traveled abroad. The Commission believes that as an urgent matter, this should change. This is most urgent for the youth of countries that have been most isolated from Europe: Serbia and Montenegro, Bosnia, and Albania.” Without any doubt the situation in Ukraine is similar.

Recently the organisation “Europe without Barriers” supported the initiative of the Polish Member of the European Parliament Pawel Zalewski in order to detect the advantages of visa free regime introduction for Ukrainians.

Answers to these questions will be sent to the relevant decision makers in European institutions in order to attract the attention to the problem and demonstrate internal motivation of Ukrainian society.

What advantages do young Ukrainian people see? The majority points out to facilitated movement — they won't need to queue for visas, collect documents, etc. Young people also speak about new perspectives for studies, employment and traveling.

The answer of one of the students is logical as well: “Visa regime liberalisation will give me the possibility to improve my French language skills as I was studying the language at the university for five years but I never had a possibility to go to France even for several days”. The possibility to meet friends and relatives more often is also mentioned.

At the same time there are people who point out to mutual benefits of visa liberalisation for Ukraine and the EU in general. Balkan activists focused on such mutual advantages while promoting faster introduction of visa free regime.

The main messages were: visa regime liberalisation will open significant economic opportunities for EU business and tourist industries; visa free regime facilitates the focus on fight against illegal migration and human

trafficking; visa free regime will contribute to reforms in the country and will provide stronger stimulus for the government and the society, etc.

### **Balkan experience: we should adopt the best and avoid the mistakes**

Balkan experience warns against producing exaggerated expectations and premature declarations on the highest level. In fact quite often Ukrainian officials are biased to use loud rhetoric that very soon (this year) Ukrainian citizens will enjoy visa free regime. However, such premature declarations can turn into a big disappointment within the society and unjustified feeling of frustration due to “stubbornness” of the European Union.

The government should carry out systematic work with the EU Member States that are in favor of visa free perspective for Ukraine as well as with its opponents.

In order to effectively apply the support of independent experts and activists, the process of visa liberalisation should be open and transparent to the maximum extent.

The Action Plan and National Implementation plan on Action Plan should be made available to the public<sup>1</sup>. At the same time implementation reports should be simultaneously addressed to EU experts and the society in: general as the criteria's implementation needed in order to meet the interests of the society.

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<sup>1</sup> National Implementation Plan on Visa Liberalisation has become open for public upon its approval by the President of Ukraine on April 22, 2011, <http://www.president.gov.ua/documents/13479.html> — op.ed.

## REPUBLIC OF SERBIA

**Vladimir Petronijevic**

**Miroslava Jelacic**

Group 484, Belgrade

## THE EXPERIENCE OF THE WESTERN BALKANS REGION

*The Serbian Experience is the most relevant in terms of Ukraine's policy planning and implementation. Serbia is the largest WB country, its domestic problems in the most cases resemble to Ukrainian realities. Visa Liberalisation Road Maps implementation from the very beginning was challenged by the number of circumstances. Nevertheless, Serbian government supported by the active part of the society managed to fulfil all the necessary tasks, and since December 2009 its citizens can travel to the Schengen zone without visas.*

The issue of placing the Republic of Serbia on the positive EU visa regime list has been preoccupying the public attention for a long time. The similarly situation was also with other Western Balkan countries.

Heads of EU States and Governments reaffirmed the importance of a dialogue on short term visas in the conclusions of the EU-Western Balkans Summit held in Thessaloniki on 21 June 2003, which also confirmed the European perspective of the countries of the Western Balkans. The "Thessaloniki agenda" confirmed in particular that the perspective of visa liberalisation for the Western Balkan countries is a goal linked to the progress of the countries concerned in implementing major reforms in areas such as the strengthening of the rule of law, combating organized crime, corruption and illegal migration and the strengthening of their administrative capacity in border control and security of documents.

Although, Thessaloniki Summit, has recognized importance of visa liberalisation process, it is not modest, if we state that civil society organizations were the first who initiated visa liberalisation dialogue as prerequisite for EU integration efforts. We have to underline on International Crisis Group Report from 2005, Citizens Pact for South East Europe activities, Group 484, European Movement from Albania policy reports from that time etc. Civil society has initiated crucial, the most important impact on European Commission to start its new policy, at the beginning, with visa facilitation process and then with visa liberalisation dialogue

The International Commission on the Balkans reported in that time that: "Among the most discouraging findings of the Commission is that the European generation of the Balkans, young men and women under 30 who share the values of Europe most keenly and who vote for pro-European parties most regularly, are those who experience the greatest difficulties in visiting the EU. More than 70% of students in Serbia have never traveled abroad. The Commission believes that as an urgent matter, this should change. This is most urgent for the youth of countries that have been most isolated from Europe: Serbia and Montenegro, Bosnia, and Albania."

As a first concrete step towards the establishment of a visa free travel regime, and considering that facilitating people to people contacts was as an important condition for a steady development of economic, humanitarian, cultural, scientific and other ties, the European Community concluded in 2007 Visa Facilitation Agreements with Serbia and other WB countries. The preamble of the visa facilitation agreements includes a clear reference to the commitment of the parties to work towards a visa free travel regime in the future. Also, it is important to mention that EU, at the same time, concluded the Readmission Agreements with all WB countries. Both types of agreements entered into force on January 1, 2008<sup>2</sup>.

The Commission in its Communication on the enlargement strategy of 6 November 2007 announced its intention to gradually move towards visa

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<sup>2</sup> Official Gazette of RS No. 103/07

liberalisation with the Western Balkan countries through further concrete steps. To that end, it proposed to open a dialogue with each of the countries concerned with a view to establishing a Road Map on the conditions to be met.

Finally, in its conclusions of January 28, 2008, the EU General Affairs and External Relations Council commended the intention of the European Commission to initiate visa dialogue with all the countries of the Western Balkans. While selecting a methodology for the process of visa regime liberalisation, special attention is given to: the European perspective of the countries of Western Balkans; political obligation undertaken by the EU in regards to short term visas for all citizens of the region, as a part of the Thessaloniki Agenda; conclusion of the readmission agreements by all the countries of the region; visa liberalisation that the countries of Western Balkans have to ensure for all EU citizens.

The Road Map documents have been created for all Western Balkan countries. The benchmarks were divided into four sets of issues: document security, illegal immigration, public order and security as well as external relations items linked to the movement of persons. The Road Map followed a balanced approach setting benchmarks which were realistic and achievable. The plan was that the process of fulfilling will be closely monitored by the Commission assisted by Member States' experts. The Commission will report regularly on the implementation of the Road Map and will consider the possibility to present a proposal for the lifting of the visa obligation for Serbian and citizens of other WB countries. The Western Balkan countries reported regularly on their achievements.

The first round of reporting was initiated in September 2008, when the Western Balkan countries submitted their reports according to which the European Commission, in November, gave its first, preliminary assessment on the progress made in the Road Map implementation. This was followed by visits of expert missions, comprised of experts from the EU member states and representatives of the European Commissions. The expert mis-

sions visited WB countries in the period February-March 2009. The experts prepared individual reports which served as a basis for the creation of an updated report on the assessment of whether and to what extent the criteria have been met, presented in June 2009. With the submission of this report, the second phase of the dialogue about the visa liberalisation of WB countries was completed.

Based on the achieved results, as well as on the positions of the EU member states, an official proposal of the European Commission to the Council of Europe followed, related to placing Macedonia, Montenegro and Serbia on the white Schengen list, through amendments to the existing annexes of the EU Council Regulation No. 539-01<sup>3</sup>. On July 15, 2009, the European Commission adopted the Proposal for amending Regulation 539 of 2001, which foresees placing Macedonia, Montenegro and Serbia on the white Schengen list. European Commission has concluded that Macedonia has fulfilled all conditions from the Road Map document and that Serbia and Montenegro has to accelerate necessary reforms in certain areas<sup>4</sup>. On its session, held on 12 November 2009, European Parliament supported visa liberalisation for Serbia, Macedonia and Montenegro. Although, it is not regular practice, European Parliament has adopted the Joint Declaration of the European Commission, European Parliament and EU Council on visa liberalisation.

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<sup>3</sup> 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 (hereinafter Amending Regulation (EC) NO 539/2001 from 2001)

<sup>4</sup> For Serbia: 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 December 19, 2009 Serbia is on the White Schengen list, so since then its citizens can travel freely around Europe after 18 year long isolation. The decision on including Serbia on White Schengen list provide for its citizens the possibility to enjoy one of the fundamental freedoms the EU is grounded upon, the freedom of movement.

However, the road to the so called white Schengen list, in the case of Serbia, was a complex process where state organs had to show readiness to fulfill the benchmarks defined by the European Union Plan for the Liberalisation of the Visa Regime with the Republic of Serbia (Road Map). In a very short period, slightly over a year since it was presented, Serbia has met most of the requirements from the Road Map, in particular during the year 2009.

Prior to the Road Map, which clearly defined basic legal and technical criteria to be fulfilled, the state authorities had only the criteria which were general by structure and allowed for a high degree of discretionary assessment. However, they did indicate certain areas in which clear progress should be made towards reforms and implementation of laws and by-laws. Based on these general guidelines there was an opportunity for undertaking specific reform measures in areas demanded by the EU, and which could have provided a shift for Serbia from the Black to the White Schengen list. In that period the reform process was not adequately coordinated and was much slower than the country's existing potential allowed<sup>5</sup>. The Group 484 and other experts from Serbia used every opportunity to point out that the main cause of slow reforms was the lack of coordination between the state bodies.

Encouraging was the fact that for the sake of strengthening the dialogue on qualification of the Republic of Serbia for inception on the positive Schengen List, on 19 July 2007 the Government of the Republic of Serbia established the Task Force for coordination of activities aimed at fulfilling the provisional criteria for visa regime liberalisation of the European Union for

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<sup>5</sup> We had experts in all of these areas, capable of offering solutions according to the highest standards.

the Republic of Serbia, consisted of three representatives from the Ministry of Interior and one each from the Ministry of Foreign Affairs, Ministry of Justice, the Vice-President's Cabinet and the European Integration Office.

This Task Force had the following tasks: coordination of activities aimed at fulfilling the provisional criteria for visa regime liberalisation, preparation of the action plan for relevant authorities for the purpose of fulfilling these criteria, identification of priorities and the tasks arising from the provisionally set criteria and their more precise definitions, preparation of the relevant authorities for political dialogue on European Union visa liberalisation for the Republic of Serbia.<sup>6</sup> As it turned out later the Task force extremely contributed in the success conclusion of this process.

Generally speaking, considering the visa regime liberalisation programme in the context of efficient application of adopted regulations, as well as perceiving the Road Map as a document which established the criteria important for reforms in the areas of freedom, security and justice, is the only proper way to visa-free regime.

The Road Map (in the case of Ukraine-Action Plan) is a document which serves as a matrix of required reformatory steps which would provide for improved efficiency of Serbian (Ukraine) state, aiming at *bono publico* i.e. general interest of its citizens, where state administration represents only an efficient service in the process.

In accordance with our opinion, it can be stated that in the process of meeting the criteria, in case of Serbia, significant progress has been achieved in the part of the process related to adoption of laws and bylaws, strategies and measures and also, but not so successful, in the process of their implementation. Because of that, in further Serbia state authorities must show particular responsibility towards their citizens, by continuing the reforms initiated by adoption of Road Map criteria.

On this place we would like to emphasize some important differences between Road Map for Serbia and Action plan for Ukraine. First difference

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<sup>6</sup> Report on Readiness, Visa Liberalisation with Serbia, October 2008

is in the names of two documents. Although, there is no significant linguistic difference between words *map* and *plan*, it is obvious that European Commission wanted to make political difference between Ukraine and Western Balkan countries. Candidate and potential candidate states for EU membership got the map and Ukraine got the plan. This political intention is more visible through establishment of the more complex structure of the Action plan and procedure of the evaluation of Ukrainian progress in implementation of the document.

The Action plan is divided in two phases: *legislative and policy framework* and *implementation*. Road Map for Serbia and the other WB countries did not recognize this separation. Process of the adoption of legislation and the other necessary measures was compiled with implementation of these documents. With this division, European Commission sent the clear message that implementation phase will be very carefully monitored in Ukrainian case.

For example, in the Action plan, in the Block 3: Public order and security, European Commission established two conditions for combating trafficking of human beings- Adoption of the of a law on trafficking in human beings, adoption of an action plan to effectively implement the State Programme for Combating Trafficking of human beings. In the second phase, EC will monitor implementation of these documents. On the other side, in Serbian Road Map, EC used this formulation: *implement* the strategy to combat trafficking in human beings *by adopting and implementing an action plan including a timeframe and sufficient human and financial resources*. This formulation supports the interpretation, that in Serbian case, EC examined process of implementation as continuous effort while in Ukraine case process of monitoring would be more result oriented.

As well, this is confirmed by the two step process for Ukrainian visa liberalisation dialogue. After Ukraine completes the first phase of the adoption of necessary legislation, European Parliament and the Council must confirm and approve the second phase evaluation process. This was

not the practice in WB visa liberalisation process. Serbia and the other WB countries had the only one unified process which resulted positively after 18 months of very hard work.

### **Review of some legal-technical criteria from Road Map which Serbia has met — guidelines (applicable) for fulfilling of criteria for achieving EU free visa regime for Ukraine <sup>7</sup>**

#### **BLOCK 1: Security of documents**

The National Assembly of the Republic of Serbia adopted the Law on Identification Cards<sup>8</sup> in 2006. The implementation of the law that included the issuance of new electronic cards started in April , 2008.

“By introducing new biometric identification cards, a dynamic document was created which enables certain data contained in the document to be changed because the prescribed identification card form contains area for contact microcontroller (chip) and area for machine readable zone for the needs of automated data reading from the identification card. At the same time, it contains security elements owing to which the possibility to counterfeit the identification card as document is drastically minimized. The mechanisms for control of identification card issuance were also implemented, which are contained in the form of program protection of the application for issuance of identification card. In this way the operating process for issuance of this document is fully automated.”<sup>9</sup>

In regards to travel documents, the National Assembly of the Republic of Serbia adopted the Law on Travel Documents<sup>10</sup>, which entered into force in October, 2007. For the first time in Serbian history, the Law has introduced

<sup>7</sup> Annex 1— VISA LIBERALISATION WITH SERBIA — Road Map

<sup>8</sup> Official Gazette of RS No. 62/06

<sup>9</sup> Report on Readiness, Visa Liberalisation with Serbia, October 2008, pages 8 and 9

<sup>10</sup> Official Gazette of RS No. 90/07

a biometric travel document for the purpose of protection and security of travel documents. The Law encompasses standards imposed by the EU regulations and standards of the International Civil Aviation Organisation (ICAO), which stipulate that by 2010 all countries must introduce travel documents with integrated photograph and mechanically readable zone.

