

EU Justice and Home Affairs Strategy in the Western Balkans Conflicting Objectives in the Pre-Accession Strategy

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Abstract

The states of the Western Balkans constitute a major source of 'soft security' threats to the EU. The EU attaches a great deal of importance to this subject, as reflected by the fact that justice and home affairs is officially one of the most prominent areas of cooperation in the region. This paper aims at elaborating on this process and poses as its key analytical question: What are the actual routes of influence through which the EU can bring these states closer to EU standards in justice and home affairs?

The analysis presents the EU's pre-accession strategy as one of the chief mechanisms for exerting influence on the domestic political processes and structures of the Western Balkan states. Yet the application of the EU's pre-accession framework to this regional setting suffers from two major shortcomings, namely the EU's 'commitment deficit', which generates doubts about the credibility of the EU's membership promise, and the uncertain timeframe within which compliance with EU rules will be rewarded. To counterbalance these shortcomings, the EU uses its visa regime for the region as a threat and main incentive for strengthening reform efforts. The analysis concludes with the argument that this strategy creates tension with the broader objectives for the region. Although the EU's overall aim is to integrate these countries and to support them in their transformation towards stable democracies and open, European-oriented societies, its visa regime functions as an obstacle to this very aim by confining the movement of persons, such that they lose sight of the wider horizon.

Keywords: Western Balkans, justice and home affairs, Stabilisation and Association Process, Stability Pact for South Eastern Europe, EU visa regime

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EU JUSTICE AND HOME AFFAIRS STRATEGY IN THE WESTERN BALKANS

CONFLICTING OBJECTIVES IN THE PRE-ACCESSION STRATEGY

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1. Introduction

The states of the Western Balkans¹ constitute a major source of ‘soft security’ threats for the EU. Two-thirds of the heroin seized in the EU comes through the Balkans. Around 100,000 illegal immigrants arrive every year to the EU via south-east Europe, 15% of whom come from the region itself (Smith, 2003, p. 173). The EU attaches a high degree of importance to this subject, reflected by the fact that justice and home affairs is officially one of the most prominent areas of cooperation. The underlying (EU) assumption is that if the EU can facilitate the strengthening of border control and law enforcement capacities in the Western Balkans (and adherence to the EU’s justice and home affairs *acquis* as part of closer integration with the EU), these states will increasingly be capable of coping with these problems themselves. Consequently, such problems would be kept outside the common EU territory and the potential causes of internal social tension and xenophobic political propaganda would diminish significantly in the domestic political arena (in this respect see also Pastore, 2001, p. 16).

But what are the actual routes of influence through which the EU can bring these states closer to EU standards in justice and home affairs? How can the EU ‘govern’ in such a sensitive realm of national sovereignty beyond its geographical scope? By dealing with these questions, this paper elaborates on a subject that is still ill-explored in various aspects: the external dimension of EU justice and home affairs in the regional setting of the Western Balkans.

The research proceeds in a three-step manner: first, the EU’s pre-accession framework is introduced and presented as the EU’s major mechanism for exerting influence on the domestic political processes and structures of the Western Balkan states. Second, the paper draws attention to an instrument with more exclusive effects, namely the EU’s visa regime, which is used as a threat and main incentive for strengthening reform efforts. Third and finally, it is argued that this strategy for bringing these states closer to EU standards in justice and home affairs creates tensions with the broader objectives for the region. Although the EU’s overall aim is to integrate these countries and to support them in their transformation towards stable democracies and open, European-oriented societies, its visa regime functions as an obstacle to this very aim by confining the movement of persons, such that they lose sight of the wider horizon.

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¹ Under the term ‘Western Balkans’, the EU subsumes Croatia, Albania, Macedonia, Serbia, Montenegro and Bosnia and Herzegovina.

2. EU external governance through inclusion: The Western Balkans queuing for membership

The most potent and far-reaching way the EU can exert influence on a non-EU country in its wider neighbourhood is to use the incentive of membership. Countries queuing for membership are expected to adhere to the EU's *acquis*, including the regulations on justice and home affairs, *in full*. In doing so, the extension of the EU's legal order is essentially inclusive, as the ultimate aim is to be accepted as a full member of the EU.

2.1 The Stabilisation and Association Process

The EU's Stabilisation and Association Process (SAP) for the Western Balkans is the overall Europeanisation instrument for the region. Launched in May 1999, "the SAP is an ambitious strategy that helps the region to secure political and economic stabilisation and to develop a closer association with the EU, opening a road towards EU membership once the relevant conditions have been met" (European Commission, 2001d, p. 2).

Generally, the SAP is in each case a bilateral affair between the EU and the applicant country. The EU takes the initiative in the sense that it first has to judge if the country in question is ready to proceed on a step-by-step process. This phased strategy ranges from the establishment of a consultative taskforce and a feasibility study on a Stabilisation and Association Agreement, to the beginning, conclusion and finally the ratification of this agreement. At the same time, this approach opens the way to the application for membership, bringing the candidate country into a process ultimately aiming at accession to the EU (on the specific procedure see the discussion on accession negotiations in section 2.1.1). During the whole process, the relationship between the EU and the respective country can be considered strongly one-sided. The EU essentially sets the rules and conditions, whereas the prospective candidate country has to content itself with expressing possible problems and concerns. Nonetheless, the policy is emancipating in its objective, namely in obtaining full membership of the EU.

