



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.11.2009
SEC(2009) 1611 final

COMMISSION STAFF WORKING DOCUMENT

on the fulfilment of the open benchmarks by Montenegro and Serbia in the framework of the Commission Proposal for a Council Regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

COMMISSION STAFF WORKING DOCUMENT

on the fulfilment of the open benchmarks by Montenegro and Serbia in the framework of the Commission Proposal for a Council Regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

1. Background

The EU-Western Balkans Summit held in Thessaloniki on 21 June 2003 confirmed the European perspective of the countries of the Western Balkans 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 organised crime, corruption and illegal immigration and the strengthening of their administrative capacity in border management and security of documents.

As a first step towards the establishment of a visa free regime, the EC concluded in 2007 Visa Facilitation Agreements with Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Serbia (in parallel with readmission agreements). These agreements entered into force on 1 January 2008.

As a second step, the Commission formally launched the "visa liberalisation dialogue" with each of these five countries in early 2008. Roadmaps were established by the Commission in agreement with the Member States and in consultation with the respective countries. These roadmaps identified all the measures to be adopted and implemented by each of the Western Balkan countries and set clear requirements to be achieved in four areas: 1.) document security, 2.) illegal migration, including readmission, 3.) public order and security, and 4.) external relations and fundamental rights. The visa dialogues and roadmaps were tailor-made in order to take into account the countries' different starting positions and to allow them to better focus their reform efforts in addressing the EU's requirements. The speed of movement towards visa liberalisation would depend on the progress made by each of the countries in fulfilling the conditions set.

In its assessment of June 2009, the Commission concluded that:

- the former Yugoslav Republic of Macedonia met all the benchmarks set in the roadmap;
- Montenegro and Serbia had also achieved important progress and only a very limited number of benchmarks remained open;
- for Albania and Bosnia and Herzegovina, despite the important progress made, a series of benchmarks were still open.

In its conclusions of 15 June 2009, the Council (GAERC) shared this assessment and "encouraged the European Commission to present as soon as possible a legislative proposal amending Regulation (EC) No 539/2001 [...] in order to achieve a visa free regime ideally by the end of 2009 with those countries that will have met all the benchmarks".

On the basis of the above described process the Commission submitted on 15 July 2009 its proposal to transfer of three countries from the negative list (of visa requiring third countries) to the positive list (of visa exempted third countries) annexed to Regulation (EC) No

539/2001. These countries are the former Yugoslav Republic of Macedonia, which already meets all the benchmarks, and Montenegro and Serbia, with the view that they are very close to meeting all the benchmarks. It was being understood that by the day of adoption of the proposal by the Council, the latter two countries would indeed fulfil all benchmarks.

In parallel the European Parliament has issued an in principle favourable opinion on the Commission proposal on 12 November 2009.

For Albania and Bosnia and Herzegovina, the visa liberalisation dialogue continues and the Commission has already intensified its efforts to help these countries meet the benchmarks. In its proposal of July this year, the Commission expressed its intention to propose transferring them to the positive list as soon as they have fulfilled the necessary benchmarks. The intention of the Council and of the European Parliament is to issue a joint Declaration on the prospects of these two countries for visa liberalisation as soon as they meet the criteria of the visa roadmaps.

2. Commission Services' assessment on the fulfilment of the open benchmarks by Montenegro and Serbia in the context of the Commission Proposal of 15 July 2009 amending Regulation 539/2001

The Commission, in its legislative proposal of 15 July 2009 amending Regulation 539/2001, listed the **remaining open benchmarks** for **Montenegro and Serbia** and announced its intention to continue monitoring the implementation and share its assessment in a timely manner with the European Parliament and the Council.

In this context Montenegro and Serbia provided **comprehensive and detailed reports** on the remaining open benchmarks on **25 September 2009**. The Commission services, assisted by Member States' experts, organised a series of technical missions in both countries from **11 to 16 October 2009**. The missions in both countries were carried out in **full cooperation** with the authorities concerned, which confirmed once more the **political will** of the governments to meet all the criteria of the visa liberalisation roadmaps. They provided the experts with the **adequate information** requested on the remaining open issues, which have been identified in the Commission proposal as conditions for granting a visa free regime for their citizens. As a follow-up of the missions further information was submitted by the two countries on specific issues.

The current assessment is based on the information provided by the two countries and the evaluation missions carried out in October 2009 by Member States' experts and Commission officials.

