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Softening of the visa regime for citizens of Bosnia and Herzegovina: What are the requirements that the Government of Bosnia and Herzegovina needs to fulfil in order to ease the transfer of Bosnia and Herzegovina from the “Black List” to the “White List” of the visa Schengen Agreement?

Sarajevo, September 2006

Executive Summary

The current visa system imposed on Bosnia and Herzegovina makes it impossible to establish a stable and open society without free movement of its people flow of information and ideas. The task ahead for government structures is to provide the opportunity for its citizens to travel abroad without restriction and to enable its society to be included in the political, economical and cultural sphere of European life.

This research summarizes the insight gained through deep analysis of the situation considered a possibility for softening of the visa regime for all citizens of Bosnia and Herzegovina. Bosnia and Herzegovina has, to date, been in the so-called Annex I, unpopular "Black List" of the Schengen Agreement which requires the possession of a visa for entering the external borders of the EU.

Bearing in mind that the decision for abolishment of a visa regime for certain countries is primarily a political question, there are requirements that the government needs to fulfill to reach the softening of the visa regime for its citizens (transferring from the "black list" to the "white list" or Annex I to Annex II of the visa Schengen Agreement).

Considering there is no precise list of conditions or criteria from EU member states required to be met for the visa regime to be liberalized, in accordance with the statements of ex Deputy Foreign Minister, Ms. Lidija Topic and Special Representative of Bosnia and Herzegovina to the European Commission in Brussels, research began with the examination of the EU Acquis applied in their respective countries. The EU areas of freedom, justice and security are very complex and constantly under development of all parts of their policies. Free movement of persons is a key element of an "area of freedom, security and justice".

Recognizing that principle, the EU at the Maastricht Treaty included asylum policy, the crossing of external borders of the Union and immigration policy among the matters of common interest to Member States, whilst the Amsterdam Treaty incorporated these into the EC Treaty. Therefore, the primary concerns were to explore the institutional and administrative framework in regards to arrangements within borders, visas, asylum and immigration policies of Bosnia and Herzegovina.

Following the Romanian's path from the Annex I to Annex II and progress made toward inclusion in the "white list" of the Schengen Agreement since January 2002, we can draw some lessons that enable us to create a strategy necessary for Acquis that need to be applied by applicant countries. Alignment with the Schengen Acquis required achievements in the vast field of asylum and migration policy, as well as within home and justice affairs. Alongside internal reforms, Romania was very pro-active in the process of international co-operation with an emphasis on relations and finalisation of agreements with their neighbouring countries. The decision made by EU countries regarding abolishment of the rough visa system for Romania happened during a period when Romania wasn't able to fulfill all its requirements however, it managed to place policies on the right track and expressed a willingness to implement and further develop its institutional and administrative capacities.

Enlargement of the EU with ten new countries additionally complicated the structure in this area and a huge level of effort was put in place to enable integration and extension of the external borders of the EU by the end of 2007. The events of September 11 drastically changed the security situation of the world and additional pressure especially from the USA required a level of the security for documentation growth (e.g. biometrical passports).

Institutions of Bosnia and Herzegovina have made relevant progress in past few years in order to meet the required EU pre-integration standards. In October 2005 Bosnia and Herzegovina was accepted for a Stabilization and Association Agreement with the EU. Constant development of a democratic society and institutional building together with improvement of the security situation in the country, are important issues for liberalization of visa regimes.

Bosnia and Herzegovina has succeeded to create and develop sustainable national structures that can provide administrative framework for implementation of the policies within visas, asylum, migration and border areas. Some of the EU conventions related to human rights and fundamental freedoms are already incorporated in the existing

Constitution of Bosnia and Herzegovina or have been acceded through succession together with the other former states of the former Yugoslavia.

A study showed that imposing legislation and establishment of proper structures is only a starting point in the desirable direction. Creation of the assumption for a functional and efficient system requires additional effort of the entire governmental structures to be included. So far, implementation of the adapted legislation has not been followed by the institutions in the satisfactory manner. Lack of adequate financial and human resources has imposed many problems regarding implementation of the requested laws in the sector of asylum and migration.

In spite of all the progress Bosnia and Herzegovina has made problems do exist, some of which are common to the region and some that are unique to Bosnia and Herzegovina. Arranging and implementing legislation of the Justice and Home Affairs sector of Bosnia and Herzegovina must be one of the priorities for this country in order to move forward to EU integration and to assure citizens freedom of movement.

Is there a chance for abolishment of the visa regime for all Bosnia and Herzegovina citizens within the next 2 years? – this was the hypothesis of the research. Mr. Davidi, Deputy Chief of the Delegation of the European Commission in Bosnia and Herzegovina gave an answer to this question and following this research, one could come to the same conclusion which is:

“There is still no political will and openness for such a step in the EU which is mainly caused by the slow implementation of reform processes and development of Bosnia and Herzegovina’s democratic society in all segments”.

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INTRODUCTION

1. BACKGROUND

Right to freedom of movement is one of the basic human rights. It is impossible to establish stable and open society without free movement of people, flow of information and idea.



The map of Bosnia and Herzegovina

The state of Bosnia and Herzegovina is composed of two Entities and one District. This structure is established under the 1995 Constitution (Annex 4 of the Dayton Peace Agreement): Federation of Bosnia and Herzegovina and Republika Srpska, and the District Brcko. Brcko, in north-eastern Bosnia and Herzegovina, is a self governing administrative unit under the sovereignty of Bosnia and Herzegovina that is not part of either the Federation or Republika Srpska.

The total length of the state border of Bosnia and Herzegovina is 1 551 km of which 625 km is river border and Bosnia and Herzegovina also has 21 km along the coastline on the Adriatic Sea.¹

Border to the states:

Republic of Croatia – 932 km; Serbia and Montenegro – 527 km.

¹ SBS information provided to ICMPD in 2004

There are four airports in the country and 12 border crossings which are internationally recognized and accepted. The State Border Service of Bosnia and Herzegovina controls the crossing of the state borders. Migrations and asylum are under the auspices of the state institutions.

Bosnia and Herzegovina is in a so-called Anex I, (un)popular "Black List" of the Schengen Agreement.² Reasons for such treatment are mostly known. Putting the Balkan States on the "White List" of the EU/Schengen Acquis, namely moving from Anex I to Anex II, is primarily a political question.

Schengen visa regime is the core of the visa regime in Europe. It was created in 1990 and was based on the previous agreement dating from 1985 between the countries of Benelux (Belgium, the Netherlands and Luxembourg), Germany and France. Apart from the EU states, some other countries are granted benefits of this agreement by means of special agreements signed with the Schengen member states. The countries included in this agreement are: Belgium, Germany, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Portugal, Sweden, Great Britain, Norway, Iceland, Liechtenstein and Ireland. This is not a classical non-visa regime which exists between some countries, but rather an agreement between competent ministries whose aim is to prevent the spreading of crime and the protection of countries included in the Schengen Agreement. It represented the beginning of the transformation of Europe from an economic integration into a region without tight state borders and with single economic, monetary and security systems. The Council of the EU adopted on March 15, 2001 the list of countries whose nationals must be in possession of visas when entering Schengen states (Annex I – "Black List"), and the list of those which are (or will be) exempt by means of special agreements (Annex II – "White List").³

² Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas crossing the external borders and those whose nationals are exempt from that requirement, *Official Journal L 081, 21/03/2001 P. 0001 - 0007*

³ see the document in Annex I – list of countries whose nationals must be in possession of visa and countries whose nationals are exempt from the possession of visa

Bosnia and Herzegovina did not receive precise list of conditions that has to meet to reach the transfer from Annex I to Annex II, although due to many facts and political reactions of the EU it is not difficult to assume which are the most important ones - improvement of economic and social situation, signing readmission agreements⁴ with all the European countries and efficient border control, as well as securing the documentation especially travel documents.

It is hard to estimate how long, after this, applicant countries would stay outside the Schengen visa system, but there are some indications that it would take at least several years. This research will try to find the answer on the hypothesis which is: Can Bosnia and Herzegovina expect softening of the visa regime in next 2 years (transfer from the “Black List” to the “White List” of the EU/Schengen Agreement)?

⁴ A readmission agreement is an agreement between authorities of two countries which regulate acceptance of nationals of a country of origin who illegally reside on the territory of a host country, and who are being deported. A country of origin is obliged by the agreement to cooperation in procedure of their return.

2. STABILISATION AND ASSOCIATION PROCESS

The countries of the Western Balkans were given a clear perspective of future EU membership in 1999, when the framework of the Stabilisation and Association process (SAp) was established. During the Zagreb Summit on November 2000, the region's leaders agreed to a clear set of objectives and conditions by which to achieve EU integration.⁵

In the process of moving toward the Stabilisation and Association Agreement (SAA), the alignment with EU acquis and EU standards in the field of asylum, migration and visa is of vital importance for Bosnia and Herzegovina. This document will map out the way towards the EU in the fields of asylum, migration and visa. During the past few years Bosnia and Herzegovina made significant progress and has already reached a common understanding of the asylum, migration and visa issues by developing the documents under the CARDS program in all these sections.⁶

At the Thessaloniki Summit of 19 and 20 June 2003 the European Council reiterated its determination to fully and effectively support the European perspective of the countries in the Western Balkan and stated that “the Western Balkan countries will become an integral part of the EU once they meet the established criteria”.

The European Partnership identifies short and medium term priorities for action to support efforts to move closer to the European Union. The short term priorities are the 16 priority areas identified in the Feasibility Study that reviewed Bosnia and Herzegovina's readiness to open negotiations on a Stability and Association Agreement.

⁵ Zagreb Summit, 24 November 2000, at http://www.europa.eu.int/comm/external_relations/see/sum11_00/statement.htm. The June 2000 European Council at Feira had assured the countries concerned with SAp agreements that they could become candidates for EU membership.

⁶ “CARDS Regional Project on the establishment of EU compatible legal, regulatory and institutional frameworks in the fields of asylum, migration and visa matters” – CARDS Regional Programme 2002/2003, Grant Contract 77352

Among the short term priorities in the European Partnership and recommendations of the Feasibility Study are the establishment of proper structures dealing with asylum and migration. Among the medium term priorities are consistent enforcement of the new Law on the Movement and Stay of Aliens and Asylum, the effective national management of asylum and migration policies, and the continued conclusion of readmission agreements. Furthermore, medium term priority is the improvement of the administrative capacity of the visa-issuing regime.⁷

⁷ Report on the SAP 2004, Bosnia and Herzegovina, 2004 30.4.2004, SEC (2004) 375

3. EU POLICIES AND SEGMENTS OF JUSTICE AND HOME AFFAIRS

3.1 The EU policies and resolutions (acquis in the field of justice and home affairs)

In order to efficiently implement the EU and Schengen Acquis, good co-operation between all the authorities involved in the visa issuing procedure is a pre-requisite. Generally speaking, the Acquis Communautaire is the body of common rights and obligations that bind all the Member States together within the EU. These rights and obligations flow from EU Law: Treaties, Community Legislation and case law (European Community part of the Treaty), acts adopted under the intergovernmental parts of the Treaty, and International Agreements and Conventions concluded by the Community and the Member States. Signing up and ratifying the treaties and acts from the Acquis Communautaire should create a secure base for one country to create the way toward the stable establishment of justice and home affairs section, which would eventually lead to regulation of the visa section, and at the same time should simplify the process of transferring from Annex I to Annex II of the EU/Schengen Acquis visa regime. The history of the European integration processes in regard justice and home affairs issues may showed the different picture when EU transferred countries such as Bulgaria and Romania to the Annex II of the EU/Schengen Acquis regime without fulfilling all requirements out of the Acquis Communautaire. Romania, for example, signed numbers of treaties and acts in the field of asylum and migration, not to mention treaties regarding human trafficking, at a time when this country was already on the “White List”.

Throughout this research it will be shown that this process could be open for political manipulation from the very beginning and especially in the case of Bosnia and Herzegovina, where the EU has never set precise conditions for the abolishment of the visa regime.

Directorate of European Integration of Bosnia and Herzegovina is constantly educating its staff in the processes to harmonize Bosnia and Herzegovina legislation in line with Acquis Communautaire. Negotiations with the EU will additionally develop this process. It is very important for Bosnia and Herzegovina now to appoint a qualified

people who will be able to continuously follow the process of integrations, and on the other hand, how have knowledge of the crucial importance for the people of Bosnia and Herzegovina of harmonizing the laws with the EU and how to achieve it using those processes. As a matter of fact, the proof that something positive regarding visa liberalization is happening is that European Council have given a “green light” for setting out a clear visa “road map” for Bosnia and Herzegovina and revision of the common consular instructions to encourage a simplified process.⁸

Detrimental fact is the information from the Amato Report which notes that over 60 percent of young people in Bosnia and Herzegovina have never traveled abroad - what values will they have?

Some representatives of the European Union are giving some hope to the citizens of Bosnia and Herzegovina with its statements regarding the visa regime situation. In a visit to Bosnia and Herzegovina in March this year, Mr. Hannes Swoboda, member of the European Parliament, said that: “the time for making brave actions has come. These actions will have to open this region, including Bosnia and Herzegovina, in order to ease traveling for the people from this region to Europe”. Mr. Swoboda emphasized that: “it is not acceptable that citizens of Bosnia and Herzegovina, especially young people, have less possibility to communicate with Europe than they had at the time of ex-Yugoslavia. This communication is not important only for Bosnia and Herzegovina, but for the EU itself. Many people in Europe still have a negative perception about the region and Bosnia and Herzegovina, according to the negative media reports from the past, many people still have a negative perception of Bosnia and Herzegovina based on old media news”.

Mr. Swoboda is hoping that 2006 will be a start for a regime without visas for this country. According to his words, initially this “no visa regime” would be implemented only for students, business people, researchers, and people with the special needs,

⁸ EU Visas and the Western Balkans, Crisis Group Europe Report N°168, 29 November 200, p.8

however, the final aim has to be abolishment of the visa regime for all citizens of BiH.⁹ In an interview with Mr. Hannes Swoboda, at his office in Brussels, a month after this visit, the respectful EU Parliamentarian on a question if there is a possibility in next 2 years for Bosnia and Herzegovina to be transferred from the “Black List” to the “White List” of the EU/Schengen Acquis visa regime, he emphasized:

“It depends of course, on what is happening with the neighbours. What is happening with Serbia in connection with Kosovo, is Serbia going forward? The Kosovo problems are to be solved by the end of the year. What offer do we give to Serbia, and then, it will be for other countries to follow, of course. Secondly, I think that if after the elections in Bosnia and Herzegovina the new government go forward and a positive make a decision on the Constitution and other reforms, like police reform, in this case I could think that in 2 years time Bosnia could be transfer from the “black” to the “white list”. I can not guarantee this progress of course, but it is not unrealistic if certain tensions develop well in Bosnia and Herzegovina and in the neighbourhood.”

On the question of whether there is anything specific to Bosnia and Herzegovina compared to other Western Balkan countries - ie: is there something which is blocking Bosnia and Herzegovina more? - Mr. Swoboda answered: “Bosnia is better known, than the names of other countries in the region and this is not always positive, because of the past, of the war, and people do not know about Macedonia very well, and so on. I think that Bosnia is still connected to its ethnic problems, and conflict, unsolved things, like refugee return and other things. And, of course, you always get some news, for example the Constitution has been blocked again, and this is exactly how people perceive the situation in the country, but not only citizens, ordinary people, even politicians from the EU countries. This is definitely one of the things that are blocking development of Bosnia and Herzegovina.”¹⁰

To sum up the words of the member of EU Parliament it could be said that people of Bosnia and Herzegovina are suffering a great deal from this country's poor international image, especially in the European Union. One of the priorities for BiH Government must

⁹ Dnevni Avaz, interview with Hannes Swoboda during his visit to Bosnia and Herzegovina, April 2006

¹⁰ Interview with Hannes Swoboda, Vice-chairman of the PSE Group in the European Parliament, EU Parliament, 15 Jun 2006

be creation of a strategy for promotion of a positive image of the country in the EU and the world.

