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**COMMISSION STAFF WORKING DOCUMENT**

**on the fulfilment of the open benchmarks by Albania and Bosnia and Herzegovina 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**

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### **on the fulfilment of the open benchmarks by Albania and Bosnia and Herzegovina 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. Amongst other issues, it was stated 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 specific areas; these include the strengthening of the rule of law, combating organised crime, corruption and illegal immigration, and the strengthening of the administrative capacity in border management and document security.

As a first step towards the establishment of a visa free regime, the European Union 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) and started structured dialogues on visa liberalisation based on detailed roadmaps. The latter set clear benchmarks to be met by each country in order to advance towards a visa free regime.

The roadmaps were established by the Commission in agreement with EU Member States and in consultation with each of the countries concerned. 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.

On 15 July 2009, the Commission proposed to transfer from the negative to the positive list of the Regulation 539/2001 the former Yugoslav Republic of Macedonia, Montenegro and Serbia. Based on the Commission proposal and after consultation of the European Parliament, the Council decided on 30 November 2009 to lift the visa obligation on citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia. This measure entered into force on 19 December 2009. In the framework of the Stabilisation and Association Process the Commission services have continued to monitor the effective and sustainable implementation of the measures taken by the three countries in the framework of the visa liberalisation process.

Regarding Albania and Bosnia and Herzegovina it was assessed that despite the important progress made a series of benchmarks were still open. In a joint Declaration adopted in

November 2009, the European Parliament and the Council underlined their political support for a quick abolition of the visa regime for the citizens of these two countries and urged the authorities of Albania and Bosnia and Herzegovina to intensify their efforts to comply with all outstanding benchmarks set out in the roadmaps.

In addition, the European Parliament and the Council invited the Commission to present a legislative proposal for amending the Regulation (EC) No 539/2001 as soon as it has assessed that each country meets the benchmarks of the roadmaps. Both institutions took the commitment to examine the Commission proposal as a matter of urgency.

Since July 2009, the Commission services continued monitoring closely the progress made by Albania and Bosnia and Herzegovina in the context of the visa liberalisation dialogue. The Commission services' assessment was based on readiness reports, regularly submitted by both countries (in October 2009, April and May 2010), as well as on six technical missions carried out between December 2009 and February 2010 with the active involvement of various Member States' experts. Based on those findings, the Commission presented on 27 May 2010 a proposal for transferring Albania and Bosnia and Herzegovina from the negative to the positive list of the Regulation 539/2001, provided that by the day of adoption of the proposal by the European Parliament and the Council, the two countries would indeed fulfil all the outstanding benchmarks.

## **2. Commission Services' assessment on the fulfilment of the open benchmarks by Albania and Bosnia and Herzegovina in the context of the Commission Proposal of 27 May 2010 to amend Regulation 539/2001**

The Commission, in its legislative proposal of 27 May 2010 amending Regulation 539/2001, listed the **remaining open benchmarks** for **Albania** and **Bosnia and Herzegovina** 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, Albania and Bosnia and Herzegovina provided comprehensive and detailed reports on the remaining open benchmarks at the end of June 2010. The Commission services, also relying on the expertise of Member States' experts, organised two additional technical missions, one in Bosnia and Herzegovina from 5-8 July and one in Albania from 12-15 July 2010. The missions in both countries were carried out in full cooperation with competent national authorities, which confirmed once more the political will of the governments to meet all the criteria of the visa liberalisation roadmaps. Member States experts were provided with all relevant information related to the outstanding issues identified in the Commission proposal. As a follow-up of the missions further information was submitted by the two countries on specific issues during August and early September 2010.

The current assessment is based on the detailed information provided by the two countries and the evaluation missions carried out in July 2010 by Member States' experts and Commission officials.

### **Albania**

#### **1) On the development of a strategy and policy to support the reintegration of Albanian returnees:**

**Good progress has been made.** The Strategy on Reintegration of Returned Albanian Citizens 2010-2015 was adopted in June 2010, accompanied by an Action Plan for its effective implementation. The Strategy applies to all returnees (including voluntary), though its particular focus is on Albanian citizens readmitted under the EU-Albania readmission agreement. The Strategy sets out a **comprehensive mechanism for the promotion of returnee reintegration** covering the main reintegration needs faced by returnees, such as registration, housing, education and employment. The elaboration of the Strategy by all relevant authorities involved in this process has strengthened awareness of the needs of returnees and ensured effective inter-ministerial cooperation on reintegration.