Montenegro

On the effective implementation of the Law on foreigners:

Very good progress has been made. All the necessary instruments required for the effective implementation of the Law on foreigners were adopted which now allows the full implementation of the law by the competent agencies. The body responsible for the implementation of the Law (the Department for foreigners of the Ministry of the Interior and Public Administration (MoIPA)), which was created last year, has become operational and acquired some first practical experiences with the application of the law. Its administrative capacity and organisational structure are in the process of being strengthened further. The division of competences of the various bodies (border police, police, and employment office) have been better delineated. Cooperation between police and border police is well developing, though cooperation and sharing of information with other agencies (employment office,

MONSTAT) require further adjustments. A significant number of trainings on the new legislation and rules has been conducted within the MoIPA (border police and police), including at regional level.

Montenegro has also made further progress with regard to the establishment of the central registry for the population. The database on the foreigners temporarily and permanently residing in Montenegro, which is an integral part of the central registry, is already established and the last remaining step is to transfer its content to the central registry and to allow access of the competent services to it. The register of foreigners is due to be completed by end November 2009, while the central register is expected to be functional by the end of 2009.

On the strengthening of capacities in the area of law enforcement related to the fight against organised crime and corruption

Further good progress has been made in this area notably through the adoption of the Criminal Procedure Code (CPC), providing for, inter alia, the reverse burden of proof in relation to proceeds of crime, the use of special investigative techniques for a wide range of crimes, including corruption, and clarity as to responsibilities of prosecution, police etc. On 29 October 2009 the Montenegrin Government adopted a comprehensive Action Plan on the implementation of the new CPC.

The plan contains a detailed analysis of the specific needs to be addressed, as well as the concrete actions to be taken to that end – in particular, 1.) revision/drafting of other relevant laws and (secondary) implementing legislation, 2) adoption and implementation of general and specific training plans (targeted to judges, prosecutors, police and lawyers), 3) upgrade of technical equipment and facilities and enhancement of human resources. The Montenegrin Government has also set up a high-level Commission to monitor the implementation of the Action Plan, as well as the practical application of the new CPC. It will act primarily as an advisory body which, amongst others, will make recommendations on the necessary improvements regarding the enactment of the CPC.

The reforms related to the fight against organised crime and corruption are complex and require continuous and consistent efforts. More concrete and tangible results are expected in the longer run and the determination shown by the Montenegrin authorities to move forward will play a vital role to this effect.

The drafting and first implementation of a wide range of keynote legislation affording significant potential powers to deter, detect and prosecute corruption and organised crime is impressive in its scope. There is still room for further improving the operational and investigative capacities of the Montenegrin law enforcement authorities, while additional efforts are needed to enhance human resources and expertise of specialised police departments, including in using modern investigative techniques. Law enforcement cooperation at national and international level has further developed, even if a more proactive approach in international police cooperation is still necessary. The level of final criminal convictions for organised crime and corruption, including high level corruption, remain still low despite an increasing trend in prosecutions. More active work is needed to improve the quality of data collection and statistics on criminal cases.

On the definition of a sustainable solution regarding the status of displaced and internal displaced persons:

Good progress was made in this area as Montenegro **has taken important steps** in solving the situation of displaced (DPs) and internally displaced persons (IDPs), in particular by offering these two categories of persons the legal possibility to apply for permanent residence status, which would regularise their status in the country and will give them access to a

number of essential economic and social rights and benefits. The steps taken to this end include the adoption of amendments to the Law on foreigners on 22 October 2009, as well as the adoption of an Action Plan on the resolution of the status of DPs and IDPs residing in Montenegro. The Action Plan provides a set of various measures, relating largely to follow-up necessary legislation and the provision of essential rights such as the right to work, to have access to social welfare, education, health and some fundamental civil rights. The plan also includes measures to facilitate voluntary return to the countries of origin. A Coordination Board will be set up to monitor and advise on its implementation.

The application for permanent residence status requires re-registration of the DPs and IDPs residing in Montenegro. The process has been completed for the DPs whereby 7.617 registered DPs qualify in principle for permanent residence status. This process is still on-going for IDPs and will continue until 14 November with a possible extension of 3 months. By 27 October 10.459 persons have applied for re-registration.

Progress has been achieved so far, even if certain issues will require further efforts as they are of great significance to the successful implementation of the recently adopted legislation and Action Plan. These issues primarily concern the possibility of independent appeals regarding the re-registration and the implementation of the criteria for application for permanent residence status (e.g. cases in which no valid travel document is produced, criminal offence as grounds for not granting the status).

Montenegro has shown political will and commitment to find a durable legal solution regarding the status of DPs and IDPs residing in the country. It is now important to ensure its proper and effective practical implementation in close cooperation with UNHCR.