3.1.1 Visa issue

The principle of free movement and the right to residence of all European citizens is provided by Article 14 of the Treaty establishing the European Community, as well as by the provisions on European Citizenship (Article 18). Among the matters of common interest to the Member States, the Maastricht Treaty included asylum policy, the crossing of the external borders of the Union and immigration policy. The Amsterdam Treaty, which came into force on 1 May 1999, incorporated these into the EC Treaty (Articles 61 to 69). Free movement of persons is a key element of the "area of freedom, security and justice".

At the same time, common rules are being laid down relating to checks at external borders of the Union, visas, asylum and immigration policies.

Visa politics presents the main element of immigration politics and the key element of internal politics which are all related primarily to the security, social cohesion and prevention against illegal migration. The criteria for establishment of the list of countries whose citizens must possess visas when passing external borders of the member countries of the EU is determined by the Council of Ministers. These criteria are 1. risk of illegal migration, 2. danger for internal politics of one or more member states, 3. reciprocity, 4. measures of compensational characters, 5. possibility of immediate implementation of certain principles, 6. political differences, 7. internal or international politics, 8. regional harmonization. However, this requires establishment of a unified position of all member states in regard to foreign citizens whose international status is not clearly defined (such as refugees, etc...).¹¹

Based on the criteria set out above, migration and asylum politics is planned for the states who are working on transferring from Annex I to Annex II of the EU/Schengen Visa

¹¹Article 96, point 2. Convention about Schengen Agreement Implementation, "Treci stub Evropske Unije", Milutin Janjević, Beograd 2003, p. 172

Regime or those states which are developing and reforming their justice and home affairs sectors.

Member States already apply common rules in these areas under the Schengen Agreements. These intergovernmental agreements have been incorporated into the European Union following the entry into force of the Amsterdam Treaty and now form part of the Community Acquis to be adopted by the applicant countries. However, most of the Schengen Acquis will not be applied to the new Member States as soon as they join but later, once this has been specifically decided by the Council. This is the aim of the plan of action for adopting the Schengen criteria on the basis of a realistic timetable for implementing the Schengen Agreement.

The binding rules which new Member States must have in place as soon as they join include some of the rules on visas, the rules governing external borders and migration, asylum, police co-operation, the fight against organized crime, terrorism, fraud, corruption, drug trafficking, customs co-operation and legal instruments relating to human rights. As regards such issues as border control, illegal immigration, drug trafficking, money laundering, organized crime, police and legal co-operation, data protection and mutual recognition of court judgments, the new Member States should be administratively capable of dealing with them. It is also crucially important to organize the judiciary and the police in an independent, reliable and effective manner.

3.1.2 Asylum policy

European asylum policy is a matter of common interest since the Maastricht Treaty. It has been a Community, as well as a national responsibility since the Amsterdam Treaty came into force in 1999.

At the Tampere European Council in October 1999, the European Union leaders decided on a two-stage strategy. The first stage is laying down minimum rules and the second stage was aimed at setting up a common European asylum system based on a common asylum procedure and equal asylum status valid throughout the European Union.

Much has been achieved, including:

- the establishment of a European Refugee Fund ;
- the adoption of a specific temporary protection system in the case of a massive influx of displaced persons;
- the definition of the State responsible for vetting asylum requests ;
- the start-up of the system of finger-print comparison for asylum seekers within the European Union.

Negotiations are still under way regarding certain aspects, such as the proposed directive on refugee status and the procedures for granting and withdrawing refugee status.

3.1.3 Immigration policy

Immigration policy is a matter of common interest since the Maastricht Treaty and a Community responsibility since the Amsterdam Treaty. Article 63 of the EC Treaty states that the Council was to adopt, within a five year period after the entry into force of the Treaty of Amsterdam (i.e. by 1 May 2004):

- measures relating to conditions of entry and residence and to procedures in Member States issuing long-term visas and residence permits, including those for the purposes of family reunion;
- measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.

As regards "legal immigration", the Conclusions of the Tampere European Council state that the European Union should:

- approximate national legislations on the conditions for admission and residence of third-country nationals;
- ensure fair treatment of third-country nationals who reside legally on the territory of its Member States;
- step up its efforts to ensure the integration of immigrants.

As regards "illegal immigration", the Tampere European Council agreed in 1999 to combat illegal immigration and organized crime which takes advantage of it. In February 2002 the "Plan of Action to Fight Illegal Immigration" was adopted.

The significance of the EU border strategy for the Balkans is emphasized by the three main security threats feared by the EU: uncontrolled migration, the trafficking of illegal drugs, and terrorism. These three issues are often difficult to separate and let alone to manage. Uncontrolled migration offers profitable business opportunities to organized crime, which often supports terrorism.

With regard to the issue of irregular migration, the developing EU *acquis* contains the following legally binding instruments:

- Convention implementing the Schengen Agreement 14 June 1985;
- Council Decision 96/746/JHA of 16 December 1996 on monitoring the implementation of instruments adopted by the Council concerning illegal immigration, readmission, the unlawful employment of third country nationals and cooperation in the implementation of expulsion orders;
- UN Convention Against Transnational Organized Crime of 2000;
- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Shengen Agreement of 14 June 1985;
- Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence;
- Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorized entry, transit and residence;
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification;
- Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers of communicate passenger data.¹²

¹² "CARDS Regional Project on the establishment of EU compatible legal, regulatory and institutional frameworks in the fields of asylum, migration and visa matters" – CARDS Regional Programme 2002/2003, Grant Contract 77352

3.1.4 Police, customs and judicial co-operation in criminal matters

Acquis supporting co-operation in criminal matters has been created mainly within the framework of Title VI of the EU Treaty. This is the inter-governmental part of the treaty covering police co-operation, the fight against organized crime, corruption and fraud, judicial co-operation in criminal matters, customs co-operation and extradition, including co-operation with and through Europol and Eurojust.

Some examples of recently developed acquis in this area relate to the protection of the Euro against counterfeiting, the exchange of DNA analysis results and the European Arrest Warrant.

Though EU Member States have difficulty in meeting all of the requirements of EU law, the challenge faced by the new applicant countries is immense. Some of the main issues are their background in history: as most of the countries who have entered EU recently and those who have applied, developed under a communist system and for some, the concepts such as an independent judiciary are relatively new. According to this research many countries lack the financial means necessary to introduce sophisticated law-enforcement mechanisms over a short period of time.

3.2 Schengen Acquis

The security strategy of the European Union has traditionally involved the creation of a hard external border for the Union, which is based on Schengen procedural standards and difficult to breach. This is achieved in parallel with the dismantling of internal borders. A Justice and Home Affairs (JHA) programme is used to create an area of “freedom, justice and security” within an open EU, and incorporates practices ranging from common visa policies and border procedures to judicial co-operation designed to fight organized crime and terrorism. External border checks replace those previously conducted at common borders, a common definition of the rules for crossing external borders is used, and the rules regarding conditions of entry and visas for short stays are harmonized. The various

national administrations in member states coordinate their border-surveillance procedures by such means as political guidance, liaison officers and staff training.¹³

The Schengen acquis poses a huge challenge to the candidate and acceding countries. It implies the removal of borders between EU Member States, referred to as internal borders. Lifting internal borders is necessary to guarantee one of the fundamental rights of EU citizenship: the right to move and reside freely throughout the Union, enshrined in Article 14 of the EC Treaty and in the provisions on Union Citizenship (Article 18). However, before internal borders can be lifted, a special evaluation process must conclude that the country concerned is able to apply the “compensatory measures” specified in the Schengen acquis. These relate to external border control, visa policy, police co-operation, mutual assistance in criminal matters and the ability to participate in the computerized Schengen Information System (“SIS”). A new version of the Schengen Information System (“SIS II”) which will have the technical capacity to connect all new member states, is also developed. Most Member States already apply common rules in these areas as a result of the Schengen agreements, now incorporated into the Community framework (Articles 61 to 69 of the EC Treaty). In practice, all the current EU border control acquis has been developed in the framework of Schengen and, in particular, the “Common manual on external borders”.

Bosnia and Herzegovina is currently not in a good position regarding fulfilment of the requirements for special evaluation process or compensatory measures which are specified in the Schengen acquis. The most realistic situation in regard softening of the visa regime for the citizens of Bosnia and Herzegovina would be liberalization of such a regime only for a specific types of citizens.

¹³ “Border Security in the Balkans: Europe's gatekeepers”, Alice Hills, Volume 44, Number 371 / 20 December 2004

4. THE CASE OF ROMANIA (THE ROAD FROM ANNEX I TO ANNEX II)

Romania adopted several pieces of legislation on data protection at the end of 2001. The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its additional protocol were ratified in February 2002. Further progress was made in 2003 with the adoption of a law laying down a scale of charges for the notification of personal data processing operations.

Considerable progress has been made on visa policy. In April 2001 Romania amended the Aliens Act and introduced provisions on visas. Visas can now only be obtained in a Romanian Consulate or Embassy and are issued at the border only in exceptional cases. The National Visa Center receives all visa applications and makes the final decision. The Aliens Directorate carries out additional checks on applications from countries with high levels of migration. A new visa sticker was adopted in April 2003 and it came into force from the beginning of 2004. The first phase of the on-line visa system is operational and connects the authority responsible for aliens with the diplomatic missions in Egypt, Russia, Serbia and Montenegro, Turkey and Ukraine. Extra staff to deal with visa applications have also been seconded to the diplomatic missions.¹⁴

Romania has largely aligned its visa policy on EU policy; and as a result, has benefited from a visa-free regime in all Schengen Member States since January 2002.

Since January 2003, Romania has introduced a visa requirement for nationals of the Former Yugoslav Republic of Macedonia. A bilateral agreement with Singapore on removing the visa requirement entered into force in February 2003, and a similar agreement has been concluded with Estonia, Liechtenstein, Lithuania and Switzerland. In 2004, a visa application system was introduced for four countries on the EU's "negative" list (Russia, Serbia and Montenegro, Turkey and Ukraine).

Major progress has been made on controls at external borders. Two emergency ordinances were adopted in June 2001:

- the first on Romania's borders;

¹⁴ Commission Report [COM(2005) 534 final - SEC(2005) 1354

- the second on the organization and functioning of the border police (it provides for a new structure and a framework for co-operation between the border police and other bodies).¹⁵

With regard to human resources, the hierarchical structure has been simplified, regional directorates reduced and a proportion of administrative employees now have to carry out operational tasks. The Commission welcomes the adoption of important measures to combat police corruption. The border police have signed an agreement with the national airline, TAROM, with a view to improving checks on travel documents and visas.

Legislation on the Romanian state borders and on the organization and functioning of the border police was adopted and entered into force in March and in May 2002 respectively. The professionalisation of the border police has continued thanks to the ongoing replacement of conscripts with professional staff.

As regards alignment with the Schengen Acquis, Romania presented a Schengen Action Plan in December 2001. A strategy on border security for 2003-2007 and a new plan of action for the adoption of the Schengen criteria were adopted in 2003, along with an integrated border management strategy for 2003-2006. A co-operation protocol was signed by the border police and the customs directorate-general in March 2003. Common border posts have been established at four Romanian border crossing points. Also, an agreement has been ratified between Romania and Bulgaria for co-operation in the fight against organized crime, drug trafficking and terrorism. In October 2003 Romania signed a protocol on the creation of an international center for coordinating and exchanging information on the Black Sea.

In January 2004 the inter-ministerial group for integrated border management met at the highest level for the first time since it was set up in 2001. In July 2004 a feasibility study was drawn up with a view to establishing an integrated border security system. A new

¹⁵ Commission Opinion [COM(97) 2003 final - Not published in the Official Journal], Commission Report [COM(98) 702 final - Not published in the Official Journal], Commission Report [COM(1999) 510 final - Not published in the Official Journal], Commission Report [COM(2000) 710 final - Not published in the Official Journal], Commission Report [COM(2001) 700 final - SEC(2001) 1753 - Not published in the Official Journal], Commission Report [COM(2002) 700 final - SEC(2001) 1409 - Not published in the Official Journal], Commission Report [COM(2003) 676 final - SEC(2003) 1211 - Not published in the Official Journal]

plan to introduce the Schengen criteria was adopted during the same period.¹⁶ In the area of immigration policy, Romania has concluded a number of re-admission agreements with Member States (Czech Republic, Estonia, France, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia and the United Kingdom), and with the Former Yugoslav Republic of Macedonia and Turkey.

The Aliens Act, which was adopted in December 2002, contains provisions on entry and residence and rules governing expulsion. An agreement has also been signed with the International Organization for Migration to set up a temporary refuge for female victims of trafficking in human beings. In March 2004 the authority responsible for aliens was set up in the form of an autonomous body, which has signed a co-operation agreement with the Directorate-General for Consular Affairs. It is also consulted by the National Visa Center on cases and applications to extend the right of residence. In April 2004, Romania established a national migration strategy.

In June 2002 Romania adopted legislation for the issuing of new identity and state border crossing documents for third country nationals. The government also concluded an agreement with the International Organization for Migration on co-operation in the field of voluntary humanitarian assisted repatriation. In May 2003 a government decision waived the long-term visa requirement as regards economic and commercial activity involving nine acceding countries.

In the asylum field, the 1996 Law on Refugees has been amended to introduce new concepts such as "manifestly unfounded application", "safe third country", "country of origin" and "accelerated procedure". Persons with refugee status in Romania receive financial assistance for nine months. Provision is also made for additional aid for certain categories of person, such as unaccompanied minors or single mothers. As a general rule, refugees have the same rights as Romanian citizens, including access to the labor market. Since February 2003 the new employment code has released persons with acknowledged refugee status in Romania from the obligation to hold a work permit before taking stable employment.

¹⁶ http://europa.eu.int/comm/research/science-society/pdf/enwise_report2_fulltext-120704.pdf

A government decision on refugee integration was adopted in November 2001. In March 2002 legislation was adopted establishing a procedure for reuniting refugees with their family members. This legislation remedies the most significant shortfalls in the previous legislation on family reunification. On the implementation side, a database to record refugees' country of origin became operational in August 2003, and it will be used in the procedure for determining refugee status. Less use has been made of the expedited procedure, the average period of detention in airport transit zones has fallen and 94% of asylum applications made in 2002 were processed within the legal limit of thirty days.

In April 2004 legislation aimed at bringing the regime for refugees more into line with the 1951 Geneva Convention entered into force. Further amendments relating to their social integration were implemented in May. In addition, more staff were recruited to the National Refugee Office and the capacity of the Romanian asylum system was considerably expanded.

With regard to police co-operation and the fight against organized crime, the Organized Crime Prevention Act was passed in January 2003. The police have been restructured and a directorate has been set up to combat organized crime and drugs. Other bodies have also been set up - a national witness protection office, a money-laundering unit, an institutional co-operation department, cyber crime units and an intelligence department. Police personnel have undergone training, especially in human rights.

The Police (Organization and Functioning) Act was adopted in May 2002 and implementing instruments were adopted in October and November. The Status of Police Officers Act was adopted in June of that year. An amendment requiring police officers seeking promotion to attend training courses was adopted in October 2003. In March 2004 ethics and professional conduct codes were adopted.

