



MIGRATION
STUDIES UNIT



**MIGRATION STUDIES UNIT
LONDON SCHOOL OF ECONOMICS
AND POLITICAL SCIENCE**

This text may be downloaded for personal research purposes only from LSE Migration Studies Unit Working Papers at www.lse.ac.uk/MSU. Any additional reproduction for other purposes, whether in hard copy or electronically, requires the consent of the author(s) and editor(s). If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the working paper or other series, the year, and the publisher.

The views expressed in this paper are those of the author(s) and do not necessarily reflect the views of the LSE Migration Studies Unit.

The paper was originally submitted as a dissertation in completion of the requirements for the degree: MSc European Studies: Ideas and Identities

The author(s) or editor(s) should inform the Migration Studies Unit at the LSE if the paper is to be published elsewhere, and should also assume responsibility for any consequent obligation(s).

ISSN 1758-499X

© 2010 Milica Petrovic

Migration Studies Unit
London School of Economics and Political Science
Houghton Street
London WC2A 2AE

www.lse.ac.uk/MSU
www.lse.ac.uk

Migration Studies Unit Working Papers

No. 2010/04

Freedom of movement in the European Union:
Visa liberalisation in the Western Balkan countries
Milica Petrovic



ABSTRACT

In November 2009 the Former Yugoslav Republic of Macedonia, Montenegro and Serbia were granted visa-free travel to the European Union (EU). In May 2010 a proposal was launched to grant the same privilege to the remaining two Balkan countries of Bosnia and Herzegovina and Albania. What were the underlying interests of the EU for this change of policy? Schimmelfennig puts forward path dependency, or the EU's rhetorical entrapment to deliver its political promise. Guild and Buzan show a change in discourse on behalf of the EU and a consequent desecuritization of the region from the EU's point of view. The European institutions all stick to the 'technical roadmap' argument. All these approaches are necessary to understand the issue comprehensively, but at the same time – leaving aside political bargaining at the surface – all theories prove the same thing, i.e. that eventually the EU intends to include the Western Balkan countries in its club.

TABLE OF CONTENTS

1. Introduction: context	p.2
2. Theoretical approach: security & enlargement	p.5
a. Schimmelfennig: political commitment/rhetorical trap	p.5
b. Guild: 3 criteria assessment	p.9
c. Buzan: regional desecuritization	p.11
3. Case study: Paper trail analysis of the 2009 amending regulation + 2010 continued proposal	p.14
a. 2001 Regulation	p.14
b. 2009 Proposal	p.15
c. From Proposal to Regulation amending Council Regulation 539/2001	p.18
d. Council Regulation 1244/2009 of 30 November 2009 amending Regulation 539/2001	p.20
e. Proposal for a Regulation offering visa-free travel to Albania and Bosnia and Herzegovina	p.22
4. Linking case study to theory	p.25
a. Enlargement & political commitment/entrapment (Schimmelfennig)	p.25
b. Technical conditionality (Guild)	p.28
c. Regional desecuritization (Buzan)	p.32
5. Conclusion	p.35
6. Bibliography	p.39

FREEDOM OF MOVEMENT IN THE EUROPEAN UNION: VISA LIBERALISATION IN THE WESTERN BALKAN COUNTRIES

1. Introduction: context

By making free movement a key value in its relations with neighbouring countries and promising that they too will be able to share in these great freedoms of movement in the future even if they do not join the Union's political institutions, the European Union has raised hopes beyond its borders. (Bigo, 2009:583)

The right to free movement of persons has been anchored in European law and values since the Treaty of Rome in 1957 (Hix, 2005:347). Persons in this case are 'defined as all individuals living on the territory of the European Union, i.e. citizens of the Member States of the Union plus all third-country nationals residing legally within Europe's borders' (Bigo, 2009:579). It was not until the establishment of the Single European Act in 1985 (Hix, 2005:347), which entailed the creation of the Single Market along with the removal of all internal physical barriers, that freedom of movement and the question of borders began to have tangible implications for the citizens of the European Union (EU).

The removal of internal frontiers was first institutionalised with the Schengen Agreement in 1985, signed intergovernmentally between the Benelux, France and Germany (Guild, 2009:178). Despite the fact that it was signed outside of the EU treaty framework initially, the Schengen Agreement was a direct spill-over of the removal of internal barriers with the creation of the Single Market. According to Huysmans, this is the point where there was a clear 'move from an economic space to an internal security space' (2006:85). Over the

years, several EU countries joined the agreement and the Treaty of Amsterdam incorporated Schengen into the *acquis* in 1999, though with an opt-out by the UK, Ireland and Denmark (Hix, 2005:348). As a result, not only did Schengen legally abolish internal borders and institutionalise freedom of movement within the EU, it also established a more defined EU external border and 'a system for common conditions of entry and exclusion of third country nationals into the combined territory' (Bigo *in* Bigo&Guild, 2005:64). The latter was formalised through the 2001 Council Regulation 'listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement' – or more simply, the official Schengen (three month) travel visa policy.¹ The criteria for visa exemption or requirement are 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.² (italics mine)

Basically, the Regulation distinguishes between a black list, i.e. visa requirement (Annex I), and a white list, visa exemption (Annex II). Since 2001, the Regulation has been amended 5 times, (excluding the last amending regulation from November 2009) with

¹ COUNCIL REGULATION (EC) No 539/2001

² COUNCIL REGULATION (EC) No 539/2001

several transfers of countries from one Annex to another.³ This paper will analyse in depth the most recent (2009) visa liberalisation concerning three Western Balkan countries, together with the current proposal for an additional waiver for the remaining Western Balkan countries (expected at the end of 2010).

It is highly interesting to question why and how these changes in EU visa policy assessment came about. When do certain countries stop being a public security threat or a socio-economic nuisance in terms of illegal migration? And more importantly: why? There have been developed several theories concerning security and migration in general. Concerning the Western Balkans, the strongest theory standing is the one connected to enlargement. Schimmelfennig describes this as the EU's 'rhetorical entrapment', i.e. the EU's promise as it were to eventually include the Western Balkans in its club (2005:163). Guild, on the other hand, looks at the three criteria mentioned in the 2001 visa regulation and concludes that most countries on the white list conform to a Western norm in terms of wealth, religion and ethnicity (Groenendijk et al, 2003:97). Does this suggest that the Western Balkan immigrants pose less of a security threat nowadays? No more wars, no more extreme poverty, no more refugees? This, then, is linked to Buzan's societal security theory, which in the European context is defined by regionalisation (Buzan 1998 and 2003). Both Buzan's and Schimmelfennig's approaches seem to suggest that the EU has specific interests when dealing with the Western Balkans. Or is the recent visa liberalisation simply the

³ Proposal for a COUNCIL REGULATION amending Regulation (EC) No 539/2001, COM(2009) 366 final 2009/0104 (CNS)

technical result of the strict follow-up of the roadmaps established since the Thessaloniki summit in 2003?

This paper will first examine the abovementioned theories related to visa policies, freedom of movement, security and enlargement. Subsequently, it will carry out an in-depth analysis and paper-trail of the latest two visa liberalisations for the Western Balkan countries. Finally, it will bring theory and case-study together in an attempt to uncover the major underlying dynamics and interests driving these policies in practice, and to prove that all theories are intertwined and necessary to understand this issue comprehensively.