The prospect of the Western Balkan states joining the EU was first expressed at the European Council in Feira in 2000. The Council conclusions stated that all the countries of the region were "potential candidates for EU membership" (European Council, 2000b, point 67). This statement marked a clear shift in the EU's previous 'regional approach', which, although already applying the principle of conditionality and seeking to bring the states closer to the EU, bypassed the issue of membership. After first being heralded, the prospect of membership was reiterated several times, most notably at the European Council of Thessaloniki, which was largely dedicated to EU–Western Balkan relations. Even though the countries concerned hoped for a more precise timeframe for accession on that occasion, the Thessaloniki Council conclusions remained silent on the issue and the countries remained 'potential' rather than 'real' candidates. Nevertheless, the Council endorsed an approach outlined in the document, "Thessaloniki agenda for the Western Balkans: Moving towards European integration", which enriched the SAP process and bolstered it by methods based on the experiences of the eastern enlargement. The chief of these was the introduction of European Partnerships, modelled on the Accession Partnerships employed in Central and Eastern Europe. More specifically, they are tailored to each country's particular situation, distinguishing between priorities for short-term action (12 to 24 months) and those for the medium term (3 to 4 years). Several observers have pointed out that the European Partnership concept, although introducing elements of the pre-accession process, lacks a full institutional and financial commitment (e.g. Kostovicova, 2005, p. 44).

The prospect of EU membership for the Western Balkans still has no concrete timeframe, and offers a rather remote accession horizon.² Even after Croatia and Macedonia were granted the status of real candidates in June 2004 and December 2005 respectively, the situation for the rest of the region has remained unchanged:

[T]he SAP has essentially remained distinct from pre-accession, with all [the] political and financial implications of the separation of the two. In addition, the EU aspirants in the Western Balkans have become wary of a possible impact of the enlargement fatigue in the EU, or, indeed, of alternative strategies towards this part of the region. An introduction of the notion of a ring of well-governed countries along the EU borders in the EU security strategy has created uncertainty about the EU's commitment to full integration of the Balkans" (Kostovicova, 2005, p. 44).

2.1.1 EU mechanisms for exerting influence domestically

Conditionality, or as the Council understands it – “the cement of the Stabilisation and Association process”³ – pervades the EU's strategy for the region and has to be viewed as its decisive cornerstone. The application of the conditionality principle links the progressive improvement of the EU's relations with the respective countries to the fulfilment of a whole range of political and economic conditions by the latter. The most powerful incentive for the Western Balkan states to comply with EU conditionality is the access to different stages of the SAP, particularly concluding the Stabilisation and Association Agreements and consequently being granted the status of candidate for EU membership. Along with this macro level of activity, the EU also exerts conditionality at subordinated levels. If the EU chooses, it can invoke ‘programme conditionality’ and ‘project level conditionality’, threatening to freeze financial means if the country concerned fails to meet the objectives set by the EU.

Failure to comply with this level of conditionality [i.e. programme and project conditionality] may result in the delay, suspension or cancellation of the planned or committed assistance without the possibility of reallocating the funds to another sector (European Commission, 2001a, p. 25).

In addition, the five conditionality instruments, as defined by Heather Grabbe for the eastern enlargement, are adjusted to the Western Balkan setting (see Grabbe, 2003, p. 312).

Models: Provisions of legislative and institutional templates

Under the 1993 Copenhagen criteria membership requires that candidates have to be capable of fulfilling the “obligations of membership”, which entails the implementation of the entire EU *acquis* as it evolves. Domestic regulations and standards are to be harmonised with EU rules and the entire EU *acquis* is to be integrated into the legal order of the candidate country. The EU's *acquis* in justice and home affairs is based on two legal sources. These are Title IV of the Treaty establishing the European Community and the Treaty on European Union, entitled “Visas, asylum, immigration and other policies related to the free movement of persons”, and the Schengen Protocol, as incorporated in the EU's legal framework in the Treaty of Amsterdam (see European Council, 1999b).

The legal downloading of the EU's *acquis* was not defined as a top priority for the Western Balkans, given the comparatively low level of European integration and institutional stability. The SAP was rather constructed in a way to link the agenda of European integration with stabilising and transforming these countries on a more fundamental level. Within the policy

² Pippan (2004, p. 244), for instance, locates the likely date for accession to the EU “rather beyond than before 2015”.

³ See General Affairs Council (2001), Annex, section III.

field of justice and home affairs, this means that the EU is focusing on four main priority areas: 1) police, public order and organised crime; 2) integrated border management; 3) judicial reform; and 4) asylum and migration.

The overall aim of the EU's policies in justice and home affairs was defined as follows:

The aim is to help partners develop institutions, which function effectively at national and regional level. In some cases this will require the creation of institutions which do not yet exist and in others the strengthening of currently weak capacity. In addition to helping to build up a sound legislative basis and to develop an administrative culture which shares the common values which underpin EU action in these areas, the CARDS programme will also support training and provide equipment while working to develop self-sustaining capacity to implement EU compatible policy in the area of Justice and Home Affairs. This strategy will be implemented through the transfer of expertise, knowledge and professional working practices from Member States to the partner countries, working closely along other international bodies, to ensure streamlined and effective regional co-operation (European Commission, 2001b, p. 3)

In doing so, two strategies – a regional one and a country-by-country one – are to complement each other. The regional strategy aims at improving regional cooperation through the establishment of contractual relationships in the policy fields of border management, visas, illegal immigration and organised crime. Country strategy papers, in turn, outline priorities for each of the states. Although justice and home affairs is identified in each of these countries as a key area of cooperation, the individual priority areas of action depend on the specific domestic conditions. In Croatia, for instance, the EU and their Croatian counterparts have focused relatively early on the transposition of the EU *acquis*, whereas the EU's main objective in Albania is to enhance the capacities of law enforcement institutions on a much more basic level.

To sum up briefly, the EU pursues a threefold strategy, namely to stabilise, transform and integrate these states into the EU's structures. These three areas are considered parallel, equally important and inextricably linked within this regional setting in south-eastern Europe.

