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**COMMISSION STAFF WORKING PAPER**

**Second report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010**

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#### I. Introduction

Since **19 December 2009**, the citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia, holding a biometric passport, have enjoyed visa-free travel to the EU Member States, in accordance with Regulation 539/2001<sup>1</sup>. Under the same conditions the citizens of Albania and Bosnia and Herzegovina have enjoyed the same visa-free travel to the EU Member States since **15 December 2010**.

The decisions to grant visa-free travel to citizens of these Western Balkan countries were based on thorough assessments of the progress made in the areas of document security, border management, asylum, migration, fight against organised crime and corruption, and protection of fundamental rights, as required by the **roadmaps for the visa liberalisation dialogues**. The visa-free regime is the most tangible benefit for the citizens of the countries in the Western Balkans throughout the process of European integration, and a very strong incentive for accelerating reforms in the justice and home affairs areas.

In its statement presented on 8 November 2010 during the Justice and Home Affairs Council, the Commission has explicitly underlined the importance of the continued effective implementation of the measures undertaken by the Western Balkan countries for preserving the visa-free regime. In order to evaluate the sustainability of the reforms, the Commission has established a **post-visa liberalisation monitoring mechanism**, which covers all areas of the visa liberalisation roadmaps and allows the Commission to scrutinise the progress which has been made.

The purposes of this Commission Staff Working Paper are (1) to present the actions undertaken under the post-visa liberalisation monitoring mechanism following the first Commission Staff Working Paper on the post visa liberalisation monitoring adopted in May 2011<sup>2</sup>, (2) to assess the progress made in the relevant Western Balkan countries in the same period, and (3) to identify the next steps and the concrete actions to be taken.

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<sup>1</sup> 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 (OJ, L 81, 21.3.2001, p. 1).

<sup>2</sup> SEC(2011) 695 final.

## II. Actions undertaken under the post-visa liberalisation monitoring mechanism following the first Commission Staff Working Paper issued on 30 May 2011

The first Commission Staff Working Paper (CSWP) on the post-visa liberalisation monitoring mechanism was adopted on 30 May 2011 and presented to the European Parliament and the Council in June 2011. It provided a detailed analysis of the progress achieved by the Western Balkan countries concerned, as well as the structure and the first results of the monitoring mechanism.

In 2011 the Commission organised experts **assessment missions** in all five Western Balkan countries concerned. In addition to the missions to Serbia and the former Yugoslav Republic of Macedonia, as reported in the first CSWP, assessment missions were organised in Albania (23-27 May), Montenegro (6-10 June) and Bosnia and Herzegovina (10-14 October). These missions allowed Commission services, supported by EU Member States' experts, to verify on the spot the progress made and the sustainability of the reforms.

Some of the EU Member States mostly concerned by the influx of asylum seekers also carried out **bilateral visits** in the relevant Western Balkan countries in order to exchange information on this phenomenon and to discuss specific measures to tackle it.

Moreover, within the framework of the **alert mechanism** managed by **FRONTEX** through the Western Balkans Risk Analysis Network (WEBRAN), **five additional alert reports** have been issued since June 2011. They provided an in-depth analysis and anticipated critical situations concerning the inflow of persons from the region. The reports allowed for a better understanding of the phenomenon of the abuse of visa liberalisation, assessing its dynamics and identifying concrete measures to tackle the challenges. On the basis of these reports, the Commission services provided **regular updates** and **analysis** of the migration flows to Member States in the relevant Council working groups, as well as in a number of bilateral meetings with the EU Member States most concerned.

The **Western Balkans Ministerial Forum**, held in Ohrid on 3-4 October 2011, was an important event during this period to raise the issues at stake at political level with the responsible political authorities in the region. In that context, the Commissioner responsible for Home Affairs confirmed the strong commitment to preserve the achievements of the visa liberalisation process. It was clearly recognised that the visa liberalisation has fulfilled its main purposes: to facilitate people-to-people contacts and to enhance business opportunities and cultural exchange. However, the new wave of unfounded asylum applications lodged by citizens of the visa-free Western Balkan countries is a cause of serious concern and might endanger the positive achievements.