2. Theoretical approach: security & enlargement

a. Schimmelfennig: political commitment/rhetorical trap

The first theory that we shall be looking at is Schimmelfennig's 'community trap' or path dependency theory. His theory is related to the 2004 Big Bang enlargement, and the basic question underlying his research is 'why did the EU expand?' (2005:142). Even though the 2004 and 2007 enlargements consisted only of countries of Central and Eastern Europe (CEEC), and Malta and Cyprus, parallels can nevertheless be drawn with the South-eastern European countries. Both groups of countries share a heritage of communism and Slav culture and language to a large extent. Since the fall of the Iron Curtain, a determinate separation from Western Europe has gradually disappeared. And since European integration was from the beginning considered to be legitimated by an ideology of a pan-European community, it seems only logical to expect the eventual inclusion of these countries in the

EU (2005:143). However, the decision to actually let the CEEC accede to the EU, as well as to open the borders to the South-eastern European countries, seem to suggest there must be a more solid reason than simply a logical expectation underlying these events. Schimmelfennig argues that rationalist theory and sociological institutionalism cannot account for it entirely, and that in fact eastern enlargement (and analogously the Western Balkan visa liberalisation) is a result of the EU's promise to commit, i.e. its 'rhetorical trap'.

Rationalist theory could explain the coming together of state preferences and interstate bargaining, but cannot explicate its outcome as a 'result of egoistic cost-benefit calculations and patterns of state preferences and power' (Schimmelfennig, 2005:143). In terms of benefits, CEEC enlargement had a political advantage because it was seen as an instrument to stabilise the region (2005:144). It also created an opportunity for an economic benefit via trade and investment (Ibid.). Geographical proximity played an important role, since Member States closer to the region would gain more than remote ones. This for instance also correlates with Great-Britain's somewhat reversed pro-enlargement stance. The CEEC are neither geographically close to Great-Britain, nor are they economically important, but British Europhobia calculated that 'extensive widening of the Community would prevent its further deepening and dilute the achieved level of integration' (2005:147). Moreover, enlargement would overall also have costs and losses, especially for the more agricultural and less developed Member States. All CEECs would become 'structural net recipients', meaning that EU transfers to these countries would outweigh the CEEC's contributions to the Community budget (2005:146). As a result, by simply adding up pros

and cons, benefits and costs, an outcome of interstate bargaining in this case would not lead as easily to an overall majority supporting full enlargement beyond simple association.

The rationalist approach cannot solely account for the enlargement outcome because there is a social element lacking. According to Schimmelfennig, only sociological institutionalism could explain the actual outcome of enlargement (2005:151). The contextual and institutional environment of liberal principles of social and political order matters because 'states that share the collective identity of an international community and adhere to its constitutive values and norms are also entitled to join its organizations' (Ibid.) This was already mentioned in the conclusions of the European Presidency at the Lisbon Council in June 1992: 'The principle of a Union open to European states that aspire to full participation and who fulfil the conditions for membership is a fundamental element of the European construction.' (Ibid.) As a result, if candidate countries are democracies, respect the rule of law and human rights, conform to the 'community principle of open-market economy with free competition', and accept the *acquis communautaire*, then there seems to be nothing in their way of acceding to the EU (Schimmelfennig, 2005:152).

Despite the fact that sociological institutionalism can perhaps explain the output, and that the rationalist approach can account for the bargaining process, according to Schimmelfennig the input driving the process can only be explained through rhetorical action (2005:154). The EU's legitimacy depends on the political commitment it has undertaken earlier on:

[T]he Community has committed itself ideologically and institutionally to the integration of *all* European liberal societies from its beginnings and has continually confirmed this commitment in its rhetoric. This rhetorical commitment created the prerequisite for effective shaming during the enlargement process. The 'drivers' among the members states as well as the associated CEE states regularly justified their demands for enlargement on the grounds of this commitment and of the community's collective identity. These arguments effectively ensured that enlargement policy has remained on track in spite of difficult practical problems and major distributional conflict. Rhetorical commitment led to rhetorical entrapment. (Schimmelfennig, 2005:157)

A similar rhetorical commitment was also established for the Western Balkans at the European Council in Thessaloniki in March 2003:

The Western Balkans and support to their preparation for *future integration into European structures and ultimate membership into the Union is a high priority for the EU. The Balkans will be an integral part of a unified Europe.* The ongoing enlargement and the signature of the Treaty of Athens in April 2003 should inspire and encourage the countries of the Western Balkans to follow the same successful road of reforms and to increase their efforts in that direction.⁴ (italics mine)

At that Council, the actual perspective of visa liberalisation for the Western Balkans was announced in the field of Justice and Home Affairs cooperation. Consequently, Schimmelfennig's 'rhetorical entrapment' could serve as one of the main factors explaining the visa waiver regulation for the Former Yugoslav Republic of Macedonia (henceforth FYROM), Montenegro and Serbia in November 2009, and for the proposed waiver for Albania and Bosnia and Herzegovina in 2010. In fact, the recent visa liberalisation in the

⁴ 'Thessaloniki Agenda for the Western Balkans', European Commission

Western Balkans is the ‘first genuinely tangible phase’ in the enlargement/accession perspective, a Council Official confirmed.⁵

b. Guild: 3 criteria assessment

Guild takes a closer look at the three criteria for visa requirement or exemption presented in the original 2001 visa regulation and concludes that these conditions are strongly related to security issues (from a Western point of view). As mentioned in the introduction, the three criteria are illegal migration, public policy and security, and international relations. Interestingly, the three criteria are nowhere elaborated, despite the fact that they keep returning in all the documents published by the European Commission, the European Parliament and the Council. That is why Guild’s in-depth analysis and interpretation of the criteria is so crucial for uncovering the underlying meaning of these conditions.

The most obvious criterion is illegal migration because ‘the visa rule constitutes an essential instrument for controlling migratory flows’ (Groenendijk et al, 2003:92). Since the war in the Balkans is over, one could assume that the West no longer sees that region as refugee-producing – and hence no longer as a migration burden. Or vice versa, one could also presume that by offering a country visa-free travel, the citizens of that country are no longer entitled to claim asylum. Another important element in the combat against illegal

⁵ Interview Council Official (23.08.2010)

migration are readmission agreements.⁶ This is an agreement between the EU and a third country, permitting the EU to expulse illegal immigrants to that third country because it was the country of origin or transit of the migrants in question.⁷ Secondly, public policy and security relates to police and public order cooperation in terms of organised crime. Of course visa restrictions were not able to completely stop or prevent cross-border crime, but the EU was unable to open its border to a politically unstable environment in the early post-war period. Now, however, it seems that the EU is willing to confide in these countries, not in the least because of accession candidacy conditions on which certain reforms depend.⁸ Finally, the criterion of external relations concerns the 'underlining type of relations the EU is intending to establish or maintain with a third country' because a given visa regime also has implications for regional coherence (2003:93).

Of the approximately 200 countries in the world, 131 countries and 3 territories were on the black visa list (Annex I) in 2001; 43 countries and 2 territories were on the white one (2003:93). In 2009, there were still over 120 countries on the black list, of which almost all of the countries from the African continent, Middle East (except Israel), non-EU Europe, Asia

⁶ Proposal for a COUNCIL REGULATION amending Regulation (EC) No 539/2001, COM(2009) 366 final 2009/0104 (CNS) p.4

⁷ European Stability Initiative, Esiweb: 'Readmission agreements'

⁸ 'Thessaloniki Agenda for the Western Balkans', European Commission: 'The EU stresses that the pace of further movement of the Western Balkan countries towards the EU lies in their own hands and will depend on each country's performance in implementing reforms, thus respecting the criteria set by the Copenhagen European Council of 1993 and the SAP conditionality.'

and the Indian sub-continent (Guild, 2009:184). When taking illegal immigration and crime as individual criteria for visa applications, 'the Union is in effect stating that nationals of some countries are by definition more likely to be illegal immigrants or criminals than nationals of other countries', Guild argues (2003:94). What or who determines if a person is likely to be a risk? That is where international relations come into play, because it is easier for the EU to pigeonhole countries on a sort of group-basis:

The Union is imposing its model of international relations – regional coherence – on other regions irrespective of whether they have in place the structures for determining and achieving common interests. Because the Union is a regional entity so it will treat other regions as coherent entities notwithstanding the fact that those regions are composed of states which reject the principle of common regional interest. (Groenendijk et al, 2003:96)

Taking a closer look at all the groups of countries that are on the black list, Guild discovers three elements on the basis of which these countries are being discriminated against: ethnicity, religion and wealth (2009:184). Most of these countries are non-Christian (or even non-Catholic), not white Caucasian, and with a low GDP in comparison to the West. All in all, they are countries that are either economically uninteresting to the EU or socio-politically problematic. In addition to that, 'the lack of requirement to justify the treatment of each country separately means that it is impossible to tell which part of which justification [criterion] is in action', Guild explains (2003:97).