The creation of biometric passports for applications submitted in the territory of the Republic of Serbia started in July, 2008. Originally, the creation of biometric passports for the applications submitted out of the territory of Serbia, at diplomatic-consular offices throughout the world, should have started in October 2008, when technical conditions for data transferring were met. In this way, the collected data will flow into the Ministry of Foreign Affairs, from where it will, via protected connection, reach the Personalisation Centre in the Ministry of the Interior for production.<sup>11</sup> This procedure was however initiated at the end of 2008, and only at 4 out of 66 diplomatic-consular offices of RS.

The implementation of the Law on ID Cards and the Law on Travel Documents has produced initial confusion in police offices responsible for receiving requests for issuance of new ID cards and passports. Due to large crowds, the offices extended their working hours and started scheduling appointments for submitting documents for new ID cards and passports. The need for improving capacities of the entire system for issuing biometric ID cards and passports has been even more highlighted in the middle of 2008 when relevant organs stopped issuing old, the so-called blue passports. Up to that date, Serbian citizens could choose between old and new, biometric ones. The original expiry date of old passports, stipulated by the Law on Travel Documents, was December 31, 2008 and it was already prolonged three times- firstly, until December 31 2009, then until December 31 2010, and with last changes until the end 2011. Old ID cards cease to be valid five years after the enforcement of the Law on ID Cards, in July 2011.

During last year as well before, Group 484 suggested to relevant organs that the foreseen deadline for the issuance of new passports is too

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<sup>11</sup> Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 9

short, since the experiences of other EU countries prove that between 5 and 7 years are necessary for the process to be completed. The number of equipped diplomatic-consular offices also points to the insufficient time for changing passports.

It is a known fact that only the citizens with biometric passports can visit some of the Schengen countries without visas. There still remain a large number of Serbian citizens who don't have biometric passports<sup>12</sup>. On the plus side, however, from this year the Ministry of the Interior (MoI) began production of the improved second generation of biometric passports, containing chips that hold fingerprint information, in accordance with the ICAO and EU standards<sup>13</sup>.

In regards to administrative measures for ensuring integrity and security of personalisation process and distribution of travel documents, "personalisation of travel documents is centralised and falls under the competence of the Information Technology Administration of the Ministry of the Interior. It is a part of the system which includes acceptance of applications for document issuance, data processing and personalisation. When citizens submit an application for the issuance of new passport, the processed data, through telecommunication and information system of the MoI, reaches the data preparation system. Via protected connection, the prepared encrypted data is transmitted to personalisation, what implies laser engraving of alphanumeric data and inscription of data on the chip. After that, visual and electronic control of passports produced is conducted. Information on produced passports is returned via the same tunnel into MoI. Through a courier service of authorised MoI officers, personalised passports are forwarded to the point of issuance. The Ministry of Foreign Affairs of the Republic of Serbia is not perform personalisation of travel documents, but

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<sup>12</sup> According to recent the MoI data, a total of two million seven hundred thousand biometric passports have been issued. Population according to the Census, 2002-7498001 Statistical Office of the Republic of Serbia <http://webrzs.stat.gov.rs/axd/en/osn.php?kljuc=1>

<sup>13</sup> Source: Zorica Djokic Milosavljević, Ministry of Interior, Head of the Department for travel documents and Readmission, interview October 2010

only data acquisition for personalisation purposes in the premises of the Ministry for diplomatic and official passports and in diplomatic consular missions of the Republic of Serbia abroad for ordinary passports. Delivery of personalised diplomatic and official travel documents from the Ministry of the Interior to the Ministry of Foreign Affairs is made through official couriers, with all necessary security measures. Delivery of personalised travel documents to diplomatic consular missions of the Republic of Serbia abroad will be made through DHL<sup>14</sup>.

In regards to ensuring a high level of security of breeder documents and identification cards, the Ministry of Interior applies the procedure in compliance with the European and ICAO standards. By passing the Law on Identification Card<sup>15</sup> and the Rulebook on Identification Card<sup>16</sup>, the recommendations of the Council of Europe for implementation of the project for integrated automated system for identity documents personalisation are incorporated, and in this way the need to follow the world's technology trends in the field has been satisfied.<sup>17</sup>

Security of documents necessary for obtaining biometric passports (registers — citizenship and birth certificates) has been most poorly assessed in the expert report of EC. This is particularly related to registers from the territory of AP KiM<sup>18</sup>.

Serbian Assembly in year 2009 adopted the Law on Registry Books<sup>19</sup>, prepared by the Ministry of State Administration and Local Self-government.

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<sup>14</sup> Report on Readiness, Visa Liberalisation with Serbia, October 2008, pages 14-15

<sup>15</sup> Official Gazette of RS, 62/06

<sup>16</sup> Official Gazette of RS, 11/07

<sup>17</sup> Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 22

<sup>18</sup> As prerequisite for visa liberalisation, Serbian Government has adopted the Regulation which established the separate passport issuing procedure for the Serbian citizens who reside in Kosovo and Metohija. They are obliged to submit breeder documents directly to Ministry of Interior Directorate which has been established by this Regulation. Residence of Kosovo and Metohija are not entitled to travel without visas to EU countries. This regulation does not apply on Serbian citizens from Kosovo and Metohija who have IDP status.

<sup>19</sup> RS Official Gazette 20/09

Due to the Law, the national register which are established, enabling citizens to obtain their certificates faster, regardless of the place registry books are kept. Furthermore, the certificate do not have expiry dates. The issuance of certificates “without expiry date” started from January 2010. They are now on new forms, prepared by the Institute for Manufacturing Banknotes and Coins. All the data are protected from fraud, guaranteed by the Constitution, and the collected data can be used only for the intended purpose. The forms used so far have not had adequate protection. The law foresees that all the organs responsible for keeping registry books are obliged to provide electronic data evidence within the five-year period, which will enable the creation of the national register of citizens.

## **BLOCK 2:**

### **Integrated border management — including readmission**

In the 1990s, during the armed conflicts that followed the disintegration of former Yugoslavia, 4 million people left their homes. Several hundreds of thousands of them received temporary protection in the countries of Western Europe due to discrimination and wars in their country of origin. After the democratic changes in October 2000, thousands of Serbian citizens continued to seek asylum in Western Europe. Since almost all applications for asylum have been rejected and temporary protection withdrawn, those people are now returning on grounds of obligations undertaken by our government by signing the readmission agreement.<sup>20</sup>

Apart from several modest attempts, until the beginning of 2009 there were not systematic efforts made to identify and monitor the problems of returnees in both western countries and the countries of origin.

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<sup>20</sup> Serbian nationals still seek asylum in the EU countries and other developed countries of the world. By the number of asylum claims, 15.200, Serbia was on the sixth place in the world in 2008. The statistics certainly influenced somewhat reserved position of certain EU countries related to placing Serbia on the white Schengen list.

The Conclusion of the Government adopted in December 2008, foresees the plan of priority activities of competent organs for the period up to April 2009, for the purpose of fulfilling conditions for placing Serbia on the white Schengen list. The creation of the Strategy for Reintegration of Returnees under Readmission Agreements<sup>21</sup> and the relating Action Plan for the period 2009-2010<sup>22</sup> was one of the activities.

The Ministry of Labour and Social Policy was responsible for the creation of the Strategy and Action Plan. The Strategy and Action Plan were adopted. In this way, foundations were laid for thorough changes in the position of the state related to this issue.

With the purpose to propose measures and activities for the realisation of reception, accommodation and integration of people returned to Serbia according to reemission agreements the government formed the interministerial body — Council for Integration of Returnees. Having in mind that the government bodies formed at high level are not operational, the Team for the Strategy Implementation has been formed as an expert and coordination body.

The Team comprises of members of all relevant and responsible ministries and other organs and organisations<sup>23</sup> The Team cooperates with other organs, institutions and public services, both national and international. It monitors the problems of returnees, exchanges information, and proposes necessary solutions and measures. The Team can be positively assessed primarily due to its efficiency and the fact that the continuity of monitoring of all changes in this field is

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<sup>21</sup> RS Official Gazette 15/09

<sup>22</sup> RS Official Gazette 22/09

<sup>23</sup> Representatives of the Ministry of Labour and Social Policy, Ministry of Interior, Ministry of Foreign Affairs, ministry of Human and Minority Rights, Ministry of Health, Ministry of Education, Ministry of State Administration and Local Self-government, Ministry of Environment and Spatial Planning, Ministry for Diaspora, EU Integration Office, Commissariat for Refugees.

provided by monthly meetings of the Team members, and their regular reporting.<sup>24</sup>

The Action Plan provides detailed elaboration of the objectives defined by the Strategy and identifies institutions responsible for the implementation of all activities, deadlines, and funds for their implementation.

According to the Action plan the Commissariat for Refugees had and still has an important jurisdiction. The Commissariat is responsible for coordination and organisation of reception and cooperation with reception communities in Serbia, operational implementation of planned activities on the field, working on successful reintegration of returnees, working on the prevention of human trafficking and the promotion of positive discrimination principles. The Intervention Reception Centre for Returnees is also under the competence of the Commissariat.

The lack of coordination and information exchange between western countries and Serbia was and still is a main obstacle in the registration of returnees and understanding their needs in order to offer adequate assistance. At the same time, as an additional consequence of poor cooperation is that very returnees have been uninformed. Certain information, important for the realisation of their rights was available to them only at the moment they returned to the territory of the Republic of Serbia. Very often returnees lack the information on the importance of certain documents. They leave destination countries without diplomas on gained education, birth certificates, proofs of the years of service, etc, and such a situation deprives them from certain rights in the territory of the Republic of Serbia. So, creation and production of handbook with basic information and its distribution through diplomatic-consular offices can primarily inform people waiting for return under readmission agreements. As an additional measure, this handbook could be distributed through international NGO networks.

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<sup>24</sup> Source : Rade Dubajić, coordinator of the Team for returnees reintegration, interview, June 19 2009

The readmission agreements that Serbia has signed, apart from the return of citizens, also include the return of third country citizens and stateless persons who have transited Serbia on their way to western countries. Prevention related to reception of these individuals can be provided by efficient control of external borders, as well as by clearly defined visa policy of the state.

Regards, the IBM system, for the purpose of harmonization of Serbian legal framework with the EU standards related to the field of integrated border management, after the Integrated Border Management Strategy<sup>25</sup> and the Action Plan had been adopted, enactment of other relevant regulations was initiated. The Strategy expresses the readiness for the implementation of European standards in this field and sets foundations for passing sectoral strategies of borders services (police, custom, sanitary and phytopathological inspection), as well as functional strategies that define the areas of common interest (joint trainings, telecommunication and information systems, infrastructure at border crossing, etc). The improvement in this field was also made by the adoption of the Law on Border Protection<sup>26</sup>, enforced on April 1, 2009 and completely harmonised with the European standards.

Having in mind that the essence of integrated border management is the establishment of the most optimum proportion between the flow of people and goods and security challenges, and that the optimum results can be achieved only with the coordinated work of all services on the border, the Agreement that formalise this cooperation was signed in February 2009. The Agreement on Cooperation in the Field of Integrated Border Management<sup>27</sup> was signed by ministers of the following ministries — Ministry of Agriculture, Forestry and Water Management, Ministry of Interior and Ministry of Infrastructure, and thus one of the main conditions for further implementation of the Strategy was fulfilled.

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<sup>25</sup> RS Official Gazette 11/06

<sup>26</sup> RS Official Gazette 97/08

<sup>27</sup> See [www.minpolj.gov.rs](http://www.minpolj.gov.rs)

The purpose of this Agreement is to harmonise and coordinate all the services on the borders, for faster flow of people and goods and with maximum respect of the security principles. Direct exchange of obtained information is also important, which leads to joint actions and seizure of goods, prevention of human trafficking, and arms and drug smuggling. Besides, it cuts expenses of the state through the reduction of number of state employees from all services present on the borders, use of equipment that need not to be purchased for each service but is jointly used by all the services.

The organisational and personnel structure of the Border Police Directorate is defined in the document on the job classification of the Ministry of Interior. The document gives a comprehensive description of all tasks and responsibilities of the Border Police. The Border Police belongs to the Border Police Directorate, which with its annual plans defines achievements, objectives and activities, priority actions, ways of their realisation and the activities of the Border Police. The defined methods of work are good.<sup>28</sup>

The Border Police comprises of regular police officers from the Serbian MoI. The education of members of the Police is the same for all. However, the tasks and activities of the Border Police members require special types of trainings. One of recommendations for Serbia from EC Mission was to enhancement of the cooperation between the Border Police and the Customs, i.e. work in pairs, which would establish a more efficient system of detection of illegal migratory movements and trade.<sup>29</sup>

It was very important to provide the modern instruments on the border crossings-for detection of suspicious travel documents during the first verification at all border crossings, as well as more sophisticated equipment that will be used for the second verification of travel documents.

According to the report of EC mission, as regards technical equipment, the early warning system has been praised, but its further improvement and

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<sup>28</sup> Expert Report relating to block 2- IBM, March 2009, page 8

<sup>29</sup> Expert Report relating to block 2- IBM, March 2009, page 8

upgrading have been suggested. At the same time, detailed suggestions have been given as to what kind of equipment is necessary for the improvement of efficiency of the border police and the IBM system, even with the alternative, cheaper but equally effective technical solutions. "The introduction of cameras on all border crossings would facilitate court proceedings related to giving bribe to customs officers".<sup>30</sup>

The EU standards on the cooperation in this field, with regards to bilateral and multilateral agreements, impose their practical and pragmatic nature as the main criteria, for the purpose of more efficient fight against illegal migration and cross-border crime. The development of the system should be based on plans related not only to the level of central authorities of one country but also to the regional level. With that aim, Serbia has signed the agreement on strategic cooperation of the Republic of Serbia and the European Police Office (EUROPOL)<sup>31</sup>, as well as the Working Agreement for the Establishment of Operational Cooperation with FRONTEX, and Memorandums of Understanding with international organisations such as DCAF, IOM, MARRI and OSCE. The Declaration signed with UNDOC is also important, relating the cooperation in the field of fight against drugs and organised crime.

In terms of asylum policy, Serbia was obligated to adopt and implement legislation in the field of asylum in compliance with international standards and legal framework and standards of the EU. This was done in order to ensure relevant infrastructure and empower responsible bodies, particularly in the field of asylum procedures and accepting asylum expenses.

With a view to harmonising legal regulations with the regulations of the European Union, the Law on Asylum<sup>32</sup> was adopted in 2007 and entered into force on April 1, 2008. The Law on Asylum is harmonised with the UN Convention on Status of Refugees from 1951, the Protocol on the Status

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<sup>30</sup> Expert Report relating to block 2- IBM, March 2009, page 9

<sup>31</sup> RS Official Gazette 38-09

<sup>32</sup> Official Gazette of RS 109/07

of Refugees from 1967, the Universal Declaration of Human Rights from 1948, the European Convention on Protection of the Human Rights and Fundamental Freedoms from 1950, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment from 1984 and the UN Convention on the Rights of the Child from 1989.

