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Group 484

Towards the white Schengen list

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Towards the Schengen "white list"

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Author,
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Introduction

Could anyone today remember the time when it was possible for the citizens of this country to travel to Western Europe without a visa?

Can you nowadays imagine you decide to travel to Rome, Paris or Vienna, get your passport, book a ticket and go to the city you want to visit – all in one day? Older generations of our citizens certainly remember the times when this was possible, but the young people, born in the period of the most severe isolation and crisis experienced by Serbia and Montenegro (SaM), do not know what it feels like. Today, the nationals of SaM do not feel like citizens of Europe because they are denied one of the fundamental rights upon which the EU was founded – the freedom of movement.

This analysis will seek to provide answers to the following questions: what is the purpose of the EU visa regime with SaM and what SaM should do in order for the EU to liberalize and eventually lift the visa regime for nationals of SaM.

The expansion of the EU to the east of Europe brings, among other things, the certainty of hindered movement of persons, nationals of those countries which have not made sufficient progress towards accession to the EU. New EU Member States – Slovenia, Slovakia, the Czech Republic, Cyprus, Hungary, Malta, Lithuania, Latvia, Estonia and Poland introduced visa regime with regards to SaM as suggested by the European Commission, but each of these countries may facilitate and simplify the procedure for issuing visas.

The imminent accession of Romania and Bulgaria to the EU will create another problem for SaM with regard to free movement of persons and goods between SaM and its neighbours. Romania introduced visa requirements for nationals of SaM in 2004, and Bulgaria announced it would do the same in early 2007. A visa regime is already in place with Hungary.

The situation is getting increasingly difficult for SaM as the "Schengen wall", is coming nearer and nearer to the State Union borders. It is high time that the competent bodies of SaM seriously tackled this issue and became aware of the prospects of a new isolation of SaM. Such isolation would not come as a result of any political decision of EU authorities, but as an inevitable consequence of the absence of a clear-cut national strategy and policy for migration management in SaM; a failure to move closer to the standards laid down in the **Schengen Agreement**.

There is undoubtedly a lack of information and certain ignorance about this problem among the general public in SaM. The issue of inclusion of SaM in the EU positive list has been presented as a purely political issue. This is only partially true, insofar as each decision made by a competent body of the EU or a member state alike is dependent upon the political will, but the political will must be based on facts and meeting of certain criteria.

The EU did establish these criteria. They do not constitute a clear list of requirements which once met by a country will automatically place it on the positive EU visa list. These criteria are general by structure and allow for a high degree of discretionary assessment, but they do indicate certain areas in which clear progress should be made towards reforms and implementation of laws and by-laws. These criteria are laid down in the **Council Regulation (EC) No 539/2001 of 15 March 2001,** which will be further discussed below.

The transition process, which involves actually bringing our economic and social system in line with the standards established by the EU, tends to be very painful for citizens of SaM. The low standard of living; high unemployment rate; existence of organized crime and slow pace of reforms in the judiciary, police, and state administration, as well as other problems faced by the state create an impression among citizens that no progress whatsoever is being achieved and that the European future of the country is just a dream which will never come true.

Transferring SaM to the Schengen visa white list would help restore the public's shaken faith in the integration of SaM into the EU. It would be the most tangible result of SaM integration with the EU and most beneficial for the "little men" who are often called losers in the reform, and to whom a better future is promised only at the end of the transition process. It would also benefit young people, businessmen, the civil society and all SaM citizens.

The research conducted in 2004 by the "Strategic Marketing" polling agency found that as many as 70% of university students in SaM had never travelled outside their country. Data presented by the United Nations Development Program is even more alarming. According to UNDP data, "51.5% of persons in Serbia under the age of 25 have never been abroad, and 40% of citizens never had a passport. Less than half of the population in Serbia – 44% do have a passport."[1]

"I don't have a passport and have never been abroad. I could never get enough money to travel. I had to work while studying to gain additional income and help my family endure the difficult times,"[2] said a 28-year old final year student of the Medical School in Kragujevac.

[1] *Blic* daily, October 22, 2005
[2] Ibid

The difficult economic situation and the EU visa regime with SaM make young people rationalize the fact that they seldom or never travel abroad. "I don't think I missed a lot by not visiting some of the European countries. I guess some new experiences could be gained through travelling, but they are not crucial"[3]. Downplaying the importance of travelling abroad is a prelude to self isolation, which will directly affect their future.

Representatives of some EU countries look at the problem of visa regime from a different angle. They emphasize that the visa issuance procedure is not "much more complicated than, for example, booking a room in a hotel (...). We issue over 70,000 visas per year, but we have to turn down some applicants, between 12 and 14 % of them, which is a significant number(...) When we find out that a document is false or forged, or false information is presented, we must reject the application (...) It is true that the visa regime was established, among other things, as a part of sanctions against the regime of Slobodan Milosevic. But the fact that the visa regime persists today does not imply that the sanctions are still in effect. It is a misinterpretation. There are some other specific reasons and facts that cannot be removed overnight in order to get the visa regime liberalized. These reasons largely have to do with the functioning of your government bodies."[4]

Although certainly not under sanctions, SaM is still subject to some kind of isolation, the consequences of which may be very dangerous to SaM and the entire region alike.

"There certainly is a connection between the fact that young people cannot travel abroad and the fact that political parties promoting intolerance and xenophobia have a large number of followers in Serbia. Isolation engenders xenophobia, distance towards foreigners, fuels conspiracy theories and even hate."[5]

Businessmen are also affected by the current visa regime. Those who already established long-term cooperation with partners from the EU happen to be in a somewhat better position, but even they face difficulties when applying for visas. "We have bigger problems with the new EU states, which are not part of the Schengen area. We wait longer to get their visas than the Schengen ones."[6]

Obviously, the EU visa regime with SaM represents a serious problem, producing consequences that are getting worse and worse. Hence it is high time

[3] Ibid

[4] Bernhard Hauer, Head of the Legal and Consular Department, German Embassy, "When will our citizens travel to Europe without visas?", *Vreme* daily, October 6, 2005, p.37

[5] Žarko Trebješanin Ph.D, *Blic*, October 22, 2005

[6] Branko Bešević, director of PC" Unitrag", Group 484, Round table „Towards the Schengen white list", Užice, October 18, 2005

for the government to address the problem of limited freedom of movement of SaM nationals as a priority issue.

To be on the Schengen visa white list means to achieve one of the key values of the EU – the freedom of movement of persons. With no more queues in front of the embassies of West European countries and visa-free border crossing, citizens of SaM will feel that they finally belong to the community of European nations.

I The Schengen Agreement

One of the things that fascinates us most every time we travel to EU countries is the fact that we are required to show our travel documents only twice: on entering EU and on leaving it. Many people, however, do not know that the Schengen Agreement and the Convention Applying the Schengen Agreement are the reason why today there are almost no borders within the EU.

The small Luxembourg town of Schengen, located at the border with Germany and France, would have remained unknown for most Europeans if it had not been the place where **Belgium, France Germany, Luxembourg and the Netherlands** signed an agreement in 1985 which is today known as the Schengen Agreement. Exactly five years later, the Convention Applying the Schengen Agreement was signed along with the adoption of six declarations (referring to Articles 4, 71 (2), 121, 132, and 139). Two additional documents were also adopted and signed alongside the Convention:

- *Protocol*, which includes a joint declaration on unification of the two German states and three unilateral declarations (two signed by Federal Republic of Germany and one signed by the Kingdom of Belgium)?
- *Joint Statement by the Ministers and State Secretaries*, with priority issues for future discussions.

Other EU countries joined the Convention as follows: **Italy** on November 27, 1990; **Spain and Portugal** on June 25, 1991; **Greece** on November 6, 1992; **Denmark** after being an observer became a full member together with Finland, Sweden, Norway and Iceland on March 25, 2001. It should be noted that Norway and Iceland, being non-EU members, concluded a special agreement with the EU which permitted them to fully participate in the Schengen system. **Austria** joined the agreement and began implementing it in 1995.

Great Britain and **Ireland** did not sign the Schengen Agreement because their governments find abolishment on internal borders unacceptable, but they agreed to take part in some aspects of Schengen system and did not remain isolated and outside of the Schengen system.

To date, 15 countries have signed the Schengen Agreement with a tendency to admit new members parallel with EU enlargement and subject to meeting the requirements set forth by the Agreement.

As *VC Expert Group Research* pointed out, the Schengen Agreement is either indirectly or directly connected to the European law. Article 140 of the Convention Applying the Schengen Agreement stipulates that only EU member states can become parties of the Schengen system; Article 134 states that the provisions of the Convention shall apply only insofar as they are compatible with European law, etc.

The Schengen Agreement and the Convention are the cornerstones of all EU regulations adopted to date governing visas, asylum, migration and border control. All these regulations are part of EU body of legislation accumulated so far, known as *acquis communautaire*.

1.1. Contents of the Schengen Agreement

Both the Schengen Agreement and the Convention Applying the Schengen Agreement have a very complex structure. This complexity becomes evident through a simple reading of these documents and reviewing previous research papers like the one published by the *VC Expert Group Research*.

The formal title of the Schengen Agreement is "Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders". It has two parts: part one – "Measures Applicable in the Short Term", on measures that should be applied from the moment the Agreement enters into force until all border checks are abolished completely; and the part two dealing with "Measures Applicable in the Long Term".

Part one focuses on the following issues: checks at border crossing points by the police and customs authorities, with emphasis on the visual surveillance of the vehicles without requiring them to stop; simplifying surveillance of member states nationals by affixing signs on the vehicles; coordination of visa policy in order to avoid negative consequences of the reduced control of illegal migrations; security etc.

Part two addresses the complete abolishment of checks at common borders and their transfer to the external borders, and additional security measures to prevent illegal migrations; police cooperation in crime prevention and investigation; harmonization of regulations on drug, arms and explosives trafficking etc.

The agreement will be fully affirmed through signing of the Convention and its application.

1.2. Contents of the Convention Applying the Schengen Agreement

The Convention comprises four constituent parts. Part I is entitled **"Definitions"** and offers definitions of key terms used in the text. The title of Part II is **"Abolition of checks at internal borders and movement of persons"**. Part III is called **"Police and security"**, and the last part, the Part IV, is called **"The Schengen Information System"**.

Part I of the Convention includes definitions of 13 key terms, the most important of which relate to internal borders, external borders, and the concept of alien. The term *internal borders* is used to denote common land borders, airports for internal flights, and sea ports for regular trans-shipment connections exclusively from or to other ports within the territories of the Contracting Parties.
The term *external borders* is used to denote land and sea borders and airports and sea ports of the Contracting Parties, provided they are not internal borders.
The term *alien* applies to any person other than a national of a member state of the European Union.
The term *alien reported as person not to be permitted entry* denotes an individual listed in the Schengen Information System as a person not to be permitted entry in the Schengen area.

Part II of the Convention is the most important part of the Convention as it regulates abolishment of internal borders between the Contracting Parties. Finally, the space was created within the European continent with a free movement of persons and goods. It stipulates that internal borders may be crossed at any point, thus permanently removing the limitation of border crossing exclusively at official border crossing points.
In contrast to internal borders, the external borders gained particular importance. This seems logical considering the fact that borders between contracting parties no longer exist. External borders, sometimes called "the Schengen wall", are controlled using standard procedures and covered by internal regulations of the contracting parties, in accordance with the principles set forth in the Convention and the interests of all the member states. The latter is very important because finally the emphasis was shifted from protection of individual state borders to the protection of the common borders of member states with third countries, other then EU members. By doing so, Europeans are directed towards protecting that which is common, European. The Dutch border, for example, is now protected in Greece, a country with an external border. There is a set of measures and requirements in place for controlling external borders, ranging from possession of documents permitting border crossing to regulations governing the exit checks on leaving EU territory, in accordance with the interests of all the member states.

Part II of the Convention covers cooperation between police authorities of the member states. The entire mechanism was set up for the purpose of the

exchange of relevant information, cross-border observation, protection of external borders and the like.
Provisions contained in this part of the Convention demonstrated that the principle of absolute sovereignty of states as subjects of international law is now history. Thus, police authorities of one state may now persecute suspected criminals in the territory of another member state, subject to prior authorization given by the state concerned. There remained, however, some restrictions, such as the mentioned authorization, and the fact that cross border hot pursuits apply to extraditable criminal offences. These restrictions are lifted in case of urgency provided that two conditions are met: the authorities of the other Contracting Party must be notified immediately that the border has been crossed; and a request for assistance has been submitted immediately.