The Prevention and Combating of Trafficking in Human Beings Act and an Action Plan for Combating Trafficking in Human Beings were adopted in December 2001. An inter-ministerial working group on trafficking in human beings was set up in February 2003. A

programme aimed at preventing and combating trafficking in children was also launched at the end of 2003 by the Romanian Police Institute for Crime Prevention and Research.¹⁷

In July 2002 Romania and Bulgaria signed a protocol aiming at combating cross-border organized crime more efficiently. Other international agreements have been concluded with Albania, Armenia, and the Czech Republic. In November 2002 Romania ratified the UN Convention against Transnational Organized Crime, and the protocols against trafficking in persons and smuggling of migrants by land, sea and air. A co-operation agreement with Europol was approved in May 2003. In February 2004, Romania signed the supplementary protocol on the illicit manufacturing of and trafficking in firearms, their parts, components and ammunition.

As regards the fight against terrorism, Romania ratified the UN Convention for the Suppression of the Financing of Terrorism of 1999 in November 2002. In April 2002 the Supreme Defense Council (CSAT) adopted a national strategy for preventing and combating terrorism. The inspectorate to prevent and combat terrorism became operational in the second half of 2002. In February 2004 the new headquarters of the Operational Center for Co-ordinating the Fight Against Terrorism was inaugurated, and the National Terrorism Prevention System thus became operational in April. A direct line was made available to allow the public to report useful information on the fight against terrorism.

As far as the fight against fraud and corruption is concerned, in July 2002 the Parliament approved legislation establishing the National Anti-Corruption Prosecutor's Office, which began functioning in September 2002. It has taken over the present anti-corruption section within the General Prosecutor's Office and its territorial branches.

Romania ratified the Council of Europe Civil and Criminal Law Conventions on corruption in April and July 2002 respectively. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime was ratified in

¹⁷Report of the ICVS in Romania, Prof. Horia M. Vasilescu, Juridical Research Institute of Romanian Academy, Bucharest, Romania

August 2002. A plan of measures to combat corruption was adopted in December 2002 to expedite the implementation of the National Strategy Against Corruption. In March 2004 a code of ethics and professional conduct for police officers was adopted. In addition, the new Criminal Code, adopted in June 2004, will enter into force in July 2005 and will introduce the concept of the liability of legal persons.

In January 2003, a commission to study forged euros became operational. In March 2004 a national central office was set up to combat counterfeiting. In June Romania also adopted a law on the criminal liability of legal persons for the crime of currency counterfeiting. However, Romania still has to bring its law into line with the 1995 Convention on the protection of the European Communities' financial interests.

A drugs squad was set up in March 2001. From the legislative perspective, Romania has adhered to all the international conventions referred to in Community drugs law. In June 2002 Romania ratified the Agreement on Illicit Traffic by Sea. New legislation on precursors was adopted in June 2002. In January 2003 the government adopted a National Drugs Strategy for 2003-2004 and established a National Drugs Agency.

A preliminary report on the implementation of that national strategy was completed and has resulted in the revision of the relevant action plan. In April 2004 an agreement was initialed concerning Romania's participation, as observer, in the European Monitoring Centre for Drugs and Drug Addiction. In July 2004 the Romanian Government decided on a very large increase in the number of local and regional officials in the national drugs agency.

The criminal code and the code of criminal procedure have been amended in respect of money laundering. Although Romanian law in this area has been largely brought into line with the Acquis, a Money Laundering Prevention Act was passed in December 2002. In August 2002 Romania ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Rules governing the organization and functioning of the National Office for the prevention and control of money laundering were adopted in May 2002. In March 2004 responsibility for the Office was transferred to the local control authority and then to the

Prime Minister's Office. A new Board and a new President were appointed in June 2004. The following month it was eventually agreed that the Prime Minister would decide on the powers of the National Office and its Board.

An anti-fraud department was set up in January 2001 for the purposes of customs co-operation. A national database has also been established in accordance with the requirements of the Customs Information System ("CIS") Convention. The interdepartmental working party set up within the customs administration with a view to acceding to the Convention is currently also working on the 1997 Convention on mutual assistance and co-operation between customs administrations (Naples II).

Anti-fraud control teams have been set up. An action programme against corruption in the customs administration and a sector action plan against corruption have been drawn up as part of the national programme on prevention of corruption and the national action plan against corruption. A number of co-operation agreements have been signed between the customs administration and other institutions such as the border police, the national police, the financial guard and the copyright office. Mutual assistance agreements have been concluded with the customs authorities of Bulgaria, Moldova, Ukraine and Yugoslavia.

Romania has ratified most of the international conventions on judicial co-operation, and in particular:

- the 1970 Hague Convention on the Taking of Evidence Abroad;
- the 1980 Hague Convention on International Access to Justice;
- the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children.

It still has to ratify the 1965 Hague Convention on the Service of Documents; though an Act authorizing accession was passed in April 2003. In May 2004 the Law on accession to the 1961 Hague Convention abolishing the Requirement for Legalization of Foreign

Public Documents (1961) was amended in order to transfer central Government powers to local courts and authorities.¹⁸

Regarding judicial co-operation in civil matters, Romania adopted legislation in May 2003 on international judicial assistance in civil matters and on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters given in Member States of the European Union. In October 2003 an Order of the Justice Ministry approved the rules for the application of the relevant laws.

Regarding judicial co-operation in criminal matters, Romania has adopted domestic legislation transposing the European Convention on Mutual Assistance in Criminal Matters. In December 2001 it ratified the additional protocol to the European Convention concerning the Transfer Abroad of Convicted Persons. It also ratified an agreement with France to facilitate the return of illegally resident minors in November 2002. In July 2004 a law on international judicial co-operation in criminal matters was adopted.

Romania has now ratified all legal instruments concerning human rights as part of the *JHA acquis*.

¹⁸ D Shelton – The Boundaries of Human Rights Jurisdiction in Europe, Duke Journal of Comparative and International Law, 2003

5. THE CURRENT SITUATION IN BOSNIA AND HERZEGOVINA

The section about Bosnia and Herzegovina will now be open with the words of ex-Deputy Foreign Minister Ms. Lidija Topic, now Ambassador of Bosnia and Herzegovina at the Permanent Mission of the European Union in Brussels, which mentioned during the national follow up mission that “Bosnia and Herzegovina plans to complete its preparation for EU accession by 2009. The immediate objective is to achieve visa free travel for citizens of Bosnia and Herzegovina to EU countries”.

Later, in an interview with Ms. Topic she explained how the authorities of Bosnia and Herzegovina were trying to obtain ideas on requirements by which one country has to comply in order to get a liberalised visa regime, or abolishment of a visa regime for its citizens. As Ambassador Topic said: “the European Commission never provided a list with concrete criteria for Bosnia and Herzegovina. Therefore, the authorities were trying to compare visa regimes of Bosnia and Herzegovina with the visa regimes of its neighbouring countries and the countries in the region, asking what of these requirements, which are already in the Annex II of the Schengen visa regime, they should have to fulfil in getting visa liberalisation and abolition”.

“Until today we still did not receive the list of requirements what Bosnia and Herzegovina has to do in order to ease or abolish visa regime for its citizens. Other countries have received such a list and we have asked them what is the most important for one country to accomplish in this process. We got some criteria which are the most important ones:

1. The first one is that documentation has to be secure. Bosnia and Herzegovina has relatively safe documents but after September 11, 2001 the world changed and the required level of the security for the documentation grows, so today everyone is talking about the biometrical passports. I have to say, what is very positive, that Bosnia and Herzegovina is ready to make one step further toward the fulfilment of this criterion. Ministry for Civil Affairs is working on the preparation for biometrical passports. However, it has to be emphasized that until today European Union has not set the possession of the biometrical passports as a requirement for the visa liberalisation.

2. Second, not less important is border control and administrative capacity at the borders. This requirement has to be implemented according to the EU standards.
3. The third criteria should count the number of activities which are taken in regard the fight against international crime and terrorism.
4. And the last one I could indicate now as the most important ones, and this last one is perhaps the important one, is fulfilment of the readmission agreements with the member countries of EU. In all this fields we really did make a progress and we did a lot to accomplish them. Bosnia and Herzegovina signed a number of readmission agreements with other countries; when we talk about the fight against organised crime Bosnia and Herzegovina absolutely fulfils all the international requirements and norms; Capacity of the border management is rated as one of the best in the region, etc...

Several times we asked from the European Commission to give us the requirements but till today we still did not receive anything. Why? Because the Commission thinks that member country states of EU are still not prepared even to start this discussion with the countries of the Western Balkan, including Bosnia and Herzegovina. We, as a state, which will tomorrow, I mean in the future be a member of the EU can not accept this”.¹⁹

Now, to complete the picture about the progress that has been made in Bosnia and Herzegovina in the field of home and justice affairs with the view from the international position we interviewed Mr. Renco Davidi, Deputy Chief of the Delegation of European Commission in Bosnia and Herzegovina, which has different view on the development and possible transfer of BiH from the Annex I to Annex II of the EU/Schengen Acquis visa regime.

In an interview with the Deputy Chief of the Delegation of European Commission in Bosnia and Herzegovina, Mr. Renco Davidi, he was asked whether it was possible for Bosnia and Herzegovina to abolish its visa regime within the next 2 years Mr. Davidi stated:

¹⁹ Interview with ex Deputy Minister Ms. Lidija Topic, now Ambassador of BiH in the Permanent Mission of EU in Brussels, interview taken on 21.04.2006

“At the beginning it is important to separate the terms “liberalisation” from “abolishment”. By the terms of liberalization, EC does not mean a complete abolishment of the visa regime nor transfer from Annex I to Annex II of the EU/Schengen Acquis visa agreement. Liberalization of the visa regime for one country means to ease the process of application and to issue a visa for a longer period only for some specified groups of applicants, in this case students, business people, researchers and people with special needs. This is what the government of Bosnia and Herzegovina is lobbying for right now, and unfortunately, this is the only advance that this country could make at this moment in the field of visa abolishment”.

Mr. Renco Davidi also emphasized that: “it is very obvious that the authorities of Bosnia and Herzegovina, in particular politicians, are using the term of liberalization for political manipulation with the citizens to reach their own political or personal goals”. According to Mr. Davidi, the European Union does not have a positive view for the abolishment of the visa regime for all Bosnia and Herzegovina citizens in near future, definitely not within the next 2 years. “There is still no political will and openness for such a step in the EU what is mainly caused with the slow implementation of the reform processes and development of the Bosnia and Herzegovina democratic society in all segments.”²⁰

5.1 Bosnia and Herzegovina - Asylum

The right for asylum in Bosnia and Herzegovina is guaranteed by a number of documents. The most important among them are the International Convention on Refugee Status (1951) and the Protocol on Refugee Status (1967). Bosnia and Herzegovina is a signatory country of the Convention and the Protocol and these documents are included in the Bosnia and Herzegovina Constitution.

5.1.1 Legal framework

A common European Asylum system, based on the full and inclusive application of the 1951 Convention relating to the Status of Refugees and its Additional Protocol of 1967, which together with the European Convention on Human Rights (“ECHR”) and

²⁰ Interview with Renco Daviddi, Deputy chief of the mission, Delegation to the European Commission in BiH

Fundamental Freedoms are binding on all EU Member States, a number of directives and regulations have been introduced.

Matters that are normally regulated through national legislation in the form of a Refugee Act or similar include: identification of asylum-seekers at the border, access to asylum procedures, procedure for family re-unification, referral systems, first instance and appeal procedure, procedure for subsidiary protection, access to free legal advice, loss of refugee recognized refugees and procedures for naturalization. National migration legislation should include the prohibition of re-foulement, referral procedures and issuance of residency permits.

The legal framework for asylum matters in Bosnia and Herzegovina is defined by the "Law on Movement and Stay of Aliens and Asylum" that was put into force on 14 October 2003. The Law foresees that the Council of Ministers may, in consultation with the UNHCR, in cases of mass influx of aliens or imminent mass influx of aliens in need of international protection, issue special regulations for their protection, as well as conditions for cancelling those regulations. The Law consists of "protective regulations", which require and bind agencies to deal sensitively with those aliens that express fear of persecution or other forms of humiliation acts in their home country. The Law requires a complete and thorough inquiry in cases in which an alien makes allegations of persecution in their home country. Representatives of the European Commission, Delegation in Bosnia and Herzegovina, OHR, OHCHR, UNHCR and IOM were involved in the drafting of the law because of their mandate in Bosnia and Herzegovina. This was made in co-operation with the representatives of the Ministries of Interior at the Entity, Cantonal and Brcko District levels. Representatives of the Ministries of Justice of both entities were consulted in matters concerning expulsion. State Ministries and the State Border Service had the possibility to comment on two working versions of the document.²¹

Harmonisation of the Law on Movement and Stay of Aliens and Asylum and its proper implementation would be the best way to incorporate the EU standards. However, by-

²¹ "CARDS Regional Project on the establishment of EU compatible legal, regulatory and institutional frameworks in the fields of asylum, migration and visa matters" – CARDS Regional Programme 2002/2003, Grant Contract 77352

laws regulating the execution of the legal regulation have not as yet been passed. Lack of by-laws hinders the implementation of this law in practice. Conditions of entry, visa processing and travel documents for aliens, issuance of residence permits, procedures for visa abolishment and revoking of residence permit, procedure for deportation of aliens to their country of origin or to the country from which they came to Bosnia and Herzegovina, procedures for registration of aliens residing temporarily or permanently in the country, code of conduct in relation to victims of trafficking, as well as other regulations should be precisely defined through such by-laws and rule books.

Persons who were granted temporary admission status within the territory of Bosnia and Herzegovina before the entry into force of this Law will have their status recognized under the present law as well.²²

According to the National Action Plan the following bylaws should be passed or amended:

- amendments to the by-laws regulating the internal organization of the Ministry of Security;
- by-law relating to the establishment and function of an asylum reception center;
- by-law which will regulate the issue of asylum and the procedures in greater detail;
- by-law relating to records and central database of aliens;
- by-law relating to the instruction on the implementation of the Tripartite Protocol on re-registration of refugees from Croatia temporarily staying in Bosnia and Herzegovina.
- to the law implementation and further improvement of the asylum procedures.²³

²² Bosnia-Herzegovina 'Who's living in my house-Obstacles to the safe return of refugees and internally displaced people', Amnesty International documentation, 2005

²³ Action Plan document, Ministry of Security of BiH, December 2004

The Ministry of Security together with the Council of Ministers of Bosnia and Herzegovina is currently working on preparing these by-laws. After including, accepting and ratifying amendments and by-laws the Law on Movement and Stay of Aliens and Asylum would completely absorbed the principle of non-refoulement and determined that aliens would not be returned or expelled in any manner whatsoever to the frontier of territories where their life or freedom would be threatened on the basis of their race, religion, nationality, membership of a particular social group or political opinion, regardless of whether or not they have formally been granted asylum. The prohibition of return or expulsion also applies to the persons if there is a reasonable possibility that they would be in danger of being subjected to torture or other inhuman or degrading treatment or punishment. Aliens also may not be sent to a third country where they would be in danger of being returned to such treatment. According to the Law, an alien who has been granted residence for humanitarian reasons would be entitled to work and would have access to education, health care and social welfare under the same conditions as citizens of Bosnia and Herzegovina.

5.1.2 Institutional framework

Every country in Europe has a unique asylum system with its own institutional structure and procedures.

The EU acquis provides that there should be designated authorities dealing with every part of the asylum procedure.²⁴

The authorities responsible for identifying asylum-seekers may include border authorities, policemen, NGOs or lawyers providing legal advice. It is strongly recommended that authorities other than the determining authority for example border police, only register the application with all relevant information to the determining authority for an examination based on the merits of the case.