Money: Aid and technical assistance

Financial assistance is offered through the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme, officially launched in December 2000 (European Council, 2000a). In contrast to its predecessor PHARE, CARDS also targets some specifically Western Balkan problems stemming from the conflicts of the 1990s, such as the return of refugees and internally displaced persons. The programme amounted to €4.6 billion in the period 2000–06, most of which was devoted to capacity- and institution-building.⁴ In practical terms, CARDS assistance is managed by the Commission, by both its headquarter in Brussels and its national delegations in the Balkans. While the Brussels-based Commission works out the CARDS strategy papers, the delegations on the ground are given the task of managing the individual project level (in conjunction with national authorities). Exceptions are Serbia and Montenegro (the Republic of Serbia, the Republic of Montenegro and UN-administered Kosovo) and Macedonia, where the CARDS programmes are run by the European Agency of Reconstruction, seated in Thessaloniki (European Council, 2001b).⁵

In line with the set-up of the SAP, CARDS programmes are based upon a regional strategy and country-specific strategies. The priority of justice and home affairs in the SAP is further

⁴ The detailed programmes can be seen on European Commission's website (at http://europa.eu.int/comm/enlargement/cards/index_en.htm).

⁵ See homepage of the European Agency of Reconstruction (at <http://www.ear.eu.int/sectors/sectors.htm>).

reflected in the allocations under the CARDS programme – roughly €1 in €6 is devoted to this heading.

The regional component accounts for around 10% of the total CARDS programme. The largest amount of money for regional programmes for the period 2002–04 (some €17 million of a total of €197 million) was allocated to integrated border management (European Commission, 2001d, p. 18). In the policy field of justice and home affairs, the CARDS regional programme aims at developing a strategy that translates the commonly-accepted EU standards and practices into the national laws and practices of each of the Western Balkan states. Furthermore, the programme seeks to enhance regional cooperation and networking in order to exchange information and analysis, undertake joint training and improve standards in asylum, migration and visa policy. National CARDS programmes, on which the bulk of financial resources are spent, are based on country strategy papers and multi-annual indicative programmes for each of the five countries (Table 1). A large share of these national allocations is used to adopt relevant legislative frameworks and to strengthen the administrative and implementing capacities of the states' law-enforcement bodies. In relation to justice and home affairs, assistance is typically granted for projects such as infrastructure support, improvements to asylum procedures, institution- and capacity-building including the training of staff, judges and lawyers, improvements to reception conditions for asylum-seekers, and the upgrading national legislative standards in line with the European and international asylum *acquis* (see UNHCR, 2003, p. 160).

Table 1. EU justice and home affairs in the CARDS programme: Total allocations for 2005–06 and those for justice and home affairs (JHA)

	Total allocation (million €)	JHA allocation (million €)	Proportion of JHA in relation to total allocation (%)
Albania	89.7	27	30.10
Bosnia and Herzegovina	100.4	25	24.90
Macedonia	85	17	20.00
Serbia	349.5	26.6	7.61
Montenegro	46.5	3	6.45
Kosovo under UNSC 1244	143.5	11.6	8.08
Regional	90	5	5.56
Sum	904.6	115.2	12.73

Notes: 1) Croatia is not listed because it was eligible for pre-accession funding (other than from the CARDS programme) after it began accession talks with the EU in October 2005. It could, however, still take part in the CARDS regional activities for 2005 and 2006.

2) In the CARDS programme the allocation for Serbia and Montenegro, a total of €16 million, is included under that allotted to the former State Union, out of which €1.8 million is for JHA.

Sources: European Commission, DG Enlargement, CARDS financial statistics and author's calculations (retrieved from http://ec.europa.eu/enlargement/financial_assistance/cards/statistics2000-2006_en.htm#cr, accessed on 02.01.2007).

Concerning the next Financial Perspective (2007–13), CARDS will be replaced (together with several other external assistance programmes such as the Turkey pre-accession programme) by the newly created Instrument for Pre-Accession Assistance (IPA) (European Commission, 2004a). The IPA was created to streamline the EU's financial allocations and to achieve a higher impact with the resources available. The IPA is intended to make a clearer differentiation between 'potential candidates' and 'candidates' in the Western Balkans. While potential

candidates will continue to receive assistance along the lines defined in the CARDS regulation, candidate countries will receive the same kind of assistance and extra help related to their preparations to fulfil accession criteria and build up proper administrative and judicial capacities for implementing the *acquis*. Furthermore, candidate countries should be prepared to manage EU funds after their accession (European Commission, 2004a, p. 8).

Benchmarking and monitoring

In its annual Stabilisation and Association Reports, the Commission regularly assesses the performance of the Western Balkan states. First introduced in April 2002, these annual reports carefully list achievements, enervations and ‘things to do’ and determine the priorities for the consecutive year. The annual reports are complemented by individual country reports, each of which contains a chapter on cooperation in justice and home affairs. In this chapter, the European actors define priority areas of action in the fields of visa, border control, asylum and migration. A very particular and highly important case of monitoring is the European Commission’s opinion on a country’s application for membership (also known as the ‘avis’). Up to now, the Commission has expressed its opinion in two cases, namely concerning Croatia (European Commission, 2004b) and Macedonia (European Commission, 2005b). These reports are very powerful in the sense that the Council decides on the basis of them whether to grant the status of candidate to the applicant country.