The Action Plan for the implementation of the Strategy sets out 41 specific measures relating to the **legislative framework** (revision of legislation in all relevant policy areas by the end of 2010 taking account of the specific needs of returnees), **capacity-building** (establishment of 36 "migration counters" at local and regional offices of the National Employment Service, and designation of reintegration contact points in line ministries and the Border and Migration Police) as well as **provision of information and assistance** to foster the reintegration of returnees (e.g. guidance on opportunities and assistance available to returnees and referral to relevant agencies or NGOs). The monitoring of the Strategy's implementation is to be ensured by a high-level inter-ministerial committee, reporting to the Prime Minister, on the basis of biannual reports prepared by the Directorate of Migration Policy, Return and Reintegration within the Ministry of Labour, Social Affairs and Equal Opportunities.

Overall, efforts to ensure the effective implementation of the new Strategy and Action Plan should continue. Close cooperation with all involved agencies and effective collection and analysis of statistical data will be of particular importance. It would be advisable to regularly review the Strategy and Action Plan in light of the experience gathered.

## **2) On the strengthening of capacities of law enforcement and the effective implementation of the legal framework for the fight against organised crime and corruption, including through the allocation of adequate human and financial resources:**

**The Albanian authorities have continued to make good progress.** The implementation of the legal framework and of the Action Plan on the fight against organised crime progressed well. A new inter-institutional committee to coordinate efforts in the fight against organised crime was set up and is headed by the Prime Minister and supported by a technical secretariat. There is a positive track record of effective law enforcement operations and intensified investigative and prosecutorial activities. The number of cases where a court decision has been reached is still low, but the investigative and prosecutorial activities of the last months should be reflected in court statistics with some delay. Some final convictions have been reached. The implementation of the Action Plans for the prevention and fight against trafficking in human beings and drugs continued. The national strategies in both areas will be renewed in 2011 as the current strategies will expire. An action plan to fight the cultivation of narcotics was adopted in March 2010.

The **administrative and investigative capacities** of law enforcement authorities were strengthened. The police structures for the fight against organised and serious crime have benefitted from an important increase in staff spread over central, regional and local levels. The training of the newly transferred staff is ongoing. A number of trainings have been carried out for law enforcement agencies in the area of fighting organised crime, including some on the use of special investigative means and intelligence-led investigations. Special investigative means are increasingly used to support investigations and prosecution. Further

improvements are still necessary to develop a more effective use of interception capabilities and to further expand the use of risk assessment in the fight against trafficking in human beings. Funding has been allocated for the completion of a special operations management room. The use of the MEMEX criminal intelligence system has been further developed and a budget is in place for purchasing more licenses and providing training. Efforts should continue to include all relevant data from paper archives in the system as soon as possible.

Measures have been taken to strengthen **operational cooperation** between law enforcement agencies involved in the fight against organised crime on central and local levels, as well as between the police and the prosecution. The coordination of work between central and local structures for the fight against trafficking in human beings has been strengthened and reporting has been improved. A joint order clarifies and increases the involvement of prosecutors in all parts of the investigation process. Amendments to the law on the judicial police were adopted very recently. A good number of joint trainings for the police and prosecution were organised aiming at improving the gathering of evidence. Successful operations, based on effective national and international cooperation, have been conducted in cases of organised crime and trafficking of drugs, weapons and human beings.

The implementation of the **action plan against corruption** progressed well and monitoring and inter-institutional cooperation have been intensified. Problems related to reporting by line ministries have been addressed and the transparency of anti-corruption actions improved. The investigation and prosecution of corruption cases have been intensified and the number of cases referred to the Joint Investigative Units as well as the number of cases investigated by the latter increased. Anti-corruption training was given to the police and the prosecution service. Most corruption cases investigated involved low level officials, although in a few cases immunities of judges were lifted to investigate charges of corruption. Competent investigative authorities need to be more proactive and the use of risk analysis tools should be extended. Further progress should be made on amending legislation to ensure that the wide scope of immunities of judges and politicians does not jeopardise the effective prosecution in corruption cases.

### **3) On the effective implementation of the legal framework in the area of the confiscation of organised crime assets:**

**Good progress has been made.** In order to enable the effective implementation of the December 2009 law on the confiscation of proceeds of crime (so-called "anti-mafia" law), the human resources of the units dealing with the investigation of organised crime assets at central and local levels have been increased substantially.

Since February 2010 when the law entered into force, 20 cases have been investigated and there have been eight requests for sequestration or confiscation under the new law. All 121 criminal proceedings concluded since 2007 under the old law are being verified. Training of staff investigating assets has started, but further training according to modern standards needs to be given, including on the identification of illegally acquired assets. The Joint Investigative Units on economic crime and the Financial Intelligence Unit cooperate with the police and the prosecution services in the implementation of the law. The unified interpretation of implementing legislation by all prosecutors should be ensured. An increase in the staff of the Agency for the administration of seized and confiscated assets is planned.