At the Ministerial Forum, the Western Balkan countries gave update on the measures already introduced, such as **intensified information campaigns**, as well as **operational measures** like increased controls of travel agencies potentially involved in misinforming the population about asylum benefits, and **strengthened exit controls** at the border crossing points.

Immediately after the Ministerial Forum, the Commission convened on 5 October 2011 a **Senior Officials meeting** in Brussels in order to discuss the results achieved by the existing measures and the **operational plans** for new measures to be put in place in order to tackle the high number of asylum applications. All five Western Balkan countries concerned, together with Belgium, Germany, Luxembourg and Sweden, as well as Hungary, participated in the

meeting, as well as representatives of FRONTEX, EUROPOL and the Secretariat of the Police Cooperation Convention for South East Europe.

This initiative achieved multiple results. Firstly, it provided a forum where stakeholders from both sides participated in technical discussion and exchanged best practices and ideas for future actions. The participating **EU Member States** provided additional information on the specific difficulties they are facing, as well as on measures they plan to take to tackle the pressure on their asylum systems. The smooth application of the readmission agreements with all Western Balkan countries was explicitly acknowledged. FRONTEX and EUROPOL presented their analysis on the phenomenon and identified areas, within their mandates, where efforts should be intensified. Secondly, the **Western Balkan countries** outlined their **Action Plans of short term, medium term and long term measures**, requested by the Commission in order to tackle the new increase in the number of the asylum seekers from their countries. As requested by the Commission, all five Western Balkan countries sent reports on the level of implementation of these Action Plans (see section IV) which are relevant to identifying next steps.

### **III. Assessment on the continued implementation of benchmarks undertaken during the visa liberalisation dialogues by the Western Balkan countries**

The current assessment is based on (1) the **detailed reports** requested by the Commission and provided by the Western Balkans countries by **15 November 2011**, (2) the information exchanged during meetings in the framework of the Stabilisation and Association Agreement Committees and other dialogue meetings, as well as (3) the outcomes of **three assessment missions** carried out in May, June and October 2011 by Commission services, accompanied by Member States' experts to Albania, Montenegro and Bosnia and Herzegovina.

For each country, the assessment follows the block structure of the visa liberalisation roadmaps.

#### **Albania**

In the area of **document security**, the process of producing and distributing biometric passports and identity cards has been running smoothly. By 28 October 2011, 2.1 million biometric passports and 2.9 million biometric ID cards were issued.

Some progress has been made in the area of **border management**. Joint patrols have been organised with neighbouring countries based on signed agreements. The Border and Migration Police (BMP) is well structured and has at its disposal sufficient resources and technical equipment. The BMP's threat assessment capacity needs to be strengthened. The construction of ten new Border Crossing Points (BCPs) was completed and upgrading of infrastructure has continued.

Some progress has been achieved in the area of **migration**. The readmission agreement continues to be implemented smoothly. The Strategy and the Action Plan for returned migrants are under implementation. However, risk analysis and monitoring of migration flows need to be further strengthened. Legislation in the area of **asylum** needs to be fully aligned with the EU *acquis*. The Albanian **visa** regime is not fully in line with EU requirements.

Overall, progress has been achieved in the area of **trafficking in human beings**, but the capacity of the law enforcement agencies and international cooperation need to be considerably reinforced. A multidisciplinary approach to tackle this phenomenon needs to be implemented. Special efforts are necessary in the area of identification and support of victims.

Some progress has been achieved in the investigation and prosecution of **drug trafficking**. International cooperation is good. However, Albania is still the main producer of cannabis in the region. The decreasing volume of drugs seizure needs to be addressed.

While the legislative framework is largely in place, the capacity of the law enforcement agencies to tackle **money laundering** and financial crime is still weak. Cooperation between institutions needs to be strengthened in order to increase the level of reporting of suspicious transactions.

Limited progress has been achieved regarding the **fight against corruption**. The legal and institutional framework is generally in place. An anti-Corruption Action Plan has been adopted in June 2011. Its implementation is at an early stage. Overall, implementation of anti-corruption measures remains insufficient. Reporting on anti-corruption measures and implementation by responsible authorities need to be improved. A solid track record of investigations, prosecutions and convictions at all levels needs to be established.