Part IV of the Convention is dedicated to the Schengen Information System. This system has been operating since 1995. "The first seven states participating in the exchange of information were Germany, Belgium, the Netherlands, Spain, France, Luxembourg and Portugal. In 1997, Austria, Greece and Italy joined the system. The last five states (Denmark, Finland, Iceland, Norway and Sweden) joined in 2000."[7]
The purpose of the Schengen Information System, as set out in Article 93 of the Convention Applying the Schengen Agreement, is to maintain order and security, including state security, in accordance with the Convention and to apply the provisions of this Convention relating to the movement of persons in the territories of the contracting parties, using information transmitted by the system.
The Schengen Information System consists of the Central Operations Unit, located in Strasbourg, and national data banks in each member state.
"As of early 2001, nine million arrest warrants and warnings and two million personal data items were entered into the Information System."[8]
There are two types of data that are entered into the system. First of all, data related to a certain category of persons or vehicles or objects, as listed in the Convention. "In principle, the information system contains only information of a permanent character, while the other information is not the subject of input."[9]
Access to data included in this system is governed by internal regulations. Access to the system and the right to search data is permitted solely for the authorities responsible for border checks, customs authorities, as well as special bodies authorized to coordinate these bodies, bodies responsible for issuing visas etc.
The Convention guarantees the protection of data included in the system and lays down severe restrictions on the use and duplication of information included in the system

[7] VC Experts Group Research, Liberalisation of Visa Regime in the Region of South Eastern Europe, 2003
[8] Ibid
[9] Ibid

II European Council Regulation (EC) No 539/2001 – "Schengen white and black list"

Does anyone remember the slogan "Europe without borders"? It was an often repeated message that made people across Europe dream of a single European space within which united and free Europeans would be able to travel, trade, exchange knowledge and experience. Let us see what the situation is like today, 15 years later?

Nationals of many states in Eastern Europe and Western Balkans nowadays cannot enjoy one of the fundamental freedoms on which the EU itself is based – the freedom of movement. As if the fall of the Berlin Wall was an introduction to erecting a new wall – the "Schengen wall". The first one, when demolished and torn down marked a symbolic unification of Germany, whereas the latter firmly divided, Europe and Europeans at the very moment in which "The Europe without borders" became one of the strongest messages coming from the western part of the continent.

Since 1990, the "Schengen Wall" has been growing thicker and more impenetrable. The EU was seeking solutions for the countries that remained outside the Schengen area. Finally, the European Council adopted on March 15, 2001 a regulation setting the criteria and requirements which nationals of the countries outside the Schengen area have to meet to be able to enter the territory of the EU without visas.

Item 5 of the Introduction reads as follows: "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**."

First criterion: illegal migrations

Aiming at controlling illegal migrations, EU monitors and analyses:

- laws and administrative procedures of the third country which regulate the matter of illegal border crossing, prevent illegal immigration and emigration, and provide travelling documents and citizenship
- visa regime regulations and administrative practice
- human resources and material resources directed to border control and administration for the country
- statistical data on entries, exits, rejected entries and on exiling citizens as well as the foreigners from the third country
- statistical data on asylum claims submitted by citizens of third countries in EU
- whether the procedure of obtaining asylum protection is in accordance with the Geneva Convention on the status of refugees and New York Protocol from 1967
- Readiness of the third country to sign Readmission Agreements with EU, their functioning and the situation related to the repatriation (readmission) of the citizens of the third country who are illegally in the countries of EU

Second criterion: public policy and security

Public order and security in the EU should not be jeopardised. The estimation of risks is comprised by the analysis of the trustworthiness of state structures and the capability of the third country to confront threats to its stability.

In examining these concerns the EU analyses the following:

- laws on corruption and the fight against organised crime (money laundry, trafficking), as well as efforts made by the third country to fight the abuse of women and children
- passing and implementation of regulations and other measures that the third country undertakes against organised crime, especially trans-national
- risks that can arise from economic crimes (smuggling alcohol, oil, drugs, tobacco) and any other kind of crimes (prostitution, trafficking human organs), including a risk of AIDS
- risk of increasing the number of illegal workers
- cooperation of the third country within international conventions on providing legal assistance as well as the efficiency of the procedures of that country for police or jurisdictional cooperation with EU members
- efficiency of the cooperation between local agencies and the organs of the neighbour countries, especially border police, customs and public prosecutors

- relevant information and statistical data referring to the citizens of the third country (arraignments for committed crime, crime convictions, frequency of crimes, level of the living standards, social stability)
- data on the security of documents (inclusion of biometric data) as well as possibility of forgery
- regulations and administrative procedures related to issuing and changing travelling documents
- risks in this area

Third criterion: relation between European Union and third countries

Freedom of movement is one of the basic human rights. To be on the white Schengen list means to have freedom of movement within the countries signatories of the Schengen Agreement.

Therefore EU analyses:
- regulations of the third country on freedom of movement of its citizens
- legal conditions for the procedure of issuing a passport
- given the stated regulations, whether the rights of the citizens limited by racial, religious, ethnical discrimination i.e. based on religion or political opinion
- minority rights

Fourth criterion: reciprocity and regional coherence

Within this criterion the EU primarily analyses its relationship with the countries from the region in which there is a country entering the white Schengen list.

In order for a third country to enter the white Schengen list, it has been suggested that the third country should afford the same treatment to all the members of the EU

The principle of reciprocity should be applied with respect to the visa regime, regarding both the length of stay as well as applicable territories

The European Council, observing the criteria it set itself, listed the countries the nationals of which must be in possession of visas to enter the EU (**black list**) and in the Annex II (**white list**) listed the countries (pursuant to Article 1, paragraph 1) that are exempt from the visa requirement for stays in the EU up to three months. These Annexes include not only European, but other countries as well.

Where European countries are concerned, the situation is as follows[10]:

- **Countries on the Schengen visa white list, which in the meantime became EU member states include:**
    1. Cyprus
    2. Czech Republic
    3. Estonia
    4. Hungary
    5. Latvia
    6. Lithuania
    7. Malta
    8. Poland
    9. Slovakia
    10. Slovenia

- **Countries on the Schengen visa white list, which are not EU members:**
    1. Andorra
    2. Bulgaria
    3. Romania
    4. Croatia
    5. Monaco
    6. San Marino
    7. Holy See
    8. Switzerland

- **Countries on the Schengen black list (Annex I)**
    1. Albania
    2. Belarus
    3. Bosnia and Herzegovina
    4. Serbia and Montenegro
    5. Macedonia
    6. Moldova
    7. Russia
    8. Turkey
    9. Ukraine

[10] Attached are the EU positive and negative lists with regard to visa requirement

The case of Romania is particularly interesting. "Romania was 'conditionally' included in the Annex II of the Regulation. At the request of the European Commission, Romania was required to report on its policy for combating illegal migration of its nationals residing in the countries of the Schengen Agreement, including their repatriation."[11] Later on, the European Commission acknowledged the progress achieved by Romania in these areas and proposed to the EU Council to move this country to the Schengen white list, among the countries exempted from visa regime with the EU.

A different example is that of Ecuador. "Ecuador was in 2003 transferred from the Schengen white list (Annex II) to the black list (Annex I). The European Commission established that Ecuador no longer meets the defined criteria and proposed the European Council to put this country on the black list."[12]

Although it is not clear which criteria the European Council applied when drafting the said Annexes, because of lack of transparency and absence of public hearings on this subject,[13] there is a clear possibility for a country which undertakes concrete steps towards reforms in areas specified by the EU to be moved from the black to the white list. The European Commission is very carefully monitoring each reform step. This is a signal to all the countries of the Western Balkans subject to the EU visa requirement to continue implementing intense reforms in order to enable their citizens' visa-free travel to the EU, even before their formal accession to the EU takes place. Getting on the Schengen visa white list would be a powerful incentive for the citizens of the countries aspiring to join the EU and the greatest achievement that could be made during the transition period, quite obvious and meaningful to the ordinary citizens.

By carefully reading the European Council Regulation No 539/2001, Joint Statement from the Thessaloniki Summit, and Central Europe and Central Asia Meeting doc. 309/03 of October 3, 2003, it is quite possible to identify areas in which deep reforms must be undertaken:

- Establishment of a unified and effective visa regime
- Establishment of an efficient asylum system
- Signing and implementation of readmission agreements with EU countries
- Combating illegal migrations
- Integrated border management
- Enhancing regional cooperation and cooperation with the EU
- Establishment of rule of law and fight against corruption and organized crime.

[11] VC Experts Group Research, Liberalisation of Visa Regime in the Region of South Eastern Europe, 2003

[12] Milorad Ivanović, Group 484, Round table "Towards the Schengen white list", Užice, October 18, 2005

[13] www.statewatch.org

III Visa Regime of SaM and the reforms that SaM should undertake

A visa system is a set of political decisions and regulations adopted by a state in order to regulate the conditions of entry and movement of aliens in its territory.

A visa regime is a part of a country's foreign policy which serves to regulate relations with other countries concerning the freedom of movement of persons.

Every state, as a subject of international law, has its own uniform visa system. The uniformity of the visa system is guaranteed by the visa regime. The visa regime, as a part of the larger visa system, serves to implement the foreign policy of a country. The visa issuance system is comprised of visa issuing rules and mechanisms prescribed by law.

Immediately after the State Union of Serbia and Montenegro was formed on March 7, 2003, doubts were raised as to whether it would be a functional state. The state without a single market, uniform monetary policy, single budget, and burdened with deep conflicts between Belgrade and Podgorica political elites, emerged as a problem rather than a functional solution from the very beginning of its existence.

In this political climate, it is nearly impossible to implement any common foreign policy and define national priorities.

In a country beset by a multitude of problems, the antagonism of visa regimes within SaM seems to pass almost unnoticed.

In the area of visa policy the "twin– track" approach cannot be applied. As long as SaM remains a single subject of international public law, as long as the country has one passport, the visa policy must be devised at the state union level.

The very precedent set by the EU with respect to SaM reinforces the above thesis. For the first time, the EU entered negotiations on a stabilization and association agreement with a country through separate talks with the constituent

republics on a wide range of economic and commercial issues (goods, agriculture and fisheries, services, capital and financial cooperation, harmonization of laws, preambles, and political cooperation; and free movement of goods, free movement of persons, services, capital and financial cooperation). Visa policy, asylum, migrations, and integrated border management, however, are negotiated with the authorities of the state union.

This is a clear signal from the EU to our political elites that they should undertake certain measures towards creating a single visa regime in SaM if they want citizens of SaM to move freely, trade and exchange knowledge like other citizens of Europe do.

Unfortunately, for the time being, SaM does not have a unified visa regime. Surprisingly enough, the dualism in this field was introduced by the **Decision of the Council of Ministers on the Abolishment of the Visas for the Entry and Stay in Serbia and Montenegro** ("Official Gazette of SaM", No 21/2003) of May 29, 2003. Item 1 of the decision envisages lifting of the visa regime for stays up to 90 days for 40 countries, including all EU countries. This is a very important decision as it demonstrates the willingness of SaM authorities to, through unilateral steps, bring the country closer to meeting EU requirements. In order for EU to repeal visa regime with a third country, the country in question is required to do the same.

The problematic part of this decision follows: items 2 and 3 technically introduce a dual visa regime in the territory of SaM. These provisions provide for visa-free entry of nationals of Albania, Russian Federation and Ukraine in the territory of Montenegro for the purpose of tourism, whereas nationals of Bosnia and Herzegovina, Croatia and Macedonia coming to Montenegro for tourism are allowed to enter its territory on the basis of a travel document or ID card alone. The penultimate item of this decision establishes that the nationals of the above listed countries will be issued so called *tourist passes* at the border crossing points in the Republic of Montenegro, valid for 30 days.

The Decision on Conditions for Entry and Stay of Foreign Nationals in the Republic of Montenegro ("Official Gazette of the Republic of Montenegro", No 36/2004) adopted by the government of Montenegro on May 13, 2004 came as a logical consequence of the previous decision. With this decision, the government of Montenegro, in contravention of the Decision of the Council of Ministers, allowed for nationals of EU countries to enter the territory of Montenegro with an ID card alone instead of a travel document, after being issued a tourist pass at border crossings.