Group 484 has fully supported the adoption of this law, which has set benchmarks for the further development of the asylum policy of the Republic of Serbia, where the first instance, the Asylum Office, as the competent organisational unit of the Ministry of the Interior, takes decisions on the submitted requests for asylum and on the type of protection granted.

It is possible to lodge a complaint against the decisions taken by the Office to the Asylum Commission, which is established under the Law as an independent body of the Government, second instance body in the procedure of establishing the right to asylum. In this way the principle of two-instance system is observed (and by that fact, objectivity in decision making), as one of the fundamental postulates of our legal system.

The asylum procedure provides for court protection of the asylum seeker in the form of possibility to initiate administrative dispute before the Supreme Court of Serbia, in which way the principle of court control over operation of the public administration organs is also realised.

The Asylum Commission was based on the Asylum Law, as a body that examines asylum claims in the second instance. The Asylum Commission comprising of 9 members, all the members are experienced experts from different fields and they are appointed for the period of 4 years. According to the Asylum Law, the Republic of Serbia will, within its abilities, ensure conditions for the inclusion of refugees in the social, cultural and economic life, as well as their naturalisation. However, the Law does not define an institution that will be dealing with the integration of refugees that have gained the status according to the Asylum Law, also in the budget of the Republic of Serbia, for several years, there is no funds for integration of persons who have gained the status of refugees or are under subsidiary protection.

In accordance with the Law on Asylum and undertaken obligations related to the Commissariat for Refugees, appropriate measures for establishment of the Asylum Centre have been taken.

Within the Centre, asylum seekers are provided with accommodation, food, clothes and shoes, and in case they are not accommodated in the Centre, they are entitled to financial aid through a competent social care centre.

Despite all the above, it is really important to provide specialised courses for the all actors involved in asylum system in the country. In Serbia a lot of trainings were implemented in cooperation with UNHCR, CARDS, AENEAS and through various other projects.

In terms of migration control, establishing of a relevant mechanism for monitoring migration flows was one of the biggest challenges for the Serbian Government. For the first time in the Republic of Serbia, a comprehensive migration flows monitoring policy had to be established, and a Serbian migration profile defined.

Migration Management Strategy was adopted on July 23, 2009<sup>33</sup>. Recommendations and measures provided for in the Strategy:

- Contents of the Serbian migration profile shall be defined in accordance with the European integration requirements, taking into account specific characteristics of the Republic of Serbia.
- The Serbian migration profile shall be updated on regular basis
- Statistics shall be harmonised with EU standard requirements
- Normative and technical conditions shall be established for data exchange among relevant institutions
- Gather information, statistics and reports on migration in RS.
- Designate an institution responsible for data gathering
- Follow migration movement trends

The Strategy also lays the foundations for an institutional framework for migration policy development. It is defined in line with competences and

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<sup>33</sup> RS Official Gazette 59/09

duties that ministries and state institutions have in the area of migration within the Law on Ministries, other laws and appropriate normative acts and Strategies.<sup>34</sup>

In February 2009, the Government established a Coordination Body for Migration Monitoring and Management<sup>35</sup> composed of ministers who are, within their purview, in charge of certain migration aspects. The Commissariat for Refugees is in charge of vocational, operational and administrative-technical tasks for the Coordination Body. The Coordination Body submits to the Government a written progress report every 90 days.

As regards the migration profile for the Republic of Serbia, it has not been created yet. The profile would have to encompass relevant data for both the field of immigration and emigration connected to the Republic of Serbia, updated statistics in these fields, established migration policies, in respect to both forced migration as well as legal (economic) migration, and clearly identified problems in the field of implementation of the aforementioned policies.

Within the project “Western Balkans towards White Schengen List” Group 484 has been researching whether the Serbian EU accession represents an immigration threat to EU Member States. For that purpose, it has carried out a research on migration potential on representative sample in Serbia, but also in Romania, an EU Member State, and made a comparative analysis in order to have a better insight in scope, structure, but also in migration potential determinants.<sup>36</sup>

Very important Law in this field is the Law on Foreigners<sup>37</sup>. Provisions of this Law which are of special importance refer to the establishment of central database which will encompass data recorded in special records

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<sup>34</sup> Migration Management Strategy, July 2009, p.4

<sup>35</sup> RS Official Gazette 37/09

<sup>36</sup> [http://www.grupa484.org.rs/index.php?option=com\\_deepockets&task=catShow&id=23&Itemid=147](http://www.grupa484.org.rs/index.php?option=com_deepockets&task=catShow&id=23&Itemid=147)

<sup>37</sup> RS Official Gazette 97/08

(total of 21 records — 16 of the Ministry of Internal Affairs and 5 of the Ministry of Foreign Affairs).

The central database can be used by authorised police officers in the Ministry of Interior, authorised civil servants of the Ministry in charge of foreign affairs and diplomatic-consular offices of the Republic of Serbia, for the purpose of performing their duties in accordance with competences provided for in this Law. Being authorised by the Minister in charge of internal affairs, the data from the central database can be used by other state institutions, when necessary, for the purpose of performing duties in their purview.

With regard to movement and stay of foreigners in the Republic of Serbia, the Law on Foreigners also introduced types of visas in line with the Schengen standards. The Law defines requirements for entrance and stay of foreigners in the country, possibility of registering their residence through Internet, the existing types of visas that have been abolished and the new ones introduced (A — airport transit visa, B — transit visa, C — short stay visa and D — long stay visa). As regards visa types, it must be noted that, unlike before, D visa — for temporary stay — can also be obtained at diplomatic-consular offices of the Republic of Serbia. Tourist pass has been repealed, and border permit, which is issued under strictly regulated conditions and through the procedure stipulated by the Law, has been introduced. Temporary stay, which was previously regulated by by-laws, has been introduced. The law stipulates exceptionally high penalties for either aliens who violate provisions of the law or for citizens, physical and legal entities who do not report the stay of an alien.

Work on the establishment of the Visa Information System has not been finalised yet. A visa system of a county is a part of state security and its ability to manage borders in a coordinated manner. Establishment of such a system will provide support for the work of diplomatic-consular offices, as well as to the tasks regarding documentation checks on border posts which are the responsibility of the Ministry of Interior. Main holders of

the project implementation are the Ministry of Interior and the Ministry of Foreign Affairs. The solutions envisaged by the project are based on Schengen Catalogue best practices and in accordance with the EU Consular Instructions<sup>38</sup>.

### **BLOCK 3: Public order and security**

#### **Preventing and fighting organised crime, terrorism and corruption**

The importance of the fight against corruption and organised crime was confirmed by the Serbian Government. The Government especially emphasising the need for the adoption of the strategic document in the fight against organised crime, but also the need for intensive regional cooperation in this field.<sup>39</sup>

As a condition for a successful fight against organised crime it was necessary to adopt the Strategy for Fighting Organised Crime. The Strategy, whose adoption was the responsibility of the Ministry of Interior, was adopted in March, 2009.<sup>40</sup> The Strategy has tight conceptual and functional connections with certain strategies in RS, which refer to various fields, such as: fight against corruption, money laundry and financing of terrorism, integrated border management, trade in illegal drugs and combating illegal migration. The Strategy for Fighting Organised Crime is based on three basic principles — implementation and development of preventive, repressive action and illegally gained property seizure.

As it had identified the level of inter-dependence of these fields, the Government established a Commission for operation harmonisation and further improvement of cooperation in the field of justice and internal affairs

<sup>38</sup> Migration Management Strategy in the Republic of Serbia, July 23 2009, p. 16

<sup>39</sup> National plan for Integration into the EU, working version, Government of the Republic of Serbia, may 2008, page.584

<sup>40</sup> RS Official Gazette 23/09

on the issues of general interest, especially in the fight against corruption, organised crime, terrorism, drugs, human trafficking, property seizure, money laundry and other relevant issues<sup>41</sup>. The Commission is composed of representatives of the Ministry of Justice, Crime Investigation Department within the Ministry of Interior, Public Prosecutor's Office, Security-Information Agency, and the Ministry of Finance (Anti-Money Laundering Administration, Customs Administration, and Tax Administration).

The Commission was established for the purpose of providing opinions, expert explanations, and proposing measures for operation harmonisation and further improvement of cooperation and information exchange in the field of justice and internal affairs. It was established for a four-year period, and vocational and administrative-technical tasks of the Commission have been designated to the Ministry of Justice. The Commission is obliged to submit its Progress Reports to the Government every 90 days.<sup>42</sup>

Based on the legislation in force, the institutions in charge of fight against organised crime are: the Ministry of Interior, Security-Information Agency, Military-Security Agency as a public administration body of the Ministry of Defence, the Ministry of Justice and the Ministry of Finance (Anti-Money Laundering Administration, Customs Administration, and Tax Administration). Specialised state institutions for fight against organised crime have been also established. (Special Anti-Organised Crime Department — Special Prosecutor's Office, The Administration for Fighting Organised Crime (SBPOK), within the Ministry of Interior (within SBPOK there are organisational parts that deal with fight against organised crime in the field of drugs, general, financial and high-tech crime) Special Department in the Belgrade District Court, Special detention unit in the District Prison in Belgrade etc.).

Trafficking in persons is a multi-layer, complex and a dynamic social phenomenon which demands a comprehensive (legal and social) approach

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<sup>41</sup> Slobodan Bošković, advisor at the Ministry of Justice, interview. May 28 2009

<sup>42</sup> Ibid

to the problem, i.e. the implementation of efficient measures in respect to prevention, fighting, sanctioning of offenders and protection of victims, with an obligatory cooperation of victims.<sup>43</sup> It is estimated that there are about three million victims worldwide annually and that a turnover from human trafficking amounts to 10 billion Euros annually, which classifies human trafficking as one of the most profitable illegal activities.

Unlike other countries where only sexual exploitation is predominant, in Serbia there are many forms of human trafficking. Labour exploitation, persons forced to conduct crimes, child trafficking for begging purposes, forced labour and housework, use of persons for pornographic purposes, are all recognised in Serbia, and the latest one is child trafficking for the purpose of conducting crimes.<sup>44</sup>

Human trafficking, as a criminal offence, is defined by the Article 388 of the Criminal Code of the Republic of Serbia. This provision relies on the definition set by the First Protocol to the UN Convention against Transnational Organised Crime, adopted in 2000 and ratified by the FRY Assembly in June 2001.

The Government of the Republic of Serbia, with the support of the OSCE Mission in Serbia enacted the Strategy for the Fight against Human Trafficking<sup>45</sup> in 2006, comprising a set of measures and activities that should be undertaken in order to tackle this problem. With the creation of the Strategy, strategic goals have been set, which should be realised through various activities of state institutions, nongovernmental and international organisations.<sup>46</sup>

The efforts to prevent human trafficking were resumed during 2008. The Government appointed a new national coordinator for fighting hu-

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<sup>43</sup> Taken from the Strategy for Fighting Organised Crime in the Republic of Serbia, p. 1

<sup>44</sup> See "Serbia has almost all the forms of human trafficking, RTV Studio B, [www.studio-b.co.yu](http://www.studio-b.co.yu), August 8, 2008

<sup>45</sup> Strategy was published in the Official Gazette of RS, No. 111/2006 of December 12, 2006

<sup>46</sup> More about the Strategy, see in the analysis of Article 9 of the Protocol

man trafficking, established a Council for Fighting Human Trafficking<sup>47</sup> at the ministerial level<sup>48</sup>. At one moment it was clear that there can be no successful fight against human trafficking in Serbia without cooperation with nongovernmental organizations. This cooperation has been conducted in the Republic Team for Combating Human Trafficking. The Council and a Team for fighting human trafficking worked together on drawing up an Action Plan for suppression of human trafficking, which the Government adopted. The Action Plan<sup>49</sup> is a positive example of successful both interdepartmental cooperation between state institutions and their cooperation with nongovernmental sector and international organizations.

The Action Plan covers the period from 2009 to 2011 and all relevant fields are included, such as national identification mechanism improvement, assistance in protection of victims, education and training, legal framework improvement in accordance with international obligations, statistic monitoring improvement, raise of awareness, reduction of risk factors to minimum, prevention of secondary victimisation of victims, as well as international cooperation.

It should be noted that the Serbian Government has made efforts to protect victims, but did not improve identification procedure. While the state, assisted by international organisations, resumed training of police officers on the subject of victim identification and treatment, there are still no systematic procedures and standards for identification, instruction and treatment of victims of human trafficking, and the cases are being dealt with in an ad hoc manner.

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<sup>47</sup> The role of the Council is to define a national policy for combating human trafficking. The Council reviews the reports of relevant international bodies, creates opinions and proposes measures and implementation of recommendations for combating human trafficking made by international bodies. The Council also prescribes and adopts strategic and general objectives in combating human trafficking.

<sup>48</sup> Minister of Interior; Minister of Justice; Minister of Labour, Employment and Social Policy; Minister of Health; Minister of Education and Sport; Minister of Finance.

<sup>49</sup> RS Official Gazette 35/09

A large number of NGOs, and a significant part of governmental sector representatives participated, and they still participate, in preventive activities of fight against human trafficking. Representatives of governmental institutions gladly reply to and take part in projects of this kind (both as participants or lecturers).

For successful fight against this specific form of violence, the state should be categorically and systematically involved in the eradication of poverty. We also have to be aware that human trafficking would not be so widely spread without corruption. Out of these reasons, the main causes of human trafficking, above all poverty, unequal position of women, and violence against them, corruption and organised crime are priorities in terms of suppressing human trafficking.

As regards fight against corruption, the basis of this system is certainly the national Strategy of the Government of RS, as well as an Action Plan for its implementation. For the purposes of efficient implementation of the Strategy, the Serbian Government formed a Commission for the Strategy Implementation and for the implementation of recommendations of the Group of States against Corruption (GRECO). In 2008, many laws that directly or indirectly refer to fight against corruption were adopted.<sup>50</sup> Adoption of these laws can be also seen in the context of adopting GRECO recommendations which Serbia has been trying to fulfil since 2006.