There should be a designated single competent authority within the government with officials designated to determine refugee status on a full time basis. The competent first instance authority can often be found within the Ministry of the Interior (e.g. United

²⁴ Article 3A of the amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, 10279/02 ASILE 33 + rev 1-com (2002)

Kingdom, Belgium, Germany) or Ministry of Justice. In some rare cases, this authority is housed by other Ministries. The most common practice in Europe is that the first instance procedure is an administrative procedure.

In Bosnia and Herzegovina the Ministry of Security is now formally responsible for processing asylum requests (but there still remains a concern in relation to the division of competence between the Ministry of Security and the Ministry of Human Rights and Refugees). In practice, the UNHCR still implements asylum policy. The Ministry of Security was due to take over the responsibility for refugee status determination from the UNHCR, but unfortunately, far too little real capability is due to many reasons mainly lack of human resources and finance.

The Ministry of Security is obligated to ensure the adequate conditions for reception of aliens who seek asylum, especially in the field of accommodation, food, health care and education. The Ministry of Security supervises the work of institutions responsible for reception of aliens.

The Council of Ministers of Bosnia and Herzegovina, at the recommendation of the Ministry of Security, is responsible for defining the asylum centres as the type of institutions specialized for reception and accommodation of asylum-seekers in Bosnia and Herzegovina, as well as to prescribe a model for its administration, funding conditions, operational standards and other requirements stemming from the law and international standards. The law has defined that the Ministry of Security will determine the required number of basic and internal organizational units regarding the application and implementation of legal provisions, with the approval of the Council of Ministers and in accordance with the Law on Administration of Bosnia and Herzegovina, the Law on Civil Service in the Institutions of Bosnia and Herzegovina and the Decision on Principles for Determining the Internal Organization of the Ministries and other Administrative Bodies of Bosnia and Herzegovina. The Bosnia and Herzegovina Council of Ministers, based on the proposal of the Bosnia and Herzegovina Ministry of Security,

may establish institutions specialized in the reception of aliens including immigration centres, asylum centres, and centres for accommodation of victims of trafficking.²⁵

The recruitment of qualified caseworkers and decision makers is essential for effective and sustainable refugee status procedures. It is therefore recommended that certain minimum standards for recruitment be established. For instance, the recruiter should ensure that the candidate holds no prejudices against asylum-seekers and/or refugees.²⁶

The recommended physical minimum conditions that should be in place are accommodation facilities for asylum-seekers with adequate standards, registration facilities, interview facilities and an archive for file management. Unfortunately, Bosnia and Herzegovina can-not be a positive example for establishment of such an infrastructure which would be harmonised within the EU standards. The EU Acquis provides that if accommodation is provided in kind, it can be in a specially designed accommodation centre or in private houses, flats, hotels or other premises adapted for housing applicants.²⁷ The setting of a collective accommodation centre typically includes four stages: 1. the preparatory stage, 2. constructing and equipping the centre, 3. setting up the organization and 4. identifying collaborative partners. As assistant to Minister for Migration in the Ministry of Security of BiH, Ms. Murveta Dzaferovic said, “Bosnia and Herzegovina is right now in the phase of preparation for collective accommodation centre establishment. A small montage centre has to be built very soon, but this centre will not be in accordance with EU standards”.

“Bosnia and Herzegovina in the frame of the CARDS project is planning to build an accommodation centre which will be harmonized within the standards of the EU, and right now the establishment of such a centre is in the phase of preparing the documentation for the start of the work. For now, we have a temporary solution and that

²⁵ Interview with Ms. Murveta Dzaferovic, Assistant to Minister, Ministry of Security BiH

²⁶ “CARDS Regional Project on the establishment of EU compatible legal, regulatory and institutional frameworks in the fields of asylum, migration and visa matters” – CARDS Regional Programme 2002/2003, Grant Contract 77352

²⁷ Article 14 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

is a small montage house which has to be built in this year, and will after the real centre is built be part of it.”²⁸

In the process of establishing such a centre the Bosnia and Herzegovina government together with partners which will be included in this work will have to answer many questions which reflect EU standards and norms – such as: What is the layout of the building – showers/toilets, accommodation for residents, staff accommodation, play area, kitchen?; What permits are necessary to secure the location?; What are the security requirements?; and, there are many other issues that would have to be considered. The Ministry of Security of Bosnia and Herzegovina will have to meet many challenges in the process of establishment of the accommodation centre. There is however, a question of - how could the Ministry of Security be successful in its work when it has a great lack of employees, and a large financial need for training of already employed staff and eventually, new staff.

5.1.3 Priorities

- Law on Movement and Stay of Aliens and Asylum should be amended by the above mentioned by-laws and fully implemented. The current lack of those by-laws presents a serious obstacle;
- The highest priority of the Ministry of Security is also the creation of a centre for reception and accommodation of asylum-seekers in order to take over the asylum procedure currently conducted by the UNHCR, as well as education of the centre employees, in particular in areas of receiving, accommodating and treating the centre beneficiaries;
- There is still a need for further improvement of the human and technical capacities within the Sector for Asylum to independently resolve asylum matters in Bosnia and Herzegovina. Basic tools and equipment are needed in order to provide basic organizational units of the Ministry foreseen by its systematization;

²⁸ Interview with Ms. Murveta Dzaferovic, Assistant to Minister, Ministry of Security BiH

- In order to work within its full capacity on implementation of the Law on Movement and Stay of Aliens and Asylum, the Ministry of Security needs to urgently continue with the process of vacancy fulfilment. A permanent task for the Ministry presents the continuous staff education with a special focus on EU and international practices through the study visits to European countries and seminars and workshops conducted in Bosnia and Herzegovina. Special attention should be paid to education of the State Border Service (“SBS”) employees and Ministry of Internal Affairs employees on identifying potential asylum seekers and strengthening the referral system.²⁹

5.2 **Bosnia and Herzegovina – Migrations**

The importance of the effective implementation of immigration and asylum policies which respect the applicable international conventions has been recognized in the Sarajevo Declaration of 28 March 2001 through which Bosnia and Herzegovina has undertaken to align its legislation with these conventions and to approach European standards. The establishment of the State Border Service of BiH under the auspices of the UN is an important development to be strengthened.

The European Commission (“EC”) is assisting Bosnia and Herzegovina to fulfil its commitments under the Sarajevo Declaration and provides assistance for the development of Bosnia and Herzegovina's immigration and asylum policy and legislation. As part of its regional strategy the EC has been encouraging and assisting Bosnia and Herzegovina to contribute to a regional approach to such issues by the countries covered by the Stabilisation and Association program (“SAp”).

“Management of Asylum and Migration” was one of the most important activities for 2004. The European Commission in Bosnia and Herzegovina acts as a liaison between the European Union and Bosnia and Herzegovina, with all activities in relation to

²⁹Priorities taken from the official talks with the authorities of Ministry of Security in BiH, department for asylum

migration and asylum co-ordinated through the European Commission in Bosnia and Herzegovina.

The EU has yet to define precisely what forms of co-operation and models of preventive policies can best achieve its policy objectives however, in the meantime, engaging transit countries in functionally based programmes works relatively well. Migration has in this way become part of the relationships between the EU and its neighbours.³⁰

It has also become linked to EU enlargement and to the EU's efforts to combat terrorism. The admission of ten new countries in 2004, for example, means that states such as Albania and Bosnia and Herzegovina, which hold important transit routes for migrants from Asia to the EU, play an increasingly important role in the EU's defences, as do Kosovo and Romania.³¹

5.2.1 Legal framework

The policy of the migration matters is under the authority of the Bosnia and Herzegovina institutions, which is regulated by the Bosnia and Herzegovina Constitution. The entry, stay and movement of aliens in Bosnia and Herzegovina are currently regulated by the following legal acts:

- Law on Movement and Stay of Aliens and Asylum;
- Law on Ministries and other Administrative Officials in Bosnia and Herzegovina;
- Decision on determination of countries whose citizens are exempt from visa for entry, exit or transit through Bosnia and Herzegovina territory.

Related by-laws on the Law on the Movement and Stay of Alien and Asylum are currently in preparation. Trafficking in human beings remains a serious problem for the authorities of Bosnia and Herzegovina. Bosnia and Herzegovina is a destination and transit and source country of trafficked women and girls for sexual exploitation. Trafficking in persons is a solid part of the organized crime in the country and in the region.

³⁰R. Dannreuther, European Union Foreign and Security Policy: Towards a Neighbourhood Strategy, Routledge (UK), 2004

³¹Transitional Road for Traffic: Analysing Trafficking in Women From and Through Central and Eastern Europe, Volume 57, Number 4 / June 2005

In their efforts to fight trafficking and illegal migration, the Council of Ministers adopted a National Action Plan for Combating the Trafficking in Human Beings in December 2001. A state commission for the implementation of the plan was formed at the same time. Since there was no legal framework for treatment of the victims of trafficking at that time, the Ministry for Human Rights and Refugees issued temporary instructions. These instructions were in compliance with the international standards in protection of human rights. In July 2003, the Council of Ministers appointed a National Coordinator on Anti-Trafficking and Illegal Migration. The National Co-ordinator has the primary responsibility for co-ordinating and further implementing the National Plan of Action and any other related anti-trafficking activities at all levels in Bosnia and Herzegovina. Based on the recommendations of international and domestic organizations, the Council of Ministers adopted the decision on procedures and coordination of activities for the prevention of trafficking and illegal migration and the appointment of the State Co-ordinator in August 2003. In September 2003, the Mission appointed a full-time staff member to act as a focal point for its work with the National Co-ordinator.

The main activities envisaged in the National Plan are:

- Prevention - Traffickers use a variety of methods to recruit their victims, including advertisements in the press and direct contact through a network of recruiters targeting vulnerable people. Raising awareness of the dangers of these methods of recruitment among potential victims is a vital step in combating trafficking;
- Protection - A number of different measures exist to enable victims of trafficking to avoid their exploitation. The available assistance to the victims includes access to shelters where support may be received and where victims may consider their options in a safe environment. Bosnia and Herzegovina has a network of shelters, run by local NGOs and by the International Organization for Migration (“IOM”), which provide such assistance, including help with repatriation should the victim wish to return to his/her home country;
- Prosecution - Prosecution of traffickers is a vital component of combating the problem. The new Bosnia and Herzegovina Criminal Code and Entity Criminal Codes contain specific new offences under which traffickers can be prosecuted.

As prosecutions rely heavily on victim testimony, securing convictions is difficult. Victims may be reluctant to give evidence because they either are or feel threatened or intimidated. An effective witness protection programme is therefore a pre-requisite for prosecution of traffickers.³²

Bosnia and Herzegovina has signed the UN Convention on Transnational Organized Crime Protocol on Trafficking in Persons. It has ratified the Criminal law Convention on Corruption, but has not yet signed the second additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. In Bosnia and Herzegovina, international treaties become part of the national law after ratification. A new criminal code came into effect in March 2003 specifically criminalizing human trafficking, including provisions for witness protection, special investigative methods and asset forfeiture. Trafficking offences were previously prosecuted under related criminal prohibitions (pimping, pandering, false imprisonment, abduction, assault and slavery).

It is of a great importance for the government of Bosnia and Herzegovina to know the basic measures for combating of irregular migration, and these are:

- Visa policy – visa policy can have a preventative impact on irregular migration flow. The EU's Comprehensive Plan to combat illegal immigration envisages the adoption of uniform visa and security standards, the creation of common administrative structures and the development of a European Visa Identification System;
- Information exchange and analysis – currently there is regular exchange of information within the region and between the EU Member States in an attempt to reduce irregular migration. It is recommended to Bosnia and Herzegovina MoS to develop an early warning system for the transmission of information on illegal immigration and facilitator networks;
- Border management – the training of border personnel and law enforcement officers is essential for the prevention of irregular migration. Security of the border system which includes a good co-operation with neighbouring states is the pre-requisite for prevention of irregular migrations.
- Re-admission – this is also an important issue regarding combating irregular

³²Action Plan document, Ministry of Security of BiH, December 2004

migration where the countries of the region develop ways of ensuring that illegal migrants leave their territories.

For improvement in the field of illegal migration one of the priorities that Bosnia and Herzegovina has to meet as soon as possible is creating good co-operation with the countries in the region.

In line with Annex 4 of the Common Manual, the countries of the region shall require that a valid document confirm the holder's identity, nationality and citizenship. The following travel documents shall be considered valid:

- travel documents issued in accordance with international rules;
- passports or travel documents which – although issued by countries or international bodies not recognized – guarantees the person's return;
- travel documents for refugees, issued in accordance with the 1951 Convention on the Status of Refugees; and
- travel documents for stateless persons issued in accordance with the 1954 Convention on the Status of Stateless Persons.

It is recommended that a list of recognized travel documents be included in the national legislation of the countries of the region and there should be a regional exchange of information on the list of recognized travel documents issued by each country. As a measure to curb the counterfeiting of travel documents, the countries of the region shall introduce a standardized data collection form and questionnaire for the transmission of information in order to facilitate the detection of counterfeit travel documents on inspection and to increase the effectiveness of the search for stolen travel documents.

The establishment of computerized archiving systems for false and authentic documentation is desirable and should be available to all border crossing points and migration authorities.

With regard to the entry and admission of third-country nationals, the developing EU acquis contains the following legally binding instruments:

- Convention implementing the Schengen Agreement of 14 June 1985;
- Common Manual adopted by the Executive Committee established by the Convention implementing the Schengen Agreement of 14 June 1985;
- Council Decision of 27 March 2000 on the improved exchange of information to combat counterfeit travel documents;
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification;
- Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service;
- Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.³³

The government of Bosnia and Herzegovina should be coherent and in line with the procedures set out in Article 5 of the Convention implementing the Schengen Agreement regarding procedures in relation to the entry and admission of foreigners.

Accordingly, only foreigners fulfilling the following conditions may be granted entry:

- possession of a valid document or documents authorizing them to cross the border;
- possession of a valid visa, if required; and
- production of documents justifying the purpose and conditions of the intended stay;
- existence of sufficient means of subsistence for stay and return, or the possibility to acquire such means lawfully.