The use of benchmarking becomes very important at the point that a Western Balkan country can shift its status from a potential to a ‘real’ candidate country and can start accession talks with the EU. When EU member states decide, upon a Commission recommendation, on whether to open a chapter of the *acquis* for negotiations, they may include benchmarks to be met by the candidate country before the specific negotiations can start. The use of benchmarks is a new tool of the sixth enlargement round and has the purpose of improving “the quality of negotiations, by providing incentives for the candidate country to undertake necessary reforms *at an early stage*” (European Commission, 2006c, p. 6, emphasis added). Obviously, this visible and rigorous approach has been adopted to avoid any suspension of necessary reforms similar to what the EU experienced in the late stages of Bulgaria’s and Romania’s accession negotiations. So far this mechanism only concerns Croatia, for which some screening reports, including the one on justice, freedom and security, have led to the stipulation of benchmarks to be attained before negotiations on the respective chapters can begin.

Advice and twinning

Twinning is aimed at helping the respective countries to bring their administrative and democratic institutions in line with European standards. The twinning programme was invented for the eastern enlargement round and has just recently been extended to the Western Balkans. It typically involves the secondment of civil servants from EU member states as advisers to beneficiary institutions for a period of at least 12 months to work on institution-building programmes. Until 2003, around a dozen twinning programmes were running or were in preparation in only two of the SAP countries, namely in Croatia and Albania. The 2003 Thessaloniki agenda then stated that this situation was insufficient and that the twinning programme had to be enlarged to all the Western Balkan states (European Council, 2003a). Additionally, SAP countries became eligible for support from the Technical Assistance Information Exchange Office (TAIEX).⁶ TAIEX was set up originally as part of the pre-accession strategy for the eastern enlargement to provide technical assistance to candidate countries to bring their systems in line with Community legislation.

⁶ See the TAIEX website (at <http://taiex.cec.eu.int/>).

Gate-keeping: Accession negotiations and further stages in the accession process

The most powerful mechanism to induce change is gate-keeping, that is, to allow (or not) a country to proceed on the step-by-step road towards EU membership. As previously mentioned, the SAP is a bilateral process and the pace of the respective state's progress towards EU membership depends on its own performance in this process. The Stabilisation and Association Agreements are seen as the most important cornerstone for achieving candidate status and EU accession. These agreements are legally binding international instruments that institutionalise the relationship between the contracting parties on a higher level. The EU attaches a great deal of importance to the agreement and sees it as a chief means to ensure (top-down) reforms:

The Stabilisation and Association Agreements, then, are posited on respect for the conditionality of the Stabilisation and Association Process agreed by the Council. But they also bring with them a dynamic means of operationalising that conditionality and give the EU the leverage necessary to get the country to adopt genuine reforms with a few to achieving the immediate objectives of the agreements. The mechanisms of the Agreements themselves will enable the EU to prioritise reforms, shape them according to models, to address and solve problems, and to monitor implementation (General Affairs Council, 2001)

Each agreement includes a title on justice and home affairs, which provides for an intense cooperation on issues such as reinforcing the rule of law, migration and asylum, money laundering and illicit drugs. A salient aspect of the Title is dedicated to the field of “prevention and control of illegal immigration”, whereby the contracting parties agree to readmit any of their own nationals illegally residing in the other parties' territories. In addition, the EU reserves the right of the “Stabilisation and Association Council [to recommend] additional subjects for cooperation under this Article” (see for instance Art. 77 of Croatia's Stabilisation and Association Agreement, European Commission, 2005a).

The proper implementation of the Stabilisation and Association Agreement opens the way to the next step on the integration process, namely the application for membership. Following the application and based on the Commission's *avis*, the EU may decide to grant the applicant country explicit candidate status. This approval is an important political sign and implies, in practical terms, that the applicant country can use EU assistance “in all areas relevant to the ability of the country to assume the obligation of membership, such as the preparation for the implementation of the structural funds” (European Commission, 2005c, p. 11). The candidate status is a necessary, but insufficient pre-condition to open accession negotiations – the next step on the road to the EU. Before the negotiations, the applicant country is supposed to reach a sufficient degree of general compliance with the Copenhagen criteria and full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Unless the Commission is satisfied with the country's performance in complying with these conditions, the European Council will not agree to open the negotiations.

In brief, the entire SAP with its manifold integration steps is quite tedious – one scholar called it the “rocky road to Europe” (Pippan, 2004). Therefore, as one observer noted, it is very important for the EU “to keep up the momentum”.⁷ This exhortation refers to the need to provide the right incentives at the right time to prevent doubts concerning the EU's sincerity about the regions' integration. Rewards in terms of advancing on the step-by-step process can be given to one country but may be seen as a sign to all SAP countries. For instance, when Croatia was granted the status of candidate, the EU intended to give a positive sign and incentive to all the other countries in the region as well.⁸

⁷ Derived from an interview by the author (Comm-3), 6 February 2006.

⁸ Ibid.

2.1.2 The Western Balkans' current institutional affiliation with the EU

Macedonia was the first country to sign a Stabilisation and Association Agreement with the EU in April 2001, followed quickly by Croatia in October 2001. Subsequently, Macedonia had to cope with the 2001 armed conflict between the Albanian minority and Macedonian majority, which constituted a major setback for the country. It took until March 2004 for Macedonia to apply for membership officially. In November 2005, the Commission conceded that the country had undertaken major reform efforts and recommended that the Council open the negotiations for accession to the EU and to grant the country the status of candidate (European Commission, 2005b). In December 2005, the European Council finally agreed to do so (European Council, 15 and 16 December 2005). Yet EU officials have indicated that it may take years before Macedonia will actually begin membership negotiations.⁹ Croatia, in turn, proceeded more quickly and presented its application for membership on 21 February 2003. Although the European Council granted Croatia the status of candidate in June 2004, the country could not open accession negotiations owing to insufficient cooperation with the ICTY. Croatia had to wait until October 2005 to start the accession talks for EU membership. One month later, the Commission launched the process of screening Croatian laws and regulations as a first step towards accession negotiations with the country. The screening process for the 33 *acquis* chapters took exactly one year and was completed on 18 October 2006.