As a result, Guild's approach seems to suggest that visa liberalisation in the Western Balkans came about not necessarily because each of the three conditions was actually

fulfilled, but because these countries overall ceased to be a socio-political and economic burden or nuisance in the eyes of the West – i.e. a subjective change of viewpoint and discourse on behalf of the West concerning the Western Balkans.

c. Buzan: regional desecuritization

Buzan's theory of regional and societal security brings together elements of both Schimmelfennig's and Guild's approach. In the 2001 visa regulation the notion of security is clearly linked to freedom of movement, borders and migration through the three criteria. Buzan defines security and securitization as an additional, higher level of politics:

'Security' is the move that takes politics beyond the established rules of the game and frames the issue either as a special kind of politics or as above politics. Securitization can thus be seen as a more extreme version of politicization. (Buzan et al, 1998:23)

Visa policy and migration control is part of societal security, Buzan explains (1998:22). '[W]hether migrants or rival identities are securitized depends upon whether the holders of the collective identity take a relatively close-minded or a relatively open-minded view of how their identity is constituted and maintained.' (Ibid.) Of course, as Guild also suggested, there is no objective standard by which to measure a security risk. Securitization is necessarily subjective. What is important, Buzan argues, is that one understands that security is not the default position but the negative, and that only *desecuritization* can figure as a long-term tenable option in a European context of political and economic cooperation (1998:29).

As Guild also mentioned, security in Europe is heavily regionalised. According to Buzan this is a consequence of the end of the Cold War era which entailed the collapse of a bi-polar world (1998:9). There were no longer two strong leaderships at global level, hence the regionalisation of power. When it comes to the Balkans, Buzan puts forward that its eventual integration in Europe has been latently present ever since the fall of the Iron Curtain. It became obvious during the wars in the 1990s which 'came to underline the coherence of Europe: interventions were partly conducted in the name of Europe and European values, and afterwards the Balkans was reintegrated into the plans for EU and NATO enlargement' (Buzan& Wæver, 2003:378). Not only did the West influence or interfere in the Balkans, the Balkans too contributed to a kind of security interdependence, especially in the field of immigration (2003:388). As a result, the West could not pretend that the instability in South-eastern Europe was not its problem because it affected it too. 'Enlargement follows from this, because if Eastern Europe is left forever in the old 'system of balance', this will spill back on Western Europe', Buzan explains (2003:362).

This brings us somewhat to Schimmelfennig's enlargement and rhetorical entrapment thesis. Schimmelfennig only accounts for the fact that the EU promised accession to the Balkans – but he did not explain why. Bringing Buzan's desecuritization and regionalisation approach together, the combination seems to suggest that the EU was primarily trying to fix a security problem, i.e. to *desecuritize* the Western Balkan region which had strong socio-political spill-overs into the rest of Europe. Today, 'the Balkans seems to be on a track that

will eventually transform it into an integral part of Europe – not a part without problems but with the more ‘normal’ East Central European problems’ (2003:378). As a result, the recent visa liberalisation seems to be a logical consequence in a policy of overall desecuritization and eventual inclusion.

3. Case study: Paper trail analysis of the 2009 amending regulation + 2010 continued proposal

a. 2001 Regulation

[T]he Council is to adopt rules relating to visas for intended stays of no more than three months, and in that context it is required to determine the list of those third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.⁹

The abovementioned was presented in the preamble to the original 2001 visa regulation that for the first time fully harmonised EU visa policy. It is in this text that the Commission set out the three criteria concerning illegal immigration, public policy and security, and the EU’s international relations for visa requirement or exemption. In spite of Norway, Liechtenstein and Iceland not being EU-countries, because they are part of the Schengen-

⁹ COUNCIL REGULATION (EC) No 539/2001 p.2

protocol they were also exempted from visas.¹⁰ Article 1 of the 2001 regulation established the differentiation between Annex I, the black-listed countries requiring visas, and Annex II, the white-listed countries exempt from it.¹¹ As already confirmed by Guild, Annex I is a very long list of countries that in 2001 also included Albania, Bosnia and Herzegovina, the then 'Federal Republic of Yugoslavia (Serbia-Montenegro)', and the Former Yugoslav Republic of Macedonia.¹² Croatia was then already put on the white list.

b. 2009 Proposal

The Proposal for a Council Regulation amending Regulation 539/2001 in July 2009 introduced the intention to transfer Macedonia (FYROM), Montenegro and Serbia to Annex II, though after compliance to the criteria concerning illegal immigration and public policy.¹³ Before presenting the actual amendment in the proposal, the Commission gave an explanatory introduction accounting for its intention. It stated that the visa liberalisation was a consequence and follow-up of the 2003 Thessaloniki agenda:

The "Thessaloniki agenda" confirmed in particular that the perspective of visa liberalisation for the Western Balkan countries is a goal linked to the progress of the countries concerned in implementing major reforms in areas such as the strengthening of the rule of law, combating organised crime, corruption and illegal migration and the strengthening of their administrative capacity in border control and security of documents.¹⁴

¹⁰ COUNCIL REGULATION (EC) No 539/2001 p.3

¹¹ Ibid.

¹² COUNCIL REGULATION (EC) No 539/2001 p.7-11

¹³ Proposal COM(2009) 366 final 2009/0104 p.2

¹⁴ Proposal COM(2009) 366 final 2009/0104 p.3

On January 1 2008, Visa Facilitation Agreements were launched for the five Western Balkan countries.¹⁵ Roadmaps were set out reconfirming the 2001 criteria and each country was encouraged to make adaptations and fulfil these conditions, though the Commission kept reiterating that the speed with which it was making progress and the eventual visa liberalisation were completely in the hands of each country. During 2008 and 2009 the Commission monitored their development, and based on the first results of the follow-up, the proposal for amending the 2001 visa regulation was introduced.