There has been uneven progress in the field of **external relation and fundamental rights** related to the freedom of movement. Some progress can be noted in the area such as children's rights. The implementation of the Strategy on improving Roma living conditions remains slow due to inadequate resources and poor coordination at central and local level. Authorities at local level lack action plans for implementation and their responsibilities in the field have not been clearly defined. There are no dedicated budgetary allocations for the provision of basic social services. Although registration and awareness raising campaigns have been organised, some Roma are still not officially registered. Overall, Roma still face very difficult living conditions and frequent discrimination, mostly regarding access to education, employment, social and health protection and housing.

## **Bosnia and Herzegovina**

Good progress has been made in the implementation of International Civil Aviation Organisation and EU standards on **document security**. The system of issuing breeder and identity documents is well structured and based on centralised databases. Available equipment is of appropriate standards. The process of issuing biometric passports is running smoothly. Until 21 November 2011, 997 062 biometric passports were issued, representing two thirds of the total number of passports in circulation.

Bosnia and Herzegovina is advancing in the area of **border management**. The legal framework is mainly in line with the EU *acquis*. There are still some discrepancies between the existing legislation and the international agreements. Good progress has been made with the adoption of the updated integrated border management (IBM) Strategy and Action Plan (June 2011) which needs to be backed with specific budgetary resources. Legislation for implementing the Law on Border Control has entered into force. Significant progress has been achieved with the installation and use of the integral system of control of crossings of state border at 50 out of 55 international BCPs. Further efforts are needed to close unauthorised border crossings at the borders with Montenegro and Serbia.

The legal framework in the area of **asylum** is mainly compatible with international standards and the EU *acquis*. The asylum system is sufficient to address the current number of asylum applications. The temporary asylum reception centre meets the current needs. The works for the finalisation of a permanent specialised institution for the reception of asylum seekers continue.

Progress on **migration** continues, while there is a need for additional budgetary and human resources. The implementation of readmission agreement between the EU Member States and Bosnia and Herzegovina continues to be implemented smoothly. The National Returnee Reintegration Strategy remains to be implemented, backed with sufficient financial support.

As regards **trafficking in human beings** the legislative framework is largely in place. The lack of agreed budget affected the strategic operational activities. Still, good results have been achieved in terms of large scale law enforcement operations. Witness protection measures are still underused and there are shortcomings as regards human and financial resources.

Limited progress has been made in the **fight against drugs**. Implementation of the strategy and of the action plan, as well as inter-institutional coordination need to be stepped up. International cooperation has improved.

Bosnia and Herzegovina is still at an early stage in implementing its policy on preventing and fighting **financial crime**. Implementation of the existing strategy and action plan remains weak. Coordination between the competent authorities needs to be streamlined. The law on prevention of money laundering and financing of terrorist activities needs to be aligned with the MONEYVAL recommendations. Adequate structures for management and maintenance of seized assets are still missing.

Limited progress has been made in the area of **fight against corruption**. The appointment of the Director of the Anti-Corruption Agency is an important development but adequate financial and human resources are needed to make the Agency fully operational. In particular, sufficient financial allocation in the state budget remains an issue. The considerable delay in fully setting up the Agency, including the adoption of its rule book, continues to impede the implementation of the Anti-Corruption Action Plan, since the Agency has key tasks related to prevention. Effective investigations, prosecutions and convictions in corruption cases remain rare, while the number of acquittals and suspended sentences is high.

In the area of **external relations and fundamental rights** related to the freedom of movement, little progress has been made as regards the **Roma** minority. Some progress can be reported on the implementation of the Action Plan on housing. Further efforts are necessary to implement the Action Plans on employment, health care and education. There is no established mechanism to monitor the implementation of the action plans and the allocation of funds. Coordination among authorities at State and Entity level needs to be stepped up in view of achieving effective results.

The **Ombudsman** institution is functioning well and is active in a wide number of areas despite some constraints in terms of financial and human resources. However, the capacity to deal with the implementation of the anti-discrimination law remains limited. Very seldom cases were lodged regarding anti-discrimination. Follow-up to the Ombudsman's recommendations needs to be improved.

## **The former Yugoslav Republic of Macedonia**

As regards **document security**, the authorities of the former Yugoslav Republic of Macedonia issued 1 302 837 travel documents as of October 2011. The process of integration of fingerprints into the biometric documents started. The deadline for replacement of old passports is February 2012.