This decision also stipulates that tourist passes will be issued free of charge by the Montenegrin ministry responsible for state borders, and establishes the grounds for banning entry to foreign nationals.

While bringing a very good and encouraging solution related to the abolishment of visa regime with EU countries, the decision of the Council of Ministers at the same time creates a big problem by formally introducing a dual visa regime.

The future visa system of SaM, aligned with EU standards, should include the following types of visas: *airport transit visa (visa A); transit visa (visa B); short-stay visa (visa C); long-stay visa (visa D)*. Under the Council Regulation (EC) No 415/2003 of February 27, 2003 on the issue of visas at the border, authorities responsible for conducting border checks may in **exceptional and well justified cases** issue travel visa or transit visa to a foreign national provided he/she has an **excusable reason** for failing to get a visa at a diplomatic or consular representation.

A necessary breakthrough that would bring SaM's visa issuance policy closer to EU standards would be the adopting a **Law on Visa System of SaM**. This law would do away with numerous contradictions currently existing between Serbia's and Montenegro's visa systems and bring solutions based on accepted European standards.

Given all the above, the hypothetical situation of, for example, an Albanian citizen coming freely to Serbia after having crossed the Montenegrin border with his/her ID and who has boarded a plane to Belgrade in Tivat without having his/her passport checked, could conceivably occur. Once in Serbia, that person automatically becomes an illegal alien and faces prison sentence for committing an offence under the Law on Movement and Stay of Foreign Nationals.

To prevent situations like this from occurring, the EU expects SaM to enact the Law on Visa System that should contain provisions aligned with the Schengen Agreement, and the Convention Applying the Schengen Agreement, as well as other relevant documents. The law should, in addition to introductory provisions and definition of terms, address the following issues: *conditions of entry, conditions of visa-free entry, the concept of visa and types of visas, visa issuing authority, visa application procedure at diplomatic or consular representations, procedure for deciding on visa applications at diplomatic or consular representations, visa issuing procedure at border crossing points, visa cancellation procedure, notification of visa denial, definition of the term "central visa authority" and its competencies, the personal data of foreign citizens issued with warning on prohibited entry to the country which may be filed, clear data access policy; right of a foreign national to require a correction or the removal of a piece of information and to obtain information, possibilities for compensation; personal data safety; the right of a foreign citizen to access personal data; correction of inaccurate or unlawfully entered data; revision of the database; personal data retention period; joint supervisory commission, liability for damage, data security; consular cooperation on the local level; representation in third countries.*

The Law on Identity Card and the Law on Travel documents should be enacted within a short period and provide for maximum security of these documents. "Preparation process for issuing SaM and foreign nationals with personal documents which meet the highest standards set by the International Civil Aviation Organization (ICAO) and the EU in the field of security of documents (preventing forgery and misuse) should be continually present during negotiations (...)."[14] "Serbian Ministry of Internal Affairs (SMIA) has cutting-edge equipment for producing secure documents."[15] "Professionals of the SMIA have developed their own system for protection of document security which meets the highest standards. This proves that we have top experts and that we can sell our know-how to others."[16]

Parallel with drafting of regulations, SaM must undertake necessary measures to develop an IT-based visa system model to be able to meet international and European standards in the field of visa security.

All these laws will be followed by a series of by-laws. In the field of visas alone, it is necessary to enact over 40 different regulations, decisions and the like. Much effort will be needed to accomplish this, provided there is a genuine **political will** to get this job done. However, the political will for undertaking reforms in this area is lacking. Preservation of the State Union of Serbia and Montenegro is the primary concern and it is already obvious that the reform of the visa system will not be a priority in the upcoming period.

Whether the State Union survives or not, the EU will still continue to insist on reforms in this area. The fact that the Stabilization and Association Agreements signed with Croatia and Macedonia contain two articles specifically addressing visas, border control, asylum and migrations should be taken as a clear signal by the SaM authorities.

[14] Milorad Ivanović, unpublished text, "Overview of the Stabilisation and Association agreements signed beween the EU and Croatia and Macedonia", July 7, 2005

[15] Nenad Banović, head of the Department for Foreign Nationals, Ministry of Internal Affairs of the Republic of Serbia, in an interview with representatives of Group 484, August 2005

[16] Milorad Ivanović, Group 484, Round table "Towards the Schengen white list", Subotica, October 26, 2005

IV Asylum system, readmission, fight against illegal migrations and the reforms SaM should undertake

4.1. Asylum

Asylum is the protection afforded to an alien by a state that granted him/her the status of a refugee. Refugee status is granted following a statutory procedure which serves to determine if there is a well-founded fear that the alien will be persecuted on grounds of his/her race, religion, ethnicity, membership in a particular social group or political opinion.

An asylum system of a country serves to protect the persecuted within the framework of migration management policy.

According to the Constitutional Charter of SaM, the Assembly of the state union is to enact legislation governing migration policy, the granting of refugee status to asylum seekers, the visa system, and integrated management of the state border in accordance with EU standards. The right to asylum is also guaranteed by the The Constitutional Charter on the Minority and Human Rights, Article 38, Section 2, foreseeing that *"every alien who has a well-founded fear of persecution because of his/her race, complexion, sex, language, religion, ethnicity, membership in particular social groups, or political opinion shall have the right to refuge."* Article 50 of the Serbian Constitution guarantees the right to asylum to *"an alien or stateless person who is persecuted because of promoting democratic views and participation in movements for social and national liberation, freedoms and rights of human personality or freedom of scientific or artistic creation.*

The Constitutional Charter, as noted in the National Strategy for SaM Accession to the EU, goes beyond the 1951 UN Convention on the Status of Refugees in that it provides for protection of persons persecuted on grounds of their sex, complexion and language, which is not envisaged in the Convention as a basis for granting refugee status. It is stipulated, though, both in the

Constitutional Charter and Serbian Constitution, that the asylum system will be regulated by a separate law.

The **Law on Asylum** of the State Union of SaM, passed on March 21, 2005, is a so-called "framework law" that lays down some basic postulates and leaves the state union members to regulate asylum issues themselves in a more detailed fashion. Neither Serbia nor Montenegro has passed its own asylum laws. Montenegro has prepared its draft asylum law and Serbia has set up a working group to develop a draft law with the assistance of UNHCR experts. Adoption of these laws is the necessary precondition for pursuing an efficient migration policy. These laws must clearly observe the standards that have been set by UNHCR through decades of a successful practice, must be based on the UN Convention on the Status of Refugees of 1951, the standards and recommendations formulated by the Council of Europe, and, in particular, the standards accepted by the EU and the region of South Eastern Europe.

Similar to the Law on the Visa System, there is again the issue of **political will.** Are the state bodies of the two republics genuinely willing to pass these laws? The lack of money needed for the implementation of these laws cannot be the reason for not passing them. "What is the cost of our not being on the Schengen white list yet?"[17] An accurate estimate of all the costs associated with the current EU visa regime with SaM would certainly prove this reasoning correct.

The Convention Applying the Schengen Agreement in Part II, Chapter 7 addresses the issue of processing applications for asylum, thus laying the foundations of a system which is today heavily criticized by numerous humanitarian organizations across Europe. The intention of the drafters was to set up appropriate mechanisms by which to determine the member state responsible for processing of an application for asylum.

"The most important instruments of the restrictive strategy for accessing the European asylum system came out of the Dublin Convention (which was signed in 1990, and came into effect in 1997) and the London Resolution of 1992".[18] "The most important concept contained in the Dublin Convention is that according to which the responsibility for reviewing asylum requests rests with the state through which the asylum-seeker entered the territory of the European Union. This concept was further developed at the ministerial meeting in London. The concepts of "Safe Third Countries", "Safe Countries of Origin" and "Manifestly Unfounded Claim" have been determined. The last

[17] Nataša Dragojlović-Ćirić, Ministy of International Economic Relations, Preparatory Meeting, Palace Hotel, Belgrade, September 23,.2005.

[18] Timothy J. Hatton, Australian National University, University of Essex, CEPR and IZA – Jeffrey G. Williamson, Harward University and NBER, Refugees, *Asylum Seekers and Policy in Europe*, July 2004, page 18

one allows refugee status to be denied to an asylum-seeker through an expedited process where there is no right to appeal with a suspending effect. During 1993 and 1994, based on the recommendations of the Council of Ministers, the countries of the EU started to conclude bilateral readmission agreements with other countries. The aim of these agreements was to return citizens of these countries illegally residing in the territory of the EU, but also to return the nationals of third countries who, on their way to the EU, had transited through the country signatory to the readmission agreement."[19]

"Countries neighboring the EU do not have much choice but to adopt standards set by the EU. The concept of "Safe Third Country" stems from the Dublin Convention but goes beyond the EU borders and represents the broader foreign policy of certain countries as a result of international relations. The concept of "Safe Third Country" is firmly established in Western Europe and occupies a key position in the proposals of the European Commission for the alignment of EU asylum policy procedures. It is based on the assumption that under certain conditions asylum-seekers who are found within their territory should be the responsibility of a third country. The concept of "Safe Third Country" is centered around the practice of returning asylum-seekers to third countries (the transit states) without examining whether their applications are well-founded, based on the opinion that the third country is allegedly a "Safe Third Country" and the person should have sought protection there. This restriction may be set unilaterally or be a part of an agreement between two or more countries based on a readmission agreement."[20]

Such system, which has already become the European asylum system, requires the countries joining the EU to incorporate these tough standards in their national legislation. Neighbors of Serbia and Montenegro already have their well-defined asylum systems in place, more or less aligned with European standards: the Asylum Law of the Republic of Croatia was passed on June 18, 2003; Bosnia and Herzegovina adopted its Law on Movement and Residence of Aliens and Asylum on July 18, 2003; the Law on Asylum and Temporary Protection of the Republic of Macedonia was passed on July 16, 2003; the Asylum Law of Albania was enacted on December 14, 1998 and the Bulgarian Asylum Law was passed on May 16, 2002.
SaM is currently the only country in the region not having a complete asylum legislation, owing to which asylum cases are being handled by the UNHCR. This is yet another negative factor hampering progress of SaM's integration into the EU. Readmission agreements include provisions identifying SaM as a "safe third country" but they cannot be implemented because of the very fact that SaM does not have asylum legislation in place and, therefore, cannot grant protection to third country nationals and stateless persons.

[19] Group 484, Return from Westen Europe, 2005, p. 53
[20] Ibid, p.55

The experience of the UNHCR has shown that SaM is not a country overwhelmed by large waves of asylum seekers. The number of persons seeking asylum dropped after the break-up of the Socialist Federative Republic of Yugoslavia. 2,840 asylum applications were filed in 1986, 3,081 in 1987, and as many as 7,112 in 1989. With the onset of wars that number began decreasing. In 1991, 1,116 applications were filed and 825 approved. Out of 114 filed, no application was approved in 1996. In 2004, 50 applications were filed and only two were approved. In the January-August 2005 period, 40 applications were filed and none of them approved.[21]

Therefore, the number of would-be asylum seekers, along with those who could arrive in SaM under readmission agreements, should not be too high. With careful planning of the state budget, assistance from the EU, expertise of national and UNHCR experts, SaM should be able to develop an asylum system in line with international and, more importantly, European standards.

At this point SaM is lacking adequate infrastructure, especially reception centers for asylum seekers, as well as trained staff. "The current practice includes frequent cases where asylum seekers are deported *(refoulement)* without the right to appeal with a suspending effect and inadequate conditions for the acceptance of asylum-seekers, including keeping asylum-seekers in custody during court procedures and the process for considering their asylum requests."[22]

"We think that in the process of alignment of legislation and practice of Western Balkan countries with EU standards, conditions must be created for the following: building consensus on criteria against which a country is designated as "safe", i.e. adopting a single list of countries deemed to be safe; regardless of the existence of the list of potentially safe countries, ensuring case-by-case safety assessment in each individual case, securing minimum acceptable economic and social rights for asylum seekers, securing right to appeal against a decision to refer an application for asylum to a third country, providing minimum standards of protection during deportation to safe third countries, providing for proper procedural safeguards and transparency of the procedure."[23]

By doing so, the region of South Eastern Europe would harmonize its legislation in this field. Since SaM has only started to build its own system, regional coordination would help it catch up after falling behind in the previous period.