Of special importance in this field is the Law on Agency for Fighting Corruption. This Law foresees the establishment, legal status, competences, organisation and manner of work of the Agency for Fighting Corruption, rules in respect of prevention of conflict of interests in performing public

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<sup>50</sup> The Law on Responsibility of Legal Entities for Crimes“, the Law on Illegally Gained Property Forfeiture, the Law on the Agency for Fight against Corruption, the Law Amending of the Law on Financing Political Parties, The Public Procurement Law, the Law Amending the Law on Criminal Proceedings, the Law on Protection of Personal Data and a set of judicial laws ( the Law on the Organisation of Courts, The Law on Public Prosecutor's Office, the Law on Judges, the Law on High Judicial Council, The Law on State Council of Prosecutors, the Law on the Seats and areas of Courts and Public Prosecutors, the Law amending the Law on Offences).

functions and reporting of the property of a person having a public function, procedure and decision making in the case of infringement of this Law, introduction of integration plans, as well as other issues of importance for the work of the Agency. The Agency is a separate and independent state institution, and it is responsible to the National Parliament for carrying out tasks in its purview.

The corruption issue in Serbia is still an immense problem, which results in a bad ranking, according to an index of corruption perception.<sup>51</sup> An inevitable segment in analysing corruption in Serbia, and finding solutions for its reduction, is the manner in which political parties in Serbia are financed.

Experts warn that fight against corruption in Serbia has been slowed down due to, above all, lack of political will, negligence of effective laws, but also the imperfections of certain legal solutions.

### **Fight against Financial Crime, Terrorism, and International Collaboration Regarding Criminal Affairs**

Regarding the area of money laundering and financing terrorism, the framework for improving the systems and formulating recommendations for overcoming problems is undoubtedly adopted Strategy for Fighting Money Laundering and Financing Terrorism.

Recommendations given in the Strategy refer to enhancement of legal framework, both institutional and operational, as well as recommendations for improvements necessary to be implemented in the field of professional training, with five-year period planned for their application.

As stated in the Strategy, money laundering and financing terrorism are global problems with reciprocal effect on economic, political, security and

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<sup>51</sup> According to the latest research, out of 180 countries of the world, Serbia was on 85th position last year, with corruption index of 3.4 in the scale up to 10. Albania, Montenegro, India, and several more countries had the same corruption index. Source: The Voice of Serbia, Slobodan Homen, State Secretary of the Ministry of Justice, August 12 2009.

social structures of a country. According to this, wide range of regulations effective in the Republic of Serbia is applied.<sup>52</sup> It may be stated that fight against money laundering directly relates to other forms of fight against crime, and that all regulations mentioned earlier may, to smaller or greater extent, be applied in this area too.

The Law upon which the success of fighting these forms of criminal operations is largely dependent is the Law on Prevention of Money Laundering and Financing Terrorism. The stated Law includes provisions prescribing necessary activities and measures aimed at revealing and prevention of money laundering and financing terrorism, defines authorities responsible for undertaking those activities and measures, as well as authorities of the Directorate for Money Laundering Prevention.<sup>53</sup>

Institutional framework in this area, apart from the Directorate, includes many state authorities such as the Ministry of Finance, Tax Administration, Customs Directorate, Ministry of Justice, Ministry of Interior, Security — Information Agency, Ministry of Defence, Public Prosecutor's Office, courts. Training and development of abilities and professional skills of the existing human resources in all the above mentioned relevant bodies was an essential condition for setting up an efficient state mechanism in fighting money laundering and financing terrorism.

Expert Mission Report suggested that special attention should be paid to training in investigations, criminal prosecution and proceedings in the financial crime area, improvement of technical equipment, collection of data, whose absence was obvious, as well as adequate data exchange

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<sup>52</sup> Strategy for Fighting Financial Crime and Financing Terrorism, p. 2.

<sup>53</sup> The Directorate for Money Laundering Prevention is a financial and intelligence agency established as management body within the Ministry in charge of financial activities. The Directorate collects, processes, analyses and forwards information, data and documents gathered in accordance with Law, to authorised bodies (police, justice and inspection bodies), and performs other duties related to prevention and revealing money laundering and financing terrorism in accordance with Law.

between state bodies. „The best solution for efficient data exchange may be creation of a shared database of all relevant bodies, which would serve as a basic tool in both prevention and repressive implementation of effective laws”.<sup>54</sup>

#### **BLOCK 4: Foreign Relations and Fundamental Rights**

In this Block maybe the most applicable is experience of Serbia related to adoption and implementation of legislation in the field of discrimination.

Regarding discrimination, until 2009 there was no separate Law in Serbia to regulate in general terms the field of discrimination, and this issue was criminally sanctioned and prohibited by diverse legal documents. After intensive debates in public caused by the Law on Prohibition of Discrimination, which was at one moment withdrawn from the adoption procedure, it was eventually passed in March 2009<sup>55</sup>. The Ministry of Labor and Social Policy was in charge of formulating, while the Ministry of Human and Minority Rights was responsible for implementing the Law. The Law, for the first time, sanctions in a comprehensive way all cases of discrimination and protects especially vulnerable and endangered groups.

*The Law regulates overall prohibition of discrimination, discrimination forms and cases, as well as practices for protection from discrimination. Important novelty refers to the fact that the Law also establishes the Trustee for Protection of Equality (hereinafter: Trustee), as independent state authority, autonomous in execution of assigned duties. Having analysed the responsibilities commissioned to the Trustee, the fact that the Trustee may, apart from the possibility of informing the public about cases of discrimination,*

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<sup>54</sup> Individual expert reports of the EC relating to bloc 3 — Fighting financial crime, terrorism and international cooperation in criminal affairs, February 2009 , p. 13.

<sup>55</sup> RS Official Gazette 22/09

act before court (filing suits on account of violation of rights related to this Law, in his name, with the approval and on behalf of a discriminated person, if a court procedure upon the same case has not already been initiated or legally closed; submitting charge sheets on account of violation of rights stipulated by the Law) must be marked positively.

Although the significance of passing such a Law was recognised, a single Law on prevention of family violence, which would include efficient family and crime-related legal provisions, as well as rules on activities of police in cases of family violence, has not been produced.

In February 2009, Serbia also endorsed National Strategy for Improving the Position of Women and Strengthening Gender Equality<sup>56</sup>, which sets out the activities planned for the 2009-2015 period. This document defines complete and harmonised state policy aimed at eliminating discrimination of women, improving their position and integrating the principle of gender equality in all areas in which system institutions operate, as one of the elements of modernisation and democratisation of society. It incorporates the fields dealing in participation of women in creating policies and decision making in economy, education, health, as well as issues of violence over women, and other matters related to mass media and public opinion.<sup>57</sup> Institutional framework for implementing the Strategy consists of the Ministry of Labour and Social Policy, Ministry of Human and Minority Rights, Ministry of Culture, Ministry of Telecommunications and Information Society, provincial authorities, authorities of local self-government, and professional and other associations. Speaking of state bodies which, by means of their activities, should contribute to the improvement of gender

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<sup>56</sup> Official Gazette RS 15/09.

<sup>57</sup> National Strategy for improving the position of women and strengthen gender equality, page 1.

equality, the Directorate for Gender Equality<sup>58</sup> and the Council for Gender Equality<sup>59</sup> should undoubtedly be mentioned.

Despite the closure of legal framework in this segment, discrimination is still present to a large extent, especially against women, national minorities, and LGTB community (lesbians, gay, transsexuals and bisexuals), as government still does not offer sufficient protection.

### **The role of the civil society**

As it is already mentioned, during the process of fulfilling criteria, these and all others from Road Map, the Government of the Republic of Serbia provided the European Commission with detailed Reports on Progress in this process. It is unclear why the governmental reports were not available to general public and why the Government of the Republic of Serbia had greater need to inform the European Commission rather than public about the undertaken reforms, taking into account that the public is very interested in the visa liberalisation process and that it is the party mostly concerned in the process.

From the very beginning of the process civil society in the Ukraine must insist that the information about every step during the process need to be available. In Serbia we didn't have always a good situation. Most information used by Group 484 for creating reports was collected by interviewing

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<sup>58</sup> *Directorate for Gender Equality* — this is an executive governmental mechanism established in July 2007, operating within the Ministry of Labour and Social Policy. The tasks of this body imply analysing the existing state of gender equality, proposing solutions, creating and implementing National Strategy for Improving the Position of Women, cooperating with other state bodies, cooperating with other countries, integrating principles of gender equality in all areas and institutions, and implementing UN recommendations.

<sup>59</sup> *Council for Gender Equality* — is a government interdepartmental and advisory body whose members are recruited from academic circles and civil organisations. It was founded in 2004. Its tasks include proposing measures for improvement of gender equality based on their analyses, initiating encouragement of women for participation in public and political life, formulating suggestions and directing them to the Serbian government.

state authorities, representatives of Embassies, by desk research, analysis of EC reports obtained by personal efforts of employees. The Government has the largest responsibility to regularly inform the public during the process of adoption and implementation of the reform measures, and to develop clear criteria for the successfulness of the implemented measures.

In the process of visa liberalisation the role of the civil society is extremely important, since it corrects, instigates and monitors the work of state administration, like in most of areas. Without the civil society, which must have unlimited and unrestricted access to all public data on the work of state organs, there could not be well enough implemented reforms and real changes in the society.

Also, civil society can be seen as a partner in this process. In Serbia the Team for Combating Human Trafficking is undoubtedly a good example for that kind of “partnership”. Also, we have good example in readmission area.<sup>60</sup>

Within the Republic Team, there are four working groups in following areas:

- Prevention and education (coordinated by nongovernmental organization ASTRA),
- Assistance to victims by creating assistance mechanisms (coordinated by the Ministry of Labour, Employment and Social Policy),
- Suppression of trafficking in children (coordinated by nongovernmental organisation Beosupport),
- Implementation of the Law (coordinated by the Ministry of Justice).

When it comes to the field of combating human trafficking, it is important to note that NGOs have taken upon themselves a number of activities, especially those with regard to suppressing human trafficking, and enhancing reintegration and resocialisation of victims. It could be said that these activities fall under the obligations of the state bodies.

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<sup>60</sup> Noted in Block 2 — part about readmission agreement

It is necessary to pointed that civile society can contribute when it comes to lobbying. Group 484 had been advocated in the country for the importance of lobbying in the visa liberalisation process within in the EU Member States and in Brussels. Having in mind the whole procedure in the process of visa liberalisation, it is extremely important for authorized bodies of Ukraine to pay special attention in the following period to visit member states playing key roles in bringing a decision and advocating in favour of their positive attitude. The key role in this process it would be taken by the EU Council, i.e. Ministers of Interior of EU member states. It is a fact that civil society has a great knowledge and experience when it comes to lobbying. State authorities can learn and can have great support from the experts from civil society.

Without doubt it is of special importance to make efforts to inform the public about the rights and obligations imposed by the Schengen system or in other words, about the conditions of movement under the visa- free regime. Civil society may do that through the campaigns. Of course, the state authorities also need to work on that. It is useful to draw attention that in Serbia the most campaigns during the process of fulfilling criteria were about the importance of visa liberalisation, benefits of inclusion into the white Schengen list, especially for the young people, and that a minimum attention was dedicated to the obligations imposed by Schengen system. In a way, this kind of a campaign could be seen as a preemptive measure for the situation when EU decides to include Ukraine in the White Schengen list. In Serbia, the lack of knowledge has contributed in certain extent to the increase in the number of Serbian citizens seeking asylum in the EU<sup>61</sup> after the obtaining of free visa regime. Most cases involve persons requesting asylum without proper grounds (so called false asylum seekers), and who are then soon returned to Serbia, in accordance with the readmission agreements.

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<sup>61</sup> According to data presented by Ivica Dačić, minister of Interior, 7,500 Serbian citizens requested asylum in Sweden, Belgium and Germany since the beginning of 2010; [http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=10&dd=21&nav\\_id=466763](http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=10&dd=21&nav_id=466763).

This kind of misuse of asylum right usually stem from economic reasons of individuals, which can, by no means stand as grounds for approving asylum. It is mainly a responsibility of the government to carefully manage the situation in generation of conditions for citizens not to abuse with freedom. As a part of solution, the government should strategically think of reforms aimed at improving life conditions, especially in least developed areas as a means to discourage immigration in the Schengen area. But civil sector can also help, though informing of citizens<sup>62</sup>.

It is possible to find many ways for using the capacity of civil society. Often the civil society takes the initiative even before authorities realize that there is a need for realization of certain activities. When it comes to the activities of the Group 484, it turned out that the research paper “Migration potential of Serbia”<sup>63</sup> was seen from the authorities as very useful. Within the project White Schengen List Group 484 investigated into whether the accession of Serbia to the EU might act as immigration tret to the EU states. With this objective in mind, we conducted a survey of migration potencial at the representative sample in Serbia in orded to gain insight the volume, structure and the determinants of migation potencial. Civil society in Ukraine should be thinking about conducting similar research.

As regards civil societyin this process we must not neglect the role of media. Logical question is why media are important? Firstly, they can improve the transparency of the process- it has to be evident what is going on. Secondly, they can provide the learning “space” — the easiest way to present some good examples and to assist in finding adequate solution to obstacles in the process of fulfilling the criteria. It is the fact, that the media don't

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<sup>62</sup> It is very import to explain ordinary people as well as state stakeholders, that visa liberalisation is very responsible process which does not guarantee permanent status on white Schengen list. In 2005, Ecuador lost it status because the irregular migration movements towards EU countries.

<sup>63</sup> [http://www.grupa484.org.rs/index.php?option=com\\_deeppockets&task=catShow&id=23&Itemid=147](http://www.grupa484.org.rs/index.php?option=com_deeppockets&task=catShow&id=23&Itemid=147)

understand the importance of the process, they don't know much about it and this kind of news does not sales newspapers. Non governmental organizations can help them to understand and to improve its reporting through various types of trainings and educations<sup>64</sup>.

## Conclusion

The issue of visa liberalisation gains additional significance from the viewpoint of individuals, who are having benefit from immediate positive effects at the end of the process. Inclusion of Serbia in white Schengen list is the initial concrete effect of European integrations for the citizens of Serbia. They are provided with the possibility to enjoy one of the fundamental freedoms the EU is grounded upon, the freedom of movement. This, as it turned, led to additional encouragement to persevere in further process of reform implementation aimed at Serbian accession to the EU. The EU Integration Office conducted a survey in May 2009 on the attitudes of Serbian citizens towards the possibility of travelling without visas, which indicated that even 82 % of citizens found that inclusion in white Schengen list was important for Serbia, 49 % responded that this was important for them from personal viewpoint as well, 16% stated that this was both important and not important, while 33% claimed that this was not of importance at all<sup>65</sup>. These figures clearly show that the citizens had a clear idea of the importance of inclusion on White Schengen list.

It is necessary to be honest and sad that without political will nothing can be done. Creating of strong and unique political voice for the visa liberalisation is important step in this process.

Of course, there is always a question of money needed for this process. Good tactic is to make public to think "What is the cost of our not being on

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<sup>64</sup> In 2009, Group 484 has organized training for 10 media representatives and students of journalism from WB countries on visa liberalisation process.