In the area of **border management** the implementation of the IBM Strategy continued. However, the border police are still lacking adequate technical equipment and budgetary resources. Police stations in charge of border surveillance still have no access to the central database of the Ministry of Interior.

In the area of **asylum** the legal amendments on provision of free legal assistance for asylum seekers are still to be adopted. Work should also be intensified as regards access of refugees and persons under subsidiary protection to health services. The process of issuing ID documents to asylum-seekers needs to be improved. Administrative capacity and efficiency of the asylum administration should be strengthened.

As regards **migration**, a national database for foreigners, covering data on asylum, migration and visas was created. However, secondary legislation necessary for its use and maintenance has yet to be adopted before the database can be fully functional. The Readmission Agreement continues to be implemented smoothly.

In the area of **the fight against organised crime** inter-institutional cooperation between law enforcement agencies was strengthened with the establishment of joint teams for conducting investigations. However, structural problems persist and there clearly is understaffing (in the Centre for Suppression of Organised and Serious Crime e.g., only 64% of posts have been filled, which is hampering the centre's effectiveness). The legal framework for prevention of money laundering has been strengthened with the adoption of necessary secondary legislation. An operational agreement with EUROPOL has been signed and is subject to ratification.

As regards **the fight against corruption**, a systematic verification of asset declarations by the State Commission for the Prevention of Corruption started. However, a system of verification of conflict of interest statements has still not been introduced. A track record of investigations and convictions in high-level corruption cases has yet to be established. In October 2011 amendments to the Law on the Financing of Political Parties were adopted to take into account GRECO recommendations. The State Audit Office became a leading body in the system of supervision of the financing of political parties.

In the area of **external relations and fundamental rights** related to the freedom of movement, the process of civil registration of the **Roma** population was intensified. It involves relevant social care institutions, Roma Integration Centres and NGOs. The lack of personal documents so far represents a major obstacle to accessing social, housing and health benefits. There has also been an increase in enrolment of Roma students to high school and university. The Ministry of Labour and Social Policy has started to implement a project aiming at legal assistance to the Roma community. As a result, seven offices are to be established throughout the country providing advice on basic rights and obligations in the areas of employment and health care.

## Montenegro

In the area of **document security**, 301.079 biometric passports have been issued as of 11 November 2011. The process is running smoothly. Since 1 January 2010, only biometric passports are valid.

In the area of **border management** inter-agency cooperation was strengthened, aimed at effective implementation of the Integrated Border Management Strategy. A system for electronic surveillance of the blue border was set up. A risk assessment on green and blue border safety was adopted. Administrative capacity of the border police was improved through training. Further efforts are needed to maintain the capacity of the border police and avoid frequent rotation of trained staff.

As regards **migration**, the 2011-2016 Strategy for reintegration of persons returned under the readmission agreements was adopted in June 2011, together with an action plan for its implementation. Construction of a reception centre for foreigners is in its final phase. The Readmission Agreement continues to be implemented smoothly.

In the field of **asylum**, a national database for checking asylum seekers' personal data, including fingerprints, has been set up. Reception conditions for asylum applicants have improved, but further efforts are needed in this respect. Measures aiming at improving co-operation between all institutions involved in asylum system (Ministry of Interior, Police, Refugee Support Office) have been initiated and relevant training activities conducted.

In the area of **the fight against organised crime**, regional and international police cooperation has improved. An international law enforcement coordination unit (ILECU) has been formally established to improve cooperation and investigations in cases with a foreign dimension. Financial investigations in two cases have led to the temporary seizure of assets. In July 2011, a revised 2010-2012 action plan for the implementation of the Strategy for fighting corruption and organised crime was adopted. The new Criminal Procedure Code became fully applicable in August 2011. However, its efficient implementation is hampered by insufficient co-operation between police and prosecution. Intelligence-led policing is at an initial stage. The use of special investigative measures is rare and hampered by the lack of adequate equipment and specialised human resources. The institutional and administrative capacity of the police has been strengthened, including through training courses to improve its capacity to fight organised crime and corruption. Frequent rotation of trained police officers in expert areas is a challenge in terms of maintaining capacity and professionalism.