The other countries – Albania, Serbia, Montenegro and Bosnia and Herzegovina – are less advanced on their way to the EU. Albania's negotiations for a Stabilisation and Association Agreement started in January 2003 and lasted more than three years. The country was finally able to sign the agreement with the EU on 12 June 2006. Serbia and Montenegro has always been a particularly difficult challenge for the EU. In an attempt to cope with the realities on the ground, it introduced a 'twin-track' approach long before the people of Montenegro voted for independence in May 2006. This approach implied "a single Stabilisation and Association Agreement with distinct negotiations with the Republics on trade, economy and possibly on other relevant sectoral policies" (European Council, 2004, p. 23). The specific (and separate) negotiations for an agreement began in April 2005 after the Council endorsed the feasibility report of the Commission.

At the time of writing, the negotiations are deadlocked with Serbia because of its failure to comply fully with the ICTY on the issue of delivering war crimes suspect Radko Mladic. This problem does not concern Montenegro any longer. The negotiations for a Stabilisation and Association Agreement with the newly founded state were launched on 26 September 2006 and were based on the previous mandate for negotiations with the former State Union. The latest progress report (European Commission, 2006b, p. 6) defined as the key challenge for Montenegro the need to upgrade the country's administrative capacity to enable it to implement the provisions of the agreement.

With UN-administered Kosovo, the EU holds no formal contractual relations but has reinforced in a recent Commission communiqué (2005a, p. 3) that "the European perspective...is also open to Kosovo". Meanwhile, the country lagging behind most is Bosnia and Herzegovina, which began negotiations for a Stabilisation and Association Agreement in November 2005. Although by the end of 2006 a considerable amount of the text had been agreed, its conclusion depends upon further progress in a number of priority areas, most notably on full cooperation with the

⁹ In its presidency conclusions the Council stated that for any further steps towards integration to occur "the absorption capacity of the Union also has to be taken into account" (European Council, 2005b). See also the article "Macedonia gets nod, but no date, from summit" on the news website EurActiv.com, 19 December 2005 (retrieved from <http://www.euractiv.com/Article?tcmuri=tcm:29-151051-16&type=News>).

ICTY, police reform and broadcasting legislation (European Commission, 2006a). (See also the summary for the Western Balkans in Table 2.)

Table 2. *State of relations between the Western Balkan states and the EU (as of December 2006)*

Country	Stabilisation and Association Agreement (SAA)	Candidate country or application for membership	Main contractual relations in JHA area
Albania	Yes	Neither	EC/Albania readmission agreement; JHA clause in SAA incl. JHA sub-committee
Bosnia–Herzegovina	Negotiations ongoing	Neither	No formal contractual relation
Croatia	Yes	Candidate country since June 2004; accession negotiations since Oct. 2005	JHA clause in SAA incl. JHA sub-committee; specific accession negotiations on the JHA <i>acquis</i>
Serbia	Negotiations deadlocked	Neither	No formal contractual relation
Montenegro	Negotiations ongoing	Neither	No formal contractual relation
Macedonia	Yes	Candidate country (without accession negotiations) since Dec. 2005	JHA clause in SAA incl. JHA sub-committee; agreements on EU monitoring mission and EU police mission ‘Proxima’ and ‘EUPAT’

Source: European Commission, DG for Enlargement.

The entire SAP is closely linked to another EU-led initiative, the Stability Pact for South Eastern Europe.

2.2 The Stability Pact for South Eastern Europe

Background and organisation

The Stability Pact for South Eastern Europe was launched simultaneously with the SAP in 1999. Although initiated by the EU as part of its common foreign and security policy, the Pact is not an EU instrument per se, but is vested under the auspices of the OSCE. More than 40 participating countries and organisations signed the founding document and committed themselves to strengthening the countries of south-eastern Europe “in their efforts to foster peace, democracy, respect for human rights and economic prosperity in order to achieve stability in the region”.¹⁰ It is important to note, however, that the Stability Pact is not another international organisation nor has it independent financial resources; rather it is a framework agreement to streamline the existing efforts in the region and to develop a shared strategy among all actors for stability and growth in south-eastern Europe. The Pact relies on the Special Coordinator,¹¹ Erhard Busek, and his team of 30 or so who are funded by the EU and situated in Brussels *vis-à-vis* the European Parliament.

¹⁰ See the Constituent Document of the Stability Pact for South Eastern Europe, signed in Cologne, 10 June 1999 (retrieved from <http://www.stabilitypact.org/constituent/990610-cologne.asp>).

¹¹ The special coordinator is appointed by the EU in consultation with the OSCE and his/her mandate is renewed once a year.

Organisationally, the Pact comprises a Regional Table, the most important political structure and chaired by the special coordinator, and three Working Tables that operate under the Regional Table. The tables cover specific themes:

- Working Table I: Democratisation and human rights;
- Working Table II: Economic reconstruction, cooperation and development; and
- Working Table III: Security issues (with two sub-tables on security and defence, and justice and home affairs).