³³“CARDS Regional Project on the establishment of EU compatible legal, regulatory and institutional frameworks in the fields of asylum, migration and visa matters” – CARDS Regional Programme 2002/2003, Grant Contract 77352

5.2.2 Institutional framework

The Ministry of Security has the responsibility for migration and the personnel in this sector however, practical progress of its responsibilities has been slow in various areas. Staffing remains a problem and there is little progress in transferring the Inspectors for Foreigners to the Ministry of Security jurisdiction. The law should be consistently enforced. “The number of trained staff in the sector of migration is under the required capacities. It is already very difficult with this number of people in the section of migration to keep up with all requested work for the process of harmonization with the EU laws, and fulfilment of the requirements for establishment of migration politics in Bosnia and Herzegovina, which have to be in accordance with European standards”.³⁴

5.2.3 Priorities

The main priorities for Bosnia and Herzegovina authorities which have to be taken into the process of realization as soon as it is possible for possible abolishment of the visa regime for citizens of Bosnia and Herzegovina in the sector of migrations are:

- Development of the immigration system on a national level according to the standards of the EU that will enable integrations to the European Union;
- To more efficiently and actively be involved in the development and implementation of the system for migration on a regional level;
- The immigration system of Bosnia and Herzegovina to be include into the immigration system of the EU;
- In view of the Convention implementing the Schengen Agreement, Bosnia and Herzegovina should introduce in the national legislation a provision requiring that the validity of the travel document must exceed that of the visa by at least three months, taking into account the period of use of the visa. In more general terms, legislation on the required period of validity of travel documents used for entry should correspond with the national provisions on expulsion;

³⁴ Interview with Ms. Murveta Dzaferovic, Assistant to the Minister for Migration issues, Ministry of Security Bosnia and Herzegovina, interview on 30.02.2006 in the Ministry of Security Bosnia and Herzegovina, Sarajevo

- Bosnia and Herzegovina should develop a working method to collect all relevant information and documentation regarding applicants for entry to their territories, in view of measures to be taken at a later date;
- Uniform levels of skills and equipment for the detection of false documents at points of entry should be achieved. The level of equipment should be determined by factors such as level of passenger traffic, current levels of abuse, availability of reference material, and presence of control officers and standards of training provided;
- There is a need to upgrade and develop the necessary technical equipment and training of competent authorities (consular staff, border guards and migration authorities);
- Bosnia and Herzegovina should further increase the number of properly educated staff and the professionalism of the staff of the Foreigner's Office of the Ministry of Security, and its sub-offices. In the implementation of the police reform, an aliens policing module should be included in the training.³⁵

5.3 Bosnia and Herzegovina – Visa issue

Bosnia and Herzegovina citizens are presently requested to be in possession of a visa in order to travel to the European Union countries. Due to numerous naturalizations of foreign combatants during the war and the issuance of many forged bh passports, the lifting of the visa regime for citizens from Bosnia and Herzegovina is now linked also with:

- Review of those naturalizations by the Bosnia and Herzegovina Naturalization Commission, this is in accordance to the Bosnia and Herzegovina Law on Citizenship to review all citizenship acquired by naturalization between 6 of April 1992 and 14 of December 1995.
- Implementation and possible improvement of the Citizen Identification and Protection System (CIPS) project, which provides safeguards regarding the type of passport issued and the identification of its user.³⁶

³⁵ Priorities taken from the statements of officials in the Ministry of Security BiH, department of migration

³⁶ JHA mission 2002, p.172

Citizen Identification and Protection System (“CIPS”) greatly improved security of the identification documents of Bosnia Herzegovina citizens and created a very good base for better communication between the institutions which are in the field of visa management in Bosnia and Herzegovina. CIPS is a modern and qualitative system that could compete with other similar systems in the countries of the EU. This system -eased the process of issuance of visas for Bosnia and Herzegovina in the term of strengthening this process in regard to security issues.³⁷

Establishment and implementation of CIPS is for now the best example of Bosnia and Herzegovina government in presenting certain development and progress of this country in justice and home affairs field.

Regarding the issue of naturalisation the progress is also evident by establishment of Naturalisations Commission of Bosnia and Herzegovina.

Bosnia and Herzegovina has recently taken a step towards harmonization to the EU visa policy also through the abolishment of visa requirements with the new EU Member States.

5.3.1 Legal framework

Law on the Movement and Stay of Aliens regulates conditions and procedure for entry and stay of aliens in Bosnia and Herzegovina, reasons for refusal of entry and stay, reasons for cancellation of stay and expulsion of aliens from the territory of Bosnia and Herzegovina, procedure for submission of requests for asylum, approval of asylum and cessation of asylum, competency of authorities relevant for implementation of this Act, as well as other issues related to asylum, stay and movement of aliens.

According to Article 25 the responsible Ministry should by-laws further specify conditions and procedures for entering Bosnia and Herzegovina, as well as, other issues relevant for entry of aliens, issuance of visas at the border, form and content of guarantees for entering Bosnia and Herzegovina. The Ministry of Foreign Affairs shall in co-operation with the responsible Ministry by way of by-law prescribe more detailed conditions and procedures for visa issuance, types of visas, form and content of a visa

³⁷ Interview with Mr.Borisa Arnaut, Chief of the department, Ministry of Foreign Affairs BiH

sticker, as well as, other issues relevant for visa issuance. On the basis of this article, the following acts have been adopted:

- Regulation governing the conditions and procedure to issue entry visas to aliens, visa extension, visa invalidation, visa types and keeping of records of issued visas, was passed on 8 November 2004.
- Instructions on visa issuance procedure in diplomatic-consular representative office of Bosnia and Herzegovina were adopted on 9 November 2004.
- The Rule Book on Entry Conditions and Procedures and Stay of Aliens entered into force on 8 February 2005.

Aliens who are subject to visa requirement are obliged to apply to the visa section in the diplomatic mission or consular post responsible.

The diplomatic mission or consular post which examines the application form, its central authority, consults the national central authority or informs it of the decision it plans to take in accordance with the arrangements and time limits laid down by national law and practice.

By way of derogation from the general rule that visas shall be issued by diplomatic and consular authorities, a third-country national who is required to be in possession of a visa when crossing the external borders of the Member States may exceptionally be issued with a visa at the border where the conditions are satisfied.

There is now a growing appreciation of the need to develop administrative capacity within Bosnia and Herzegovina. A significant step in this direction was taken with the adoption of the Civil Service Laws at State and Entity levels, establishing a legal framework for public administration. Further, Civil Service Agencies responsible for recruitment, training, discipline, etc. were created at State level and in Republica Srpska (“RS”); in the Federation of Bosnia and Herzegovina (“FBiH”) the Agency has not as yet been fully established. A review of State-level civil servants has begun. Importantly, in March 2003, Bosnia and Herzegovina governments endorsed five public administration reform pledges at the Peace Implementation Council (“PIC”). The resulting agenda underlined the need for structural reform leading to an efficient, non-discriminatory and affordable administration. Moreover, the agenda acknowledged the need to pull together

existing achievements with functional reviews in order to produce a comprehensive and cost-estimated Action Plan for public administration reform which should be maintained. As follow-up, an intergovernmental Task Force at State and Entity levels was created. Thus far, the latter has met on a number of occasions, however, practical results have been limited.

According to the Law on Movement and Stay of Aliens and Asylum, the Ministry of Security is competent to coordinate the work of the Ministries in the Federation and the Public Security Centers in the RS. Article 102 of the Aliens Act (2003) foresaw a transitional period during which the cantonal Ministries of Interior and the Public Security Centres remained under the auspices of the Ministries of Interior of the two entities (FBiH and RS). With the adoption of the Law on the Service for Foreigners Affairs on 28 July 2005, the Inspectors for Foreigners of the cantonal Ministries of Interior and the Public Security Centres were brought under the Ministry of Security jurisdiction, that is, under the responsibility of the Foreigners Service within the Ministry. The Director for Foreigners of the Service reports to the Minister. The Director will have a Deputy, an Assistant, and the Service Head of Operations. The Service will also have units for inspections, surveillance and support functions and accommodation centres for illegal immigrants.

As mentioned, responsibility for immigration and the personnel has been transferred to the Ministry of Security, but the issue of human resources remains a problem within the Ministry of Security.³⁸ The Migration department had 7 staff members, whereas 25 staff members are foreseen. The Asylum Department has 8 employees. Both Ministries are bound by the decisions adopted by the Council of Ministers. The MoS will, once fully operational, be responsible for central data on visa related matters.

As of 1 November 2004 visas are electronically processed, transferring inserted data directly from the DMCPs to the Ministry of Security for checks in databases. Presently the verification procedure only entails checking if the person has been banned entry, whether a court verdict has been issued, or whether the person is wanted by Interpol.

³⁸ Report on the Stabilization and Association Process 2004, BiH, 2004, 30.4.2004, SEC (2004) 375.

With the law on the Service for Foreigners Affairs adopted on 28 July 2005, the Inspectors for Foreigners were brought under the competence of Ministry of Security (10 Foreigners Offices in the Federation), 5 Public Security Centers in SR and 1 Foreigners Office in Brcko District.

According to the conclusions drawn by the state-working group an integral part of the Ministry of Security is the State Border Service of BiH (SBS) – an administrative organization with operational autonomy, established for the purpose of performing border police tasks. SBS has the competence to issue visas at 14 Border Control Points (BCP), out of more than 50 allowing for border traffic, upon recommendation by the Ministry of Foreign Affairs.

The establishment of the State Border Service in 2000 and the adoption of accompanying measures resulted in a significant decrease in the number of illegal migrants on the territory of Bosnia and Herzegovina.

5.3.2 Institutional framework

Within Bosnia and Herzegovina there is a growing appreciation of the need to develop administrative capacity. A significant step in this direction as it is already mentioned was taken with the adoption of the Civil Service Laws at the State and Entity levels, establishing a legal framework for public administration.

Competencies in the field of visa policy are divided between the Ministry of Foreign Affairs, Consular Department, and Ministry of Security, Migration Department. Visas are issued by DMCP-MFA, or at borders – SBS. DMCPs through the electronic visa issuing system, communicate directly with the Ministry of Security for consultation in databases on the visa applicant. Ministry of Foreign Affairs has 44 diplomatic missions and consular posts competent for issuing visas. According to the Law on Movement and Stay of Aliens and Asylum the Ministry of Security is competent to coordinate the work of the Ministries in the Federation and the Public Security Centres in the RS. With the adoption of the Law on the Service for Foreigners Affairs on 28 July 2005 the Inspectors for Foreigners of the cantonal Ministries of Interior and the Public Security Centres were

brought under Ministry of Security jurisdiction, under the responsibility of the Foreigners Service within Ministry.

As of 1 November 2004 visas are electronically processed, transferring inserted data directly from the DMCPs to the Ministry of Security for checks in databases. The verification procedure only entails checking if the person has been banned entry, whether a court verdict has been issued or whether the person is wanted by Interpol.³⁹

According to the interview with the SBS staff there are still cases in the DMCP of BiH of issuing visas to the persons with the “suspicious” identity. As it is already mentioned the Consular Department of the Ministry of Foreign Affairs has no insight into the visa system, it only gets the information when a visa has been printed. The consular staff at the DMCPs have a tendency to issue visas more or less without further considerations, if there are no objections based upon the results of the consultation. This is definitely something what is indicated as disadvantage in the process for issuing visas to the foreigners mainly because the consular personnel do not receive the necessary training to deal with the process.

5.3.3 Priorities

- The Law on the Movement and Stay of Aliens and Asylum, should be amended, in accordance with the EU/Schengen Acquis;
- Bosnia and Herzegovina should gradually align its visa policy to that of the EU, taking into account its national interest. Bosnia and Herzegovina should not necessarily try to achieve full harmonization with the EU visa policy before having started accession negotiations, if this is not in line with its national interests;
- Bosnia and Herzegovina should follow the possible forthcoming adoption of a new EU Council Regulation on recognition of Schengen visas, by non-Schengen members, for transit purposes;

³⁹ International Centre for Migration Policy Development, Visa Module, Country report Bosnia and Herzegovina, CARDS Regional Programme 2002/2003, Vienna, Austria, October 2005.

- Bosnia and Herzegovina needs to develop an immigration system at a national level, following the standards of the European Union, which would enable the country to become integrated into the immigration system of the European Union;

The by-laws foreseen by the law are necessary to regulate and define all procedures in detail, as well as to promote new advanced techniques that could additionally improve the situation in the above-mentioned fields. A current lack of those by-laws presents a serious obstacle to the law implementation and may make Bosnia and Herzegovina unable to execute its own decisions related to asylum and migration issues.

The Law on Movement and Stay of Aliens and Asylum foresees the creation of a Centre for Acceptance of Illegal Immigrants. The Centre has not been established mainly due to insufficient financial support, as well as lack of competent human resources. In short, Bosnia and Herzegovina is not able to implement its own decisions on deportation and therefore the Centre presents a vital pre-condition for the law implementation.⁴⁰

- Continuous staff education should be a permanent task for the government with a special focus on the EU and international practices in the above mentioned areas;
- A unified database at a national level needs to be set up which should provide access to information related to entry and stay of aliens in Bosnia and Herzegovina for all officials dealing with the control of movement and stay of aliens in Bosnia and Herzegovina;
- Additional agreements on re-admission need to be concluded.⁴¹

In order to align the Bosnia and Herzegovina' visa policy and practices with the EU visa policy and practices, it is vital to intensify activities and introduce a visa regime for the countries which are in the EU negative visa list and at the same time free from visas the EU member states and some candidate countries.

⁴⁰ “CARDS Regional Project on the establishment of EU compatible legal, regulatory and institutional frameworks in the fields of asylum, migration and visa matters” – CARDS Regional Programme 2002/2003, Grant Contract 77352

⁴¹Priorities taken from the statements of the official staff of MoS BiH and MFA BiH

It is also recommended that some of the proposed agreements be reviewed and changed with the purpose of preventing the conclusion of agreements harmful to Bosnia and Herzegovina.

A clear division of responsibilities and competencies between the MoS, MFA as well as SBS should be made, including establishment of control systems – both operative as well as political. Furthermore, the responsible organizational unit in the MoS should be clearly determined. The necessary resources for introducing consultation and verification procedures in accordance with EU standards should be made available.

The central role of the MoS should be emphasized, since it is this authority that generates the visa-working guidelines and exercises a general overview of the work being done in the field of visas.

Bosnia and Herzegovina should further increase the number of properly educated staff and increase the professionalism in the consular sector. It is of a great importance that different categories of personnel involved in visa matters realize that they are all part of a common system applying the same rules, common training for all staff categories involved in visa matters is highly valuable.

5.4 Re-admission

Re-admission is a priority for the EU, both as regards external relations and the area of freedom, security and justice. In principle, a visa facilitation agreement would not be concluded if no re-admission agreement were in place, without prejudice to the rhythm of negotiations.⁴²

The agreements on re-admission represent an instrument used by the European Union for deportation of persons who entered or remained illegally in the territories of the EU' countries. In order to facilitate the deportation of illegal immigrants and to share responsibility and financial liability with the countries transited by illegal immigrants who arrived to the country, Bosnia and Herzegovina needs to conclude appropriate

⁴²Potemkina - European Journal of Migration and Law, Brill Academic Publishers, Volume 5, Number 2, 2003

agreements on readmission. There are some agreements on readmission already signed and applied, but there are also intensive ongoing activities aimed at establishing such agreements with a number of countries. Bosnia and Herzegovina has made great progress in signing the Re-admission Agreements and according to the statistics is one of the leading country regarding this requirement in the region.

Besides this progress Bosnia and Herzegovina should continue to negotiate re-admission agreements and should continue to work on this important requirement for liberalization of the visa regime for citizens of Bosnia and Herzegovina.

It is recommended that Inter-Ministerial meetings at a national level should be held on a regular basis in order to discuss the initiation of negotiations of Re-admission Agreements and to determine the next country of priority. This would guarantee that migration information and statistics from relevant departments would be taken into consideration, particularly in the determination of countries of priority.

In line with the EU Acquis, all Re-admission Agreements concluded by the countries of the region shall contain standard re-admission clauses as defined in the Council Recommendation of 30 November 1994 concerning a Specimen Bilateral Re-admission Agreement between a Member State of the European Union and a third country and the Council Decision of 2 December 1999 in relation to readmission clauses in Community agreements or mixed agreements.⁴³

The time involved in the finalisation of Re-admission Agreements should be reduced. Taking into account this fact, representatives of European Community are negotiating with Bosnia and Herzegovina to sign a unified document which will finalise Agreements of Re-admission with all EU countries in one. This would significantly reduced the time and shorten the whole process. Regarding this issue Bosnia and Herzegovina should follow the example of Repulic of Albania which already signed one unified Agreement

⁴³ C. Roth, "Report on a Draft Council Recommendation Concerning a Specimen of the JHA Council, 28–29 November 2004

with the European Community on the re-admission of persons residing without authorisation.⁴⁴

5.4.1 Priorities

- Sign up and ratify Re-admission Agreements with all EU countries as well as other countries outside of the EU;
- It is important for Bosnia and Herzegovina to commence preparation for efficient implementation of existing Re-admission Agreements. There is a need for detention facilities for foreigners who are found to be illegally resident, pending their removal from the country concerned. Additional funding will be needed in the countries of the region in order to set up and run such detention centres;
- Integrated country-specific return programmes should be designed to ensure effective, timely and sustainable return. Such a programme should provide reasonable assistance to returnees as well as contributions from the country of origin concerned to adequate capacity building;
- Regional co-operation should be strengthened regarding effective implementation of Re-admission Agreements between the countries in the region.⁴⁵

5.5 Bosnia and Herzegovina - Border Management

Following Dayton, the countries originating from the former Yugoslavia had to distinguish borders among themselves and initiate the creation of civilian border controls. However, the situation of Bosnia and Herzegovina was particularly exposed: not only was this state constructed as a unity between two entities with two entirely different administrating systems, but it lacked until 2000 any external border control system and segments of the borders of the country are still not demarcated.