In the area of **the fight against corruption**, there have been further efforts to strengthen the legal framework needed for combating corruption. A risk analysis of vulnerable areas was adopted in July 2011. The Judicial Training Centre conducted a number of trainings and seminars in the area of anti-corruption for judges and prosecutors in the context of comprehensive programmes. A monitoring mechanism for anti-corruption measures has been established. A special anti-corruption investigation team has been established but inter-agency co-operation remains to be enhanced. Nine persons were sentenced in first instance to imprisonment for abuse of official positions and bribery in June 2011. Proceedings are ongoing in one high level corruption case. Yet, the number of final convictions, in particular for high-level corruption cases, remains low. The track record of investigations and convictions needs to be further developed. Financial investigations have to be conducted more systematically. Provisions on extended confiscation have not been used so far.

In the area of **fundamental rights** related to the freedom of movement, in July 2011, the Law establishing the **Ombudsman** as the national authority for combating discrimination and preventing torture and ill-treatment was adopted by the Parliament; work has started to draft relevant by-laws needed for its proper functioning. In September 2011 an advisor on human rights and anti-discrimination was appointed in the Prime Minister's office. Courts have started to refer to case law of the European Court of Human Rights. However, protection of human rights by law enforcement authorities presents shortcomings. Effective implementation of the legal framework for anti-discrimination still remains a challenge. In July 2011, a strategy for displaced and internally displaced persons was adopted. Efforts should be strengthened in a view of its effective implementation. The Parliamentary Committee for Human Rights and Freedoms has stepped up its activities and cooperation with civil society. Its influence nonetheless needs to be further strengthened.

## **Serbia**

In the area of **document security**, the process of producing and distributing biometric passports and secure ID cards continued. Between July 2008 and October 2011, Serbian authorities issued nearly 3.6 million biometric passports and more than 3.2 million ID cards. The production, personalisation and distribution of these documents run smoothly. A special coordination directorate is responsible for issuing biometric passports to persons residing in Kosovo\*. Between September 2009 and October 2011, it issued 37 000 biometric passports. Although required by law, verification by the police of applications for residence changes is rarely undertaken. During 2011, 23 police officers have been prosecuted for corruption in issuing biometric travel documents to persons residing in Kosovo. The police should step up its verification of applications for residence changes from Kosovo and investigate potential corruption in the document issuing process.

In the area of **border management**, Serbia has continued to implement its IBM Strategy and Action Plan. Equipment has been upgraded at the busiest border-crossing points<sup>3</sup>. Agreements on border police cooperation with Bulgaria, Romania, Bosnia and Herzegovina and Montenegro have been signed. Cooperation with FRONTEX improved. However, the demarcation of borders with Bosnia and Herzegovina and Croatia remains incomplete and the domestic sharing of data and risk profiles, particularly in the fight against trafficking in human beings, should be improved. The control of the administrative boundary line with Kosovo remains a considerable challenge. Information exchange with EULEX should be strengthened.

In the field of **migration**, Serbia has continued to make progress. The legislative framework and the strategies on combating illegal migration largely meet EU standards. Serbia's early warning system has borne fruit in reducing illegal migration across the border with the former Yugoslav Republic of Macedonia. The Readmission Agreement continues to be implemented smoothly.

In the area of **asylum**, establishing an Asylum Office, setting up a system to process asylum-seekers' biometric data and enhancing conditions for integrating asylum-seekers should be considered. Further steps are needed to align the legislation on legal migration with the EU *acquis*.

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\* Under United Nations Security Council Resolution 1244/1999

<sup>3</sup> Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Hungary and Romania .

Serbia's **visa** policy is largely in line with EU standards, but the list of countries subject to the visa requirement does not fully correspond to Regulation (EC) 539/2001. Serbia has continued work on establishing a visa information system.

In the area of **fight against organised crime and corruption**, the legal and institutional framework is in place. The reforms of the judiciary, the establishment of an Anti-Corruption Agency and the stepped up police and judicial cooperation in criminal matters are positive steps. Cooperation with EUROPOL and EUROJUST improved. However, a proactive, intelligence-led, approach is needed in the fight against corruption and organised crime, including in financial crime, strengthening the track record of investigations and final convictions. Serbia remains a country of origin, transit and destination for trafficking in human beings. The legislative and institutional framework in the fight against drug trafficking is in place. However, further efforts are needed for efficient implementation.