<sup>65</sup> Government of Serbia EU Integration Office, research: European Orientation of Citizens of Serbia — Trends , May 2009

the Schengen white list yet?" An accurate estimate of all the costs associated with the current EU visa regime with Ukraine would certainly prove this reasoning correct.

In Ukrainian case, this process can be long. This is reality when it comes to the size of the country and negative reputation as a country of origin and transit of irregular migrants. Unfortunately, we have to add EU skepticism towards migrants and frustration which is not completely understandable.

But civil society in Ukraine must be the initiator of the positive energy and movement which will influence Government and EU stakeholders to accelerate visa liberalisation dialogue. As well, through accurate and regular reports, civil society can break some stereotypes and provide necessary information to all involved parties.

The most important fact is that visa liberalisation dialogue between EU and Ukraine has started. Ukraine citizens can achieve historical step towards EU, if they participate and support this process. The light is visible at the end of the tunnel, but a lot of work is in front Ukrainians.

## BOSNIA AND HERZEGOVINA

**Sara Nikolic**

Association Alumni of the Centre

for Interdisciplinary Postgraduate Studies, Sarajevo, BiH

*By Bosnian Experience visa liberalisation process clearly demonstrated that comprehensible end-results of direct benefit to citizens, combined with clear reform benchmarks and the positive aspects of regional competition are able to create, through actions of civil society and the media, the public pressure needed for the successful implementation of even the most difficult reforms.*

The question of entry of Bosnia and Herzegovina onto the White Schengen List has been marked as an issue of high priority, both for government representatives as well as for individual citizens. For a country located in such proximity to the Schengen borders, as well as emerging from a previous system which had permitted its citizens freedom of movement unprecedented to other countries both East and West at the time, being placed on the negative Schengen list based on the Council Regulation (EC) No 539/2001 shortly after coming out of a difficult early transition period caused an overwhelming feeling of isolation and Euro-skepticism. For what is this European Union wanting to enforce numerous regulations within our countries but at the same time keeping its doors closed to our citizens — preventing their movement within the same countries whose values are being promoted within their own societies.

In this context, the beginning of the concrete visa liberalisation negotiations, headlined by the signing of the Road Map documents with the Western Balkan (WB) states, proved to be a winning formula — proving both real commitment of the EU in regard to inclusion of WB citizens, as well as providing the leverage needed for the implementation of difficult reforms bringing these countries closer to the EU, and not only in terms

of the freedom of movement of its citizens. As will be depicted here, this process wasn't without difficulties, especially for countries with complex governance structure, as is Bosnia and Herzegovina (from here on BiH). However, the **process of visa liberalisation** showed that **comprehensible end-results of direct benefit to citizens**, combined with **clear reform benchmarks** and the **positive aspects of regional competition** are able to create, through actions of **civil society** and the **media**, the **public pressure** needed for the **successful implementation** of even the most difficult reforms.

### **The Visa Liberalisation Beginnings in the Western Balkans: From the Thessaloniki Summit to Liberalisation Talks**

The 2003 Thessaloniki summit can be highlighted as the beginning of the EU Balkan agenda — setting the Balkan integration into the EU as one of the Union's priorities.

“The Western Balkans and support to their preparation for future integration into European structures and ultimate membership into the Union is a high priority for the EU. The Balkans will be an integral part of a unified Europe”<sup>66</sup>.

The agenda encouraged the following items: further consolidating peace and promoting stability and democratic development, the progress of Western Balkan countries towards the EU within an enriched Stabilization and Association Process, fighting organized crime, co-operation in other Justice and Home Affairs matters, promoting economic development, reconciling for the future and enhancing regional co-operation.<sup>67</sup> The implementation of all these aspects is a vital step on the road to eventual European integration. However, as a first step forward, advancements in

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<sup>66</sup> “The Thessaloniki agenda for the Western Balkans — Council Conclusions.” *European Commission — Enlargement*. 16 June 2003.

<sup>67</sup> *Ibid.*

these fields also give the countries of the Western Balkans the opportunity to amend the negative effects of having been placed on the “black” Schengen list in 2001, following the implementation of the Council Regulation (EC) No. 539/2007<sup>68</sup>, through undertaking the visa liberalisation dialogue shaped by the Thessaloniki agenda in 2003 and officially commenced between the European Commission and Bosnia and Herzegovina, Albania, Macedonia, Montenegro and Serbia in January 2008.

As alluded to in the introduction, the stifling black Schengen list discourages economic development and has negative impact on business relations in Bosnia and Herzegovina.<sup>69</sup> Entrepreneurs and other businesspeople face difficult barriers to enter the Schengen Area, where they could discover potential business opportunities. Additionally, many companies in the Balkans must hire truck drivers from within the Schengen Area in order to transport their goods there, therefore leaving many truckers from their own countries without jobs.<sup>70</sup> Furthermore, the visa regime has cultivated an environment that prohibits cultural exchanges and youth development. Some recent surveys reveal that up to 70 percent of young people from the Western Balkan region have barely traveled outside the region.<sup>71</sup> Without the opportunity to travel, the citizens of BiH will develop skewed perceptions of the outside world through the media and other biased outlets, contributing to a rising feeling of isolation and xenophobia in opposition to gaining a wider European perspective.

The receipt of the Road Map on Visa Liberalisation on the 5<sup>th</sup> of June 2008 marks the commitment of both the Bosnian authorities and of the European institutions, via the European Commission, to fulfill a precise set

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<sup>68</sup> Listing the third countries whose nationals must be in possession of visas when crossing the external borders as well as those who are exempt from that requirement.

<sup>69</sup> “What BiH politicians intend to do in order to obtain liberalisation and subsequent abolishment of the Schengen visa regime for all citizens of BiH?” *Centre for Security Studies*. July 2006.

<sup>70</sup> Karajkov, Risto. “Europe’s Visa Policy for the Balkans.” *Worldpress*. 5 February 2007.

<sup>71</sup> Sinisa-Jakov, Marusic. “Macedonia Visa Liberalisation on the Cards.” *Balkan Insight*. 20 May 2009.

of conditions in order to grant the citizens of Bosnia and Herzegovina visa-free travel in the Schengen area, and with this access to a wider range of development opportunities, both human and economic.

## **STEP 1: Visa Facilitation and its Shortcomings**

The European Commission launched negotiations with the Balkan states on visa facilitation and readmission agreements in November 2006, a first step towards liberalisation of the visa regime, and all agreements were signed in September 2007 and finally entered into force on 1 January 2008.<sup>72</sup>

The visa facilitation agreements promise relaxed short-stay Schengen visa requirements in exchange for an endorsement of an EC readmission agreement and some additional domestic reforms. The goal of the facilitation agreement is to make it easier for citizens of Bosnia and Herzegovina to attain Schengen area visas, therefore increasing exchange with the rest of Europe. The citizens of Bosnia and Herzegovina and the rest of the Western Balkans value this exchange, as it is often linked with positive democratic and economic development.<sup>73</sup>

For Bosnia and Herzegovina, the VFAs are seen as a major cornerstone on the way to visa free Schengen travel. In December 2008, the EC reported that the Western Balkan governments have been adequately implementing the VFAs. The governments have made the VFAs a serious priority, thus positively increasing its effectiveness and efficiency.<sup>74</sup> Overall, for many

<sup>72</sup> Knaus Gerald and Alexandra Stiglmyer. "Visa-free travel for the Western Balkans — A win-win situation." EU Observer. 15 June 2009. 26 June 2009. <http://euobserver.com/7/28298>

<sup>73</sup> European Commission Delegation to Bosnia and Herzegovina (ECDBiH). "Negotiations on visa facilitation and readmission agreements concluded with Bosnia and Herzegovina 10.April.2007" ECDBiH 02.07.1009

<sup>74</sup> European Citizen Action Service (ECAS). "Does it Really Matter? Visa Facilitation in the Western Balkans: Monitoring of new Agreements." ECAS 10 December 2007. accessed on 20 July 2009. available at: [http://www.ecascitizens.eu/index.php?option=com\\_docman&task=doc\\_download&gid=389&Itemid=](http://www.ecascitizens.eu/index.php?option=com_docman&task=doc_download&gid=389&Itemid=)

groups of citizens, the VFA has significantly increased access to the rest of Europe. Nevertheless, the implementation of the VFA also experienced significant problems.

Polish scholar Leszek Chajewski conducted a survey on the EU visa policy towards the Western Balkans since the implementation of the VFAs. His conclusions showed that the main problem that visa applicants have is the negative staff attitude as well as long queues for applications. Furthermore, the more limiting a country's visa policy is, the more unclear the criteria for visa applications. The fact that all consulates have different application procedures further hinders access to visas. Despite these challenges, the survey also showed that visa refusal rates for Bosnia and Herzegovina have declined since the implementation of the VFAs, from 10% in 2007 to 4% in late 2008.<sup>75</sup> The Road Map to Visa Liberalisation for Bosnia and Herzegovina has set a goal of 3 %. But for the Western Balkans as a whole, these denial rates changed little in respect to the category of the visa applicant as the VFA intended.<sup>76</sup> Difference in payment or timing of visa issue did not vary significantly for those expected to enjoy lowered rates or quicker processing, such as businesspeople or students.

In June 2008, Association Vesta from Tuzla in partnership with ECAS from Brussels implemented a telephone hotline to assess the visa facilitation process in Bosnia and Herzegovina. They advertised the hotline number via various media outlets and soon after began to receive calls from all over Bosnia and Herzegovina.

The basic goal of the project is directed towards the evaluation of the Agreement on Visa Facilitation and the further liberalisation of the visa regime. During the past period of the project realization, the citizens of the Western Balkans have had a chance to share their opinion about the process

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<sup>75</sup> Chajewski, Leszek. „EU Visa Policies Towards Western Balkans: Summary of May 2008 Survey Results.“ Available at: [http://209.85.135.132/search?q=cache:i4AoyukGX50J:www.ecas-citizens.eu/index.php%3Foption%3Dcom\\_docman%26task%3Ddoc\\_download%26gid%3D384%26Itemid%3D+Chajewski+survey+balkan&cd=1&hl=en&ct=clnk](http://209.85.135.132/search?q=cache:i4AoyukGX50J:www.ecas-citizens.eu/index.php%3Foption%3Dcom_docman%26task%3Ddoc_download%26gid%3D384%26Itemid%3D+Chajewski+survey+balkan&cd=1&hl=en&ct=clnk).

<sup>76</sup> Ibid.

of receiving and issuing a visa, as well as receive information about their rights guaranteed by the Agreement on Visa Facilitation.<sup>77</sup>

The conclusion drawn from the Tuzla hotline is that most citizens are unable to notice the difference between the visa application process before and after VFA implementation. Furthermore, many applicants have found the real cost of the visas to be much more than the assigned 35€ — for example, many business people need an invitation for entry from the host nation's Chamber of Commerce, which can cost up to 80€. This is an area that the VFAs failed to take into account.

Undignified treatment of applicants by consular staff was also a major issue.<sup>78</sup> Furthermore, inconsistency in national policies regarding application requirements, appointments, rejection, reasons for rejection, and appeals for rejection lead to high levels of confusion among individuals applying for visas.<sup>79</sup> This unfortunately prevented the positive perception of the VFA, which has actually assisted in decreasing the visa denial rate. Additionally, it was concluded that citizens are not properly informed about the VFA — in part due to poor media attention.<sup>80</sup> Since media tends to underscore examples of refused visa applications, many have the impression that refused visas are a trend. In many other cases, citizens are simply unaware of the VFA and its implications for travel.

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<sup>77</sup> European Citizen Action Service (ECAS). "Does it Really Matter? Visa Facilitation in the Western Balkans: Monitoring of new Agreements". ECAS 10 December 2007. accessed on 20 July 2009. available at: [http://www.ecascitizens.eu/index.php?option=com\\_docman&task=doc\\_download&gid=389&Itemid=](http://www.ecascitizens.eu/index.php?option=com_docman&task=doc_download&gid=389&Itemid=)

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

## **The Start of Real Reforms: Implementation of Visa Liberalisation Benchmarks**

The Road Map on Visa Liberalisation with Bosnia and Herzegovina is composed of four blocks focusing on document security (block 1), illegal migration including readmission (block 2), public order and security (block 3), and external relations and fundamental rights (block 4). The blocks are reflecting a set of reforms not solely indispensable for the achievement of visa-free travel but essential for the establishment of a functional and responsive state and the advancement of BiH in the process of European integrations.

The Road Map conditions are based on concrete legal and technical criteria, making the process of visa liberalisation dependent on individual country capacity to implement the necessary reforms. They are mainly pertaining to the body of EU legislation belonging to the segment of justice and home affairs.

The individual approach to liberalisation has been demonstrated by the decision of the European Commission to recommend Macedonia, Montenegro and Serbia for visa liberalisation in July 2009, a decision upheld by the EU Council in November of the same year, while Bosnia and Herzegovina and Albania have been held back, still needing to complete some of the necessary reforms and finally getting a positive assessment in the second half of 2010.

In the case of BiH, a Working Group tasked with negotiations on visa liberalisation had been nominated in May 2008. The group was presided over by a representative of the Ministry of Security, and also included members of the State Investigation and Protection Agency, Border Police, Ministry of Human Rights and Refugees, Service for Foreigners' Affairs, Agency for identification of documents, registers and data exchange (IDEEA), Ministry of Foreign Affairs, Ministry of Justice and the Directorate for European Integrations.

The Road Map implementation process was followed through a series of reports submitted by the BiH government (prepared by the Working Group) on advances made, followed up by written assessments of the situation by the European Commission (EC) and EC assessment missions (see Table below for the chronology). This consistent dialogue proved important in maintaining momentum and providing clarifications on unclear benchmarks. Following the signing of the Road Map, the visa liberalisation process lasted two and a half years and included the submission of 5 readiness reports by BiH government, followed by 4 written EC assessments, as well as the additional clarification of remaining benchmarks on July 15th 2009, as well as including 3 separate expert missions coming to the country.

### **Progress by Block — A Short Summary**

Due to the complexity of its administrative structure and the difficulty to reach political consensus on some of the reforms, particularly in the sphere of public order and security, Bosnia and Herzegovina had been experiencing substantial difficulties in satisfying the Road Map measures in the first period of negotiations.

As highlighted by the European Commission 2008 Progress Report, the country's "administrative structures remain cumbersome, and in some cases fragmented, and prone to duplication and unclear division of powers, both between institutions at the same level and vertically, between different levels of government"<sup>81</sup>. The findings of ACIPS' monitoring have highlighted these issues as one of the main factors blocking a speedier reform process in Bosnia and Herzegovina.

**DOCUMENT SECURITY** presented one of the key reform areas for visa liberalisation. By June 2009, all the benchmarks from Block 1 still remained

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<sup>81</sup> Commission of the European Communities. Bosnia and Herzegovina 2008 progress report. p.11.

to be fulfilled. Subsequently, the pace of reforms in this field speeded up and the key conditions were met by the end of 2009 for BiH.