Serbia

On the integrity and security of the procedures followed in issuing new biometric passports to persons residing in Kosovo¹:

Very good progress has been made. Until July 2009, the delivery of biometric passports to the citizens originating from Kosovo was ensured by specific dislocated units established in 7 regional 'Police Directorates' in Serbia. Central services were not able to properly control the data on civil status, citizenship and residence of the applicants. For this reason the responsibility for issuance of new biometric passports was transferred from these regional units to a Special Coordination Directorate in Belgrade. Since 21 September 2009, this Directorate is responsible for the issuing of biometric passports to persons residing in Kosovo and persons whose citizenship certificate has been issued for the territory of Kosovo. 2757 passport applications have been submitted both to the Directorate and to the Serbian diplomatic missions and consular posts and 134 passports have been delivered. The administrative capacity of the Directorate is good, the staff was trained to their specific tasks and offices are well secured. The issuing of new biometric passports is carried out effectively, procedures from the lodging of the application to the delivery is well organised, efficient and secure.

On the effective implementation of the Law on Foreigners and the adoption of a Migration Strategy:

¹ Under UNSCR 1244/99

Very good progress has been made. The Migration Strategy has been adopted. The necessary by-laws (16) for the implementation of the Law on Foreigners have all been adopted. Implementation has started. Efforts were made to ensure proper implementation of the law by training the competent staff. The expulsion procedure runs without problems and the Readmission unit continues with its good work. Correct and efficient implementation of the Migration strategy will be a key element in addition to the establishment on a firm legal base of the Migration Agency which is still lacking. A common database on foreigners should be established.

On the improvement of the cross-border/boundary surveillance, which includes the exchange of information with EULEX/Kosovo police:

Good progress has been made. The Administrative Boundary Line (ABL) between Serbia and Kosovo is approximately 400 km long and there are six official gates. The police protocol between Serbia and EULEX was signed and entered into force on 19 September 2009. A series of meetings have taken place to exchange information and informal cooperation at some of the individual gates already exists. Regarding the institutional framework, implementation of the police protocol has started and the two sides are finalising the exchange of the corresponding points of contacts. As concerns the controls at gates, Serbia has installed IT-connections with the central database at all 6 gates. Police officers check the identity documents of passengers, although the registration of the information is not yet fully systematic. The training of police officers at the gates should be improved in particular concerning the identification of falsified documents. The existing equipment has been upgraded (UV lamps, passport reader machines) but further efforts are needed in particular on equipment for the detection of hidden persons in cars, buses and trucks.

Concerning the control of passenger trains passing the ABL nearby Gate 1, Serbian police have started to check systematically all passports of persons although the registration of the collected data into the central database needs to be improved. Information concerning the passing of passenger trains and number of passengers on the trains is being communicated to EULEX since end of October on a regular basis. Cargo trains run on a non-regular basis (one train in 3 months) and mainly carry cargo into Kosovo. They are controlled by the Serbian authorities (police and customs). However, in order to better prevent smuggling activities, these controls need to be further improved.

Improvements have been made to fight corruption at gates. Under a pilot project at Gate 1, a video surveillance system covering indoor and outdoor premises has been installed. Rotation of Gendarmerie units from one operational area to another has also been introduced.

Although there is no written risk analysis of the ABL with regards to illegal immigration and trafficking, the situational awareness on the ground is relatively good.

As regards surveillance of the green border, Serbia has deployed some 500 Gendarmerie staff to patrol the ABL on a regular basis which provides sufficient level of surveillance. It however needs to be improved, as there are around 131 unofficial roads that can also be used for illegal crossings, as well as for smuggling.

On the effective implementation of the Legal framework for the Fight against organised crime and corruption:

Good progress has been made. Tangible legal and institutional progress has been made to tackle organised crime and corruption. In particular on the legislative framework, new amendments were adopted to the Criminal Procedure Code and the Penal Code and special

legislation was introduced on high level corruption. Assets management by the recently set up Directorate for the management of seized assets function properly. As regards corruption, Serbia has signed and ratified the UN Convention against corruption. Preparations are continuing for starting the operation of the Anti-corruption Agency from January 2010.

The office of the special Prosecutor for the fight against Organised Crime works well. The specialised police services for the fight against organised crime (drugs, THB etc.) are efficient and work in cooperation with the special Prosecutor. As regards the fight against organised crime, human resources improvements are still necessary. In terms of anti-money laundering a good legislative framework is in place and the institutions are competent and committed. Convictions for money laundering are conceded to be low, but the developing supervisory regime may well provide opportunities for disruption of money laundering activities.

3. Conclusion: Building upon the Commission services' previous assessments of November 2008 and June 2009 and based on the outcome of the present assessment, the Commission services consider that Montenegro and Serbia have taken all the necessary measures to fulfil all open benchmarks listed in the Commission Proposal of 15 July 2009 and consequently can be transferred from the negative (Annex I) to the positive (Annex II) list of Regulation 539/2001.

The Commission services will continue to work with the Serbian and Montenegrin authorities in these areas in the wider framework of the pre-accession process.