[21] Asylum seekers and UNHCR Mandate refugees with BO Belgrade

[22] Group 484, *2004 Report on Human Rights of Refugees, IDPs, Returnees and Asylum-Seekers in Serbia and Montengro*, 2005

[23] Group 484, Tanja Pavlović– Križanić, unpublished text, *EU activities towards establishment of the asylum system*, 2004

4.2. Illegal migrations

When it comes to illegal migrations in the EU the situation is so alarming that one of the main criteria for determining whether a country will be placed on the positive or negative visa list is its ability to efficiently control the illegal migration of its own nationals and aliens who pass through its territory en route to the EU.

This problem has multiple aspects such as: human trafficking, smuggling of people and the issue of readmission

4.2.1. Human trafficking and smuggling of people[24]

In the aftermath of armed clashes and the break-up of former Socialist Federal Republic of Yugoslavia, South Eastern Europe region remained divided into numerous small states hostile to each other, but at the same time interlinked by poverty, misery, and the grey economy. Consequently, these newly formed states became permanently connected by transnational organized crime. Crime is not selective about the nationality or religion of people, it brings together those who find a sense of purpose in money, profit and getting rich. Traffickers of children, women and men, as well as smugglers of people, create unbreakable bonds and channels to provide a smooth flow for these illegal activities.

In absence of an exact monitoring and analysis system in place, the majority of international, non-governmental and governmental organizations provide different estimates on the magnitude of the human trafficking in the world and in this region. According to UN reports, around 700,000 women and children annually become victims of human trafficking in the world. The Swedish women's non-governmental organization *Kvinna till Kvinna* estimates that around 500,000 women from all over the world are transferred to Western Europe as human trafficking victims.[25] According to estimates by International Organization for Migration (IOM), approximately 12% of all human trafficking victims are children.[26] Data collected by MARRI shows that around 100,000 illegal migrants a year cross the territory of South Eastern European countries, out of whom around 15% originated from the countries of our region.[27] According to the data provided by a group of researchers from South

[24] This section was written in cooperation with Anđelka Marković from Belgrade Center for Human Rights

[25] "Human trafficking in Serbia", Victimology Society of Serbia, Belgrade, 2004, p. 24

[26] IOM Kosovo (2002), Return and Reintegration Project, Situation Report, February 2000-December 2002

[27] Migration, Asylum, Refugees Regional Initiative (www. marri-rc.org/Strategy and activities-Migrations), 2005-2006

Eastern European countries, between 600,000 and 800,000 people from all over the world become the victims of human trafficker and are exploited by those who use their services (weekly *Vreme*, September 22, 2005, page 17). According to the same source, the American Federal Bureau of Investigation (FBI) claims that this type of illicit trade reaches 9.5 billion dollars annual turnover.

According to the data of Ministry of Interior of Serbia, "the fight against human trafficking has been successfully continued during 2004 and 2005 and a number of routes for illegal transfer of people, mostly of those from Albania (261) and Turkey (227), have been cut. Criminal charges have been brought in 66 cases – 52 for human trafficking and 14 for illegal state border crossing."[28]

However, an analysis of court rulings in illegal migrations cases, based on media coverage, could not provide a clear picture on how many of those rulings were on human trafficking and how many on the smuggling of people. Firstly, the quality of media coverage of this field is poor since apparently obvious cases of people smuggling were presented by media as human trafficking cases. Secondly, very often cases of people smuggling are qualified as human trafficking cases even by the state bodies in charge of prosecution of criminal offences (Article 111 b, Criminal Code of the Republic of Serbia).[29] Experts in this field claim our judicial bodies often do not make a distinction between the smuggling of people and human trafficking, wrongly qualifying all illicit activities as human trafficking.[30] The reasons for doing so are varied, but not always based on a lack of understanding and knowledge on the part of judicial officials, although this was usually the case.

Human trafficking

Human trafficking, as a criminal offence, is defined by the Article 111b para.1 of the Criminal Code of the Republic of Serbia. This provision is still in effect and relies on the definition set by the First Protocol to the UN Convention against Transnational Organized Crime, adopted in 2000 and ratified by the FRY Assembly in June 2001, as following:

A person who by fraud or deceit, abuse of power or trust or a position of dependency or vulnerability of another: solicits, transports, transfers, hands over, sells, buys, brokers the transfer or sale, hides or keeps another person with the intent to profit, exploit the labour of this person, commit criminal offences, prostitution or begging, use for pornographic purposes, extract body parts for

[28] www.mup.sr.gov.yu/arhiva

[29] See Reports on human rights in Serbia and Montengro, Belgrade Center for Human Rights at www.bgcentar.org.yu

[30] Marija Anđelković, NGO ASTRA, interview with representatives of Group 484, September 2005

transplantation or use a person in combat activity, shall be sentenced by imprisonment from one to ten years.

Exploitation is the *diferentia specifica* that separates human trafficking from smuggling of people

Smuggling of People

Smuggling of people entails brokering i.e. taking part in providing illicit entry into another country to persons who gave their **consent to it,** with the intent of profiting directly or indirectly but without any intent to exploit those persons.[31]

The legislation currently in effect in Serbia, prescribes a sentence of imprisonment for up to one year to those who cross or attempt to cross the state border of SaM without permit, armed or with the use of violence (Article 249 Basic Criminal Code of the Republic of Serbia). A person involved in the prohibited transfer of other persons across state borders of SaM or who facilitates another person's illicit state border crossing in return for a material gain shall be sentenced by imprisonment of six months to five years. However, no protection is provided for the persons who were transferred. The law does not envisage any aggravating circumstances that would lead to qualifying the offence as a more serious crime such as: endangering the lives or security of smuggled migrants or inhuman or degrading treatment involving the exploitation of migrants. This is a derogation of the Second Protocol to the UN Convention against Transnational Organized Crime (Article 6 para 3).

When it comes to illegal entry and stay in the territory of SaM, the Law on Movement and Residence of Aliens (Article 34 para. 4) states that temporary residence in SaM shall not be granted to an alien who entered SaM in an illicit way and was not granted the status of a refugee or the right to asylum. As a protective measure, such an alien would be asked to leave the territory of SaM.(Article 35). The Law does not provide for granting temporary residence to the victims of human trafficking even though some by-laws that allow such residence were put into effect in 2004. In order to provide a higher level of protection, laws regulating status of aliens and asylum should be updated and aligned with relevant international standards.[32] With regard to this, special emphasis should be placed on protecting smuggled persons by changing all the provisions related to such protection to harmonize them with articles 5, 6 (para.1 (c), 16 and 18 of the Second Protocol to the UN Convention against Transnational Organized Crime.

[31] *Vreme* weekly, September 22, 2005, p. 15

[32] SaM is obliged, under Article 7 para 1 of the First Protocol, to consider adopting regulations or other appropriate measures that would allow human trafficking victims to stay in its territory for a certain period of time, or in specific cases permanently, thus exempting them from the category of illegal migrants.

The new Criminal Code of the Republic of Serbia was adopted on June 29, 2005 ("Official Gazette" of the RS No.85/2005) and will be in effect as of January 1, 2006. Article 350, para 2, of that Code prescribes **illicit state border crossing and smuggling of people as a** criminal offence stating that whoever, for the purpose of obtaining any benefit, facilitates the illicit SaM state border crossing by a SaM-non-resident or illicit stay or transit through SaM shall be sentenced by imprisonment from 3 months to 6 years. This criminal offence is in fact an elaborated and amended version of the existing Article 249 of the Basic Criminal Code of the Republic of Serbia. Amendments made the provision defining this criminal offence more updated and harmonized with the standard established by the Second Protocol (Article 6 para. 3) making it less legally uncertain. There is an improvement compared to the previous definition of this criminal offence, but the deficiency that creates ambiguity and could lead to serious problems in implementation still remains. Article 350, paragraph 2, for instance, refers solely to aliens as smuggled persons. What about SaM nationals in the position of smuggled persons?

There can be no successful fight against human trafficking in Serbia without cooperation with non-governmental organizations. Women's groups in Serbia have been dealing with human trafficking issues since 1990s. ASTRA[33] was the first non-governmental organization to focus on these issues considering them to be the gravest possible form of violence against women. Prevention of human trafficking, and education of and assistance to trafficking victims are aimed at making these issues visible in the society and addressing them without prejudice, especially when it comes to female victims who are often subjected to psychological and physical violence.

After the change of power that occurred in Belgrade in 2000 and after the inauguration of the new government of Serbia at the beginning of 2001, there were attempts to systematically involve various institutions in the fight against human trafficking. In mid 2001, the Yugoslav Team for Combating Human Trafficking, comprising representatives of competent ministries, non-governmental and international organizations, was formed.[34]

In April 2002 a National Team for Combating Trafficking in Human Beings was established in Serbia. ASTRA has had representatives in both teams from the very beginning. Within the National Team, there are four working groups in following areas:

- Prevention and education (coordinated by ASTRA),
- Assistance to victims by creating assistance mechanisms (coordinated by the Ministry of Labour, Employment and Social Policy),

[33] NGO ASTRA (http://www.astra.org.yu)
[34] Data provided by the Reasearch Group, *Vreme* weekly, September 22, 2005, p. 16

- Suppression of trafficking in children (coordinated by nongovernmental organization Beosupport),
- Implementation of the Law (coordinated by the Ministry of Justice).

ASTRA has its representatives in three working groups: Working group for the Prevention and Education which is coordinated by ASTRA, Working Group for Children and Working Group for the Assistance to the Human Trafficking Victims.

The National Coordinator created the **Advisory Body for Combating Trafficking in Human Beings** in February 2004 comprised of:

- National Coordinator and his associates,
- Coordinators of all working groups and
- Representatives of OSCE, IOM and UNICEF

The main **role** of the Advisory Body is to assist and support the National Coordinator in the coordination and implementation of measures and activities undertaken in the fight against human trafficking.

The Advisory Body is, through the coordinators of working groups, connected with other members of the National Team in order to achieve better communication and information sharing among stakeholders.

On the basis of the Decision adopted by the Government of Serbia in October 2004 (Decision of the Government of Serbia No. 02-6783/2004-I, "Official Gazette of the RS" No.113, October 15, 2004, pg.2) the **Anti-Trafficking Council** was formed, comprised of the following ministers:

- Minister of Interior;
- Minister of Justice;
- Minister of Labour, Employment and Social Policy;
- Minister of Health;
- Minister of Education and Sport;
- Minister of Finance.

The Council is chaired by the Minister of Interior.

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

In the course of 2004, two sessions of the National Team for Combating Trafficking in Human Beings were held. The first one was held on January 23,

2004. In that session the decision to form the Working Group for Children was made since that body had been previously created as a sub-group of the Working Group for the Prevention and Education.[35]

On May 26, 2005, a conference on human trafficking in South Eastern Europe, organized by OSCE Mission to Serbia and Montenegro, was held in Belgrade. On that occasion, OSCE Special Representative against Human Trafficking Helga Konrad requested revision of mechanisms for combating human trafficking. Addressing conference participants, she said that the international community is at a cross-roads in the fight against human trafficking. Despite some improvement made, there are not many facts to indicate success has been achieved in suppressing this type of crime. It is necessary, therefore, to face those facts and use that knowledge to consider all strategies and efforts to be invested in achieving further improvement. She also invited all governments represented in the conference to undertake measures that would provide for confiscation of the assets belonging to those convicted of human trafficking.[36]

Human trafficking and smuggling of people are transnational criminal activities and will be further covered by this report in the section dealing with the fight against organized crime.

4.3. Readmission

Readmission means the obligation of a country to take back its nationals who are illegally overstaying in the territory of another country, as well as third-country nationals who passed through its territory en route to another country in which they reside illegally.

The rights and obligations with regards to readmission are set out in inter-state bilateral or multilateral agreements.

SaM has only started negotiations with the EU on stabilization and association. "Negotiating Stabilisation and Association Agreement leaves little room for us to manoeuvre. Each paragraph and each word matters. Experiences of the countries with similar economy, similar problems are of relevance to us..."[37] "The Agreements with Croatia and Macedonia address visa issue, border control, asylum and migration in Articles 76 and 77 and 75 and 76 respectively. Despite slight differences, the content of the said Articles is almost identical in both Agreements. In all of them particular emphasis is placed on migration and asylum issues, more specifically, illegal migrations, and commitment to

[35] NGO ASTRA (http://www.astra.org.yu)
[36] One World Southeast Europe (http://ssla.oneworld.net/article/view/112189/1/)
[37] Jela Baćević, Head of EU Accession Office, *Politika* daily insert, October 7, 2005, p. 10

take back migrants and conclude agreements on readmission (with the European Union or bilateral agreements with EU member states)."[38] It is realistic to expect the draft Agreement on Stabilisation and Association between the EU and SaM to contain similar provisions.