The first benchmark fully achieved had been reporting to the Interpol/LASP database on lost and stolen documents. The legal and technical requirements have been met for the establishment of an automated system for reporting to Interpol on lost and stolen travel documents, implemented by the Agency for identification of documents, registers and data exchange (IDDEEA).

The system for issuing biometric travel documents had begun being tested as of July 2009 and by the end of September of the same year, 41 000 passports have been issued following biometrical standards. Biometric passports began being issued on October 15<sup>th</sup>, and some 16 000 travel documents have been personalized based on citizen requests submitted with the competent authority in the first month.<sup>82</sup>

Anticorruption and educational programs for servants that issue breeder documents were in course in the same period. The verification of registry books and data entry into the central database coordinated by IDDEEA was being implemented by municipalities — all entity, cantonal and municipal authorities were expected to digitalize their registry books by the end of 2009.

In the area of **BLOCK 2**, dealing with **ILLEGAL MIGRATION and INCLUDING READMISSION**, Bosnia and Herzegovina made efforts and achieved significant progress regarding migration management standards and plans for eventual EU integration. A source, transit and destination country for both irregular and regular migration, the country has relatively young institutions in place responsible for migration management.

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<sup>82</sup> Agency for Identification Documents, Registers and Data Exchange (IDDEEA). "Personalization of biometric passports is carried out without any problems – News." IDDEEA, 13.11.2009. available at: [http://www.iddeea.gov.ba/en\\_saopstenja\\_detalji.php?id=125](http://www.iddeea.gov.ba/en_saopstenja_detalji.php?id=125)

Improvements were evident early on in many areas of Block 2, both in border management, asylum policy and in migration management.

Regarding border management, the Integrated Border Management (IBM) system has been established, enhancing the operational effectiveness of the agencies working at the border through ensuring their interconnectedness. As a mechanism of coordination, the Commission for Integrated Border Management has been established. Additionally, an agreement on cooperation between all IBM agencies has been signed. Another achievement in this segment was the adoption of the Law on border control in June 2009, which regulates and clarifies the responsibility for management of border posts. Bosnia and Herzegovina is also the only country in the region having established a Joint Risk Analysis Center.

Cross-border cooperation with neighboring countries has been successful, and BiH concluded an agreement with FRONTEX. However, BiH needed to do further work on border demarcation issues and the improvement of border crossing points. Some of the border crossing points still does not satisfy the elementary conditions for normal functioning, such as electricity or clean water.

The asylum matters in Bosnia and Herzegovina are defined by the new Law on Movement and Stay of Aliens and Asylum, which entered into force on the 14<sup>th</sup> of May 2008. As a result of developments and progress in the area of asylum policy, the BiH procedures in this field are largely in line with international standards. Finally, all approvals related to the building and the functioning of a permanent reception center in Trnovo have been granted, and the latter should become fully operational in 2011.

There has been progress made in the area of migration management. The New National Strategy on Migration and Asylum was adopted in November 2008 and the Migration Profile for B&H has been created and adopted. BiH has also set up the Informative System for Migrations, the structure for information exchange thus being established. A Strategy on Return and

Reintegration based on the Agreement on Readmission has been adopted. BiH also secured additional places at its detention center for illegal immigrants.

**BLOCK 3**, dealing with **PUBLIC ORDER AND SECURITY**, has presented the package of reforms most difficult to implement. The inability of BiH politicians to reach a consensus about many of the core issues covered by this block presented a major obstacle for its full realization. The updated assessment of BiH progress presented by the European Commission on June 8<sup>th</sup> 2009, and re-iterated in the Annex to the Commission's letter to BiH authorities of July 15<sup>th</sup> 2009, showed the majority of benchmarks that remained to be met were contained in this Block. Generally, in an already late stage of the Road Map process, a considerable amount of additional sustained efforts was required from BiH authorities for the full realization of the requirements of the Block 3.

Among the main developments of the September 2009 sessions of the BiH Council of Ministers, following the positive assessment of the European Commission given to Serbia, Montenegro and Macedonia, have been the adoption of the new Strategy for fighting organized crime 2009-2012 and the Strategy for fight against corruption and its 2009-2014 action plan.

Additionally, consensus has been reached on and the Law on the Establishment of the Agency for the Prevention of Corruption and the Coordination of the Fight Against Corruption has been adopted and sent into parliamentary procedure. It remained undefined to what extent this Agency will have the jurisdiction required to successfully coordinate the fight against corruption. The strengthening of capacities of law enforcement and the effective implementation of the legal framework for the fight against organized crime and corruption, including the allocation of adequate human and financial resources remained a subject of evaluation in 2010.

Following the adoption of the National Drugs Strategy in March 2009, a related action plan had also been put in place in autumn. Additionally, the Law on the Prevention of Money Laundering and Financing of Terrorist

Activities has been adopted and entered into force in June 2009, and has been followed by the adoption of the strategy and the action plan for 2009-2013 in September of the same year.

In fighting organized crime, one of the greatest obstacles identified has been the low level of cooperation and exchange of information, both between domestic law enforcement authorities (horizontally) as well as within a given agency (vertically). In the BiH context, there is also the prevalent issue of numerous policing agencies with overlapping jurisdictions. As these are highly politically contentious issues, they have been blocking the process of enhancement of the law enforcement structures considerably. The breakthrough in this process has been the Agreement on the establishment of an electronic system of information exchange from police and prosecution registers, adopted by the Council of Ministers (CoM) on September 30<sup>th</sup> 2009 (just before the deadline for submitting another readiness report). Following the adoption by CoM, the Agreement was signed by the directors of all police and prosecutorial bodies.

The ownership over the data remains in the hands of the respective agencies, but its exchange will be managed by this centralized system. In March 2010, an action plan on the establishment of electronic data exchange between police and prosecution bodies had been put in place — and its progressive implementation in the period that followed had been one of the last remaining benchmarks in the Road Map process.

Also, it had been decided the system server will be located in the Directorate for the Coordination of Police Bodies and Agencies in Sarajevo, which was a positive step towards full implementation of another contentious measure — the two police reform laws of 2008, which imply the nomination of missing directors and full establishment of the 7 state-level police agencies. The issue of nomination of the Director of this body (and thus its full establishment) was still a contentious issue in 2010, with an acting director being named in the meanwhile.

Another important problem that remained prevalent at the end of 2009 was the slow process of harmonization of parallel criminal law frameworks that exist within the country — harmonizing entity level and Brcko district with state level criminal code. Though the CoM has adopted the Draft Law on the Amendments to the Criminal Law of BiH, it remained blocked in parliamentary procedure with 31 new amendments shortly after. The harmonization of the state law on lower levels of government was completed in 2010.

Important progress has been made by BiH in the field of cooperation with international law enforcement organizations, though further efforts are needed in the implementation of the agreements that BiH has signed, such as the GRECO recommendations. Finally, Good progress has been made in the establishment of the legal and administrative framework for data protection, as well as in the establishment of working relations with Eurojust. The Law on International Legal Aid in Criminal Matters has been adopted in June 2009.

Although Bosnia and Herzegovina has made good progress towards meeting benchmarks under **BLOCK 4 — EXTERNAL RELATIONS AND FUNDAMENTAL RIGHTS**, some issues still remain to be resolved in autumn of 2009. The country established adequate legal framework regarding the freedom of movement and access to identity documents, though certain difficulties still exist in terms of implementation of the legislation for vulnerable groups such as refugees, displaced persons, returnees, disabled persons and members of minorities.<sup>83</sup>

As for minority rights, they are generally well ensured, both through legal provisions and institutional arrangements. Furthermore, a general anti-discrimination law has been adopted in July 2009<sup>84</sup>, after an extensive parliamentary procedure. Overall, a low number of cases of discrimination have

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<sup>83</sup> Updated Assessment of the Implementation by Bosnia and Herzegovina of the Road Map for Visa Liberalisation. European Commission, May 2009, p.24.

<sup>84</sup> Law on anti-discrimination, Bosnia and Herzegovina Official Gazette, 59/09, 28. July 2009.

been registered in BiH, and when they occur, the BiH Ministry of Human Rights and Refugees reacts immediately. However, there is no information on further follow-up regarding police investigations, prosecution and court action.

An ongoing problem in the implementation of benchmarks in this block has again been one of political nature — involving the phasing out of the Entity Ombudsmen offices, especially in Republika Srpska, that have been delaying the establishment of a fully functioning single Ombudsman Office at the state level.<sup>85</sup> This has finally been accomplished towards the end of 2009.

The most numerous minority in Bosnia and Herzegovina, the Roma, is still the most vulnerable one as well. The Roma strategy is being successfully implemented, and the Ministry of Human Rights and Refugees is carrying out the obligations taken by joining the Decade on Roma Inclusion 2005 — 2015. However, there are still difficulties in securing the funds for the implementation of The Action Plan on Educational Needs of Roma and Other National Minorities in Bosnia and Herzegovina.

In the area of citizenship, BiH was experiencing no major obstacles. Citizenship is primarily acquired through descent from at least one parent with Bosnia and Herzegovina/entity citizenship. Naturalization is possible, but strict conditions are in place. Currently, amendments to facilitate naturalization are awaited. Also, Bosnia and Herzegovina needs to ratify the bilateral agreement with Croatia on dual citizenship, while the agreement with Montenegro is in process. Agreements are currently in place with Serbia and Sweden.

## **The Positive Push of Regional Competition**

Ever since the 5 Western Balkans countries have been placed on the White Schengen list, finalized with the November 2010 decision of the EU

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<sup>85</sup> Šlako, Samir. Expert for monitoring of the Decade of Roma Inclusion, Ministry of Human Rights and Refugees of Bosnia and Herzegovina. Interview. July 6th 2009.

Council of Ministers to back up the EC and EP positive decision for BiH and Albania, the European policy community has been debating on whether a new 'carrot' can be identified able to further EU integrations reforms in the Western Balkans in a way as efficient as the visa liberalisation Road Map did. There is a wide consensus on the two aspects which contributed greatly to creating the pace and efficiency witnessed in the implementation of the Road Map benchmarks in the 5 countries — one is the fact that the visa liberalisation process has a very tangible end-result, significant to individual citizens (whose importance will be further highlighted in the discussion on the role of civil society within this process), the second is the positive incentive of regional competition in furthering these reforms.<sup>86</sup>

Bosnia and Herzegovina provides a case in point for this second argument. The EC assessment BiH received in May 2009 wasn't at all positive, with many measures left to be fulfilled, especially pertaining to the sphere of public order and security. However, the positive assessment given by EC to Macedonia, Montenegro and Serbia in July 2009, and the large amount of public pressure it generated acted as a positive push in Bosnia's speeding up the necessary reforms.

On July 15th, when the three countries received a positive assessment from the EC, BiH received a letter from the European Commission, highlighting 48 detailed Road Map measures remaining to be fulfilled, more than 60% of which dealing precisely with Block 3. The period that followed showed Bosnia make headway, even in some of the reforms proven to be most difficult to approach up until that point. From July to the end of September, with most activity witnessed in that last period, just prior to the deadline for submitting a new progress report to the EC, BiH executive authorities finally adopted an Agreement on the establishment of the electronic system for data exchange between police and prosecution registries, made headway in the establishment of a Directorate for the coordination of police bodies

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<sup>86</sup> Grabbe, Heather, Knaus, Gerald and Daniel Korski. *Beyond Wait-and-See: The Way Forward for EU Balkan Policy*. European Council on Foreign Relations. May 2010.

at the state level, adoption of the Law on the Establishment of the Agency for Prevention of Corruption and the Fight Against Corruption, Strategy and Action Plan for the prevention of money laundering and financing of terrorist activities, etc.

These achievements clearly prove that no reforms (or headway towards reforms) are truly impossible to bring forth if there is sufficient political interest and consensus. Having an electorally attractive reward, as is visa liberalisation, as well as clearly spelled out conditions for obtaining it, and ensuring transparency of the process through regular status reports resulted in Bosnian politicians working “hard to avoid the electoral cost of falling behind their neighbors.”<sup>87</sup> A final key aspect to be discussed here and contributing to ensuring the transparency is the role of the civil society in this process, to be tackled next.

### **Civil Society Efforts in the Process of Visa Liberalisation**

Acting as a span between citizens and the government, the role of civil society is always an important one when dealing with government decisions directly impacting upon the life of citizens. Civil society actors work both to promote citizen interests with the decision makers, as well as to monitor the efficiency of the work of the government in representing and working towards the protection and better satisfaction of these interests.

The process of visa liberalisation in the Western Balkans provides a case where, precisely due to the importance of issues at hand, civil society was presented with a space to play an important role in the advancement of these processes. Its efforts were taken into account by both the decision makers and the wider public. As mentioned several times, the combination of clear end-results of direct benefit to citizens, well defined reform benchmarks and the positive aspects of regional competition opened up a space where

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<sup>87</sup> Grabbe, Heather, Knaus, Gerald and Daniel Korski. Beyond Wait-and-See: The Way Forward for EU Balkan Policy. European Council on Foreign Relations. May 2010. p.2.

concentrated civil society action, most notably the monitoring of the implementation of the reforms and keeping close contact with the media contributed to generating the public pressure necessary to push forth even the most difficult reforms required by the visa liberalisation process.

ACIPS has been following the policy on visa liberalisation since its early beginnings, having conducted a first overview in 2006 assessing the grounds for visa liberalisation in BiH. It is important to notice that during this first assessment, discussion with EU officials did not provide hopefulness that the visa regime will be liberalized in such a short period but showed prospects of visa facilitation at best.<sup>88</sup> In 2008, following the entry into force of the Visa Liberalisation Road Maps, we re-focused on the implementation process, firstly providing our assessment of advances made for the PASOS Policy Brief on the Western Balkans<sup>89</sup> and subsequently taking part in the regional initiative to monitor individual country Road Maps initiated by Group 484, Serbia and also joining together partners from Macedonia, Montenegro and Albania.

The methodology agreed upon was simple — monitoring the advancements made by states in fulfilling the individual visa liberalisation benchmarks — shadowing the reports issued by the government itself, assessments made by the European Commission — and complementing these with additional data received on the ground. In this process, as often in policy research we conducted, we found ourselves to be the voice of mid-level civil servants, those tasked with implementing the technical reforms at hand, but often being blocked in the process by lack of necessary decision-making at the top level — as in the cases of the previously outlined reforms for which political consensus was lacking. Similar efforts were invested in this process by a fellow national think tank, Popolari, as well as their

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<sup>88</sup> Vasic, Stela. *The Liberalisation of the Schengen Visa Regime for Citizens of Bosnia and Herzegovina: How far is BiH from a Visa Free Regime?* Sarajevo: ACIPS, 2006. p.28-29.