In articulating its approach, the Stability Pact has explicitly chosen the opposite of the top-down method of the SAP:

A special feature is that at Regional and Working Tables, representatives of South Eastern European Countries are, for the first time, on an equal footing with those of international organisations and financial institutions in advising on the future of their region and in setting priorities concerning the content of all three working areas.¹²

Since its initiation, the Pact can refer to certain achievements, particularly in the area of regional cooperation. The Pact has also had the chance to reinforce intra-regional trade, has done much to promote infrastructure development and revitalise the Southeast European Cooperation Process (SEECP). Additionally, it has been able to secure funding for projects worth €5.4 billion at two regional conferences. The high expectations of the Stability Pact at its launch were not entirely fulfilled, however. An employee of the special coordinator's team describes the dilemma between inflated expectations and given capabilities as follows:

Mr. Blair was calling the Stability Pact a “new Marshall plan for the reconstruction of the region”. The countries were exactly expecting this; they were hoping for quick solutions to all of their problems. But the Stability Pact is not another financial institution, [it] can be mainly considered as a political instrument for lobbying in favour of the region. The aim has always been to bring together all the possible investors and the countries of the region and furthermore, to help the countries to come closer to the European Union. But this takes time.¹³

Broadly speaking, the overall direction of the Pact is agreed upon at the Regional Table, which brings together all the participants and takes place once a year (although it is often held twice a year). At the one staged in Belgrade in May 2006, a far-reaching decision was taken with regard to the future of the Pact: the Stability Pact for South Eastern Europe should be phased out in its current form and be transformed into a regional cooperation council with the countries themselves gradually taking over ownership of the entire cooperation process. The new main task is defined as “[t]he facilitation of regional cooperation and support for European and Euro-Atlantic integration, while ensuring continued involvement of the donor community, thus preserving the legacy of the Pact” (Stability Pact for South Eastern Europe, 2006). Additionally, the conclusion stated that the new council should closely work with the SEECP,¹⁴ but it did not clearly define the relationship between the two forums.

¹² See the homepage article “About the Stability Pact” on the website (retrieved from <http://www.stabilitypact.org/about/default.asp>).

¹³ Derived from an interview by the author, 21 March 2004.

¹⁴ The SEECP is a non-institutionalised regional cooperation structure founded in 1996. At that time, Bulgaria organised a meeting of ministers of foreign affairs to lay the foundation of a new cooperative forum, following the birth of new countries in the Balkans. Its *raison d'être* is to offer a regional cooperation in domains of common interest.

Nevertheless, the Regional Table has agreed that there still is and will remain a continued need for regional cooperation in the following areas: economic and social development, infrastructure, building human capital, security cooperation, and justice and home affairs.

Justice and home affairs in the Stability Pact

Justice and home affairs has always held an essential place in the Stability Pact for South Eastern Europe. The sub-table on justice and home affairs is split into four main areas of action:

- 1) Organised crime
- 2) Anti-corruption
- 3) Migration, Asylum, Refugees Regional Initiative (MARRI)
- 4) Police

Additionally, there is the issue of border security and management, which lies across these four sub-tables and constitutes an extra field.

In line with the main objective of the Pact, the justice and home affairs' policies are also directed towards developing or strengthening regional cooperation. It has to be taken into account, however, that the Stability Pact's resources are quite limited, particularly in terms of personnel. According to one commentator, the Pact's involvement in the field of border security and management for instance is mainly to serve as a kind of "clearinghouse" or "secretary"¹⁵ for the Ohrid Border Process, the common umbrella of NATO, the EU, OSCE and the Stability Pact for streamlining the international efforts in border management. For undertaking anything more, there are simply not enough resources, bearing in mind that only one to two individuals are entrusted to this field within the Pact.

A quite interesting initiative within the justice and home affairs sub-table is the MARRI programme noted above. It is given the task of developing a more comprehensive approach to the related issues of migration, asylum and refugee return. What is more, the MARRI has been singled out as the first initiative to realise the frequently cited objective of 'regional ownership'. In July 2004, the main office of the MARRI was transferred to Skopje as a part of the SEECF. For the international actors, "MARRI is [therefore] kind of a test case on how this works out for all the other initiatives, how it goes, in which directions does it develop, and so on", as noted by one observer.¹⁶ Nevertheless, the principle of regional ownership remains a tricky one. This point can be illustrated by the fact that the five countries participating in the MARRI could not agree on a director for the MARRI Regional Centre in Skopje who originates from one of their states, but reverted to a person coming from outside (Alenka Prvinsek from Slovenia).

To sum up briefly, the Stability Pact constitutes the most prominent European supplement to the SAP for bringing these states closer to the Euro-Atlantic structures and institutions. Its main aim is to strengthen regional cooperation and to give ownership of the process to the countries concerned.

2.2 Assessing the EU's pre-accession framework

The EU's external governance in justice and home affairs in the context of the Western Balkans' integration strategies builds upon the EU's most successful foreign policy tool – the extension of its boundaries of order (in the form of the EU's *acquis*) through the incentive of membership. Since the principle of conditionality includes the obligation to implement the EU's

¹⁵ Derived from an interview by the author (SP-2), 7 February 2006.

¹⁶ Derived from an interview by the author (SP-1), 7 February 2006.

acquis in justice and home affairs *in full*, it is rather a question of when and how, not if these countries will adhere to the EU's *acquis*. The EU assists them with the CARDS financial programme, in which justice and home affairs is included in a prominent manner and actually in some countries as *the* most prominent area of cooperation.

The EU's pre-accession strategy differs in two important aspects to previous enlargement rounds, both of which affect the EU's capacities to induce changes domestically. The first of these relates to doubts about the credibility of the EU's membership promise. The second is the uncertain time horizon within which compliance with EU rules will be rewarded (in this respect see also Lavenex & Ucarer, 2004, p. 433).