The EU also gave its opinion on the readmission policy in the **Feasibility Report, section 3.6.2.**, dedicated to asylum, migration and visa issues. Particular attention in this section was given to the issue of readmission, acknowledging some positive developments in this area. SaM has signed 13 readmission agreements to date with the following countries: Germany, Switzerland, Sweden, Denmark, Italy, Belgium, the Netherlands, Luxembourg, Austria, Slovakia, Hungary, Slovenia, Croatia, Bosnia and Herzegovina and Bulgaria. All the agreements, except those concluded with Bosnia and Herzegovina, Canada and Austria, have been ratified. Negotiations are ongoing with the United Kingdom, France, Norway, Portugal, and Macedonia.

However, it should be noted that the process of signing of new readmission agreements slowed following March 2003. Since then no readmission agreement has been signed. Slow progress in this area was indicated by the French Minister of Foreign Affairs as a possible reason for tightening the French visa regime with SaM. „Serbia and Montenegro got on the list of countries with which French authorities announced tightening of visa regime, because it has not signed the readmission agreement yet. Other countries on that list include Guinea, Sudan, Cameroon, Pakistan, Georgia, Belarus and Egypt"[39]

The positive assessment given in the Feasibility Report may easily turn negative, unless the process of concluding readmission agreements continues at a faster pace.

Through the above mentioned documents, the Dublin Conventions and London Resolution, the EU established the notion of "safe country of origin" and "safe third country". Both notions constitute a basis for all readmission agreements concluded so far between SaM and EU countries.

"Through readmission agreements, each signatory party is committed to accept certain persons on request from the other country. Readmission agreements almost always explicitly commit the contracting parties to accept their own citizens if requested. The return of third-country nationals who passed through the territory of the contracting party in transit towards the developed country of destination which they enter or reside in illegally, is often requested as well.

[38] Milorad Ivanović, Overview of the Stabilisation and Association agreements signed beween the EU and Croatia and Macedonia", authored piece, July 7,

[39] Beta news agency, September 13, 2005

These agreements are almost always bilateral, one of a few exceptions being the Dublin Convention[40], the agreement between the group of Schengen countries and Poland, and agreements between the EU and Hong Kong. Most of the bilateral agreements are signed between two Western countries, between the West European country and the countries of Central and Eastern Europe, and between the countries of Central and Eastern Europe and their neighbours.

During armed conflicts in the territory of former Yugoslavia, large number of people left Serbia and Montenegro. At the same time, the country received huge number of refugees (the 1996 population census registered 551,000 refugees from Croatia and Bosnia and Herzegovina). In addition, SaM received 225,738 displaced persons from Kosovo. Statistics available from international organizations show that Serbia and Montenegro produces the largest number of people seeking asylum in Western Europe. "Serbia and Montenegro (including Kosovo) tops the list of countries originating asylum seekers", reported the UNHCR. "With 10,800 applications filed, nationals of SaM constitute the largest group followed by the Chinese and Russians (including the Chechens). The report shows France to be the top country of destination for asylum seekers with 27,400 applications received, followed by the USA, Great Britain and Germany. The number of asylum applications in EU has dropped by about 20%, which is attributed to the tightening of criteria for granting asylum."[41]

The Council of Europe estimates that between 50,000 and 100,000 people will be returned to SaM from Western Europe (30,000 from Germany, 12,000 from the Netherlands, 3,000 from Belgium, 3,000 from Switzerland, 3,000 from Luxembourg). According to data provided by the German Government, nationals of SaM in 2004 filed 6,000 applications seeking asylum in Germany,

[40] The Dublin Convention is ambitiously envisaged as a contract which tackles the issue of readmission of citizens of third countries and authority for examining the application for asylum. The Convention was signed in 1990, and became effective in 1997. In 2001, apart from the EU countries, it included Iceland and Norway. Briefly, the signatory party of the Dublin agreement which is responsible for the access of certain person on the territory of the EU is also responsible for examining of his/her application for asylum. UNHCR cherished the Dublin Convention as a strategy for adoption of agreed rules on responsibility for the decision on asylum application, emphasizing that certainty in this respect reduces the possibility of „launching" the asylum-seekers to the refugee „orbit". However, the Dublin Convention leaves the space to the „orbit" and chain return of refugees. UNHCR and other international organizations are concerned about the Article 3(5) of the Dublin Convention that allows to the EU states to return the asylum-seeker to a non-member country that is perceived as safe. It means that the EU country in which the request for asylum was filed can return the asylum-seeker to the safe third country, rather than to some other EU country that is bound by the Dublin Convention. The EU country can also, based on the Dublin Convention, return an asylum-seeker to another EU country which can again return him/her to the country outside the EU which, based on criterion of the last country of EU destination, is not the safe third country. (Stephen H. Legomsky, *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries*, International Journal of Refugee Law, 2003, page 15), Taken from the text "Fortress Europe"

[41] Tanjug news agency, September 6, 2005

while only 4,000 persons were returned in the same period. In the first quarter of 2005, SaM was on the top of the list of countries whose nationals sought asylum in Germany.[42]

The above data raise major concerns and indicate the magnitude of the problem currently faced by SaM. As long as these figures dominate international statistics, it will be quite impossible for SaM to make it on the Schengen visa white list.

[42] Group 484, *Return from Western Europe*, p. 12

V Integrated Border Management

Further integration of SaM into the EU entails achieving certain European standards in the field of border management. The fight against organized crime and illegal migrations depends heavily on the successful development and implementation of a relevant strategy. The European Commission, in order to assist South Eastern European countries to consolidate and reform their border services, introduced "Regional Guidelines for Integrated Border Management in the Western Balkans".

"The region spreads over approximately 5 000 kilometers of border area with 25 million people. Countries involved in this regional program are: Albania, Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia and Montenegro."[43]

"Regional Guidelines for Integrated Border Management in the Western Balkans" reflect the essence of this concept. The first level of cooperation to be achieved is *within* various services at the border. The second level entails cooperation *between* services involved in border management and the third is related to *cross-border i.e. international cooperation.* Such an approach to border management requires efficient and effective joint effort by all competent services involved. The cooperation is not limited to the national level but necessarily includes competent services in other countries of the region, across national borders."[44]

Establishing integrated border management means a permeable border, imperceptible for all legitimate movement of people and goods while at the same time an insurmountable obstacle for all illegal activities, from goods smuggling to people smuggling and human trafficking. In order to undertake such a comprehensive task, an in-depth analysis and the reform of services and EU support are needed.

The support of the EU is already provided via the CARDS Regional program based on the mentioned EU guidelines.

[43] Strahinja Brajušković, EU Accession Office, *Politika* daily insert, October 7-8, 2005, p. 12
[44] Ibid

In February 2005, Croatia announced its Integrated Border Management Strategy. There are five chapters of that strategy. The first one defines the notion of *integrated border management,* the second the *geopolitical characteristics of the region,* the third the *institutional framework,* the fourth the *coordinating mechanisms,* the fifth *cooperation and coordination on the three levels integrated border management.*

The main objective of the Strategy is enhanced cooperation and coordination within and between agencies involved in border administration, as well as between them and competent bodies of other countries. According to the Strategy, the main agencies involved in border administration are: the Border Police Directorate of the Ministry of Interior of Croatia, the Customs Directorate, the Phytosanitary Service and the Border Veterinary Inspection Department.

After a detailed description of the state border, its weaknesses are identified such as: a large number of border crossings, too many lines of infrastructure intersecting border, too many "pocket-size pieces of land" etc. The conclusion was that a decrease in the number of border crossings for phytosanitary and veterinary inspections is needed in order to rationalize resources and increase efficiency.
Analyzing the structure of border police, the Strategy found certain changes in the organization of border police were needed, at the regional as well as at local level. When it comes to other border services, their importance was emphasized in relation to the transitional status of Croatia. The inter-ministerial working group's task was to provide the most efficient strategy implementation through specific expert teams. Establishing such a body was necessary since reform tasks, in the organizational sense, might lead to idle running or overlapping activities. The inter-agency working group should prevent that from happening.

The most important part of this document is the one on the cooperation and coordination of three levels of integrated border management. There are three sub-sections to that section: intra-service cooperation, inter-agency cooperation and international cooperation. Each sub-section is comprised of chapters on: legal and regulative framework, administration and organization, procedure, human resources and training, communication and exchange of information, informational-technological system, infrastructure and equipment. Within each chapter recommendations for specific services are provided.

The reform project on establishing integrated border management may achieve results only if all the counties in the region are seriously committed to it. In order to assist all the countries in the Western Balkans to establish integrated border management, the project "Assistance and Coordination of Integrated Border Management Strategies" has been launched in 2005 to be implemented in 24 months.

"Within this project, local coordinators as specialized associates were appointed in the countries of the Western Balkans in order to create necessary state bodies structure that will later on monitor the development of integrated border management."[45]

The aim of this project is educational as well as informative, but the state bodies are those with the major task of drafting the strategy.

The action plan of the Government of the Republic of Montenegro laid plans to adopt the strategy by the end of the year.

The Government of the Republic of Serbia on March 10, 2005 issued a **Decision on Appointment of the President and Members of the Commission on Preparation and Organization of National Strategy on Management of Border Security and Control Services of the Republic of Serbia (Official Gazette No.24/05).** The Commission is comprised of 24 members and the president is the Minister of Interior. The members are the representatives of the Ministry of Interior, Ministry of Finance (Customs Directorate), Ministry of Justice, Ministry of Public Administration and Self-Government, Ministry of Agriculture, Forestry and Water Management (Veterinary Directorate, Phytosanitary Directory), Ministry of Capital Investment, Ministry of Trade, Tourism and Services, Ministry of International Economic Relations, Ministry of Labour, Employment and Social Policy, Ministry of Health, and Ministry of Foreign Affairs of SaM as well as Serbian Statistics Office, Geodetic Authority and Property Directorate of the Republic.

It is a very cumbersome body that can perform operational tasks only in a more narrow composition. The first draft of the Strategy is expected in a short time. As soon as the Strategy is adopted the issue of its implementation will be raised. The precondition for strategy implementation is the demilitarization of SaM borders i.e. turnover of state border control from the military to the police authorities of the constituent republics. In preparation for the turnover of state border control to the Ministry of Interior of Serbia, based on the decision of the Supreme Defence Council ("Official Gazette of SaM" No.1/03), all necessary documents for that endeavour have been harmonized and adopted by the competent bodies.

- Decision of the Council of Ministers on Temporary Takeover of State Border Control, Resources for Performing Those Tasks and Members of SaM Army by the Ministry of Interior of Serbia (Official Gazette SaM No. 4/05)
- Memorandum on Turnover of State Border Control, Resources for Performing Those Tasks and Takeover of Professional Members of SaM Army by the Ministry of Interior of Serbia.

[45] Ibid

- Decision of the Minister of Defence on Establishing the Commission on preparation of Concrete Proposals and Activities in Implementation of the Decision of the Council of Ministers.
- Plan of Action for the Turnover of State Border Control from the SaM Army to the Ministry of Interior of Serbia.

In accordance with the Amended Plan of Action adopted on August 15, 2005, the takeover of the state border control has commenced without further requests and problems. On September 15, 2005, at 4:30 p.m., state border control from the border area Hungary-SaM-Croatia to the border area Hungary-SaM-Romania, around 175 kilometers in length, was taken over by the Border Police of the Ministry of Interior of Serbia.

It is the complete border line to Hungary and Border Police took control over 16 watchtowers and 40 military compounds.

In accordance with the Decision of the Council of Ministers E.P. 119 adopted on July 31, 2003, from November 26 to December 24, 2003, state border control in the territory of the Republic of Montenegro was taken over by the Ministry of Interior of Montenegro.

"Positive experience acquired so far should be brought into activity plans for the take over of the state border control on the border with Romania."[46]

The importance of trained people who know geographical characteristics of the state borders well is not to be neglected. The Ministry of Interior of Serbia should have that in mind when hiring people for the job vacancies with the Border Police. The experience of the members of border units of SaM Army is immeasurable. Only 42 members of SaM Army, so far, have joined Ministry of Interior of Serbia to be deployed on the state border with Hungary.