<sup>89</sup> Dimitrova, Nadya. *Could EU visa-free travel become a key incentive for western Balkans countries to establish better democratic institutions and the rule of law?* Bulgaria: European Institute Foundation, 2009.

Brussels-based partner, the European Stability Initiative. In addition, many other civil society organizations made visa liberalisation part of their agenda, and opened up a space for the presentation and communication of our own monitoring findings within their circles of contacts.

The same was true of the media — looking to satisfy high public interest, media representatives were looking for updates on the advancements made and problems blocking the process and thus there was a large amount of open media space for discussion of visa liberalisation issues. In this way, in a context where public opinion was highly favorable of the speedy implementation of reforms, sufficient space was also provided to civil society to contribute to creating sufficient pressure for even the toughest reforms to finally go a step forward.

In addition to pushing forth the implementation of necessary reforms, civil society also needs to play an important role in another aspect of the visa liberalisation process — that of providing citizens with the correct information on what is implied by being placed on the White Schengen list, and also what is not.

Careful advocacy efforts need to be vested early on into explaining that visa liberalisation does signify freedom of movement — but that this freedom does have a yearly time limit typical of short stay visas anywhere, and does not include a working permit in Schengen countries. We are witnessing the backlash of lack of sufficient information in this regard in Serbia, Macedonia and Montenegro at the moment, with the rise of false asylum claims in the EU coming from citizens of these countries, and the same might be expected in Albania and BiH if more concentrated efforts are not invested in education and awareness raising.

## **Concluding Remarks**

To conclude, the process of implementation of a series of reforms dealing with the spheres of justice, liberty and security is a complex one

and not without shortcomings at certain periods. However, the very fact that a country has signed an agreement with the EU, whether it be called Road Map or Action Plan, promising visa liberalisation at the end of this reform process is a clear sign that pending on the completion of one side of the bargain, the European Union will also deliver upon its promises. This proved to be true in the case of the countries of the Western Balkans and therefore, the same logic should apply in future cases, with Ukraine now being the forerunner in the process.

As shown here, visa liberalisation is (or can be fairly easily communicated as) a common interest for all citizens. Though the reforms leading to progress in this field are often abstract, the goal of a free visa regime is tangible and can be utilized to place additional pressure on decision makers. Civil society plays a key role in sharing information on the process with citizens and the media, ensuring the proper implementation of reforms that are key not solely for obtaining greater freedom of movement for individual citizens but contributing to the overall development of societies entering these reform processes. As such, the striving for positive changes does not stop with the attainment of the visa free regime but needs to be continuously monitored and pursued, ensuring positive developments increasing the quality of life of individual citizens every day in their home countries, and not just in periods of travel.

## ALBANIA

### Ilir Qorri

Albanian Expert on EU Affairs

## VISA LIBERALISATION EXPERIENCE OF ALBANIA

*Starting from 15 December 2010, the Albanian citizens can travel freely to the Schengen area being in possess of a biometric passport. This new regime of visa exemption came as a result of a continuous dialogue between the Albanian institutions and those of European Union. This was also one prominent case on the spirit of Thessaloniki Summit of 2003, where the countries of Western Balkans were promised with the clear European perspective: the free movement of people, expressed with the first step of removing the visa barrier that EU upheld with these countries, including Albania as well.*

The visa dialogue between Albania and European Union was launched in March 2008, when the then vice President of European Commission, Franco Frattini presented it in Tirana, with the vision of a visa liberalisation in the close future for Albania. When the European Commission handed over in 19 May 2008 the Road Map towards visa free regime, the Visa Facilitation Agreement between Albania and EU was in place since the beginning of year 2008. The Facilitation of visa regime brought with itself only some improvements mainly on the procedures of getting the visa and not to all the categories of people, but didn't bring the expected final outcome, which for the people meant not going through the gates of Embassies of Schengen countries anytime they needed to travel abroad. The core meaning of visa dialogue was the continuous communication between the two parties on the fulfillment of Road Map criteria, and this communication launched a new

working style on the cooperation EU-Albania: when the criteria to be met are well clear, can be easily measured and very technical, their fulfillment can be an easy task and can put the authorities into a working position. This means: either you achieve them, or you fail. This came also as a result of not being bound to the political developments, which sometimes can put hurdles to the process, but maintaining it clearly technical and in course with the task of relevant institutions of public administration. The political support was also needed, in order to give the consent of all the layers of society, and this is crucial as well, but the work was entirely connected with the achievements of institutions. The final act of this path was decision of EU for the removal of visa regime for the Albanian citizens, which entered into force starting from 15 December 2010.

It is important to stress out the real meaning of the short term visa exemption. This new regime of visa liberalisation applies for short term staying in the Schengen area, the citizens have the right to enter and stay the EU for maximum 90 days in a period of 180 days since their first entry. The Schengen area includes 25 countries of European Union, excluding the United Kingdom and Republic of Ireland, but widened with three countries outside the EU, which are full signatories of Schengen agreement: Iceland, Norway and Switzerland. The perspective is that Bulgaria, Cyprus and Romania also join soon on signing the full agreement, though citizens of third countries can enter them with a valid Schengen visa when required or without it after visa liberalisation with EU. All this means that visa liberalisation applies for C type of visas, and not for the D type of visas, which are mainly national and long term visas for the purpose of studies, employment, family reunification and/or other purposes for long term staying in the EU countries. In this case, those citizens travelling with the aforementioned purpose of their trip should again visit the embassies of Schengen countries, in order to continue their engagement.

In the meantime, visa liberalisation provides for a very good opportunity to study the market whether there are possibilities to find a job in the

country they intend to undertake this. Although many jobs require certain qualifications and skills from the person, as well as the process of being hired for a certain job is longer for those coming from outside the EU area, Albanians have now the possibility to closely observe the situations and their probabilities for getting a job in the EU countries. Students can go and see the conditions that institutions offer for them before they start their studies. Travel across Europe has been a long time will for young generations, now this has become a reality and every young people can visit their age-counterparts of Western countries.

How did we come to this situation?

The Road Map towards visa free regime is a document divided into four blocks, each of one containing a number of requirements to be met by Albanian authorities. After some two and a half years of hardly working on it, all of these criteria have been fulfilled and the citizens enjoy the fruits of this continuous exercise.

On 30 November 2009, The Council decided to grant visa free travel to and throughout the Schengen area for citizens of Macedonia, Montenegro and Serbia, leaving out Albania and Bosnia and Herzegovina, but promising a visa dialogue in the near future for the citizens of Kosovo. When in summer 2009 the Commission assessed these three countries being very close to the promised achievement and the race being close to the end, the Albanian and Bosnian authorities started to accelerate the speed of their reforms. The finish line was a very desirable goal.

Though Albania had made substantial progress on fulfilling the criteria laid down in Road Map towards visa free regime, at that time it still lacked the implementation of a number of benchmarks. The government thought it was time for a more comprehensive and overall plan on the Road Map. After consultations with all the relevant actors of the process, being mainly the Ministry of Interior, Ministry of Justice, Ministry of Labor, etc, it adopted on 29 July 2009 an Action Plan with the description of each and every task to

be done. Since that time, Albania seemed to have caught the momentum and the authorities didn't lose time anymore, especially when it was clear that the reward is based on the real achievements and was within touching distance.

The Action Plan was taken very seriously by all the institutions involved on it and they provided a deep commitment to the fulfillment of criteria.

The main achievements by each block of the Road Map are explained as follows:

**Block 1:**  
**Document Security -Passports/travel documents, ID cards and breeder documents**

Albania signed a contract for the production of biometric passports and ID cards with a private contractor and the security features meet the relevant ICAO and EU standards. The personalization and distribution of documents is also under the supervision of the Albanian authorities. The passport personalization centre was equipped with video surveillance and access control and applicants' biometric data is systematically verified upon distribution of ID cards/passports. Applications for biometric ID cards started to be accepted since 12 January 2009 and their issuance began on 18 February 2009. The processing of applications for biometric passports started on 25 March 2009. Today (March 2011), more than 1,2 million biometric passports have been distributed.

Continuous training for personalization centre staff and employees of the civil registry offices is carried out respectively by the concessionary company and by the Ministry of Interior (General Directory of Civil Status), with the support of an international project on modernization of the civil status and address system. Training was provided to specialists from the border police, customs service, and services fighting organized crime, trafficking and economic crime, police directorates and stations. Anti-corruption trainings were also organized for public officials dealing with passports.

Albanian authorities have access to the Interpol database on lost and stolen passports. All lost and stolen passports and ID cards reported to the police are declared void. Over the past 3 years, the police services in Albania and Interpol Tirana have done much to improve the process of uploading national and ASF databases on lost and stolen passports. The Albanian authorities has reached a consolidated process, and the information in the field is available for all EU Member States.

## **Block 2: Illegal migration, including readmission**

### ***Border management***

Albania adopted the necessary legislation for the full and effective implementation of the Law on state border control. Risk analysis management was strengthened and risk analysis increasingly used by the BMP to support operational planning.

TIMS (Total Information Management System), a control system for Border Police and VoIP communication system and Interpol ASF2 database was installed and is operational in all the Border Crossing Points. As a result, TIMS, ASF2 and VoIP communication system is operational in all 24 BCP throughout border of Albania.

On cooperation of agencies operating at the border, the regulation on cooperation between the State Police, the Customs Service, the Veterinary Service and the Phyto-sanitary Service started to be implemented.

Measures were taken to strengthen human resources, where a working group within the Directorate General of State Police was set up together with the support of EU led agencies (PAMECA Mission and ICITAP program) to study and reallocate human resources within the State Police.

An Inter-Institutional Maritime Operational Centre (IMOC) became operational in January 2010, ensuring close cooperation between the BMP, Coast Guard, Customs and Fishery Agency.

## *Asylum*

Albania has adopted additional legislation regarding the receipt of country-of-origin information, the list of safe third countries of origin and functioning of the Directorate of Citizenship and Refugees.

## *Migration Management*

An Action Plan on implementation of the law “On Foreigners” was developed by the Ministry of Labor, Social Affairs and Equal Opportunities. This foresaw several measures to be taken, such as the measures for the completion of the subordinate legal framework, organizational measures, measures for information technology upgrading and measures for the training of staff.

The Department of Migration Policy was established within the Ministry of Labor, Social Affairs and Equal Opportunities, which (along with regional and local labor offices) manages registers of foreigners residing with a work permit, potential emigrants and returned Albanian citizens.

A Strategy on Reintegration of Returnees for the period 2010-2015 was adopted in June 2010, which foresees measures to be taken for reintegration of Albanian citizens returning to Albania, as well as for those persons readmitted as a result of implementation of Readmission Agreement.

## **Block 3: Public order and security**

With the aim of meeting the criteria under this block, the Albanian authorities increased substantially the efforts to fight organized crime. They adopted important laws in the field of confiscation of organized crime assets for fighting against organized crime and corruption. Laws were also adopted on mutual legal assistance and witness protection. Along with the legal framework, a large number of strategies and action plans were also

adopted and are implemented. This has made possible the alignment of the domestic legal framework with European and international standards at a large extent.

### ***Fighting against organized crime and terrorism***

In the context of the implementation of the inter-sector strategy on organized crime, trafficking and terrorism, a training plan was drafted for implementation of the action plan on fighting organized crime.

An important step in improving data exchange was the extension of a system on criminal intelligence called MEMEX to regional police. Significant efforts were made especially for improvement of operational cooperation and coordination between law enforcement agencies, the judiciary and the prosecution.

### ***Fighting against financial crimes***

A strategy and an action plan on the prevention of money laundering were adopted. Specific legislation — the law on prevention of money laundering and financing of terrorism was put in place. This law creates the core framework in fighting against financial crimes. The Albanian authorities put a lot of stress on incorporating international standards, such as FATF recommendations, UN and Council of Europe Conventions, into the national law. A National Committee on the coordination of the fight for prevention of money laundering is in place.

### ***Fighting against trafficking in human beings***

The most important steps in this area were the strategy for fighting against trafficking of persons and the national strategy for fighting against trafficking in children and protection of child victims of trafficking, as

part of the inter-Sector strategy of the fight against organized crime. The strategies were encompassed each with action plans, which continue to be implemented.

### ***Anti-drug policy***

Inter-agency cooperation on fighting against drug trafficking was improved substantially recently. Co-operation agreements were signed between the different responsible institutions and joint task forces were established (mainly including staff from the Ministry of Interior, border police, tax police, road police and customs). The responsible persons taking part in operations started to have the focus on using special investigative means and with the objective of dismantling organized criminal structures instead of individual cases.

### ***Policy on preventing and fighting corruption***

The implementation of the integrated anti-corruption action plan was prioritized. A lot of efforts were put into reduction of corruption in public procurement, in particular through simplification of procedures and introduction of electronic systems in various areas. The police and judiciary system started to become more active in investigating officials of government and personnel of law enforcement for corruption cases. GRECO recommendations from the second round of evaluation have been satisfactorily fulfilled.

### ***Judicial co-operation in criminal matters***

Albania ratified the main European and international conventions in the field of extradition, mutual legal assistance and other forms of legal and judicial cooperation. Albania signed specific agreements facilitating

procedures of general judicial cooperation and extradition with neighboring countries.

### ***Law enforcement co-operation***

Special investigative measures started to be used by the law enforcement and prosecution to investigate cases of organized crime and trafficking in all the different crime areas. New laws were adopted, such as Law on state police, Law on the coast guard, Law on foreigners, etc. Several trainings were provided for the police and prosecution in the area of international judicial cooperation.

### ***Protection of personal data***

A new Law on protection of personal data entered into force in the meantime. The Commissioner for data protection was in office and started to work regularly. His Office was provided with a budget and premises to work.

## **Block 4: External Relations and Fundamental Rights**

Albania became a full member of the Decade of Roma Inclusion 2005-2015 in July 2008. A regulation of the Ministry of Interior settled a working group for the identification and registration of the unregistered Roma population.

The law on anti-discrimination was prepared by civil society and widely discussed with international experts and other relevant actors interested in the field.

Many positive initiatives were carried out for the promotion of Roma Decade inclusion goals, especially in the areas of education, culture and employment.

Although in a low number, refugees are equipped with a biometric travel document.

## **Final remarks**

The achievement of all these results required a hard work from the Albanian institutions. The timeline for meeting all the criteria was approximately two years, but the most important fact was that the results-driven process always bears its fruits.

A permanent dialogue was established between the Albanian authorities and those of European Union. The Ministry of Foreign Affairs was the key institution which continuously kept in working position all the parties involved in the process.

Significant work was also made in the diplomatic area. Lobbying and advocacy was an integral part of the process. All the achievements were clearly introduced to several decision-makers at the EU level by the diplomatic corps of Albania, which increased the leverage of the process. Reports were delivered not only by their deadline, but mid-term ones were prepared and sent to the European Commission, which meant that the proactive way of thinking and doing made the Albanian institutions more sustainable and credible.