The EU increasingly focuses on the pragmatic themes of integration, co-operation, liaison, reliability and commonality, all of which seem specifically designed to provide comprehensive and politically uncontroversial solutions to a raft of local, national and regional security problems. For example, in its country strategy paper for Bosnia and Herzegovina for the period 2002–06, the European Commission (“EC”) specifically notes

⁴⁴ see document in the Annex II

⁴⁵ Priorities taken from Ministry of Security, department for readmission agreements

the need for the EU and Bosnia and Herzegovina to develop a “comprehensive solution” to the known (and accessible) problems of organized crime and corruption, trafficking and illegal migration. For the European Commission, better border management will involve improving border crossings, strengthening national institutions and procedures, developing the capabilities and infrastructure of border agencies, and increasing interagency co-operation. It will also demarcate borders. Border guards are the functional agents performing the checks, liaison and crime fighting on which such objectives depend.⁴⁶

Guidelines for the EU’s preferred model of border management were laid down in the Schengen acquis, which establishes the written rules and commonly accepted standards for border management within the Schengen sphere.

Ratification of the UN Convention Against Transnational Organized Crime; Protocol Against Smuggling of Migrants; Protocol for Prevention, Stopping and Punishment of Human Trafficking, especially trafficking of women and children; Criminal legislation of Bosnia and Herzegovina; Law on Movement and Stay of Aliens and Asylum; as well as formal instruments, create legal bindings and a base for the work of institutions of Bosnia and Herzegovina in the field of border management and its fight against all forms of illegal border crossings.

Border management, which is under the authority of the Border Service Control of Bosnia and Herzegovina, is composed of the following components:

- Legal framework;
- Operational-intelligence work;
- Prevention actions;
- Technical equipment;
- Trainings; and
- Measures for physical control of border crossings.

⁴⁶Joanna Apap and Malcom Anderson, Striking a Balance between Freedom Security and Justice, CEPS 2006

5.5.1 Legal framework

The surveillance, control and protection of state borders, in accordance with constitutional bindings is formalized through the Law of the State Border Service of Bosnia and Herzegovina, Law on Movement and Stay of Aliens and Asylum, and also through accepted entity regulations for the movement inside the border belt.

The issue of the necessity for a State Border Service (“SBS”) in Bosnia and Herzegovina was raised for the first time at the Peace Implementation Council (“PIC”) in Bonn, in December 1997. This requirement was further reinforced in June 1998, at the Luxemburg PIC. Drafting of the SBS Legislation was made by the Office of High Representative (“OHR”), the International Police Task Force (“IPTF”), and the Bosnia and Herzegovina authorities, and was illustrated in specific terms at the Madrid PIC in December 1998. In early 1999, a first proposal on the establishment of the SBS was prepared, which defined the supervision and control of the internationally recognized borders of Bosnia and Herzegovina - international airports, train crossings, sea borders and international rivers-sea ports. In accordance to Annex 10 of the Dayton Agreement, the High Representative imposed the law on 13 January 2000. The Bosnia and Herzegovina parliament finally ratified the Law on the State Border Service in August 2001.

The SBS of Bosnia and Herzegovina is important for three reasons: it is new, it is explicitly shaped by political imperatives, and its formal objectives and organization are based on internationally acceptable norms, structures, and objectives.⁴⁷

The overall tasks of surveillance, control and protection of the state borders according to constitutional consents are formalized through:

- the Law on State Border Service of Bosnia and Herzegovina;
- the Law on Movement and Stay of Aliens and Asylum;
- and the Entity Regulations on Border Crossing and the State Border Safety.

⁴⁷ Alice Hills, Border Security in the Balkans: Europe's gatekeepers, Volume 44, Number 371 / 20 December 2004

However, Bosnia and Herzegovina does not have Regulations on Border Crossing and State Border Safety at the state level, while the SBS is a state body for securing the border crossing and other related issues.

At the beginning of June 2000, the State Border Service took responsibility for the border crossing at the airport in Sarajevo. In August 2000, it also took control over the crossings of the State border in the Bosnia and Herzegovina municipalities of Capljina, Bihac, and Zvornik. In February 2001, the border crossings at Trebinje, Kamensko, Velika Kaldusa, and Orasje were added to the SBS' jurisdiction. In March 2001, the border crossings at Brod, Brcko, Hum and Neum came under SBS control. The Bjeljina Border Crossing was established on July 31, 2001 also as an SBS crossing. The SBS assumed responsibility for Banja Luka International Airport on December 14, 2001. With the opening of the SBS border crossing in Gradiska in September 2003, the SBS assumed responsibility for 100% of Bosnia and Herzegovina border crossings.

In the beginning of 2001 the State Border Service controlled 60% of the state border, and by the end of the same year, 75% of the borders were under their control. By September 2002 the SBS had responsibility for total control of the borders. In that period of time, the SBS controlled three out of four airports in Bosnia and Herzegovina. The fourth one in Tuzla was taken over from SFOR at the end of 2002. The fact that the SBS is controlling the movement through the borders has reduced the number of illegal crossings.

On December 28, 2001, the first Field Office of the SBS in Bjeljina was opened. The field office has a Mobile Support and Control Unit (MSCU) consisting of 36 personnel. The Field Office has full responsibility for the SBS Units in its area and manages the activities of operational/organizational office that is in charge of local operation, investigation, legal/asylum, personnel, budget/finance, administration and communication. An SBS Unit can include several municipalities within its area of responsibility.

Bosnia and Herzegovina's border service represents the region's first state-level, multi-ethnic law-enforcement Agency.

The Border Service Authorities have been established in order to perform border protection and airport security. Border protection includes the following duties:

- Surveillance of borders. The SBS controls border traffic within a range of 10 km from the international border of Bosnia and Herzegovina, except in those cases in which the SBS responsibility covers only one half of the distance between the international border and the entity boundary line. The SBS duties include inspection of border crossing documents, authorization for border crossings, tracking down persons within the border zone, as well as prevention of non-permitted entries to Bosnia and Herzegovina;
- Airport Security. The Border service ensures the protection of the 12 internationally recognized borders of Bosnia and Herzegovina at the international airports as well as the security of civilian air traffic. Such activities of the SBS are restricted to the premises of the airports;
- Duties in the case of emergencies. If cases of serious danger of public security or natural disaster occurred causing significant difficulties for the SBS to perform its duties, it can request support from the appropriate police authority in the entities. Entity Police involved in such activities are subordinated to the State Border Service;
- Prosecution. The SBS assumes the police duties in the field of investigation and prosecution if there is a reasonable suspicion that the crime or offense is aimed against the border security or the execution of the SBS duties. The SBS has been assigned the duty of supervising goods taken across the border without official permission or in violation of an applicable prohibition. If investigation and prosecution activities must be conducted beyond the border zone, the State Border Service will undertake such measures in consultation and co-operation with the responsible authorities.

In an interview with officials of the State Border Service of Bosnia and Herzegovina it was stated that 2.111 employed members since establishment of this organisation performed their jobs very professionally and made great development in securing Bosnia and Herzegovina borders, preventing illegal migrations and trafficking, as well as

discovering certain organised criminal activities.⁴⁸ Director of State Border Service Mr. Vinko Dumancic emphasised that in the past six years of SBS existence, significant results have been made regarding surveillance and security of 1.551 km of Bosnia and Herzegovina borders. The greatest success was reached in the term of establishment of the control for illegal migrations. One example for this improvement is that the Republic of Croatia in accordance with the Re-admission Agreement in 2002. returned 1.117 migrants, however, in this year the number drastically decreased to only 12 migrant persons. During the 6 years of SBS work its employees managed to undercover and imprison 1. 462 persons from different warrant lists and 4 persons indicated for war crimes. Also, the efficiency of the border service work could be measured by the fact that 450.189 foreigners with no valid travel documentation were prohibited to enter the country since the establishment of SBS.⁴⁹

5.5.2 Institutional framework

According to Schengen, border security is a matter of law enforcement, not national defense. It is to be delivered by a professional, specialist, multipurpose border police with a dedicated and unified command chain, rather than by military troops or conscripts.⁵⁰ Bosnia and Herzegovina is usually used to show the role of border management as an aspect of state formation.

The SBS has a total of 2. 111 employees. The SBS Directorate has three directors of different ethnic groups. The Director position rotates on an eight-month cycle, while other two Directors act as Deputies. The actual Director and the Deputies formerly reported directly to the Council of Ministers. However, by the establishment of the Ministry of Security, the SBS Directors now report to the Minister of Security. The Directorate is also entitled to monitor the work of the Internal Control Unit (“ICU”) that deals with disciplinary issues within the SBS. The SBS headquarters is based in Sarajevo and has 105 employees. The Chief of the Service has the authority over his Chief of Staff, Chief of Administration and Chief of Operations. The Chief of Operations manages the

⁴⁸Interview with Mr. Predrag Crnogorac, Inspector for control of border crossing, SBS BiH

⁴⁹An interview with Mr. Vinko Dumancic, Director of SBS of BiH, Dnevni Avaz, 07.06.2006, p.4

⁵⁰The Adelphi Papers, Assumptions, principles and strategy, Routledge, part of the Taylor & Francis Group

activities of five sub-units in charge of operations, crime prevention, IT/communications, migration and asylum, and airport security. The Chief of Administration is in charge of four sub-units that deal with legal issues, personnel, finance and logistics. The SBS has five field offices throughout the country, each with an associated mobile support and control unit (“MSCU”) or observation and surveillance unit (“OBSU”).

The State Border Service (“SBS”) is still not fully staffed and its deployment is not complete and operational capacities remain constrained by financial and technical weaknesses. SBS, with the European Union Police Mission (“EUPM”) in Bosnia and Herzegovina supports, co-operates with police services, customs authorities and prosecution services. The introduction of intelligence- and investigation-led policing (concentrating on traffickers rather than trafficking victims) has produced improved results in addressing human trafficking and other cross-border crimes. Implementation of the national anti-trafficking plan and the protection of trafficking victims has advanced.

5.5.3 Priorities

In regard of great development in the field of border management, which has been clearly stated above, the work and organisation of SBS still does not fulfill all the required EU norms for any movement toward the abolishment of a visa regime in which this service of the state border control plays an important role. The main priorities for further development of this system are:

- Implement changes to the existing law of the State Border Control or create new law which would be the basis for taking all necessary measures and actions in border management according to EU rules;
- Amend the Border Protection Law to include all international standards;
- Collect data regarding individuals or groups who are shown to be participating in organized criminal acts of trafficking of persons;
- Establish unified functional system for secured transportation of verbal and written information and/or data;
- Conclude the process of instalment of opto-electronic machines for travel documents on all international border crossings;

- Establish an information system and data base for controlling all important data regarding the entry and length of stay of foreigners in Bosnia and Herzegovina;
- Take all necessary measures to realize the possibility of possession and installment of the equipment for Visas;
- Bosnia and Herzegovina should further increase the number of properly educated staff and rise the level of professionalism in the work of SBS' staff.⁵¹

These are the main priorities, in the field of border management, that are required from the EU in order to move faster towards the possible abolishment of the visa regime for the citizens of Bosnia and Herzegovina.

It should be emphasised that financial need for the establishment of technical requirements for equipment at border crossings according to EU standards is enormous. The indicated cause for not fulfilling norms in terms of border equipment is the matter of very limited financial resources. The state budget is not always in favour and does not give priority towards these problems. Therefore, EU financial support is more than necessary. Apart from development in institutional building and human resources of the SBS in order to effect efficiency of border control, there are also some crushing issues indicated in regard to Bosnia and Herzegovina's current border position and status. In an interview with an official of the SBS, it was stated that one of the internationally recognised border crossing of Bosnia and Herzegovina does not have electricity, water or power at its check point. This situation is absurd and a huge lack of process to harmonisation with EU laws and further integrations.⁵²

5.6 Document Security

In the aftermath of the tragic events of September 11, 2001 the Commission was requested by Member States to take immediate action in order to improve document security. Clearly, it was important to be able to detect persons who attempt to use forged official documents in order to gain entry to European Union territory. Prevention of the use of bogus or false identities could best be achieved by enabling more reliable checking

⁵¹Priorities taken from the interviews and talks with the Director and staff of the State Border Service BiH

⁵² Interview with Mr. Predrag Crnogorac, Inspector for control of border crossing, SBS BiH

of whether the person who presented a document was identical to the person to whom the document had been issued.

One of the weaknesses of the system then in use was that neither the visa nor the residence permit, in sticker form, included any sort of photograph or other reliable means of identification. Consequently, it was decided that at the very minimum, it was imperative to provide for the incorporation into both documents a photograph, meeting high standards of security.⁵³

EU Member States have emphasised that they would like to see further enhancement of security standards of the uniform format for visas and travel documents in general. They have made it clear that they are in favour of including biometric identifiers in the visa and residence permits for third country nationals in order to establish a more reliable link between holder, passport and visa.

In an interview with the assistant Minister for Civil Affairs of Bosnia and Herzegovina, Mr. Pandurevic, stated that this ministry is preparing conditions for inauguration of biometrical passports in Bosnia and Herzegovina. Mr. Pandurevic emphasised that Bosnia and Herzegovina already has a very good passport quality system that assures certain security standards.⁵⁴

Through the Citizens Identification Protection System (“CIPS”) project, new identity documents have been introduced in Bosnia and Herzegovina. Within the framework of the CIPS project Bosnia and Herzegovina is producing secure documents with a view to responding to international (“ICAO”) and EU standards. Siemens Business Services has been commissioned by the Ministry of the Interior of Bosnia and Herzegovina to implement the IT infrastructure for the personalisation and issuance of the cards. This service was responsible for setting up, operating and maintaining the system as well as for training the users and helping government staff with any related questions. Together with the ID cards, 1.5 million new driving licenses in credit-card format are also being

⁵³ Rens van Munster, The EU and the Management of Immigration Risk in the Area of Freedom, Security and Justice Political Science Publications No. 12/2005

⁵⁴ Interview with Miodrag Pandurevic, Assistant to the Minister, Ministry for Civil Affairs

issued, though which do not contain any biometric information. The overall project (ID cards and driving licenses) is worth in the region of 20 million euros.⁵⁵

CIPS has also established a uniform system of registering personal identification numbers and residence data. The production of identity documents as well as the personalisation takes place at the National Centre in Banja Luka. Banja Luka is the only location in the country carrying out these functions, thereby making it completely centralised. The fact that identity documents are centrally produced as well as personalised, represents high security standards.

The visa stickers are produced according to ICAO standards for machine readable documents. In accordance with the Law on Stay and Movement of the Aliens and Asylum in Bosnia and Herzegovina Official Gazette 29/03, the Ministry of Foreign Affairs is responsible for issuance of Bosnia and Herzegovina visas in diplomatic missions and consular posts as well as the State Border Service who may issue visas to aliens at border crossing points in special circumstances. IT infrastructure providing communication between relevant authorities was introduced in November 2004. The Ministry of Foreign Affairs, Ministry of Security and State Border Service can communicate through this system.⁵⁶

Mr. Borisa Arnaut, Assistant to the Minister for Consular issues at the Ministry of Foreign Affairs stated that relations between these institutions in Bosnia and Herzegovina are very good thanks to the new communicational system and CIPS. At the time of the interview with Mr. Arnaut a commission for visa type harmonisation was created and the work of this working group will be visible soon when Bosnia and Herzegovina will introduce 4 types of BiH visas which will be harmonised with the EU standards.⁵⁷

Documents that do not yet comply with international standards, such as temporary travel documents, diplomatic and service passports should be up-graded as well.