## **Bosnia and Herzegovina**

### **1) On the strengthening of capacities of law enforcement and the effective implementation of the legal framework for the fight against organised crime and corruption, including through the allocation of adequate human and financial resources:**

**The authorities of Bosnia and Herzegovina have continued to make good progress.** The implementation of the legal framework and the Action Plan on the fight against organised crime progressed well, as demonstrated by an increased number of cases in the investigative and prosecutorial stages, as well as some final convictions. BiH presented a comprehensive monitoring of the measures taken, but this monitoring capacity would benefit from being consolidated into a more formal working group. Implementation of the Action Plans for prevention of Human Trafficking and for drug control, suppression and prevention continued. Regarding the fight against financial crime, the legislation is generally adequate. Nevertheless, efforts for its more effective implementation should continue. The legal regime for the confiscation of criminal assets has led to some increase in the confiscation, and has recently been further enhanced. In line with the regional trend its more effective application should be pursued.

The **administrative and investigative capacities** of law enforcement authorities have been strengthened. Law enforcement bodies across the country have participated in an important number of national and regional trainings across all areas of policing, including on the further development of special investigative means and intelligence-led policing. Staffing levels were found to be generally adequate and developing positively. For example, the previously understaffed state prosecution office has increased its staffing by 40% since February 2010. The capacities of the Interpol office in Sarajevo (National Central Bureau of Interpol), undergoing reorganisation during the time of the mission, should continue to be aligned with the office's operational needs. Financial means of law enforcement authorities were not negatively affected by austerity measures imposed on all public budgets in BiH. Generally, adequate financial means are at the disposal of specialised units for the fight against organised crime. Only a very limited number of units still require an increase of resources for the application of special investigative means.

**Operational cooperation** between law enforcement agencies in the fight against organised crime and corruption was stepped up further. A number of successful operations, involving both national and international cooperation, have been carried out, particularly in the fight against drugs, weapons and trafficking in human beings. The board of police directors has met regularly and further consolidated its activities. This new structure for domestic strategic police cooperation clearly improved operational results. The use of special investigative means has increased both in cases of organised crime and of corruption.

The implementation of the **action plan against corruption** showed a further positive trend towards more effective results. The strengthening of institutional capacities for the fight against corruption continued. An acting director for the Anti-Corruption Agency was appointed in June and its mandate extended in September. The appointment process for the director and the two deputy directors of the Agency was started in August. The location of the Agency was identified and a draft rulebook presented. Members of law enforcement bodies generally receive trainings on anti-corruption. A number of high-level cases involving senior politicians and civil servants are in the prosecution stage. Some lower level verdicts were noted. One recent high level case of abuse of office resulted in an acquittal. A raise in

anonymous complaints about corruption cases during the first semester 2010 suggests an increased public awareness for corruption.

## **2) On the progressive implementation of the action plan from March 2010 on establishment of electronic data exchange between police and prosecution bodies:**

**Good progress has been made.** Implementation of the action plan progressed according to schedule. Until June 2010, the BiH authorities developed the design of the system for electronic data exchange in view of the planned tendering procedure funded by the EU Instrument for Pre-Accession Assistance (IPA). In June, two additional agencies, the Service for Foreigners' Affairs and the Directorate for Police Coordination signed the agreement on establishment of the system.

Progress in preparing databases from the different agencies for connection to the future system is generally good, but uneven. Particularly the capacities at Federation and Canton level need to be strengthened further to ensure a timely readiness to connect.

The setting up of the Directorate for Police Coordination, which is expected to play a key role in coordinating police activities at the state level, continued. A director and two deputy directors were appointed in March and the agency was provisionally set up. Funding for 2010 was allocated and a provisional location provided. The agency shall host the main server for the electronic data exchange system. A rulebook for the Directorate was adopted in August 2010. This provides the basis for the recruitment of staff (30 during 2010). The transfer of selected units and IT installations from the Ministry of Security and the State Investigation and Protection Agency (SIPA) to the Directorate is under preparation.

## **3) On the harmonisation of entity level and Brcko district criminal codes with the state-level criminal code:**

**Very good progress has been made.** The harmonisation had been required to align the entity level and Brcko District criminal codes with the amendments to the state level criminal code adopted in December 2009. These amendments were adopted by the Brcko district on 17 June, by the Republika Srpska on 6 July and by the Federation on 8 July 2010.

They entered into force at the beginning of August. These amendments inter alia facilitate the confiscation of illegally acquired assets and bring the state and entity level legislations in line with the Council of Europe Convention on trafficking in human beings.

### **3. Conclusions**

**Building upon the Commission services' previous assessments of November 2009 and April 2010 and based on the outcome of the present assessment, the Commission services consider that Albania and Bosnia and Herzegovina have taken all the necessary measures to fulfil all open benchmarks listed in the Commission Proposal of 27 May 2010 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 authorities of Albania and Bosnia and Herzegovina in these areas in the wider framework of the pre-accession process.**