By the time the proposal was launched, the Commission considered FYROM to have met all the benchmarks, with Serbia and Montenegro still needing to improve their respective legal frameworks concerning internally displaced persons and migration and organised crime.¹⁶ For the first time Kosovo was also considered in terms of visas. A Coordination Directorate would be established in Belgrade 'solely in charge of processing all passport applications received from persons residing in Kosovo under UNSCR [United Nations Security Council Regulation] 1244/99'.¹⁷ Because there is still no consensus among all EU Member States on the recognition of Kosovo's independence¹⁸, the Commission thought it unfeasible and inadvisable to include Kosovo in Serbia's visa free regime:

Therefore, in view of security concerns regarding in particular potential for illegal migration from persons residing in Kosovo and persons whose citizenship certificate

¹⁵ Proposal COM(2009) 366 final 2009/0104 p.4: Serbia (30 January 2008), the former Yugoslav Republic of Macedonia (20 February 2008), Montenegro (21 February 2008), Albania (3 March 2008), Bosnia and Herzegovina (26 May 2009)

¹⁶ Proposal COM(2009) 366 final 2009/0104 p.6

¹⁷ Proposal COM(2009) 366 final 2009/0104 p.7

¹⁸ On 22.07.2010 the ICJ ruled that Kosovo's independence was no violation of law (euobserver).

has been issued for the territory of Kosovo under UNSCR 1244/99 and in the absence of any verification of the passport issuing procedures followed by the Serbian authorities for this category of persons, the Commission considers that holders of Serbian passports issued by the specific Coordination Directorate (in Serbian: *Koordinaciona uprava*) should be excluded from the visa free regime for Serbia.¹⁹

Before, there was no mention of Kosovo at all in the EU's visa policy, now Kosovo would be added to Annex I. As for Albania and Bosnia and Herzegovina, there was still a lot of progress to be made in order to meet the benchmarks, but the Commission was dedicated to transferring the two countries to Annex II as soon as they fulfilled the criteria.

Finally article 2 of the proposal provided for the inclusion of FYROM, Montenegro and Serbia (without Kosovo) in Annex II, though the visa exemption would only apply to holders of biometric passports. The latter is an additional level of document/passport security, introduced for the entire Schengen-zone, which combines finger prints and photographic data with a paper passport.²⁰ A Commission Official confirmed that the biometric passports are designed according to ICAO (International Civil Aviation Organization) standards and that they are an absolute condition for visa-free travel, not in the least because they are the most easily measurable condition.²¹ As could be expected, such a measure and condition raises questions on privacy protection and intrusion, and proves that visa-free travel can only happen with an undeniable element of control.

¹⁹ Proposal COM(2009) 366 final 2009/0104 p.7

²⁰ Euractiv: 'EU countries to issue biometric passports by end 2005' (10.06.2004)

²¹ Interview Commission Official, DG JLS, Unit Visa Policy (14.07.2010)

c. From Proposal to Regulation amending Council Regulation 539/2001

The decision-making process for the proposed 2009 amending regulation happened under consultation procedure for the European Parliament (EP) and qualified majority voting (QMV) for the Council of Ministers. As a result, the EP was invited to express its opinion on the proposal presented by the Commission, but the Council was not obliged to take this into consideration. The EP proposed several amendments to the Commission's proposal. First of all, it wished to include all the Western Balkan countries at once because it was advocating equal treatment for the whole region.²² Of course, each country would be assessed individually and expected to meet all the benchmarks, but a second amending regulation would be avoided this way. Secondly, the EP was of the opinion that also a visa dialogue should be opened up with Kosovo.

EP rapporteur Tanja Fajon (from the Social and Democrat Alliance) for the LIBE committee (Justice, Liberty and Security) in the EP, responsible for the report on the proposal, added an explanatory statement to the draft. Firstly, she put forward that the only way to actually achieve prosperity and stability in that region was to treat all the people in that region equally. Splitting the visa-free area up would create divisiveness within the region. Fajon warned that the EU's visa policy may be about purely technical decisions, but

²² Draft EP Resolution: proposed EP amendments, 27 October 2009.

one should keep in mind their political impact. That is why all the Western Balkan countries should be added to the proposal, including Albania and Bosnia and Herzegovina, she argues. Incorporating both countries already in the amending regulation would not only prevent a lengthy and bureaucratic process, it would also 'motivate the Bosnians and Albanians to work harder', a staff member of Tanja Fajon confirms.²³ Secondly, Fajon argued that including Kosovo into the visa dialogues would not correspond to an automatic acceptance of its independence: 'I believe that the Parliament should put pressure on both the Commission and the Council to find a way to initiate the visa liberalisation process while respecting Kosovo's status under UNSCR 1244/99 and division between the Member States towards its declaration of independence. This is without prejudice to the status of Kosovo.'²⁴

Less than a month later the EP presented a second resolution on the texts adopted reiterating its core opinion in a joint statement with the Council, stating that 'The European Union strongly supports the goal of the abolishment of the visa regime for all the countries of the Western Balkans.'²⁵ This was also confirmed by rapporteur Sarah Ludford for the AFET committee (Foreign Affairs), stating that the overall support for the Fajon report was the

²³ E-mail correspondence with staff member of Tanja Fajon (23.07.2010)

²⁴ Draft EP Resolution: proposed EP amendments, 27 October 2009.

²⁵ EP legislative resolution of 12 November 2009 on the proposal for a Council regulation amending Regulation 539/2001

expression of the 'definite aim of visa liberalisation for all the citizens of the Western Balkans as soon as possible.'²⁶

d. Council Regulation 1244/2009 of 30 November 2009 amending Regulation 539/2001

The Regulation was adopted less than half a year after the initiated proposal, with a text pretty much identical to the proposal. Only FYROM, Montenegro and Serbia were transferred to Annex II, Kosovo was put in Annex I, where Albania and Bosnia and Herzegovina still remained. The visa liberalisation applies everywhere in the Schengen-zone, though not in the entire EU zone. Since the UK and Northern-Ireland are not part of the Schengen protocol, they are not taking part in the adoption of this amendment and are not bound by or subject to its application.²⁷

Given the fact that decision-making was happening under consultation, the Council was free not to take into account the EP's amendments when approving the Commission's proposal – which it also did not do. The Commission published a Communication in November in which it explained why it did not accept the EP's amendments. First of all, '[t]he Commission did not agree with the 'technique législative' used by the EP to pass the

²⁶ EP: Debate on Regulation Amendment , MEP Sarah Ludford 'Third country nationals subject to or exempt from a visa requirement when crossing external borders (debate)'

²⁷ COUNCIL REGULATION 1244/2009 p.2

positive signal to Bosnia and Albania.’²⁸ Secondly, concerning the EP’s proposed amendments on the recitals in the preamble, the Commission deemed them to ‘go beyond the scope of the present proposal and should not be added to the preamble of this proposal.’²⁹ Consequently, the Commission announced that it would not modify its proposal and hence the Council adopted the proposal on November 30 2009.

Of course, one of the main reasons why the Commission and Council did not take into account the EP’s amendments, was simply because they did not need to since it was under consultation procedure, a Commission Official confirms.³⁰ Another reason is that the Commission was strictly following the laid out roadmaps, and was holding a technical discussion as opposed to the EP, which had a more political approach.³¹ This entire process happened before the ratification and entry into force of the Lisbon Treaty, which turned the co-decision procedure into the ordinary legislative procedure, making the EP officially co-legislator with the Council. As a result, the further visa liberalisation procedure for the remaining Western Balkan countries will happen under that procedure, and consequently with a stronger EP.

²⁸ Commission communication on the action taken on opinions and resolutions adopted by Parliament at the November I and II 2009 part-sessions

²⁹ Commission communication on the action taken on opinions and resolutions adopted by Parliament at the November I and II 2009 part-sessions

³⁰ Interview Commission Official, DG JLS, Unit Visa Policy (14.07.2010)

³¹ Ibid.

e. Proposal for a Regulation offering visa-free travel to Albania and Bosnia and Herzegovina

Once more benchmarks were met, as promised in Regulation 1244/2009, the Commission launched a proposal for an additional amendment concerning visa liberalisation for Albania and Bosnia and Herzegovina on May 27 2010, six months after the other three Balkan countries entered a visa-free regime. The proposal establishes the transferral of Albania and Bosnia and Herzegovina to Annex II. '[T]his transfer is in line with the political commitment taken by the European Union on the liberalisation of the short-stay visa requirement for all Western Balkan citizens as part of the Thessaloniki agenda', the Commission puts forward.³² From November 2009 onwards there was a close monitoring of the visa liberalisation process for Albania and Bosnia and Herzegovina, and a lot of progress has been made since then. However, the Commission stresses the fact that both countries should have fulfilled all the benchmarks by the day of adoption of the proposal by the EP and Council. For Albania, the remaining benchmarks to be met concern the 'development of a strategy and policy to support the reintegration of Albanian returnees', and strengthening of the legal framework for the fight against organised crime and corruption.³³ For Bosnia and Herzegovina the outstanding conditions also relate to the fight against organised crime and corruption, and to the 'establishment of electronic data exchange between police and

³² Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF THE EUROPEAN UNION amending Regulation 539/2001, COM(2010)256 final 2010/0137 p.2

³³ Ibid. p.4

prosecution bodies’.³⁴ Of course, visa-free travel is again only available to holders of biometric passports.