⁵⁵ European Biometric Portal, Biometrics in Europe - Trend Report 2006 – <http://www.europeanbiometrics.info/>

⁵⁶ Rebekah Thomas - European Journal of Migration and Law, 2005 - ingentaconnect.com

⁵⁷ European Journal of Migration and Law, Volume 7, Number 4, 2006, pp. 377-411(35)

5.6.1 Priorities

- Prepare and fasten the process for introduction and utilisation of biometrical type of passports in BiH.

6. COMPARATIVE ANALYSIS–ROMANIA VS. BOSNIA AND HERZEGOVINA

The prospect of EU accession has been a driving force in much of the recent reform efforts in almost every country of the region.

The EU opened accession negotiations with Romania in early 2000, and were successfully concluded on December 14, 2004. The Accession Treaty was signed on April 25, 2005, and the ratification process by all 25 EU Member States is underway. The treaty envisages accession on January 1, 2007. Consistent with other EU candidate countries, the European Union and its accession process have exerted a tremendous influence on the direction, pace and progress of legal and judicial reform in Romania. However, the Justice and Home Affairs chapter (“JHA”) was the last issue to be agreed upon after two years and seven months of difficult negotiations. Until 2007, when the entry date was set, Romania is under 11 specific commitments regarding the reforms that must be accomplished, seven of which relate to the JHA chapter.

If we could compare this situation with the case of Bosnia and Herzegovina we would probably say that regarding Romanian transfer to Annex II of the EU/Schengen visa regime agreement EU made it on a clear political condition. If Justice and Home Affairs chapter was the last issue to be agreed in the process of accession in Romania and on the other side harmonizing and reforming issues from this chapter is somehow pre-condition for Bosnia and Herzegovina to abolish visa regime we could say that some political manipulation is present.

It is not negotiable the fact that overall political, security, economic and social climate in the European Union changed from the time when Romania was in this process. Firstly, security situation changed and conditions for the visa abolishment are much different today. Also, Romania was EU candidate country at the time of transfer from Annex I to Annex II and Bosnia and Herzegovina still does not have this status. Bosnia and Herzegovina did an enormous progress in the sector of JHA and also a great progress regarding harmonization process, but as we could see from the above text many things

are missing in this development and taking in account all the advantages and disadvantages this process is happening very slow.

Romania is the second largest country in Central and Eastern Europe, after Poland, in terms of population (22.5 million), with an area of sq/km 238,390. After a decade of relatively poor reform performance, Romania has, over the past four years, significantly improved its economic performance. The economy has begun to stabilize, growth has increased to approximately 4.5 to 5 percent, and poverty has recently declined. Growth has been driven primarily by increased investments and exports.

Similar to economic reforms, institutional reforms started slowly during the early transition period and have accelerated since 2000. When the Romanian Government embarked on an ambitious economic development programme aimed at enhanced economic growth, reduction of poverty and successful integration into the European Union, it realized that sustained progress in growth and investment required institutional reforms to complement economic reforms. A weak judicial system, poor accountability, and widespread perception of corruption in particular were seen as negatively impacting the business environment and therefore private sector investment and growth. Improvements in public administration generally, and in the justice sector in particular, became a main focus of the Romanian Government's reform plan.

Comparation between two countires set some measures which Bosnia and Herzegovina has to undertake to follow Romania and achieve the transferred to the EU visa "White List", include:

- Introducing sophisticated, high-tech passports that are very difficult to forge (biometrical passports today are the most sophisticated ones);
- Enacting criminal sanctions and fines for irregular border crossing and forged documents and legislation making it a criminal offence to violate the immigration law of any EU member state;
- Aligning visa issuance policy with that of the EU;
- Deploying more staff and equipment at the borders;

- Concluding agreements for the repatriation of illegal residents in the EU.

There is one more issue that Bosnia and Herzegovina should follow in Romania's way of progress and that is establishment of the links with Europol. Besides the fact that Interpol of Bosnia and Herzegovina is functioning very well, e.g. -Bosnia and Herzegovina was the first country in the region to establish a police system for conducting organised crime in the frame of Interpol network. As the Bosnia and Herzegovina Interpol is satisfying EU standards, there is a need for movement toward Europol.

Europol is a structure similar to Interpol, however, does not work on a global scale, but only across Europe. Bosnia and Herzegovina should start fulfilling Europol membership requirements in order to better enforce European Union laws that handles criminal intelligence. The mission of Europol is to make a significant contribution to the European Union's law enforcement action against organized crime, with an emphasis on targeting criminal organizations. Therefore, Romania learned the importance of Europol membership and Bosnia and Herzegovina should follow the same way.

7. CONCLUSION

European Union enlargement will result in new challenges for the present and future members. Additionally, the events of September 11, 2001 have clearly demonstrated that maintaining a safe and stable Europe in the years to come calls for developing an integrated and comprehensive strategy on Justice and Home Affairs issues.

An integrated approach will require an improved inter-pillar coherence, since it became clear that the frontier between external security and internal security has vanished. This should also be reflected in the future structure of the Union, by incorporating the current third pillar into the first and second.

Freedom is also a basic principle governing all JHA activities. The sensitive balance between the need for security and the democratic rights of European citizens can be ensured by recognizing the basic principles incorporated in the Charter of Fundamental Rights. For example, the fight against illegal immigration must hamper neither the freedom of movement of persons within an enlarged EU, especially between the present and the future Member States, nor the individual security of the European citizens.

The goal of Bosnia and Herzegovina is full integration into the EU through the Stabilisation and Association Process (“SAp”). The main instrument of this is a Stabilisation and Association Agreement (“SAA”) under which applicants can introduce, adopt, and implement the Schengen Acquis and other transitional regulations.

The SAA uses border management to facilitate trade and regional co-operation necessary for the EU’s integration project. However, with the current overall political and economic situation Bosnia and Herzegovina has little hope of becoming an applicant country in the near future. Many facts are indicating this situation. Bosnia and Herzegovina may have the most sophisticated system of border management in South-East Europe, but it is dependent on international support and its thriving informal economy is accompanied by significant problems of social exclusion. Six new state-level institutions with counterterrorism responsibilities have been developed since 2000 in BiH what is an enormous progress. Some of these are operational, while others remained promising, with more authority on paper than actual capacity. The six are:

- The State Border Service (SBS);
- The State Investigative and Protection Agency (SIPA);
- The Ministry of Security (MoS);
- The BiH State Court and State Prosecutor's Office;
- The Foreign Affairs Service (FAS); and
- The Bosnian State Intelligence and Security Agency (OSA).

In spite of all progress that Bosnia and Herzegovina made problems do exist, some of which are common to the region and some that are unique to Bosnia and Herzegovina. Common issues include:

- Relations with locals - Effective policing is prejudiced by high unemployment in Bosnia and Herzegovina's rural areas, which encourages smuggling and reduces co-operation.
- Relations with police - Initiatives appear to be made by the SBS, rather than the police. Indeed, border guards are often barely accepted by the public police and entity-customs officers, who resent their high profile and resources. This has much to do with the fact that a guard's salary is several times higher than that of their counterparts within the police.
- Resistance to transparency - Residual suspicion remains.
- Poor management – At state level the Office for Auditing of Financial Operations of Bosnia and Herzegovina, investigated the SBS and concluded that it must improve its financial management.⁵⁸
- Migration - Several Re-admission Agreements have been signed, but serious problems remain.

Vested interests are always problematic, and new security agencies such as the SBS are vulnerable to sabotage, manipulation, or corruption by the agents or structures whose

⁵⁸ Alice Hills, Border Security in the Balkans: Europe's gatekeepers, Volume 44, Number 371 / 20 December 2004

interests are threatened. Not surprisingly, Bosnia and Herzegovina's development is shaped by conflicting political goals that are often supported by corruption.

Issues that are unique to Bosnia and Herzegovina are of great importance and those are priorities for the Bosnia and Herzegovina government to implement and resolve in order to move closer to the Annex II of the Visa Schengen Agreement.

In the asylum sector, the most important issues that should be improved are:

- Law on Movement and Stay of Aliens and Asylum should be amended by identified laws and fully implemented. Current lack of those laws presents a serious obstacle;
- Creation of a centre for reception and accommodation of asylum-seekers in order to take over the asylum procedure currently conducted by the UNHCR;
- Further improve human and technical capacities within the Sector for Asylum to independently resolve asylum matters in Bosnia and Herzegovina.

In relation to the migration question in Bosnia and Herzegovina other than improving the Law on Movement and Stay of Aliens and Asylum, the issues which should be taken care of as soon as possible are:

- Development of the emigrational system on a national level according to the standards of the EU that will enable integrations to the European Union;
- More efficient and active involvement in the development and implementation of the system for migration on a regional level;
- The immigrational system of Bosnia and Herzegovina to be included into the immigrational system of the EU;
- Upgrading and developing the necessary technical equipment and training of competent authorities (consular staff, border guards and migration authorities).
- Increase the number of properly educated staff and the professionalism of the staff of the Foreigner's Office of the Ministry of Security, and its sub-offices.

Main priorities in the sector of visa politics in Bosnia and Herzegovina are:

- Bosnia and Herzegovina should gradually align its visa policy to that of the EU, taking into account its national interest;

- Four types of Bosnia and Herzegovina visas harmonised with EU standards should be introduced;
- Staff education should be a permanent task for the government with a special focus on EU and international practices in the visa issuance area.

In the field of re-admission Bosnia and Herzegovina has reached great development, however, there are still things which needs to be done such as:

- Sign up and ratify Re-admission Agreements with all EU countries and with other countries outside the EU;
- Regional co-operation should be strengthened regarding effective implementation of Re-admission Agreements between the countries in the region.

Apart from the fact that the State Border Service has been established and a big move forward has been made security of the border in Bosnia and Herzegovina should still be improved, by:

- Implement changes to the existing Law of the State Border Control or create new law text which would be the base for taking all necessary measures and actions in border management according to EU rules;
- Amend the Border Protection Law to include all international standards;
- Establish unified functional system for secured transport of verbal and written info/data;
- Conclude the process of instalment electronic machines for travel documents and installing them on all international border crossings.

Priorities that should be taken care of in all government should in all sectors regarding softening of the visa regime for Bosnia and Herzegovina citizens are primarily fulfilling one another. There are a few important issues which hold the same priority for all sectors and their completion would have the same strength for migration or asylum or border security control. Only fulfillment of all of the above stated priorities would make the whole progress which would be very difficult to avoid as regards moving Bosnia and Herzegovina closer to Annex II of the EU/Visa Schengen Regime. The research showed that transfer from the Annex I to Annex II of the EU/Schengen Visa Regime within the

next two years would be very difficult to achieve. There is still political unwillingness within the EU and the International Community as a whole to accept Bosnia and Herzegovina and its citizens to enter the Schengen zone without possession of visa. However, it is clearly evident that even with all the progress made to date, the work of the Bosnia and Herzegovina government, still requires great improvement to achieve abolishment of a visa in Schengen states for the citizens of Bosnia and Herzegovina.

The government must create the atmosphere for establishment of the positive image of this beautiful country and that should be presents every day to the states in the region, Europe and the rest of the world throughout the diplomatic representatives and young people from Bosnia and Herzegovina studying abroad. This must be a duty not only of the government, but the responsibility of every single man in Bosnia and Herzegovina.

8. ANNEXES

12. Annexes:

ANNEX 1: Council Regulation (EC) No 539/2001

32001R0539

Council Regulation (EC) No 539/2001 of 15 March 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

Official Journal L 081 , 21/03/2001 P. 0001 - 0007

Council Regulation (EC) No 539/2001
of 15 March 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62, point (2)(b)(i) thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Whereas:

(1) Under Article 62, point (2)(b) of the Treaty, the Council is to adopt rules relating to visas for intended stays of no more than three months, and in that context it is required to determine the list of those third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. Article 61 cites those lists among the flanking measures which are directly linked to the free movement of persons in an area of freedom, security and justice.

(2) This Regulation follows on from the Schengen acquis in accordance with the Protocol integrating it into the framework of the European Union, hereinafter referred to as the "Schengen Protocol". It does not affect Member States' obligations deriving from the acquis as defined in Annex A to Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis(3).

(3) This Regulation constitutes the further development of those provisions in respect of which closer cooperation has been authorised under the Schengen Protocol and falls within the area referred to in Article 1, point B, of Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis(4).

(4) Pursuant to Article 1 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European

Community, Ireland and the United Kingdom are not participating in the adoption of this Regulation. Consequently and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Regulation apply neither to Ireland nor to the United Kingdom.

(5) The determination of those third countries whose nationals are subject to the visa requirement, and those exempt from it, is governed by a considered, case-by-case assessment of a variety of criteria relating *inter alia* to illegal immigration, public policy and security, and to the European Union's external relations with third countries, consideration also being given to the implications of regional coherence and reciprocity. Provision should be made for a Community mechanism enabling this principle of reciprocity to be implemented if one of the third countries included in Annex II to this Regulation decides to make the nationals of one or more Member States subject to the visa obligation.

(6) As the Agreement on the European Economic Area exempts nationals of Iceland, Liechtenstein and Norway from the visa requirement, these countries are not included in the list in Annex II hereto.

(7) As regards stateless persons and recognised refugees, without prejudice to obligations under international agreements signed by the Member States and in particular the European Agreement on the Abolition of Visas for Refugees, signed at Strasbourg on 20 April 1959, the decision as to the visa requirement or exemption should be based on the third country in which these persons reside and which issued their travel documents. However, given the differences in the national legislation applicable to stateless persons and to recognised refugees, Member States may decide whether these categories of persons shall be subject to the visa requirement, where the third country in which these persons reside and which issued their travel documents is a third country whose nationals are exempt from the visa requirement.

(8) In specific cases where special visa rules are warranted, Member States may exempt certain categories of persons from the visa requirement or impose it on them in accordance with public international law or custom.

(9) With a view to ensuring that the system is administered openly and that the persons concerned are informed, Member States should communicate to the other Member States and to the Commission the measures which they take pursuant to this Regulation. For the same reasons, that information should also be published in the Official Journal of the European Communities.

(10) The conditions governing entry into the territory of the Member States or the issue of visas do not affect the rules currently governing recognition of the validity of travel documents.

(11) In accordance with the principle of proportionality stated in Article 5 of the Treaty, enacting a Regulation 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, is both a necessary and an appropriate means of ensuring that the common visa rules operate efficiently.

(12) This Regulation provides for full harmonisation as regards the third countries whose nationals are subject to the visa requirement for the crossing of Member States' external borders, and those whose nationals are exempt from that requirement. However, the application of the exemption from the visa requirement for nationals of certain third countries, which are listed in Annex II, will come into force only later. To that end, the Council will take a decision for each of those countries on the basis of reports drawn up by the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

1. Nationals of third countries on the list in Annex I shall be required to be in possession of a visa when crossing the external borders of the Member States.

2. Without prejudice to Article 8(2), nationals of third countries on the list in Annex II shall be exempt from the requirement set out in paragraph 1, for stays of no more than three months in all.

3. Nationals of new third countries formerly part of countries on the lists in Annexes I and II shall be subject respectively to the provisions of paragraphs 1 and 2 unless and until the Council decides otherwise under the procedure laid down in the relevant provision of the Treaty.