In the area of **external relations and fundamental rights** related to the freedom of movement, Serbia has made some progress. A comprehensive anti-discrimination law prohibiting any kind of discrimination has been in place since 2009. Implementation of the Roma Strategy and the Action Plan has improved basic education, enrolment in schools, civil registration and access to health care. Yet, poor socio-economic conditions and marginalisation of Roma continue to exist. Access to the labour market remains particularly challenging for this community and requires continuing attention from Serbian authorities.

#### **IV. Prevention mechanism against abuse of visa liberalisation by citizens from the Western Balkan countries: evaluation of its implementation**

The present evaluation is based on the 5<sup>th</sup> to 11<sup>th</sup> **FRONTEX alert reports** as well as on the **reports** provided by the **Western Balkan countries** in November 2011, as requested from the Commission during the **Senior Officials meeting**, held on 5 October 2011.

Following the first decision at the end of 2009 to grant visa-free travel to three Western Balkan countries (the former Yugoslav Republic of Macedonia, Montenegro and Serbia), some EU Member States have experienced waves of **increasing numbers of asylum seekers** in 2010 and 2011. Belgium, Germany, Luxembourg and Sweden remain favourite destination countries.

Seasonal waves of increasing numbers of asylum seekers from the Western Balkan countries have been observed also during the second half of 2011, but some important **new aspects** have been identified.

The FRONTEX alert reports show that the new waves of increases in 2011 follow the **same pattern** in terms of **seasonality** as those in 2010. Both in 2010 and 2011, there was a considerable decrease of the number of asylum seekers during the summer season (June-July) and a sharp increase in the autumn (September-October).

The **total number** of asylum seekers from the region has **decreased** in the second half of 2011 in comparison with the same period of the previous year (-58% for October)<sup>4</sup>. Therefore,

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<sup>4</sup> According to the 11th FRONTEX Alert Report the following change in percentage can be observed for October 2011 in comparison with October 2010 as regards the weekly applications in Belgium, Germany, Sweden and Luxembourg: Serbia (-68% with 1109 asylum applications in October 2011),

the magnitude of the phenomenon is smaller than before. The decline is due to the lower number of asylum seekers from Serbia and from the former Yugoslav Republic of Macedonia, although Serbian nationals still represent the largest share of the asylum seekers from the region.

This decrease is counteracted by the considerable **increase in** the number of asylum seekers from Albania and Bosnia and Herzegovina. The most significant annual increase is registered for citizens of Albania. These new dynamics show the **extended regional dimension** of the phenomenon, which is an element to be taken into account in further analysis.

The most frequent **reasons for asylum claims** are still lack of health care, unemployment and lack of schooling.

The **assessment missions** confirmed that the majority of people continue to choose the same EU countries as destination, because of information which they receive from friends and relatives who have already travelled to these countries. Most of them are also aware that there is little chance for their asylum request to be granted, but try their chances anyway.

As regards the underlying reasons for the high number of asylum applications which are subsequently judged to be unfounded, the **duration of asylum procedures** and the **associated length of authorised stay** in a given Member State remain relevant **factors** which are taken into account by the would-be asylum seeker. Even if specific **counter-measures** have been put in place by the EU Member States of destination, including optimisation of human resources employed in treating asylum claims, decrease of the average processing time for manifestly unfounded asylum applications and more effective procedures for appeals, there was only a limited effect on the number of applications.

The **common profile of the asylum seekers** has been confirmed during the second half of 2011. The vast majority of the claims stems from persons belonging to the Roma minority, who often arrive with their families<sup>5</sup>. The level of education among the Roma population in the region is low, and unemployment rates are very high, contributing to social exclusion and deterioration of living conditions. As to the average age, 59% of all asylum seekers from the Western Balkan countries concerned were minors and 71.1% were not older than 25 years (figures for September 2011).

There is an increasing number of **attempts to circumvent the asylum and return procedures** by impeding identification of asylum seekers via destruction of passports and false nationality claims. Large number of Albanian asylum applicants try to justify their claims with false certificates alleging victimisation due to blood feuds.