On 12 July 2010, the EP published a draft report, drawn up again by rapporteur Tanja Fajon, in response to the proposal launched by the Commission. Important to remember is that now the decision-making process was post-Lisbon, and hence under co-decision, with an equally powerful EP as the Council. This time, then, the EP did not have any amendments to propose. The EP states in the draft that it ‘[a]dopts its position at first reading, taking over the Commission proposal’.³⁵ The EP also ‘[c]alls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text’ and instructs the President of the EP to ‘forward its position to the Council, the Commission and the national parliaments’.³⁶ Tanja Fajon explains that the main reason why the EP adopted the proposal without any amendments is because it wishes to see the process continue ‘smoothly and quickly’, seeing it unnecessary to lose too much time after visa-free travel has already been granted to the other three countries in the Western Balkans.³⁷ The sooner visa-free travel is established comprehensively in the area, the faster it will progress towards political and economic stability. However, Kosovo still remains a

³⁴ Ibid. p.5

³⁵ DRAFT REPORT on the proposal for a regulation of the European Parliament and of the Council amending Regulation 539/2001, (COM(2010)0256 – C7-0134/2010 – 2010/0137(COD)) Committee on Civil Liberties, Justice and Home Affairs, p.5

³⁶ DRAFT REPORT on the proposal for a regulation of the European Parliament and of the Council amending Regulation 539/2001, (COM(2010)0256 – C7-0134/2010 – 2010/0137(COD)) Committee on Civil Liberties, Justice and Home Affairs, p.5

³⁷ Ibid.

contested issue due to the disagreement among Member States concerning its status of independence. Fajon nevertheless encourages the Commission and Council to include Kosovo in the visa liberalization process so as to facilitate the required structural reforms. She shows that a purely technical approach to this issue is not enough because it entails political consequences:

The European Union has a political responsibility to carry out this process. It's paradoxical that more than 20 years after the fall of the Berlin wall, we still have "visa walls" in our direct neighbourhood. It's even greater paradox that people there could freely travel not even 20 years ago. If we want to unite our citizens in our continent, young people in particular need to be able to travel.³⁸

In the end, all of the Western Balkan countries except for Kosovo will have obtained visa-free travel by approximately the end of 2010, just like the EP pushed for.³⁹ Why were the Commission and Council then so categorical in delaying the process somehow? If it was only a matter of months, could they not have waited for all of them to comply to the criteria and then have simply one amending regulation at a later date? Both the Commission and EP stress the technical aspect of the criteria: once the conditions are fulfilled, there is the green light for visa-free travel. A Council Official explains that visa liberalisation is not a gift but a reward, and that countries simply need to fulfil objective conditions before they can

³⁸ DRAFT REPORT p.7

³⁹ E-mail communication with staff member of Tanja Fajon: because of unofficial consensus within LIBE pushing for fast procedure 'there is a chance to have a final vote in Council in October or the latest in November' (27.07.2010)

qualify.⁴⁰ However, as mentioned before, these technical aspects also have an important political side to them. The next chapter will come back on the theories discussed above, which tried to account for the recent visa liberalisation in the Western Balkans. This time, however, the theories will be put in dialogue with the paper trail analysis of the proposals, drafts, and amending regulation.

4. Linking case study to theory

a. Enlargement & political commitment/entrapment (Schimmelfennig)

Schimmelfennig's 'rhetorical entrapment' – that of a promised enlargement perspective and consequential path dependency – is of course also related to the notion of security, and to establishing peace, prosperity and stability in an expanded EU zone (Schimmelfennig & Sedelmeier, 2005:144). However, according to Schimmelfennig, the underlying reasons for enlargement do not take away the implications of such rhetorical commitment. Exactly because from the outset the EU was focussed on creating long-lasting peace in Europe, this commitment became the 'founding myth of the EU' as it were (2005:158). This is precisely not only why visa liberalisation and eastern enlargement came about, but also why it could not have been stopped: the EU's legitimacy was at stake.

⁴⁰ Interview Council Official (23.08.2010)

This 'European perspective' for the Western Balkans was also mentioned in the Proposal for a Regulation amending Regulation 539/2001 in July 2009.⁴¹ Around the same period, Herman Van Rompuy – President of the European Council at the end of the same year – confirmed this vision by stating that the 'EU is unanimously and unambiguously supporting the EU perspective for the whole of the Western Balkans.'⁴² 'I am a supporter of the EU's enlargement message to the Western Balkans, and would like to see the whole region move forward', he concludes.

This idea was already set out in the Thessaloniki agenda which envisaged the visa liberalisation process as a step towards the eventual inclusion of the Balkans.⁴³ In the EP's draft legislative resolution on the proposal, rapporteur Tanja Fajon's pro-Balkans approach is framed in a pro-enlargement perspective as well: 'If we really want to *integrate* all the countries of the Western Balkans in the European Union, the younger generation, in particular, has to have a chance to travel, to learn about it. Staying behind closed doors for too long can only strengthen nationalism and deepen ethnical divisions, which, before the wars, were practically non-existent' (italics mine).⁴⁴ In addition, the latest proposal for visa-free travel in Albania and Bosnia and Herzegovina literally confirms Schimmelfennig's commitment thesis: 'this transfer [of Albania and Bosnia and Herzegovina to Annex II] is in line with the *political commitment taken by the European Union* on the liberalisation of the

⁴¹ Proposal for a COUNCIL REGULATION amending Regulation 539/2001, COM(2009) 366 final 2009/0104 (CNS) p.3

⁴² Augustin Palokaj and Zeljko Pantelic, 'Van Rompuy: "No doubt on EU commitment to Balkans"', Wazeuobserver, 05.07.2010

⁴³ See Thessaloniki agenda quote in first chapter on Schimmelfennig.

⁴⁴ Draft EP Resolution: proposed EP amendments, 27 October 2009

short-stay visa requirement for all Western Balkan citizens as part of the Thessaloniki agenda' (italics mine).⁴⁵ Tanja Fajon reiterates this in her draft report on the latter proposal by putting forward that the 'European Union has a *political responsibility* to carry out this process' (italics mine).⁴⁶

Finally, perhaps one of the objective facts that supports Schimmelfennig's commitment to enlargement-thesis most strongly is simply that visa policy at the Commission is a competence shared between DG Justice, Security and Liberty and DG Enlargement.⁴⁷ Moreover, within the Balkan region Croatia and FYROM are already candidate countries, and Bosnia and Herzegovina, Serbia, Montenegro, Albania and Kosovo under UNSCR 1244 are potential candidate countries.⁴⁸ 'As the EU has not finished enlarging, so too the Schengen area, which mimics but it not identical to it, is also likely to enlarge', Guild logically summarises (2009:178).