So far, when a task is seriously taken, the objective can be achieved without doubts. This brings for the benefit of all the people, which are enjoying the visa free regime with Schengen countries since 15 December 2010.

## **Gledis Gjipali, Blerta Hoxha**

European movement in Albania

### **TWO YEARS OF A WELL-STRUCTURED PROCESS:**

#### **On the approach of the European Commission and that of the Albanian government**

*Albania's main lesson learned: the visa liberalisation will have the systematic and positive consequences for the entire society only if it contributes to the introduction of better governance practices and brings positive pressure on the government by the society with the aim to increase governmental accountability.*

Following the introduction of the Road Map of the European Commission to the Western Balkan countries, the governments of these countries were asked to make comments and submit their assessment reports on the situation in the country regarding the standards set forth in the Road Map. In some countries the assessment reports were discussed in the parliament and were made known to the public before their submission to Brussels, while in others countries, including Albania, the governments preferred not to make public or to include in the process other institutions outside the executive and the Parliament. On the other hand, the European Commission answered each country through the assessment reports, which were discussed at the EU Council on Western Balkans COWEB.

The evaluation reports highlighted various stages of the Western Balkan countries. At that time, the most advanced country in such process was

Macedonia, followed by Serbia and Montenegro. After various exchanges of reports and assessments from the parties in July of 2009, the European Commission proposed to the Council of EU the lifting of the visa regime with Macedonia, Montenegro, Serbia and Albania. Meanwhile, Kosovo was included in the Schengen negative list.

In November 2009, the Council of Ministers of the EU decided to lift the visa regime with the three countries mentioned above. Such decision came to power on 19 December 2009. Concerning Albania and Bosnia and Herzegovina who had not yet fully met the benchmarks, the European Commission continued to monitor the performance through the expert missions throughout the year 2010.

Looking closely to the benchmarks embedded in the Road Map, it is immediately evident that overall this is a document dealing with major important fields of the country's democratization process. More specifically, it foresaw the design and implementation of strategies and concrete reforms to mark improvements in problematic issues such as public order and security, the fight against corruption, organized crime and illegal trafficking, the security of identification documents with biometric data, the integrated border management, illegal migration, as well as external relations and fundamental rights.

Concerning the efforts of Albania to meet the benchmarks embedded in the Road Map, the approach of Albanian institutions did not differ significantly from the usual tradition of policy-making in the country. The process was characterized by a general underestimation of the element of transparency and publicity of documents and phases of the process. In the neighboring countries such as Macedonia, various institutions publicly commented on assessment reports. In Albania, the information of the public opinion or of nongovernmental actors on the different stages of the process or the content of documents exchanged between the government and the Commission was generally avoided.

Progress has generally been commented from different political exponents pushed from political purposes, rather than from the aim of objective information of the public opinion, especially during the elections' campaign of June 2009. As a western diplomat, rightly pointed out, "the Albanian politicians have massively speculated with the issue of the visa liberalisation. It has become the toy of the politicians"<sup>90</sup>. Thus, the citizens have not been completely clear on the reforms carried out by our country.

Another aspect closely related to the information about the progress of the country in the process, concerns the approach of the Albanian government regarding the inclusion of non-state actors in the design and implementation of reforms and strategies. Exactly the work of several years to achieve higher standards in important fields serving to the country's democratization such as the fight against corruption, organized crime or trafficking makes the involvement of the non-governmental actors necessary in the development and implementation of reforms and strategies in the areas mentioned above.

Inclusion of non-state actors in the VLP process in Albania has been limited and mainly concerned NGO-s operating the human rights sector whose cooperation was indispensable (e.g. in the fight against human trafficking, integration of marginalized individuals, etc.).

The very fact that the state authorities interviewed bring across a single example of civil society involvement in this process, and in particular its contribution to the drafting of the anti-discrimination law, adopted in early 2010, proves that consultations have been relatively limited. However, limited involvement of non-state actors in the process cannot simply be interpreted as an exclusion from the policy-making process concerning visa liberalisation. Instead, it can be considered as a continuation of the «top-down» tradition of policy-making in Albania.

Another reason limiting the involvement of non-governmental actors is associated with the pace at which the Albanian institutions are coping with different stages of the visa liberalisation process. Many of the decisions were

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<sup>90</sup> Interview with a western diplomat in Tirana, 10 February 2010.

taken under time pressure, neglecting the required timeframe that would allow for extensive consultation in a democratic society.

The meetings held by several ministries with civil society representatives have been mainly characterized by formal nature. Often, they were held in the last moments preceding the Commission expert's visits and thus playing an ineffective consulting role. However, it should be highlighted that although the inclusion of more actors in the design and implementation of strategies and reforms in the visa liberalisation process would have made this process more democratic, it would not necessarily have accelerated it. This is because more consultations would also mean more procedures.

Based on a retrospective of the visa liberalisation process since its beginnings in spring 2008, it seems clear that despite the EU encouragement to achieve certain standards, the Albanian government has somehow slowly coped with the work required to achieve visa free regime. It seems that only the "shock of the separation from the group" of the Western Balkan countries in July 2009, shook the Albanian society, as they might not be walking at a proper pace. In addition, it has set in motion the Albanian institutions to collaborate. That is how the new energy of the Albanian institutions in order to fulfill the requirements embedded in the Road Map starting with a new speed from the September 2009 and on may be explained.

However, besides a first apathetic approach towards the achievement of the required benchmarks in comparison to neighboring countries such as Serbia or Montenegro, Albania faced some objective difficulties that slowed down its performance in this regard.

More specifically, along with the occasional lack of political will in any reform challenge, Albania faced limited administrative capacities. "I am sure that the visa liberalisation could be managed much better. However, for a better management is required a greater capacity including more trainings, more resources and more financial resource" confirmed a western diplomat in Tirana.<sup>91</sup>

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<sup>91</sup> Interview with a western diplomat, 8 February 2010.

Albanian institutions have not been reluctant to respond to the Road Map benchmarks with strategies and different action plans. Certainly, the documents at the stage of completion of the legal framework have not been missing. However, there has not always existed a proper budget or detailed information for the implementation of a specific plan. Often there is a lack of coordination and coherence between different strategies.

In a way, the lack of a clear vision of how to translate something described in paper into action has penalized Albania in her attempt to attain specific standards in a well defined and limited time. Moreover, the Albanian tradition of policy-making deals with the consolidation of practice in doing things in a way that is rushed, superficial and sometimes driven by short-term commitments, usually originating by international pressure.

All these factors explain why EU institutions insisted in a convincing record of accomplishments from Albania in meeting the benchmarks embedded in the Road Map.

However, during 2010, a significant mobilization of Albanian institutions to accelerate the implementation of laws and other measures was noticed. This was translated into significant steps towards meeting the benchmarks to lift the visa regime.

Apart from that, it is also worth mentioning an evident inter-institutional solidarity to cooperate, considering visa liberalisation process as a priority for the nation. From the institutional interaction point of view, it was expected a more active role to be played by the institutions that exercise control over the other ones. For instance, the Albanian Assembly should have been more active in monitoring the work of institutions that report to it concerning the visa liberalisation process.

At the level of political commitment, it must be noted the approval in a wide consensual manner of the Resolution of the Albanian Assembly on March 11, 2010 supporting the Visa Liberalisation process. In addition, on November 12, 2009, the European Parliament and the EU Council of Ministers issued a joint declaration that reconfirmed the political will to lift the

visa regime in Albania and Bosnia and Herzegovina when the European Commission would have judged that the benchmarks were met and that the issue was to be urgently addressed.<sup>92</sup> All along the visa liberalisation process, the European Parliament has been supportive and proactive in encouraging both the EU Council of Ministers and Western Balkan countries to complete this process as soon as possible.

The continuous efforts of the Albanian authorities to meet the benchmarks embedded in the Road Map were rewarded at different stages of the process, notably following reporting from institutions and positive assessments of experts at the end of the several field missions organized. In May 2010, the Commission issues a Proposal to the European Parliament and the Council of Ministers to lift the visa regime with Albania and Bosnia-Herzegovina, provided that the outstanding benchmarks would be met. More concretely, in the case of Albania they concerned: The development of a strategy and policy to support the reintegration of Albanian returnees; Strengthening of capacities of law enforcement and effective implementation of the legal framework for the fight against organized crime and corruption, including through the allocation of adequate human and financial resources; and the Effective implementation of the legal framework in the area of the confiscation of organized crime assets.

The Albanian government was given a few months (the summer of 2010) to fulfil the outstanding benchmarks. Following the concrete measures taken, it provided a detailed report at the end of June 2010. Later in July, the Commission services organized a final technical mission composed of experts partly seconded from EU Member States. As a follow-up of the missions, further information was submitted by Albanian authorities in early September 2010. On 7 October 2010, the European Parliament voted largely pro visa liberalisation with Albania and BiH. Despite some rumours on concerns raised by Member States, in particular France on possible mi-

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<sup>92</sup> See the website of European Stability initiative: <http://www.esiweb.org/index.php?lang=en&id=403>

gration flows following visa liberalisation, the co-decision procedure was completed by a unanimous vote of Council of Ministers of EU in favour of the abolishment of the visa regime in Albania and Bosnia and Herzegovina on 8 November 2010. In exchange, Member States were assured by the European Commission of continuous post visa-liberalisation monitoring of the situation and even on a control mechanism that would eventually allow the reintroduction of the visa regime in case a Member State is faced with a situation of significant migration flow from one of the five countries of the Western Balkans that benefited visa-liberalisation<sup>93</sup>. The decision to lift the visa regime with Albania and Bosnia and Herzegovina entered into force on 15 December 2010 (one day after the publication in the *Official Journal of the European Union*).

## Lessons Learned

In two years, the Visa Liberalisation Process has certainly impacted in many ways the relation between EU institutions and Albanian state institutions, non-governmental actors and public opinion at large. By introducing concrete conditionality of reforms, it has pushed state authorities to change the attitude that “benefits from internationals will be granted on the rhetoric that some work is being carried out” into a more results-oriented attitude. Indeed, two years of intensive reform measures being demanded, have often pushed authorities to speed up the policy-making and decision-making process, both in terms of legislative initiatives and in terms of operational actions under the justification “it’s for the visas”.

However, EU institutions, but also other actors, should carefully reflect on the implications that making important reforms in record short time can have in country with a strong top-down tradition of policy-making.

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<sup>93</sup> These measures were significantly inspired by the situation of increased number asylum seekers from Macedonia and Serbia flowing to MS, in particular Belgium after visa liberalisation with these countries in December 2009.

Despite having resulted in a considerable amount of pieces of legislation and/or strategies adopted, because of the “rush” way it has been dealt with, it cannot be concluded that the visa liberalisation process has contributed to making the Albanian decision-making process more democratic and pluralistic, nor legislation content more qualitative and applicable.

On a more positive note, the visa liberalisation process has contributed to the strengthening of direct relations between civil society actors present in the country and EU experts and institutions. In fact, during each field mission, experts have also held meetings with NGOs working in relevant fields of reform. This experience should be seized by the later to build more solid and direct communication channels with the EU in the future. Civil society organizations operating in Albania certainly have an important input to give in the integration process, both by being consulted and involved in policy-making by the government and by reporting to and/or lobbying EU institutions.

Now that visa liberalisation has entered into force, the Albanian society should assume an ever realistic view and responsible attitude towards the benefits and conditions deriving from the lifting of the visa regime.

Leaving behind earlier speculations and ambiguities on the level of freedom of movement in the Schengen areas, citizens should be aware that with the visa-free regime, some conditions apply and competencies that were earlier covered by the consular services will be transferred to the borders checkpoints of Schengen countries.

Commitment from state and non state actors to inform citizens and take all measures to make things run smoothly, transforming visa liberalisation in a success story in the eyes of EU public opinions should be maximal. This not only to put an end to fears and concerns in some EU Member States, but also due to the importance that this step carries for the Albanian society.

The completion of the visa liberalisation process should be seized as an opportunity to mark the end of an everlasting severe isolation, frustration and sense of abandonment by EU institutions of Albanian citizens. It should mark the beginning of a dignified treatment when travelling to the Schengen area as well as a portal for the development of Albanian society. Through increased contacts and exchanges with western societies, this concrete step towards the EU must become the key not only to introduce new (best) practices of doing things in the country, but also an increased pressure by the society towards the government to improve its performance and increase accountability.

### **Key points & Recommendations**

- By introducing concrete conditionality, VLP has pushed state authorities to gain a results' oriented approach rather than stick to mere commitments on paper.
- The VLP has contributed to the strengthening of direct relations between EU institutions and civil society in Albania. This experience should be intensified in other steps of the integration process.
- However, EU institutions, but also other actors should carefully reflect on the consequences that making important reforms in a short time in a country with strong tradition of “top-down” policy-making may bear. More concretely, the quantity-quality relationship of legislation and reforms should be carefully weighed.
- Completion of the VLP will certainly be the end of a severe and prolonged isolation. It will mark the starting of a dignified treatment when travelling to European countries, and a genuine window of development for the Albania society.
- Through increased contacts and exchanges with European societies, this concrete step towards EU should serve to introduce successful practices, but also to promote the positive pressure from society

on the government to increase accountability and improve its performance.

- State authorities should not only intensify the implementation of reforms and legal framework, but continue informing the individuals and monitoring measures for a better-management of post-liberalisation situation, collaborating closely with the Commission.
- State and non-state stakeholders should maximize efforts to make visa liberalisation a success story. This step is not only important to the dignity and comfort of individuals, but also at a larger scale, to constitute an example of good performance of national institutions and improve our image in the Member States, from which in future will depend (via national referenda) the decision on Albania's accession to the EU.



## **PUBLIC INITIATIVE “EUROPE WITHOUT BARRIERS”**

Public initiative “Europe without Barriers” (EWB) was founded in Summer 2008 on the basis of all-Ukrainian consortium of NGOs and think tanks conducting independent monitoring of the EU policies and practices in Ukraine. The aim of EWB was to consolidate the efforts of public activists and experts for the sake of elimination of barriers for freedom of movement within Europe, providing relevant expertise and advocacy.

The participants of Consortium jointly promote people to people contacts in Europe, in particular via independent monitoring of visa issuance by the EU Member States for Ukraine’s citizens. EWB provides independent assessment regarding the quality of implementation of the Agreement on the Facilitation of the Issuance of Visas between Ukraine and the EU.

Founding members of EWB represent cities (regions) where EU Consular establishments are located: Kyiv, Lviv, Odesa, Donetsk, Uzhgorod, Lutsk, Kharkiv.

EWB establishment and their projects were supported by the International Renaissance Foundation.

**EWB web-site: [www.novisa.org.ua](http://www.novisa.org.ua)**