The **asylum recognition rate** remains very low<sup>6</sup>, indicating as in the previous report the unfounded nature of most asylum claims. However, unlike the previous period, when the ratio

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former Yugoslav Republic of Macedonia (-79% with 250 asylum applications in October 2011), Bosnia and Herzegovina (+323% with 169 asylum applications in October 2011), Albania (+880% with 392 asylum applications in October 2011), Montenegro (+586% with 48 asylum applications in October 2011).

<sup>5</sup> Between 22 August and 18 September 2011 the share of citizens of Roma origin is as follows: 100% for Albania, 100% for Montenegro, 92% for Serbia, 88% of Bosnia and Herzegovina and 71% for the former Yugoslav Republic of Macedonia.

<sup>6</sup> '**Recognition rate**' was calculated as a share of positive decisions (those granting refugee status or subsidiary protection (Directive 2004/83) or humanitarian status (national law)) in the total number of

between the number of new asylum claims and the number of returns was fairly balanced, new asylum applications have gradually out-numbered returns since mid-September 2011. This increasing imbalance is due to the decreasing number of voluntary returns and to more frequent attempts to prolong the stay in the EU .

The authorities of the five Western Balkan countries have, for their part, reacted and taken measures as requested by the Commission to start countering the phenomenon, as detailed above under section II.

All reports on the implementation of the action plans dedicated to avoid abuse of the visa-free regime presented by the Western Balkan countries pay particular attention to **information campaigns**. Posters, brochures and leaflets clarifying the obligations and rights stemming from the visa-free travel to the Schengen area have been distributed throughout the countries. The EU Delegations in the region are playing an important role in this respect.

Measures to strengthen **border controls** have also been intensified. Particular attention has been paid to border crossing points with high road traffic intensity. As a result, the number of citizens of the Western Balkan countries who were identified while attempted to leave their countries without meeting the requirements for entering the Schengen area gradually increased<sup>7</sup>.

The Western Balkan countries also reported on the intensified measures as regards the **control of travel agencies** and **transport companies** potentially involved in misinforming citizens about asylum benefits. Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia coordinated actions of their law enforcement agencies and the Ministries of transport to investigate possible irregularities. In several cases transport licences have been withdrawn and criminal proceedings launched.

Moreover, the former Yugoslav Republic of Macedonia and Serbia have prepared amendments of their Criminal Codes introducing a **new criminal offence** of facilitation of the misuse of the visa-free regime. Amendments of the respective laws on travel documents have also been adopted.

All five Western Balkan countries reported on intensified cooperation with the neighbouring countries as well as with the EU Member States. **Long-term measures for better integration of the Roma minority** were also reported. Their successful and continuous implementation is of paramount importance for addressing the phenomenon of unfounded asylum applications (see also the country's analysis in section III).

The European Parliament and the Council are currently discussing a number of legislative proposals aiming, *inter alia*, at limiting the abuse of the asylum systems in the EU Member States and **preventing asylum shopping**.

Finally, the co-legislators are also discussing the Commission's proposal for an amendment of Regulation 539/2001 (which lists the third countries whose nationals must be in possession of

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decisions in first instance procedures. The total number of decisions consists of positive and negative decisions.

<sup>7</sup> Serbia returned 1715 Serbian citizens from February until October 2011. Albania returned 1700 Albanian citizens from May until October 2011. Former Yugoslav Republic of Macedonia returned 1719 citizens from April to November 2011.

a visa when crossing the external borders and those whose nationals are exempted from that requirements)<sup>8</sup>. This proposal i.a. foresees a visa safeguard clause allowing the temporary suspension of the visa waiver for a third country whose nationals are exempted from the visa obligation in case of an emergency situation, where an urgent response needs to be given to solve difficulties faced by one or more Member States. Such a mechanism should only be a measure of last resort and can be applied to any third country exempted from the visa obligation. Taking into account the latest developments and figures related to the phenomenon of abuse of the asylum systems of certain Member States and in case the mentioned phenomenon is not reduced within normal standards, the triggering of the safeguard mechanism, once the amendments to Regulation 539/2001 have entered into force (expected to happen in the course of 2012) could become a concrete option for the affected Member States<sup>9</sup>.