However, as was mentioned also in the Thessaloniki agenda, the path towards visa liberalisation and eventual accession is only open to those countries who implement 'major reforms in areas such as the strengthening of the rule of law, combating organised crime, corruption and illegal migration and the strengthening of their administrative capacity in border control and security of documents'.⁴⁹ This clearly shows that enlargement may

⁴⁵ Proposal for a Regulation amending Regulation 539/2001, COM(2010)256 final 2010/0137 p.2

⁴⁶ Draft report on the proposal for a regulation amending Regulation 539/2001 (COM(2010)0256) p.7

⁴⁷ ESI, 'The EU decision-making process' 01.03.2010 p.2

⁴⁸ DG ELARG <http://ec.europa.eu/enlargement/potential-candidates/index_en.htm>

⁴⁹ Proposal for a COUNCIL REGULATION amending Regulation 539/2001, COM(2009) 366 final 2009/0104 (CNS) p.3

indeed by an important factor pushing this process, but that key issues such as security and illegal migration play an equally important role. That is why Schimmelfennig's thesis necessarily needs to be complemented with Guild's and Buzan's theoretical approaches.

b. Technical conditionality (Guild)

The three criteria that are mentioned as a condition to visa-free travel in the 2001 Regulation – namely, illegal immigration, public policy and security, and the EU's external relations – may seem objective criteria but Guild's analysis shows how they are used subjectively to alter bi- and multilateral relationships with the EU. The actual assessment of the criteria per country in question is not publicly available with the European Commission, it is simply stated that progress has been made or that a certain benchmark has been reached. There is however a scorecard drawn up by ESI (European Stability Initiative), which has put the assessments of progress in roadmap implementation in tables on-line.⁵⁰ Nevertheless, as said before, the conditions and criteria for visa-free travel are nowhere really elaborated or explained, so even this scoreboard merely mentions if a country qualifies or not, if it has improved on a certain criterion or not. Nowhere is it explained *how* or *why* a particular reform occurred. As a result, a certain vagueness remains inherent to the criteria established by the Commission.

⁵⁰ <<http://www.esiweb.org/index.php?lang=en&id=407>>

Officially and formally, the three countries in the Western Balkans received visa waivers at the end of 2009 because they (allegedly) had met all the benchmarks laid out in the roadmaps set per country, according to the ‘tailor-made and result-intended’ EU visa liberalisation policy.⁵¹ Interestingly, however, the fulfilment of all three criteria could be called into question when considering a specific consequential phenomenon that occurred shortly after the 2009 visa liberalisation: i.e. a rise in asylum seekers from Serbia, Macedonia and Montenegro in Belgium, Sweden and Switzerland at the beginning of 2010.⁵² How can the public policy and security criterion, and the international relations with the EU be stabilized if those countries still have asylum applicants to the EU?

Three facts should be kept in mind. Firstly, government sources confirmed that the asylum seekers in questions concerned mainly ethnic Albanians who were misinformed and manipulated by local agencies promising them a better life abroad.⁵³ Secondly, all of the asylum applications were rejected because none of them fulfilled the conditions laid out by the Geneva Convention.⁵⁴ Thirdly, and most importantly, ‘many citizens of the three countries have applied for asylum in Western European states without knowing that only individuals coming from countries which still have a visa regime with the European Union can apply for asylum status’.⁵⁵ The EU is of the opinion that since the end of the Balkans

⁵¹ Interview Commission Official, DG JLS, Unit Visa Policy (14.07.2010)

⁵² BalkanInsight, ‘Soaring Number of Balkan Asylum Seekers in Belgium’, Brussels, 25 February 2010

⁵³ BalkanInsight, ‘Soaring Number of Balkan Asylum Seekers in Belgium’, Brussels, 25 February 2010

⁵⁴ Svetlana Jovanovska, Wazeuobserver, ‘Visa-free travel brings Balkan asylum seekers to Belgium’, 03.03.2010 <<http://waz.euobserver.com/?aid=29593>>

⁵⁵ BalkanInsight, ‘Soaring Number of Balkan Asylum Seekers in Belgium’, Brussels, 25 February 2010

war, people in that region cannot claim refugee status because there is no longer existence of a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.'⁵⁶ This, of course, does not mean that the socio-economic and often even political situation has stabilized entirely.

Now, the question to ask is whether the EU abolished visa requirements for that region because it considered the Balkans to be no longer *refugee-producing* (reaction to public policy and security criterion) or because it wished to *render* the Balkans a '*refugee-free region*' (response to EU external relations condition)? Following the philosophy of *realpolitik*, one could argue that given the fact that it is the EU who sets the conditions, it does not matter whether the Balkan countries actually and fully met the criteria, as long as the EU decides they did. Of course the Balkan countries made progress in the areas of migration , public policy and security, but was 2009 really the year in which all the puzzle pieces came together, suddenly and smoothly? The ESI scorecard shows for instance that in May 2009 Bosnia and Herzegovina had very low scores in the field of document security and public order and security, but by September 2009 they already had good to very good scores.⁵⁷ Unfortunately, by September 2009 it was too late to be included in the amending proposal which was drafted in July 2009. Nevertheless, one could question how it is possible to be completely unqualified to join the list at one moment and suddenly fully apt a couple of

⁵⁶ Geneva Convention and Protocol Relating to the Status of Refugees 1951, art.1

⁵⁷ ESI 'Bosnian Breakthrough'

<http://www.esiweb.org/pdf/schengen_white_list_project_bosnian%20breakthrough%20-%20visa%20scorecard%20-%2028%20September%202009.pdf> (28.09.2009)

months later? All correspondents from the Council, Commission and EP defend the technical roadmap argument, i.e. that the only reason why the Balkan countries received visa-free travel in 2009/2010 is because they had finally fulfilled all criteria after a gradual process of monitoring by the EU. However, the easiness and rapidity with which the 2009 amending regulation was voted and with which the 2010 proposal came about suggest the unmistakable existence of a political will within the EU to proceed in that direction.

As mentioned previously, Guild saw a parallel in all the countries on the black visa list: indirectly discriminated upon on the basis of wealth, ethnicity and religion. In terms of the Balkans, ethnic instabilities have more or less calmed down; wealth and religion have largely remained unchanged. But there has been a change in approach and discourse. Guild's scrutinized approach of the official visa exemption criteria shows that it is not simply the objective fulfilment of those criteria that paved the path of free movement for the Balkans, but that the EU clearly has a larger project in mind in which the Balkans fit. The socio-political situation in the Balkans has indeed calmed down, but more importantly, the EU has decided that the religious, ethnic and financial aspects that remained unchanged and that used to form a threat to the EU, are no longer perceived as such. One take on that project has been theorized by Schimmelfennig in his rhetorical entrapment-thesis concerning the EU's enlargement vision and the eventual incorporation of the Balkans in the EU. This goes together with Buzan's viewpoint of the project, i.e. regionalized approach and desecuritization, which shall be further discussed in the final part of this chapter.

c. Regional desecuritization (Buzan)

Ethnic conflict in the Balkans raised a security threat of fragmentation for Western Europe and resulted in extensive (though unsuccessful) EU involvement in the region (Buzan and Wæver, 2003:358). This EU involvement triggered the question of eventual inclusion of the countries in this region into the EU. One could perhaps argue that the previous failure on behalf of the EU to stop the atrocities in the 1990s encouraged a better and more successful involvement this time. Consequently, desecuritization as the default position was the state in this region that the EU was and is aiming for. The process of desecuritization is a two-way movement in which the EU set up benchmarks for the countries in that area to meet (cf. the three criteria in the 2001 regulation) but also one in which the EU gave a signal of trust with a more desecuritized starting point. The fact that Kosovo is still not on the white list, and no plans have been made yet to transfer it there in the near future either, shows that neighbouring visa liberalisations and enlargement perspectives are not enough to include Kosovo in the club right away.