At the time of the writing of this report, the national assembly is discussing the very important **Law on Police**, which is expected to define police as a public service as well as the position of the border police within law enforcement. The **Law on Surveillance of the State Border** is unfortunately still pending.

"According to the Law on State Border Crossing and Stay in Border Area adopted back in 1978, border units, according to the Article 48, provide state border control as well as control of movement and stay of people in the border area in a 100 meter radius, out of settlements and border crossings in order to prevent illegal border crossings and violations of border lines."[47]

[46] Lieutenant – Colonel Mikan Vasiljević, Panel-discussion, "Towards Schengen white list", Subotica, October 26, 2005.

[47] Ibid

State border control in border crossings as well as control of movement and stay in settlements is performed by officials of the Ministry of Interior of Serbia.

Integrated Border Management Strategy of Serbia should clearly and unequivocally define the mechanisms created to prevent overlapping between authorities for all border services. The existence of the inter-agency group in the course of the implementation would be a good way to do it.

VI Establishment of rule of law and fight against corruption and organized crime

The EU Summit in Thessaloniki, held June 19 through 20, 2003, encouraged the countries of the Western Balkans on the path of their European integrations. However, the need for comprehensive reforms in the areas of rule of law and the fight against organized crime, corruption and illegal migrations was pointed out.

Unfortunately, two years after that summit, South Eastern Europe is still the region where all these criminal activities are widely spread. This time we would focus on the corruption issue and human trafficking and people smuggling.

The level of corruption throughout South Eastern Europe remains high according to the Transparency International (TI) Annual Report on Corruption Perception in 159 countries.

According to the Corruption Perception Index (CPI) for the year 2005, issued on Tuesday, October 18, Iceland, Finland and New Zealand are the countries with the lowest level of corruption among 159 surveyed countries. At the bottom of the list are some of the poorest countries in the world, among those are Bangladesh, Chad and Turkmenistan.

CPI is based on complex research that reflects the perception of business people and analysts in specific countries, local as well as foreign, and it is based on 16 different surveys done by ten independent institutions. Countries are ranked on the perception score that ranges from 10 to 0, 10 being most creditable and 0 most corrupted.

All the countries of South Eastern Europe, except Cyprus, scored less than 5.0, placing them among 113 countries i.e. 79% of all surveyed countries, where "corruption is spread through all aspects of public life", according to TI President Peter Eigen.

Out of all the countries in the region Greece has the best score at 4.3 and it is ranked 47 in the world with a higher rank than Bulgaria, ranked 55 with a 4.0 score, and Turkey, ranked 65 with a 3,5 score, as well as Croatia, ranked 70 with a 3.4 score, and Romania, ranked 85 with a 3.0 score.

The previous score of Turkey was 3.2 and it is now placed among countries and territories which showed "noticeable improvement". Comparing to 2004 CPI, the score of Bulgaria is 0.1 lower and scores of Croatia and Romania are 0.1 higher.

Bosnia and Herzegovina (BiH), Serbia and Montenegro, Macedonia, and Albania are among 70 countries with scores lower than 3.0 which implies "unrestrained corruption that is a serious threat to the institutions as well as to social and political stability".

With a score of 2.9 BiH is ranked 88, followed by Serbia and Montenegro ranked 97 with a 2.8 score, whilst Macedonia is ranked 103 with a 2.7 score. With 2.4, Albania has the lowest score of all South Eastern European countries and is ranked 126. Compared to last year, CPI scores of BiH and Albania are 0.2 and 0.1 lower while the score of Serbia and Montenegro is 0.1 higher. The score of Macedonia remained the same.

Low scores, according to TI, should not be the basis for punishment of any country or denial of support that should lead to the improvement in development of its population. It should be interpreted as a signal of structural deterioration that should be addressed immediately.[48]

Unfortunately, SaM is among the countries with a high level of corruption. The recent case of arrest of the Supreme Court Justice disturbed general public. "Unit for Combat Against Organized Crime (UBPOK) has been following Justice Vuckovic, who was humorously named "highly prized judge" by his colleagues."[49] The fact that the Supreme Court Justice has been arrested generated fear as well as hope among citizens. Fear because of the doubt whether that was the only case. Hope because the state, after all, is functioning.

According to the research done by the Center for Liberal Democratic Studies in 2001, corruption in various state bodies as well as in all segments of social life was extremely high. "Judging from average corruption diffusion scores, citizens consider areas and institutions in following areas as those with highest level of corruption: customs (4.35), taxation (4.12), judiciary (4.11), internal affairs (4.060) etc. (in brackets-average corruption diffusion index).

[48] Transparency International, BBC, Makfaks, HINA, BETA, FOKUS, Sofia News Agency, Medijapul, Dnevnik, SEE Security Overview – 18/10/05; Council of Europe – 14/10/05)

[49] weekly "*Vreme*"; "An Obscure Story", September 22,.2005. , p 11

Besides corruption, the region has been facing other criminal activities as well, those of transnational nature. Human trafficking and people smuggling, that have already been covered by this document, are examples of so called Balkan networking.

„Balkans networking in the field of organized crime means that human trafficking activities involve gangs from Macedonia, Albania and Montenegro. When, in 2003, Dilaver Bojku, ethnic Albanian from Macedonia, was arrested, it became known that that "Balkans Human Trafficking Baron", an entrepreneur, had more than 3000 trafficked human souls in his portfolio."[50]

„More than a year ago, Montenegro was shaken by internationally known "Moldavian Girl S.Č. Case", which put this member republic of SaM Union in the spotlight"[51]

„Belgrade is still one of the major transit centers in this part of Europe. Trafficking routes from Belgrade go to Kosovo in the south, to Croatia and Bosnia as well as Italy in the west and to Hungary in the north, from where that route goes further to Western Europe."[52]

The same way human traffickers cooperate in their "activities", police authorities in the region try to fight against them by joining efforts in "SECI Center" (South-East Cooperation Initiative). That body, with the seat in Bucharest, involves twelve countries in the region and has been continuously working in the field of combating "trans-border crime" since 2002. Recognizing human trafficking as one of most serious human rights violations and most widely spread organized crime activities in the region, SECI in cooperation with all countries of that region launched the "Operation Mirage" in order to suppress human trafficking. According to data collected by SECI Center in Bucharest, from all countries of the region, major human trafficking routes were:

1. Ukraine– Moldova– Romania– Serbia and Montenegro
2. Ukraine– Moldova – Romania– Bulgaria– Turkey
3. Serbia and Montenegro– BiH– Croatia– Slovenia
4. Croatia– Slovenia-EU[53]

The importance of borders in suppressing organized crime is significant but not crucial. It was the conclusion of the conference "Organized Crime in South Eastern Europe – Current Situation and Suppression Strategy", held in Berlin, October 21, 2005, organized by South Eastern Europe Association from

[50] *Vreme weekly research team*, "Trgovina ljudima– Novo ime starog posla" (Human trafficking-New name for the old office), September 22,.2005, p.19

[51] Ibid

[52] Ibid, str. 17

[53] *Vreme* weekly research team', "Trgovina ljudima– Novo ime starog posla", (Human Trafficking-New name for the old office), September 22, 2005.

Munich, Deutsche Welle from Bonn and Federal Academy of Security Policy from Berlin.

A number of experts and representatives of international organizations emphasized that, in spite of the widespread belief, closing borders is not the way to suppress organized crime. On the contrary, borders become a risk factor when it comes to increases in the crime rate. Conference participants stressed how important it is to avoid prejudices and stereotypes of the regions and nations allegedly prone to criminal activities in tackling this phenomenon in Balkans. It is necessary to take into account the political and social reasons that have been, and still are, behind the increase in the organized crime rate in the region.

On the one hand, the fact is that countries in the Balkans went through periods of war and violence and the economic situation is bad and unstable while corruption is widely spread. On the other hand, there are factors that have a positive impact on suppression of organized crime including the prospects of SaM's integration into the EU that have put pressure on the implementation of reforms and increased cooperation among countries in the region. It was pointed out that drug trafficking, human trafficking, and corruption remain major problems, but the most serious problem in South Eastern Europe is crime in economy sphere that gravely impedes economic growth in the region.

There were different opinions on the potential of effectively combatting organized crime in Balkans. Some of the experts and representatives of international organizations deemed the "critical mass" of those ready to fight against corruption and organized crime and provide for real improvements in their countries has been reached in all the countries. But there was a disparate opinion that there is still no such "critical mass" in Balkans and in order to reach it, thorough reform in security sector (police, army, security forces) is needed. To achieve it, a political consensus on the necessity of reform is required. Additionally, to implement such a reform a stable environment with no risk of further conflicts is needed, as well as a pressure from abroad and the prospects of SaM's integration into the EU.

Participants in the conference were representatives of Council of Europe, Organization for Security and Co-operation in Europe, international police associations, regional security initiatives and international police missions in the region. Researchers from various German and foreign scientific institutions also participated, as well as representatives of police and security forces from the countries in the region, including Serbia and Montenegro."[54]

[54] Beta News Agency, October 21, 2005.

In the fight against organized crime, the state has taken certain measures. The most important regulation adopted is the *Law on Organization and Competence of the State Authorities in Prevention of Organized Crime (Official Gazette RS No. 42/02, 27/03, 39/03, 67/03)*. That law provides for establishing special units of the state bodies, their competence and authorities, necessary for the efficient investigation and persecution of perpetrators.

According to this law, the organized crime entails criminal offences of an organized criminal group, or other type of organized group or its members, carrying a prison sentence of a minimum of four years or more. The Criminal Procedure Code was also amended accordingly. A new Criminal Code was adopted and will be in effect as of January 1, 2006. The Law on the Protection Program for Participants in Criminal Proceedings was also adopted and the Law on Prevention of Money Laundering has been submitted to the Parliament for approval. There is also a Draft Strategy on Combat Against Organized Crime.

The pace of SaM's moving forward towards EU accession depends on success in combating various organized crime activities.

VII Regional cooperation in South Eastern Europe

All the above indicated areas which should be reformed in order for a country to meet EU standards have a regional dimension as well.

Regional cooperation is essential in the process of preparing for integration into the EU. Regional cooperation is a first step towards EU-wide cooperation.

The message the EU sent to the countries of the Western Balkans is unambiguous: "The EU won't 'import' problems of the member states but admit as members only those who are capable of establishing enhanced cooperation with their neighbors and make proper arrangements both internally and regionally."[55]
This was the idea behind the creation of the **Stability Pact for South Eastern Europe,** as "the first serious attempt by the international community to replace the previous, reactive crisis intervention policy in South Eastern Europe with a comprehensive, long-term conflict prevention strategy."[56] "On 10 June 1999, at the EU's initiative, the Stability Pact for South Eastern Europe was adopted in Cologne. In the founding document, more than 40 partner countries and organizations undertook to strengthen the countries of South Eastern Europe "in their efforts to foster peace, democracy, respect for human rights ..."[57].

The Stability Pact launched an initiative for concluding free trade agreements between the SEE members. As a result, "the eight SEE countries have in little over 3 years finalised 27 FTAs, the majority of which are in force. This creates a regional market of 55 million consumers, stimulates trade and substantially improves the prospects for attracting investment and thus overall economic growth..."[58] Free trade agreements are aimed at bringing South Eastern Europe closer to EU trade practices.

Opening of the SEE market for SaM yielded positive results in the area of foreign trade. "Trade with the region of South Eastern Europe accounts for 15.7%

[55] See, VC Experts Group Research, Ibid
[56] http://www.stabilitypact.org/about/default.asp
[57] http://www.stabilitypact.org/about/default.asp
[58] Ibid

of the total SaM's foreign trade in 2004, with exports being higher(34%) than imports (9,5%). This proves that the region of SEE is SaM's important export market. Serbia has a growing trade surplus with some countries in the region. The major SaM's trading partner in the region is Bosnia and Herzegovina, accounting for 38% of total SaM's trade with the South East European countries. SaM also had a highest trade balance surplus with Bosnia and Herzegovina, amounting to 407.3 US$ in 2004."[59]

If the aim of trade liberalisation in the region of South Eastern Europe is to be enhancing trade and countries' capacities to attract foreign direct investments, and to improve economic efficiency and competitiveness, then "removing non-custom barriers is one of the major priorities of the regional cooperation. Non-custom barriers, which have been identified so far, include regulations and standards related to products, customs procedures, *visa policy* and practice, transportation of goods as well as other areas."[60]

Those who have good knowledge of the situation in the South Eastern Europe, former and current ministers, point to the key issues with regard to enhancing regional cooperation. "The Balkans is often referred to in documents on regional cooperation as the area with 55 million people. This holds true, however, only until Romania and Bulgaria become members of the EU. Since that moment, and especially after the accession of Croatia, it will be a 20-million people market."[61] "We are faced with a very serious question: What is the region of South Eastern Europe?"[62] There is also a problem due to EU visa regime with some countries of the region, as well as visa regimes amongst SEE countries themselves, which is growing "more severe."[63]

The issue of visas, asylum and migrations in general is addressed in the Working Table III of the SEE stability Pact, under MARRI Initiative (Migration, Asylum, Refugee, Regional Initiative). MARRI covers five South East European countries: Albania, Bosnia and Herzegovina, Croatia, Macedonia and Serbia and Montenegro. These countries meet twice a year at MARRI Regional Forums.