Problems regarding the EU's "commitment deficit" and the questionable promise of membership

The strategy of conditionality, no matter how refined it is in its daily application, suffers from an overall "commitment deficit" (Anastasakis & Bechev, 2003, p. 15). The EU is internally characterised by a lack of consensus on policy goals and priorities for the Balkans. A certain degree of enlargement fatigue, the controversy over the candidacy of Turkey and several other factors have all contributed to the fact that the Western Balkans receives much less priority today than in 1999–2000, when both the SAP and the Stability Pact were at the fore. The negative results of the referenda on the European Constitution in France and the Netherlands only increased this indecisiveness. Recent debates have increasingly circulated around the issue of whether to stop any further enlargement until the European Constitution is adopted. Consequently, the messages sent to the Western Balkans have become more and more ambiguous. The Salzburg Declaration, initiated by the Austrian presidency in March 2006 and intended as a positive signal for the region, included for the first time the caveat "[t]he EU also notes that its absorption capacity has to be taken into account" (Salzburg Declaration, 2006).¹⁷ The term "absorption capacity" has become the phrase of the day, meaning that not only must a candidate country be prepared to be absorbed but also the other party has to be ready to absorb the candidate country.

Overall it can be stated that the Western Balkans face a European political arena in which public opinion and political support for the region's full integration are fading. For the EU, in turn, this indecisive stance has a concrete impact on the possibilities for setting deadlines and demanding far-reaching reforms in certain sectors, a problem discussed in the next section.

The problem of the uncertain time horizon within which compliance with EU rules will be rewarded

The EU's commitment deficit leads to a related problem: the EU can only offer a very uncertain time horizon within which compliance with EU rules will be rewarded. As a consequence, the credibility of threats and demands is often questionable.

In this respect, one has to distinguish between controversial and non-controversial areas of cooperation. In several interviews for this analysis, ministerial officials of the Balkan countries have stated that the CARDS programme is helping to upgrade substantially (or even to create) domestic justice and home affair systems. This result particularly applies to policy areas in which no real domestic reform steps are required (as in, for instance, the technical upgrade of border control equipment). The problem for the EU rather relates to the capacity of inducing changes in areas in which real (and hence painful) reform steps are expected or considered necessary. As the membership prospect is remote, the EU's repeated insistence on far-reaching

¹⁷ In the same declaration, however, the EU "confirms that the future of the Western Balkans lies in the European Union".

reform of, say, the judiciary sectors in Croatia has trailed off with the promise to do so at a later stage in the integration process.¹⁸

At the same time, the EU has an additional, exclusive instrument to speed up reform efforts in the Western Balkans' justice and home affairs policies: the liberalisation of the visa regime.

3 Exclusion as a threat and a main incentive for cooperation: The EU's visa regime

The EU's cooperation in justice and home affairs is characterised by a strong dynamic of inclusion and exclusion (see Monar, 2000). A 'safe(r) inside' is contrasted with an 'unsafe(r) outside', "with the EU's frontiers as the dividing line and law enforcement and border controls as key instruments to maintain and further enhance the distinction" (Monar, 2001, p. 762). What is more, those from the outside who actually or allegedly pose a threat to the safe inside must be kept outside or brought under appropriate control and enforcement action. The most visible instrument to pursue this goal is the EU's visa regime.

3.1 The Western Balkans and the EU's visa regime

The EU's visa regime should serve as a chief means to control who can legally enter the common EU territory. Certain aspects of member states' visa policies were first brought into the Community framework with the Maastricht Treaty, more precisely the determination of those non-EU countries whose nationals must be in possession of visas when crossing the external borders of the member states, and the establishment of a standard model visa. Consequently, the member states agreed on the harmonisation of the different national visa policies. A 'negative' or 'black' visa list was introduced in 1995 when the Council listed 101 non-EU countries whose nationals must be in possession of visas when crossing the external borders of the member states (European Council, 1995). But this first attempt towards a common policy was hampered by various practical problems:

Confusion soon ensued. On 28 September 1995, a Schengen official captured the negative externalities of Schengen for the EU by complaining that "the EU now has three categories – three lists of countries. The first for people from places such as Switzerland who do not require a visa in any EU country (White List), the second is the main list of places such as Iraq and Libya from which everyone requires a visa, and the third includes countries such as Canada whose citizens need a visa to visit Spain, but can travel freely in the rest of the EU" (*European*, 28 September 1995), (European Agency Press, 28 September 1995, here quoted in Ucarer, 2002, p. 23)

The Amsterdam Treaty (1997) then broke ground for an expansion of the EU's visa policy. It was pooled under the newly introduced Title IV "Visas, asylum, immigration and other policies related to free movements of persons" and brought into the legal framework of the Community. In addition, the Schengen *acquis* was annexed to the Treaty,¹⁹ so that the harmonisation measures regarding visas upon which the Schengen members had agreed to apply to those outside the Community became part of the Union's legal structure. Complications arose from this action, because the participating states of the Schengen Protocol had a longer negative visa list, containing 133 vs. 101 states whose nationals required a visa for entering 'Schengenland'. The reason for the difference was that the UK (which has remained outside the Schengen

¹⁸ Derived from an interview by the author (EU-Rep-8), 11 May 2006.

¹⁹ Exceptionally, the UK and Ireland declared in an extra protocol that they are refraining from the EU's cooperation on visa, immigration and asylum but may opt-in on certain provisions, if explicitly demanded.

arrangement) wanted to allow visa-free travel to some of its Commonwealth countries, a step the Schengen signatory states did not endorse.

The Amsterdam Treaty spurred progress in the harmonisation of the visa policies. Regulation No. 2317/95 concerning those who must be in possession of visas was amended by Council Regulation No. 574/1999.²⁰ In January 2000, the Commission sent a proposal to the Council for a new regulation, aimed at aligning the EU's visa list of 101 states with that of the Schengen list of 133. In March 2001, the Council agreed on a new regulation and added to the negative list of countries whose citizens require a visa when entering the EU a 'positive' list of countries whose nationals are exempt from such a requirement (European Council, 2001a). In this famous Regulation No. 539/2001, all the Western Balkan states with the notable exception of Croatia found themselves being placed on the negative visa list.