In any case it is clear that the process of desecuritization goes hand in hand with enlargement perspectives. In an explanatory statement to the EP draft resolution on the proposal for an amending regulation in 2009 for Macedonia, Montenegro and Serbia, rapporteur Tanja Fajon writes: 'Our goal is to build stability and prosperity in the region which is to join the Union [...] we are deciding about the basic right of a future EU citizen to

travel to the Union.⁵⁸ Sarah Ludford confirms this approach to desecuritize in an EP debate on the regulation amendment:

[T]he commitment supported in the Fajon report and backed by the proposed Council and Parliament declaration is a far-sighted one. It is to give visa-free travel to all the people of the Western Balkans. This is not solely a generous and altruistic move. It is also hard-headed and shrewd, since *security in the widest sense of the word will be promoted and advanced*. People who are free, and free to travel, tend to be committed to peaceful solutions and less prey to introverted nationalism which is a *security threat*.⁵⁹ (italics mine)

Despite the fact that all the separate countries in the Balkans have their individual criteria to meet, the area is perceived and treated as one region in terms of security policy and eventual enlargement perspectives. Fajon already expressed the EP's emphasis on equality, non-discrimination and the importance of creating visa-free travel for the entire region, because differences in the visa policy would lead to socio-political fragmentation, which eventually could become a security threat. On the eventual transfer of Albania and Bosnia and Herzegovina to the white list, she writes:

An assurance that the European Union will deliver visa free-travel to both countries, especially to Bosnia and Herzegovina, in the very near future – by early Autumn 2010 – will *lower the risk of even greater ethnic and political instability*, strengthen political and economic cooperation in the region and increase popular support for the EU and

⁵⁸ Draft EP Resolution: proposed EP amendments, 27 October 2009

⁵⁹ MEP Sarah Ludford 'Third country nationals subject to or exempt from a visa requirement when crossing external borders (debate)' (11.11.2009)

the prospect of European integration, widen people's horizons and stem the anti-European and extremist forces.⁶⁰ (*italics mine*)

One could argue that the visa liberalisation in the Balkans seems a win-win situation. Not only are the citizens in the Balkan countries free to travel to the EU, but the Balkan countries also had the obligation to execute extensive reforms concerning crime and migration, which makes all of Europe safer to a certain extent (Knaus and Stiglmayer, 2009). There was and is a kind of healthy competition amongst these countries to perform well in order to achieve those freedoms. In addition to that there is of course the mental openness and security-enhancing attitude on both sides, as Ludford suggests. Despite the fact that Ludford puts forward that this liberalisation should not be seen as an altruistic move, one could argue that eventual inclusion and stability might be altruistic after all. In the end, the Balkan region still has a long way to go to match the socio-economic and political standards of Western Europe. And yet the EU seems to be opening up the door a tiny bit already. Why now already? There is not really a straightforward answer to this, but Buzan's regional desecuritization-theory could perhaps offer a relatively comprehensive explanation because it combines both Guild's and Schimmelfennig's theories into a more constructivist approach with a normative connotation (Guild, 2009:4). This seems to suggest that the reasons underlying this visa liberalisation process are perhaps not motivated by pure self-interest on behalf of the EU, and that the recent visa liberalisation in the Balkans cannot merely be explained by rigid enlargement or visa requirement criteria.

⁶⁰ Tanja Fajon, Draft Report on proposal for amending regulation including Bosnia&Herzegovina and Albania (2010) pp.6-7

5. Conclusion

Both questions of *how* and *why* visa liberalisation in the Western Balkans came about are linked to the answer of conditionality. This is most evidently present in the *how*-section, where visa liberalisation occurred after a list of conditions set out in country-specific roadmaps were met. Besides this technical conditionality, there is also a political conditionality present in the *why*-question concerning this issue. The readmission agreements that led to visa facilitation in 2006, and later on to major reforms that each country had to carry out in order to meet the benchmarks for full visa liberalisation are clearly linked to the aspect of desecuritization, which is in the interest of the European Union. 'The visa liberalisation process has been an excellent example of EU soft power at work', Knaus and Stiglmeier explain.⁶¹ 'There were very clear conditions, a rigorous process with milestones and deadlines, and a reachable, juicy carrot at the end. It created some very healthy competition among the five participating countries. When Albania and Bosnia realised last summer that they were lagging behind their neighbours, they redoubled their efforts.' This indeed explains a lot about the strategy. The goal, however, and the underlying interests on behalf of the EU are less simple to pinpoint.

⁶¹ 'Visa-free travel in the Balkans', *Euobserver*, 06.12.2009

Knaus and Stiglmeier like to believe that the visa liberalisation in the Western Balkans is a win-win situation.⁶² And perhaps it is. Citizens that used to travel freely to the EU twenty years ago, can do so again. At the same time, these EU-neighbouring countries have executed various technical and juridical reforms which make them less of a threat to EU security and public policy, and the EU is able to execute its soft power and eventually extend its territory and influence. However, an important aspect must not be forgotten about this process: the EU simply did not have any other political option. Schimmelfennig's 'rhetorical entrapment', political commitment, path dependency or whatever one wishes to call it, plays a major role in the amendments to the visa regulation that occurred recently. The intention of including the Western Balkans in the EU had already been announced with the Thessaloniki Agenda in 2003. This is where the visa liberalisation was presented and envisaged as a milestone towards eventual membership. As a result, the EU was obliged to follow its political promise in order to retain its legitimacy towards Member States within the Union, towards candidate and potential countries, and towards the outer world.

The more difficult question to answer is why *now*. In her research on why and when countries are moved from the black to the white visa list, Guild shows that this does not entirely happen on an objective basis. From the announcement of the intention in 2003 it took until 2008 for the political will to actually push for an amending proposal. There is no question that the countries in question had and have carried out extensive reforms in the field of document security, combat of illegal migration and organised crime, border control

⁶² 'Visa-free travel for the Western Balkans – a win-win situation', *Euobserver*, 15.06.2009

and public security, and that by doing so they met the requirements set out in the original 2001 visa regulation. However, one could wonder if liberalisation occurred so fast (from the proposal in July 2008 until the regulation in November 2009), whether this could also have been possible before. Why was this the right moment? Similarly Albania and Bosnia and Herzegovina were denied visa waivers with the 2009 amending regulation, but a proposal supporting their inclusion to the visa-free regime was already published six months afterwards. Either these two countries indeed executed major reforms to catch up, as Knaus and Stiglmeier suggest, or this shows that there must be a strong commitment within the Union to grant this region visa-free travel. Or both. The latter hypothesis could be deducted from Guild's approach who demonstrated that desecuritization does not only happen as such in the countries in question (via reforms), but also in the eyes of the EU. By granting the Western Balkans visa-free travel, the EU decides that that region is no longer refugee-producing.