The first Regional Forum was held in Herceg Novi (Montenegro) on April 5, 2004 when it was decided to establish a Regional Center in Skopje which would primarily deal with undertaking concrete steps and implementation of decisions taken by the Regional Forum.

[59] Duško Lopandić, Verica Ignjatović, "Korisno zbližavanje" ("Useful Rapprochement"), European Forum, No 10, October 2005, p. 6

[60] Ibid, p. 8

[61] Prof. Vladimir Gligorov, "Balkan sve manji" ("The Balkans getting smaller"), European Forum, No 10, October 2005, p. 10

[62] Goran Svilanović, Round Table on Regional Cooperation in SEE, Belgrade, October 3, 2005

[63] Milan Parivodić, Round Table on Regional Cooperation in SEE, Belgrade, October 3, 2005

One of the most important objectives of MARRI is to contribute to the orderly and harmonized movement of people with particular emphasis on security and prosperity, covering the areas of asylum, migrations, integrated border management, visa policy, consular cooperation as well as repatriation of refugees and IDPs.

Of particular importantance is the Tirana Declaration, of April 5, 2005, which identified the most sensitive issues concerning free movement of persons and capital in the region of South Eastern Europe. Priority was given to the following issues: visa facilitation within the region and with the EU and Schengen countries. The concrete steps the countries will undertake include: "exchange of information, including warning and mutual alerting on suspected illegal transit flows and consular cooperation, according to best practices offered by the EU."[64]

Given the set goal – visa facilitation with the EU and Schengen countries, and in accordance with Thessaloniki Summit Joint Statement, it was underlined that this goal for some countries is a **mid-term** and for others a **long-term** perspective, depending on reforms in the areas such as rule of law, combating organized crime, corruption and illegal migrations.

[64] The Tirana Declaration, www.marri-rc.org

VII Recommendations:[65]

The timing of the publication of this text coincides with the beginning of the negotiations towards concluding the Stabilization and Association Agreement ("SAA") between Serbia and Montenegro and the European Union ("EU"). It is Group 484's opinion that the early abolishment of EU visas, in advance of the country's actual accession to the EU, would mean the attainment of one of the fundamental European values for the citizens of Serbia and Montenegro: free movement within the entire EU territory. In order to achieve freedom of movement within the EU, the migration domain must take a special place in the process of reforms in Serbia and Montenegro, as well as in the negotiations with the EU. This domain is of an exceptional importance for the EU as well because the success of Serbia and Montenegro in controlling migration would directly resolve one of the most acute and longstanding problems facing the European Union – the problem of the constant influx of illegal migrants from or through the territory of Serbia and Montenegro into the EU territory.

8.1. Given the above context, we recommend the following:

1. The process of **reforms** in the spheres of **visas, border control, asylum and migration** is complementary to the process of negotiation and implementation of agreements with the EU (and the Stabilization and Association Agreement and the Accession Agreement that will follow afterwards). **Reforms and negotiations are one inseparable whole** in which negotiations and implementation of the agreements assist in the timely implementation of more rational and more efficient reforms. The conduct of negotiations, therefore, must serve the purpose of the reforms and in no way be an end in itself.

2. The reforms in the migration control sphere must occur early in the implementation phase of the SAA, to achieve the **abolishment of the EU visas for citizens of Serbia and Montenegro.** This is **the medium-range objective** with regard to which a strategy and plans of activity for all the competent authorities at the level of the state union and of the republics – member states – must be worked out. The negotiations in this sphere also must be geared towards the achievement of this goal.

[65] The recommendations are to a large extent based on the results of an analysis performed by the expert consultant Milorad Ivanovic.

3. **The negotiations should approach migration control issues as a component part of the whole reform strategy. The guidelines for conducting the negotiations should be flexible and** adjusted to the level of the results already achieved in the reform process. The negotiating team in this sphere must have a clear vision of the planned course of the reforms in order to be able to negotiate successfully.

4. Bearing in mind the experience of Croatia and Macedonia and the solutions contained in the agreements with those states, not much manoeuvring room has been left for different solutions in the agreements with Serbia and Montenegro. Consequently, **the provisions on the readmission principle and the conclusion of agreements with the EU on the readmission, i.e. on the continuation of conclusion of bilateral agreements with the EU member states, should be accepted while we strive to ensure that the specific interests of Serbia and Montenegro also find their place in the agreement.**

5. Initiatives should be launched in the negotiations for the **opening of a dialogue on the issue of illegal migrations,** either on a bilateral basis with the states most jeopardized by illegal migrations or together with the EU as a whole. The purpose of these negotiations should be to achieve concrete arrangements on the measures to be taken, jointly or separately, to drastically reduce the presence, or prevent the arrival, of illegal migrants from Serbia and Montenegro into the EU. These measures should be applied whether the illegal immigrants are the citizens of Serbia and Montenegro or foreigners who have crossed Serbia and Montenegro and illegally arrived in the EU territory.

6. During the negotiations on the SAA, a final agreement should be reached in Serbia and Montenegro aimed at bringing about complete **harmonization of the Serbia and Montenegro visa regime**, thereby eliminating the EU allegations of the existence of a dual visa regime. All parties should be informed of the harmonization during the course of negotiations. Prior to the achievement of harmonization, the Council of Ministers' decision of May 25, 2003, which is invoked by the EU whenever raising the issue of the existence of a dual visa system in Serbia and Montenegro, should be rescinded.

7. During the negotiations, the representatives of Serbia, Montenegro and EU should always be kept informed of the process of **reforms in the sphere of the visa regime** (preparation of new regulations, a new information system, preparations of the diplomatic missions and consular posts and their staff for the implementation of the new visa regime, etc.).

8. The process of preparing to issue personal documents that meet the highest ICAO (International Civil Aviation Organisation) and EU standards

regarding **document security** (protection from forgery and the possibility of abuse) for the citizens of Serbia and Montenegro and foreigners must be constantly present during the negotiations. If possible, the issuance of new secure personal documents (the "smart card" with an incorporated microchip) should be started as soon as possible, even if only on a trial basis.

9. **The turnover of state border control from the Army of Serbia and Montenegro to the Ministry of the Interior** should be completed before the end of SAA negotiations. The positive resolution of this uncertain issue would denote a qualitative turning point in the current situation. Resolution of the state border control issue would also provide a significant positive element to the negotiating atmosphere and create conditions for the general, and specifically financial, support from the EU in this field.

10. During the negotiations, **laws** should be passed on asylum in both republics and a significant part of the bylaws prepared. Also, in the course of the negotiations and in the implementation phase of the Agreement, there should be an on going process of gradually building up the asylum system institutions and training the staff to be engaged and employed in these institutions, in cooperation with appropriate international partners (such as the UN High Commissioner for Refugees).

11. We have proposed the above initiatives as solutions to address the following issues that the EU finds problematic: illegal migrations, complete transparency in the multidirectional course of the reforms in the sphere of visas, border control, asylum and migrations and permanent keeping of the negotiating partners informed of these processes. Our initiatives should create an environment where, before the ending of the SAA negotiations, we can make a well-documented request that the agreement incorporate a unique provision. In consideration of the progress achieved in the reforms and their concrete impact on the suppression and control of illegal migrations to the EU, the Council of Europe, on the recommendation by the Commission, should consider whether the conditions have been fulfilled **for Serbia and Montenegro to be placed on the positive list of the EU visa regime before accession to the EU.** Such a provision (positively intoned, but not too binding on the EU), would be new in respect of the agreement with Macedonia (in the agreement with Croatia it was not even necessary because it had been put on the positive list long before the conclusion of the agreement). The said provision would be drafted in recognition of the results achieved so far, particularly with respect to the reforms in this specific area. An opening of a prospective abolishment of visas, towards which the reforms process should be guided, would serve as motivation to speeded up reforms in an even more concentrated manner.

With the condition that the process of reforms progresses as set out in items 5 to 11, it would be hard to refuse our request for the inclusion of the provision on the prospects of waiver of visas in the SAA.

We emphasize again that the success of the negotiation process and, specifically, of the implementation of the agreement in this sphere hinges directly on the success of the process of reforms. For this reason of key importance, a consensus must be reached as soon as possible on the strategy of the reforms in the spheres of visas, border control, asylum and migration, and each organ, in keeping with its responsibilities, must tackle the implementation of its plan of activities, along with continued coordination to be realized through a team for the conduct of negotiations.

This proposal considers possible approaches to pursuing negotiations with the EU on the conclusion of the SAA in the sphere of visas, border control, asylum and migrations and provides a basis for further discussion of these issues.

8.2. To the Government of the Republic of Serbia we suggest the following:

1. After the adoption of the Strategy of the Republic of Serbia for the association with the EU, it would be of particular significance if the Government immediately took up the activities that will make the distant prospects of association seem much closer and usher **the state and its citizens into the EU much before the formal admission** by having the visas for the citizens of Serbia for the entry into the territory of the members of the Schengen Agreement abolished.

The abolishment of visas is possible to achieve if the Republic of Serbia makes an extra effort at the harmonization of its regulations, institutions and practice with the EU standards in the spheres that are of special importance for the EU from the point of view of **control, i.e. suppression of illegal migrations.** This practically means that the overall measures taken ought to lead to stopping the illegal migrations of citizens of the Republic of Serbia to the territory of the EU member states, in particular the members of the Schengen Agreement. The function of these measures should also be to prevent the illegal migratory movement of foreigners towards the EU territory. This is important because the **EU assesses whether a country is successful in the control and suppression of illegal migrations from and through its territory to the EU territory** before deciding to place that country on the positive list of its visa regime, thereby making it possible for the citizens of that country to enter and stay in the EU for up to three months without acquiring visas. This is borne out by the experience of Romania and Bulgaria who were put on the positive list of the EU in 2001 because they had undertaken a series of concrete measures in the

sphere of control and suppression of illegal migrations beforehand and cooperated successfully with the EU. The objective is, therefore, possible to attain.

The main areas in which the EU evaluates if the required standards were achieved (for example when the EU was determining whether Romania and Bulgaria had met the conditions to be placed on the positive list of the visa regime) are:

- illegal migrations;
- document security for identity cards and travel documents;
- penalties for illegal border crossings;
- border control (structures, equipment, legal system, statistics, procedures;
- visa system (visa regime for other states visa issuance procedures, security of the visas issued);
- readmission / repatriation;
- immigration policy (responsibility of carriers, expulsion measures).

The criteria on which the EU evaluates whether the standards achieved are at a satisfactory level are set out in the Council's Enactment No. 539/2001 of March 15, 2001. This enactment establishes both a positive and a negative list of the states to which the regime of entry into the territory of the member states of the Schengen Agreement is applied. Citizens from the states on the positive list do not require visas for stays that are less than three-months. Other relevant documents further elaborate on those criteria.

In order for Serbia and Montenegro to be placed on the positive list of the EU visa regime it is essential that each member state, in cooperation with the competent authorities of the state union (for part of these responsibilities of importance for this issue rests also with these authorities), takes the necessary measures that would result in a positive evaluation by the European Commission. This evaluation will consider both the achievement of necessary standards and successfulness in the suppression of illegal migrations.