4. The establishment by a third country on the list in Annex II of the visa requirement for nationals of a Member State shall give rise to the application of the following provisions, without prejudice to the provisions of any agreement which the Community may have concluded with that third country granting exemption from the visa requirement:

(a) the Member State may notify the Commission and the Council in writing of the fact that the third country has established the visa requirement;

(b) in the case of such notification, Member States' obligation to subject the nationals of the third country concerned to the visa requirement shall be established provisionally 30 days after notification unless the Council, acting by qualified majority beforehand, decides otherwise;

(c) provisional introduction of the visa requirement shall be published by the Council in the Official Journal of the European Communities before it takes effect;

(d) the Commission shall examine any request made by the Council or by a Member State that it submit a proposal to the Council amending the Annexes to this Regulation to include the third country concerned in Annex I and remove it from Annex II;

(e) if, prior to the adoption by the Council of such an amendment to the Annexes to this Regulation, the third country repeals its decision to establish the visa requirement, the Member State concerned shall immediately notify the Commission and the Council in writing accordingly;

(f) such notification shall be published by the Council in the Official Journal of the European Communities. The provisional introduction of the visa requirement for nationals of the third country concerned shall be repealed 7 days after the date of publication.

Article 2

For the purposes of this Regulation, "visa" shall mean an authorisation issued by a Member State or a decision taken by such State which is required with a view to:

- entry for an intended stay in that Member State or in several Member States of no more than three months in total,

- entry for transit through the territory of that Member State or several Member States, except for transit at an airport.

Article 3

Without prejudice to obligations under the European Agreement on the Abolition of Visas for Refugees, signed at Strasbourg on 20 April 1959, recognised refugees and stateless persons:

- shall be subject to the visa requirement if the third country where they reside and which issued their travel document is one of the third countries listed in Annex I;

- may be exempted from the visa requirement if the third country where they reside and which issued their travel document is one of the third countries listed in Annex II.

Article 4

1. A Member State may provide for exceptions from the visa requirement provided for by Article 1(1) or from the exemption from the visa requirement provided for by Article 1(2) as regards:

(a) holders of diplomatic passports, official-duty passports and other official passports;

- (b) civilian air and sea crew;
- (c) the flight crew and attendants on emergency or rescue flights and other helpers in the event of disaster or accident;
- (d) the civilian crew of ships navigating in international waters;
- (e) the holders of laissez-passer issued by some intergovernmental international organisations to their officials.

2. A Member State may exempt from the visa requirement a school pupil having the nationality of a third country listed in Annex I who resides in a third country listed in Annex II and is travelling in the context of a school excursion as a member of a group of school pupils accompanied by a teacher from the school in question.

3. A Member State may provide for exceptions from the exemption from the visa requirement provided for in Article 1(2) as regards persons carrying out a paid activity during their stay.

Article 5

1. Within 10 working days of the entry into force of this Regulation, Member States shall communicate to the other Member States and the Commission the measures they have taken pursuant to Article 3, second indent and Article 4. Any further changes to those measures shall be similarly communicated within five working days.

2. The Commission shall publish the measures communicated pursuant to paragraph 1 in the Official Journal of the European Communities for information.

Article 6

This Regulation shall not affect the competence of Member States with regard to the recognition of States and territorial units and passports, travel and identity documents issued by their authorities.

Article 7

1. Council Regulation (EC) No 574/1999(5) shall be replaced by this Regulation.

2. The final versions of the Common Consular Instruction (CCI) and of the Common Manual (CM), as they result from the Decision of the Schengen Executive Committee of 28 April 1999 (SCH/Com-ex(99) 13) shall be amended as follows:

1. the heading of Annex 1, part I of the CCI and of Annex 5, part I of the CM, shall be replaced by the following:

"Common list of third countries the nationals of which are subject to the visa requirement imposed by Regulation (EC) No 539/2001";

2. the list in Annex 1, part I of the CCI and in Annex 5, part I of the CM shall be replaced by the list in Annex I to this Regulation;

3. the heading of Annex 1, part II of the CCI and of Annex 5, part II of the CM shall be replaced by the following:

"Common list of third countries the nationals of which are exempted from the visa requirement by Regulation (EC) No 539/2001";

4. the list in Annex 1, part II of the CCI and in Annex 5, part II of the CM shall be replaced by the list in Annex II to this Regulation;

5. part III of Annex 1 to the CCI and part III of Annex 5 of the CM shall be deleted.

3. The decisions of the Schengen Executive Committee of 15 December 1997 (SCH/Com-ex(97)32) and of 16 December 1998 (SCH/Com-ex(98)53, rev.2) shall be repealed.

Article 8

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

2. However, for nationals of the country in Annex II marked with an asterisk, the date of entry into force of Article 1(2) shall be decided on subsequently by the Council, acting in accordance with Article 67(3) of the Treaty, on the basis of the report referred to in the following subparagraph.

To this end, the Commission shall request the country concerned to indicate which undertakings it is prepared to enter into on illegal immigration and illegal residence, including the repatriation of persons from that country who are illegally resident, and report thereon to the Council. The Commission shall submit to the Council a first report, accompanied by any useful recommendations, no later than 30 June 2001.

Pending adoption by the Council of the act embodying the abovementioned decision, the requirement laid down in Article 1(1) shall be applicable to nationals of that country. Articles 2 to 6 of this Regulation shall apply in full.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 15 March 2001.

For the Council

The President

M-I. Klingvall

- (1) OJ C 177 E, 27.6.2000, p. 66.
- (2) Opinion of 5 July 2000 (not yet published in the Official Journal).
- (3) OJ L 176, 10.7.1999, p. 1.
- (4) OJ L 176, 10.7.1999, p. 31.
- (5) OJ L 72, 18.3.1999, p. 2.

ANNEX I

Common list referred to in Article 1(1)

1. STATES

Afghanistan

Albania

Algeria

Angola

Antigua and Barbuda

Armenia

Azerbaijan

Bahamas

Bahrain

Bangladesh

Barbados

Belarus

Belize

Benin

Bhutan

Bosnia and Herzegovina

Botswana

Burkina Faso

Burma/Myanmar
Burundi
Cambodia
Cameroon
Cape Verde
Central African Republic
Chad
China
Colombia
Congo
Côte d'Ivoire
Cuba
Democratic Republic of the Congo
Djibouti
Dominica
Dominican Republic
Egypt
Equatorial Guinea
Eritrea
Ethiopia
Federal Republic of Yugoslavia (Serbia-Montenegro)
Fiji
Former Yugoslav Republic of Macedonia
Gabon
Gambia
Georgia
Ghana
Grenada
Guinea
Guinea-Bissau
Guyana
Haiti
India
Indonesia
Iran
Iraq
Jamaica
Jordan
Kazakhstan
Kenya
Kiribati
Kuwait

Kyrgyzstan
Laos
Lebanon
Lesotho
Liberia
Libya
Madagascar
Malawi
Maldives
Mali
Marshall Islands
Mauritania
Mauritius
Micronesia
Moldova
Mongolia
Morocco
Mozambique
Namibia
Nauru
Nepal
Niger
Nigeria
North Korea
Northern Marianas
Oman
Pakistan
Palau
Papua New Guinea
Peru
Philippines
Qatar
Russia
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
São Tomé and Príncipe
Saudi Arabia
Senegal
Seychelles
Sierra Leone

Solomon Islands
Somalia
South Africa
Sri Lanka
Sudan
Surinam
Swaziland
Syria
Tajikistan
Tanzania
Thailand
The Comoros
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
Tuvalu
Uganda
Ukraine
United Arab Emirates
Uzbekistan
Vanuatu
Vietnam
Western Samoa
Yemen
Zambia
Zimbabwe

2. ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE

East Timor
Palestinian Authority
Taiwan

ANNEX II

Common list referred to in Article 1(2)

1. STATES

Andorra
Argentina
Australia
Bolivia
Brazil

Brunei
Bulgaria
Canada
Chile
Costa Rica
Croatia
Cyprus
Czech Republic
Ecuador
Estonia
Guatemala
Holy See
Honduras
Hungary
Israel
Japan
Latvia
Lithuania
Malaysia
Malta
Mexico
Monaco
New Zealand
Nicaragua
Panama
Paraguay
Poland
Romania(1)
Salvador
San Marino
Singapore
Slovakia
Slovenia
South Korea
Switzerland
United States of America
Uruguay
Venezuela

2. SPECIAL ADMINISTRATIVE REGIONS OF THE PEOPLE'S REPUBLIC OF CHINA

Hong Kong SAR(2)
Macao SAR(3)

(1) See Article 8(2).

(2) The visa requirement exemption applies only to holders of a "Hong Kong Special Administrative Region" passport.

(3) The visa requirement exemption applies only to holders of a "Região Administrativa Especial de Macau" passport.

ANNEX 2:

Agreement with the Republic of Albania on the readmission of persons residing without authorisation

An EU Member State can ask Albania to readmit any of its nationals or any third-country nationals having transited through its territory who do not meet the conditions for entry and residence which apply in the Member State making the request. The agreement is reciprocal and establishes a joint readmission committee responsible for monitoring its correct application

ACT

Council Decision [2005/371/EC](#) of 3 March 2005 on the signing of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation

Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation

SUMMARY

The agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation is attached to Council Decision [2005/371/EC](#) approving it.

The purpose of the agreement is to establish rapid and effective reciprocal procedures for the identification and return of persons residing without authorisation on the territories of Albania or of one of the Member States and to facilitate the transit of such persons.

Readmission obligations on Albania

At the request of a Member State, Albania must readmit:

- all persons who do not, or who no longer, fulfil the conditions in force for entry into, presence in, or residence on the territory of the requesting Member State where it is proved that they are nationals of Albania;
- all third-country nationals or stateless persons who do not, or who no longer, fulfil the conditions in force for entry into, presence in, or residence on the territory of the requesting Member State.

In the second case, it must be proved that the person concerned:

- holds or at the time of entry held a valid visa or residence authorisation issued by Albania; or
- entered the territory of the Member States after having stayed on, or transited through, the territory of Albania.

There is no obligation to readmit:

- a third-country national or stateless person who has only been in airside transit via an international airport of Albania;
- where the requesting Member State has issued to the third-country national or stateless person a visa or residence authorisation before or after that person entered its territory.

Albania must rapidly issue the person whose readmission has been accepted with the travel document required for his or her return with a period of validity of at least six months.

Readmission obligations on the Community

At Albania's request, a Member State must readmit all persons who do not, or who no longer, fulfil the conditions in force for entry into, presence in, or residence on the territory of Albania where it is proved that they are nationals of that Member State. It must also admit all third-country nationals or stateless persons who do not, or who no longer, fulfil the conditions in force for entry into, presence in, or residence on the territory of Albania where it can be proved that the person concerned:

- holds or at the time of entry held a valid visa or residence authorisation issued by the requested Member State; or
- entered the territory of Albania after having stayed on, or transited through, the territory of the requested Member State.

The readmission obligation applies to the Member State that issued a visa or residence authorisation. If two or more Member States issued a visa or residence authorisation, the readmission obligation is for the Member State that issued the document with a longer period of validity or, if one or several of them have already expired, the document that is still valid. If all of the documents have already expired, the readmission obligation is for the Member State that issued the document with the most recent expiry date. If no such documents can be presented, the readmission obligation is for the Member State of last exit.

Readmission procedure

Any transfer requires the submission of a readmission application or written communication to the competent authority of the requested State. The readmission application must indicate the particulars of the person to be readmitted and the means with which proof or *prima facie* evidence of nationality, transit, the fulfilment of the conditions for the readmission of third-country nationals and stateless persons, and unlawful entry and residence will be provided. Where possible, the readmission application must also contain a statement indicating that the person to be transferred may need help or care, or any other protection or security measure which may be necessary in the individual transfer case.

The application for readmission must be submitted to the competent authority of the requested State within a maximum of one year after the requesting State's competent authority has gained knowledge that a third-country national or a stateless person does

not fulfil, or no longer fulfils, the conditions in force for entry, presence or residence. The time limit may be extended where there are legal or factual obstacles to the application's being submitted in time.

A readmission application must be replied to within a maximum of 14 calendar days. Reasons must be given for a refusal.

Before a person is returned, arrangements in writing must be made in advance regarding the point of entry, possible escorts and other information relevant to the transfer. All means of transportation, whether by air, land or sea, are permitted.

Transit operations

The transit of third-country nationals or stateless persons is restricted to cases where such persons cannot be returned to the State of destination directly.

Transit can be refused by Albania or a Member State if:

- the third-country national or the stateless person runs a real risk of being subjected to torture, inhuman or degrading treatment or punishment, or the death penalty, or of persecution because of his or her race, religion, nationality, membership of a particular social group or political conviction in the State of destination or another State of transit;
- if the third-country national or the stateless person is subject to criminal prosecution or penalties in the requested State or in another State of transit;
- on grounds of public health, domestic security, public order or other national interests of the requested State.

The Agreement does not affect the rights and obligations arising from international law and, in particular, from the European Convention of 4 November 1950 for the Protection of Human Rights, the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees, and international instruments on extradition.

A joint readmission committee is set up to monitor compliance with and interpret the Agreement. In addition, Albania and a Member State may draw up implementing Protocols on:

- designation of the competent authorities, border crossing points and exchange of contact points;
- conditions for escorted returns, including the transit of third-country nationals and stateless persons under escort;
- means and documents additional to those listed in Annexes 1 to 4 to the Agreement.

The agreement applies to the territory of the European Community (with the exception of the Kingdom of Denmark) and to the territory of Albania.

It enters into force on the first day of the second month following notification by the Contracting Parties.

REFERENCES

| Act | Entry into force | Deadline for transposition in the Member States | Official Journal |
|--|------------------|---|---------------------------|
| Decision <u>2005/371/EC</u> | - | - | OJ L 124 of 17.05.2005 |

Last updated: 26.09.2005

9. List of Abbreviations

| | |
|-------|--|
| CIPS | Citizens Identification Protection System |
| DMCP | Diplomatic Missions and Consular Posts |
| ECHR | European Court for Human Rights |
| FAS | Foreign Affair Service |
| ICAO | International Civil Aviation Organisation |
| IOM | International Office for Migration |
| IPTF | International Police Task Force |
| JHA | Justice and Home Affairs |
| MFA | Ministry of Foreign Affairs |
| MoS | Ministry of Security |
| MSCU | Mobile Support and Control Unit |
| NGO | Non-government Organisations |
| OBSU | Observation and Surveillance Unit |
| OHCHR | Office of the High Commissioner for Human Rights |
| OHR | Office of the High Representative |
| OSA | Intelligence Security Agency of BiH |
| PIC | Peace Implementation Council |
| SAA | Stabilisation and Association Agreement |
| SAp | Stabilisation and Association program |
| SBS | State Border Service |
| SFOR | Stabilisation Force in Bosnia and Herzegovina |
| SIPA | Security Investigation and Protection Agency |
| UNHCR | United Nations High Commissioner for Refugees |

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- Borisa ARNAUT, Head of Consular Section, Ministry of Foreign Affairs of Bosnia and Herzegovina
- Predrag CRNOGORAC, Inspector for Control of Border Crossing, SBS Bosnia and Herzegovina
- Renco DAVIDI, Deputy Chief, Delegation to European Commission to Bosnia and Herzegovina
- Vinko DUMANCIC, Director, State Border Service of Bosnia and Herzegovina
- Murveta DZAFEROVIC, Assistant to the Minister for Migration, Ministry of Security of Bosnia and Herzegovina
- Mirela LEKO, Vice-director, Interpol Bosnia and Herzegovina
- Miodrag PANDUREVIC, Assistant to the Minister, Ministry for Civil Affairs of Bosnia and Herzegovina
- Hannes SWOBODA, Vice-chairman of the PSE Group in the European Parliament. Head of the delegation of Austrian Social-democratic members in the EP
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