## V. Next steps and concrete actions

The Commission services consider that the **post-visa liberalisation monitoring mechanism** currently in place is functioning effectively and provides the necessary tools to monitor the continuous implementation of the visa liberalisation benchmarks by the Western Balkan countries and the migration flows between these countries and the Union. The alert mechanism has the capacity to help EU decision-makers, including the Commission to understand the nature of the current phenomenon, to assess its developments and to prepare for possible future measures and decisions.

The FRONTEX alert mechanism is crucial to enable the Commission and the Member States to continue the effective monitoring of the situation and of migration flows between the Western Balkans region and the Union. The alert mechanism should therefore be continued. An assessment concerning its further extension will be made in June 2012.

Based on the monitoring during the last six months and in comparison with the June 2011 CSWP, the following **conclusions** can be drawn:

- The large majority of travellers from the visa free Western Balkan countries are **bona fide travellers** and thus the genuine purpose of visa liberalisation - to facilitate people-to-people contacts, enhance business opportunities and cultural exchanges and give the possibility to the people of the region to get to know the EU better – remains satisfactory.
- Implementation of the reforms undertaken by the Western Balkan countries in the area covered by the visa liberalisation roadmaps continued, even if in some cases **reinforced efforts** are needed to ensure the full sustainability and irreversibility of the reforms.
- The level of bilateral cooperation and implementation of the **EU Readmission Agreements** with the Western Balkans continues to be positive.

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<sup>8</sup> COM (290) 2011

<sup>9</sup> It must however be underlined that there will be no automaticity, *i.e.* a request from a Member State to trigger the mechanism will not automatically lead to the re-imposition of the visa obligation for the citizens of the third country concerned, as the Commission will enjoy a margin of appreciation and will have to consider a number of elements in its assessment.

- The **magnitude of the phenomenon of abuse of visa liberalisation** has changed in terms of **geographical scope**. The total number of asylum seekers from the Western Balkan countries has **decreased** in comparison with the same period of 2010. However, the phenomenon has broadened geographically .
- The **poor level of integration of local communities, in particular of Roma origin**, has been confirmed to be a push factor for the vast majority of unfounded asylum applications. The main reasons for leaving remain economic, based on expected financial advantages associated with asylum claims in some EU Member States.
- The Western Balkan countries remain committed to finding solutions to the current problems and some of the measures put in place have produced positive results. However, the broadened geographical dimension and the increasing frequency of well-organised groups of asylum-seekers of Roma origin call for more targeted result-oriented actions.

On the basis of the above conclusions, as well as of the consultations and exchange of best practices undertaken in the last months between the Commission services, the Western Balkan countries and the EU Member States concerned, in particular during the JHA Ministerial Forum in Ohrid (3-4 October 2011) and the Senior Officials meeting in Brussels (5 October 2011), the following **actions** were identified as necessary:

- (1) **Firstly, enhanced cooperation** with the authorities of the Western Balkan countries should continue in order to help to overcome and if possible to anticipate difficult situations faced by some EU Member States. This cooperation should be based on **regular information exchange** between the Commission, EU Member States concerned and the countries of the region, in accordance with EU and national legislation.
- (2) Secondly, room for improvement has been identified as regards the **investigation of facilitators** like travel agencies, transport companies etc. The possibility to establish **joint investigation tools**, with support from **EUROPOL**, shall be carefully examined.
- (3) Thirdly, additional efforts are needed to **strengthen exit controls** (in the Western Balkan countries) and **entry controls** (at EU borders). In this context, the EU Member States which have a direct responsibility for managing EU external borders should step up their efforts, in line with the Schengen *acquis* and in close collaboration with Western Balkan countries, EU Member States of destination and FRONTEX.
- (4) Moreover, **continuous, targeted information awareness campaigns** shall be undertaken aiming to clarify the rights and obligations of visa-free travel, including information on rules for access to the EU labour market and liability for any abuse of rights under the visa-free regime.
- (5) **Assistance to minority populations**, in particular Roma communities, **should be increased and more targeted in the countries of origin**. This should include implementation of national strategies and assistance by the authorities of the countries concerned, supported by available EU assistance and bilateral assistance of Member States. The Commission services are ready to put additional emphasis on

further strengthening assistance provided under the Instrument for Pre-accession Assistance (IPA), including TAIEX.