A positive EU evaluation and the placement on the positive list depends to a great extent on the successfulness of the activities of the Government of the Republic of Serbia, therefore, the Government should be working in **three directions:**

- undertaking concrete measures in the legislative field and in institution building and practice, in keeping with the EU standards in the spheres of migration, asylum, visas, and integrated border management, as well as in the field of suppression and control of organized crime, in constant and consistent cooperation with the EU;
- cooperating with the organs of the state union and the Republic of Montenegro in the fields where specific cooperation is not only possible, but indispensable for the purpose of the unity of approach *vis-à-vis* the EU and the harmonization of specific solutions in individual spheres;

– contributing to the realization of regional cooperation in the listed fields in the relations between the states of West Balkans because regional aspects are also one of the criteria the EU takes into account in the process of association, as well as from the point of view of abolishment of visas for the country concerned.

2. In order to ensure planned and organized work on the attainment of the set goals, as well as an effective supervision of the implementation of the necessary activities, the Government of the Republic of Serbia could adopt the following **conclusions:**

   a. **Abolishment** of visas for the citizens of the Republic of Serbia and Serbia and Montenegro for the purpose of their free entry into the territory of the states of the Schengen Agreement is set as a priority in the policy of the Government of the Republic of Serbia.
   b. The Government could charge the Office for Association with the EU with the task of making the necessary preparations with a view to setting up an **Inter-ministerial Working Group for Schengen (IMWGS)** which will be working towards creating all the indispensable conditions in order for the Republic of Serbia and Serbia and Montenegro to put forward their candidature to be placed on the positive list of the Schengen Agreement visa regime.
   c. The inter-ministerial working **group should be composed** of representatives of the competent authorities and institutions of the Republic of Serbia and experts in the fields of migration, asylum, visa regime, integrated border management, struggle against organized crime, and finance, as well as experts in other issues that will have to be settled with a view to realizing the goals set. In cooperation with the Ministry of Foreign Affairs, Ministry of Defence, and Ministry for Human and Minorities Rights of Serbia and Montenegro, the conditions should be created for the participation of representatives of these ministries in the work of the Inter-ministerial Working Group.
   d. The task of the IMWGS is to prepare, within two months from the day of its establishment, and submit to the Government a draft **Plan of Activities** with fixed deadlines by which each of them will be accomplished, with the names of responsible persons in charge of each of the activities listed for adoption. The plan of the activities must also have a **financing plan** for the work of the Inter-ministerial Working Group and the **Budget Costs Projection** to cover the establishment of the new organs and institutions, as a component part in keeping with the EU standards.

In the elaboration of the draft Plan of the Activities, the Inter-ministerial Working Group will be guided by the criteria of the EU contained in the Council of Ministers' Enactment No. 539/2001 of March 15, 2001, as well as by

other relevant documents elaborating those criteria. In this work the Inter-ministerial Working Group will cooperate most closely with the EU representatives and experts.

- While the Republic of Serbia is undertaking many tasks in the spheres of its responsibilities to creating conditions for the **placement of Serbia and Montenegro** on the positive list of the Schengen Agreement, the IMWGS must bear in mind in its preparation of the Plan of Activities that there are activities which must be realised in coordination with the competent authorities of the State Union and the organs of the Republic of Montenegro. All three levels of government must cooperate in the completion of their own activities within each republic as well as for the state-union.

3. Although it need not specifically feature in the Government's conclusions, it is useful to state that the IMWGS should have sub-groups for specific issues. These sub-groups would be composed of representatives of the competent authorities of the Republic of Serbia and the ministries on the level of the state union as follows:

The 1st sub-group for **migrations** affairs – composition:

- Ministry of the Interior of the Republic of Serbia,
- Ministry of Finance,
- Commissariat for Refugees
- Ministry of Foreign Affairs,
- Ministry for Human and Minorities Rights,
- Possibly other organs, as necessary.

The Ministry of the Interior of the Republic of Serbia supervises the sub-group. If and when necessary, experts of the International Organization for Migrations, other international organizations and institutions, and experts from civilian life may be included in the proceedings.

The 2nd sub-group for the **asylum** regime – composition:

- Ministry of the Interior of the Republic of Serbia,
- Ministry of Finance,
- Commissariat for Refugees,
- Ministry of Labour and Social Policy,
- Ministry of Health,
- Ministry of Foreign Affairs,
- Ministry for Human and Minorities Rights,
- Possibly other organs, as necessary.

The Ministry of the Interior of the Republic of Serbia will supervise the sub-group. Joining in the work of the sub-group when necessary will be experts of the UN High Commissioner for Refugees, other international organizations and institutions and the EU, as well as experts from civilian life.

The 3rd sub-group for **visa regime** – composition:

- Ministry of the Interior of the Republic of Serbia,
- Ministry of Finance,
- Ministry of Foreign Affairs.
- Possibly other organs, as necessary.

The Ministry of the Interior of the Republic of Serbia supervises the sub-group. Joining in the work of the subgroup, when necessary, will be experts of the ICMPD (**International Centre for Migration Policy Development**) from Vienna and other experts of international organizations and institutions, as well as experts from civilian life.

The 4th sub-group for **integrated border management** – composition:
The sub-group is composed of **expert**s from the organs already included in the composition of the existing Commission of the Government of the Republic of Serbia.
Ministry of the Interior of the Republic of Serbia will supervise the sub-group. Joining in the work of the sub-group, when necessary, will be experts of the ICMPD from Vienna and other experts of international organizations and institutions, as well as the EU and experts from civilian lif e.

The 5th sub-group for **organized crime issues** – composition:

- Ministry of the Interior of the Republic of Serbia,
- Ministry of Finance,
- Possibly other organs, as necessary.

The sub-group is supervised by the Ministry of the Interior of the Republic of Serbia. Joining in the work of the sub-group, when necessary, will be the EU experts and experts from other international organizations and institutions, and from civilian life.

We believe that European Integration Office of Serbia and Montenegro and European Integration Office of Government of Serbia should participate in the work of these sub-groups.

4. The IMWGS with its sub-groups should be the body directly responsible for the implementation of the reforms in all the spheres relevant for the positive decision of the EU concerning the abolishment of visas for the citizens of Serbia and Montenegro. The head of the IMWGS would be responsible for submitting periodical (three-monthly or six-monthly) reports to the Council for European Integration, or to the Government, on the progress made in the implementation of the Government Action Plan.

Perhaps, it would be worth thinking about setting up of **a working body of the Government** that would be able to consider and resolve any problems that arise in the implementation of the Plan (financial, organizational and other ones bearing on the unimpeded unfolding of the process of reforms) on behalf of the Government. The aim is to establish the most efficient process possible

to quickly lead to the fulfilment of the conditions required by the EU for the abolishment of visas.

5. In order to see how the IMWGS, i.e. its sub-groups in its composition, would function, its usefulness could be assessed through the example of the work **on the reform of the visa regime.** The work would be organized in three separate spheres: one **for the normative framework** (law and statute-law acts in that sphere, based on the EU standards); the next for the **visa and information system** (the elaboration of solutions for the organization and functioning of the information system in the decision-making and visa issuing mechanism); and, lastly, for **documents security** (work on technical, organizational and normative solutions for the issuance of personal documents to the citizens of Serbia/Montenegro and foreigners such as visas, based on the ICAO or EU standards).

In all three spheres cooperation would be maintained also with experts and the EU financial support.

The sub-group work would be done by the Ministry of the Interior of the Republic of Serbia's experts on normative matters, foreigner's affairs, personal documents and travel documents subject-matter, and for the informatics field. Apart from these experts, experts for the visa regime, as well as experts from the Communications Centre and for informatics of the Ministry of Foreign Affairs would share the work of the sub-group. The sub-group would be obliged to work out its own action plan, proceeding from an overview of the overall imperatives for all the three spheres and engage immediately in the preparations for its realization. Once the IMWGS plan is adopted, it is necessary to take up without delay the realization of the tasks envisaged. The IMWGS members from this sphere would be taking part in the coordination process within the framework of the working group on the level of the state union, or with representatives of appropriate organs of the Republic of Montenegro.

The Group 484 is convinced that the herein presented recommendations could contribute to the further improvement of the process of reforms. The basic problem in the past unfolding of reforms was the absence of coordination. A lack of coordination was the main factor in the slow progress.

With a clear-cut plan and the establishment of a functional system of reforms, the Government of the Republic of Serbia would make a concrete step towards a much more substantial partnership with the European Union.

8.3. To the European Union we suggest the following:

1. To further use its authority, its experts' knowledge, and funds to continue supporting the process of reforms in SaM in the above mentioned fields.

2. During the process of negotiations towards concluding the Stabilization and Association Agreement between Serbia and Montenegro and the European Union, the EU should deliver clear messages that every enhancement in the realisation of reforms in these fields has resulted in a positive reaction within the EU organs.

3. Liberalisation of the visa regime for certain categories of SaM citizens (university students, businessmen, science workers, NGO activists) would be one of the first measures the EU could take as a reward for the reforms undertaken in SaM and their positive effects.

Liberalisation could be realized through the conclusion of a special agreement with SaM whereby each successful step in the realisation of reforms in the above mentioned fields would result in a further, gradual liberalization of the visa regime. Although the process of reforms is slow, the eventual positive result should be the reduction of number of migrants on the EU territory.

With the successful realisation of the reforms, the EU would gradually liberalise the visa regime in the following way: the abolishment of visa for a certain period of time, gradual prolongation of that period and finally the abolishment of visas for the EU countries to SaM.

Annex I and Annex II Council Regulation (EC) No 539/2001

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
Dj.bouti
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 (*)
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

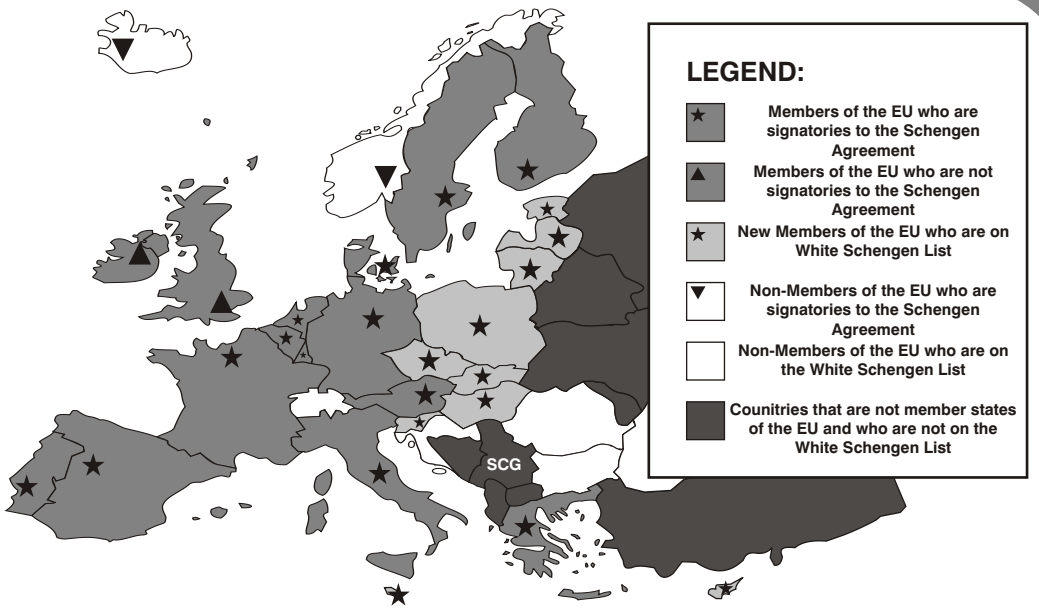
Hong Kong SAR (1)
Macao SAR (2)

(1) The visa requirement exemption applies only to holders of a 'Hong Kong Special Administrative Region' passport.
(2) The visa requirement exemption applies only to holders of a 'Região Administrativa Especial de Macau' passport.
(*) See Article 8(2).

european integration fund

European Integration Fund (EIF) was established by European Agency for Reconstruction and European Movement in Serbia, with the financial support by EU CARDS programme.
EIF exists as a part of the basic efforts that the EU, through the European Agency for Reconstruction, undertakes in Serbia in order to facilitate reforms in society and enable Serbia's attainment of European standards.

EUROPE AND THE SCHENGEN AGREEMENT



Group 484

Group 484 is a nongovermental organisation who has been dealing with the problem of forced migrants and monitoring the general migrations flows for ten years. With the support of European Agency for Reconstruction, within the European Integration Fund, and in the cooperation with the European Movement, Group 484 completed a project dealing with examing the criteria necessary for entering the positive list of the EU visa regime (white Schengen list).