This desecuritization has also been explained by Buzan. Of course the EU decides to desecuritize on behalf of its own interests, but its own interests are not necessarily always those supporting the philosophy of *realpolitik*. As mentioned before, the war and ethnic conflicts happening in the Balkans were considered as fragmentation and security troubles in the EU's backyard – hence the numerous (though not always successful) international involvements. What is important to understand here is that the EU wished to stabilise this region because it envisaged it to become part of the Union one day. Buzan's constructivist approach is therefore linked to Schimmelfennig's enlargement promise but focussing more

on the normative aspect of the EU's founding ideological goal of pan-European inclusion. This approach was and is very much present in the EP's opinions and actions: there is not only an interest in stability in the region *an sich* but also rapprochement to its people ('people to people contacts') who are eventually to become EU citizens.⁶³ Even though the Commission and Council were less lenient to immediately include all the Western Balkan countries in the 2009 amending regulation, a Commission official nevertheless confirms that there is no real disagreement between the European institutions, that they all promote mobility, and that there is simply a kind of consensus on this matter.⁶⁴

Consequently, all theoretical approaches, proposals, drafts and opinions can be traced back to one main idea underlying the various interests involved in this process: i.e. that the Western Balkans will one day be part of the European Union. In reality, of course, technical conditionality becomes intertwined with political bargaining because on the surface of the process concrete political interests get involved. However, at the core of the visa liberalisation process in the Western Balkans is not a realist approach but a constructivist one mirroring the idea of an eventually unified Europe.

⁶³ Interview Council Official (23.08.2010)

⁶⁴ Interview Commission Official, DG JLS, Unit Visa Policy (14.07.2010)

6. Bibliography

BalkanInsight, 'Soaring Number of Balkan Asylum Seekers in Belgium', Brussels, 25.02.2010. <<http://www.balkaninsight.com/en/main/news/26130/>> (accessed on 01.05.2010)

Bigo, Didier, 'Immigration controls and free movement in Europe', *International Review of the Red Cross*, Vol 91 n° 875, 2009, pp. 579-591.

Bigo, Didier and Guild, Elspeth, *Controlling frontiers : free movement into and within Europe*. Aldershot: Ashgate, 2005.

Buzan, Barry and Wæver, Ole, *Regions and powers: the structure of international security*. Cambridge: Cambridge University Press, 2003.

Buzan, Barry; Wæver, Ole; de Wilde, Jaap, *Security : a new framework for analysis*. Boulder, Colo. : Lynne Rienner Publishers, 1998.

Council of the European Union, 'Council Regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement', *Official Journal of the European Union*, (EC) No 1244/2009, Brussels, 30.11.2009.

Council of the European Union, 'Council Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement', *Official Journal of the European Union*, EC No 539/2001, Brussels, 15.03.2001.

Council of the European Union Official, Telephone Interview, Justice and Home Affairs – Visa and Frontiers, 23.08.2010.

Euractiv, 'EU countries to issue biometric passports by end 2005', 10.06.2004 (updated 08.06.2007). <<http://www.euractiv.com/en/security/eu-countries-issue-biometric-passports-2005/article-117813>> (accessed on 20.07.2010)

European Commission, 'Commission communication on the action taken on opinions and resolutions adopted by Parliament at the November I and II 2009 part-sessions', Brussels, November 2009.

European Commission, 'Proposal for a Council Regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement', COM(2009) 366 final 2009/0104, Brussels, 15.7.2009.

European Commission, 'Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF THE EUROPEAN UNION amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement', COM(2010)256 final 2010/0137 (COD), Brussels, 27.5.2010.

European Commission, 'The Thessaloniki Agenda for the Western Balkans', Brussels, 16.06.2003.

<http://ec.europa.eu/enlargement/enlargement_process/accesion_process/how_does_a_country_join_the_eu/sap/thessaloniki_agenda_en.htm> (accessed on 20.07.2010)

European Commission Official, Telephone Interview, European Commission DG Justice Liberty Security, 14.07.2010.

European Parliament, 'Legislative resolution on the proposal for a Council regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement', ([COM\(2009\)0366](#) – C7-0112/2009 – [2009/0104\(CNS\)](#)), Brussels, 12.11.2009.

European Parliament Debates, 'Explanations of votes', Brussels, 12.11.2009.

<<http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20091112&secondRef=ITEM-011&language=EN&ring=A7-2009-0042#4-105>> (accessed on 10.07.2010)

European Stability Initiative, 'Bosnian Breakthrough', Esiweb, 28.09.2009.

<http://www.esiweb.org/pdf/schengen_white_list_project_bosnian%20breakthrough%20-%20visa%20scorecard%20-%2028%20September%202009.pdf> (accessed on 12.08.2010)

European Stability Initiative, 'ESI visa "grade reports"', Esiweb, May/June 2009.

<<http://www.esiweb.org/index.php?lang=en&id=407>> (accessed on 12.08.2010)

European Stability Initiative, 'Readmission agreements', Esiweb
<http://www.esiweb.org/index.php?lang=en&id=371#_Toc229907916> (accessed on 20.07.2010)

European Stability Initiative, 'The EU decision-making process', Esiweb, 20.03.2009 (updated 01.03.2010). <<http://www.esiweb.org/index.php?lang=en&id=354>> (accessed on 20.07.2010)

Fajon, Tanja, 'Draft European Parliament Legislative Resolution on the proposal for a Council regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement', A7-0042/2009, Brussels, 27.10.2009.

Fajon, Tanja, 'Draft Report on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement', 2010/0137(COD), Brussels, 12.07.2010.

Fajon, Tanja, 'Third country nationals subject to or exempt from a visa requirement when crossing external borders (debate)', European Parliament Debates, Brussels, 12.11.2009.
<<http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20091112&secondRef=ITEM-008-01&language=EN&ring=A7-2009-0042>> (accessed on 10.07.2010)

Guild, Elspeth, *Security and migration in the 21st century*. Cambridge: Polity, 2009.

Guild, Elspeth, 'The Border Abroad – Visas and Border Controls' in *In Search of Europe's Borders*, ed. Kees Groenendijk, Elspeth Guild, Paul Minderhoud, pp.87-104. The Hague: Kluwer Law International, 2003.

Hix, Simon, *The Political System of the European Union*. London: Macmillan (2nd edition), 2005.

Huysmans, Jef, *The Politics of Insecurity: Fear, migration and asylum in the EU*. London: Routledge 2006.

Jovanovska, Svetlana, Wazeuobserver, 'Visa-free travel brings Balkan asylum seekers to Belgium', 03.03.2010. <<http://waz.euobserver.com/?aid=29593>> (accessed on 01.05.2010)

Knaus, Gerald and Stiglmayer, Alexandra, 'Visa-free travel for the Western Balkans – a win-win situation', Euobserver, 15.06.2009, < <http://euobserver.com/15/28298>> (accessed on 06.07.2010)

Knaus, Gerald and Stiglmayer, Alexandra, 'Visa-free travel in the Balkans', Euobserver, 06.12.2009 <<http://euobserver.com/?aid=29097>> (accessed on 06.07.2010)

Ludford, Sarah, 'Third country nationals subject to or exempt from a visa requirement when crossing external borders (debate)', European Parliament Debates, Brussels, 11.11.2009. <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20091111+ITEM-020+DOC+XML+V0//EN&language=EN&query=INTERV&detail=3-236>> (accessed on 01.05.2010)

Palokaj, Augustin and Pantelic, Zeljko, 'Van Rompuy: "No doubt on EU commitment to Balkans"', Wazeuobserver, 05.07.2010 < <http://waz.euobserver.com/887/30420/?rk=1>> (accessed on 06.07.2010)

Phillipps, Leigh, 'Kosovo independence no violation of law, finds International Court of Justice', Euobserver, 22.07.2010. < <http://euobserver.com/9/30529/?rk=1>> (accessed on 22.07.2010)

Schimmelfennig, Frank, 'The community trap: Liberal norms, rhetorical action and the eastern enlargement of the European Union' in *The politics of European Union enlargement: theoretical approaches*, ed. Frank Schimmelfennig and Ulrich Sedelmeier, pp.142-171. London : Routledge, 2005.

Staff member of Tanja Fajon, E-mail correspondence, LIBE Committee, Brussels, 23.07.2010.