3.2 Visa liberalisation as a main incentive to strengthen cooperation

Since the moment the Western Balkan states were placed on the EU's negative visa list, the issue of visa liberalisation has ranked high on the political agenda of the countries concerned. The EU, in turn, has expressed on repeated occasions that the main pre-condition for the liberalisation or even the facilitation of the visa requirements relates to sufficient cooperation on security issues, in particular on the issue of illegal immigration and organised crime.

At a conference on transnational organised crime in the Balkans, held in London in November 2002, the EU sent a clear message that countries in which organised crime flourishes have no place in the EU (see Foreign & Commonwealth Office, 2002). Subsequently, this message was reiterated on several occasions, most notably at the EU–Western Balkans summit in Thessaloniki 2003, which explicitly linked the fight against organised crime and illegal immigration with the liberalisation of the visa regime:

The EU is aware of the importance the peoples and governments in the Western Balkans attach to the perspective of liberalisation of the visa regime. Meanwhile, progress is dependent on these countries implementing major reforms in areas such as the strengthening of the rule of law, combating organised crime, corruption and illegal migration, and strengthening their administrative capacity in border control and security in documents (European Council, 2003b).

The primary responsibility for achieving progress in this respect was given to the countries themselves, as emphasised at several JHA ministerial meetings with the Western Balkans (see European Council, 2003a and 2006b).

But what exactly are the requirements the EU expects the Western Balkans to fulfil before being removed from the negative visa list? To answer this question, one may look at the experiences of Bulgaria and Romania. These two countries were removed from the negative list after making considerable efforts to improve their performance with regard to border management and the fight against illegal immigration and organised crime (on these two cases see Grabbe, 2000, p. 30; Apap et al., 2004, p. 39).

In the case of Bulgaria, in a report to the Council the Commission (2001c) elaborated the reasons why the country deserved to be removed from the negative visa list:

- Bulgaria had introduced new types of passports that incorporate a number of security features against counterfeiting and forgery.
- The practices for issuing visas had been aligned on EU standards; the practice of issuing visas at the borders had been prohibited.

²⁰ See European Council (1999a).

- Sanctions on illegal emigration to the EU member states had been introduced (meaning that a breach of the immigration laws of any EU member state, over which the Bulgarian government has no control, had become a criminal offence).
- Sanctions had been put in place concerning the facilitation of illegal migration.
- The staff for border surveillance and control had been increased and equipment upgraded.
- A series of readmission agreements had been concluded with EU member states and several other non-EU countries to repatriate Bulgarians to Bulgaria.
- Several other measures, such as close border cooperation with Greece and an information campaign for Bulgarian citizens on the exact details of the visa exemption had made the Commission conclude “[I]t is clear that Bulgaria has at its disposal the necessary legal instruments to allow it to combat illegal immigration to, through or from its territory” (European Commission, 2001c).

Apart from these more technical/policy-related issues, there is another level of discussion that aggravates the visa *problématique* for the Western Balkans: an increasingly hostile political climate towards softening the visa requirements.

A Commission official explained in an interview for this analysis that some of the EU member states were relatively dissatisfied with their experiences in the wake of the visa liberalisation for Bulgaria and Romania. A comparatively high number of people overstayed the permitted three months, and it was rather complicated to “collect them again and repatriate them”.²¹ As a result, EU member states are now very reluctant to agree on a quick visa liberalisation scheme for any other Balkan state. In addition, the Western Balkans have to face a generally tougher stance by the EU towards non-EU countries that are perceived as a possible source of instability. The International Crisis Group (ICG, 2005) reported that the Council Working Group on the Western Balkans was unable to agree on possible first steps for visa facilitation during their discussions on the issue at the beginning of 2005. This outcome reflects “a general hardening of the political environment following the negative result of the referendums in France and the Netherlands on the EU Constitution. Paris argued that the region remains a security threat” (ICG, 2005, p. 7).

Lately, the EU has nonetheless been willing to move slowly.

Officially, this softening derived from the Commission’s Communication (2006d) entitled “Western Balkans on the road to the EU: Consolidating stability and raising prosperity”, which proposed visa relief as one of the major points. Following the communiqué, the Council (2006c) laid out a concept of visa facilitation agreements to be concluded with neighbouring states. These agreements pursue the aim of making travel easier for certain categories of citizens such as researchers, students or businesspersons and reducing the handling fees for all Western Balkan citizens.²² Any successful negotiations, however, are closely linked to reform efforts in the field of fighting illegal immigration, and in particular to the signing of readmission agreements with the European Community. The clear go-ahead for the Commission to launch negotiations on visa facilitation and readmission agreements was granted at the Council meeting held on 13–14 November 2006 (see European Council, 2006a). The stated aim of the European Commission is to have concluded negotiations as soon as possible, before July 2007 at the latest. Thus, according to a speech by the responsible Commissioner Franco Frattini (2006), these agreements are only another step on the road towards full visa liberalisation. Negotiations

²¹ Derived from an interview by the author (Comm-3), 6 February 2006.

²² The specific categories of persons who will obtain facilitated travel opportunities are not predefined but subject to the related negotiations.

for a visa-free regime should be initiated when the smooth and proper functioning of visa facilitation and readmission practices are guaranteed, along with efforts to improve cross-border police cooperation and the fight against corruption. In addition, Mr Frattini recommends that the Western Balkans speed up reform efforts in two policy areas considered crucial to effective border management: document security, including the introduction of biometric identifiers, and personal data-protection measures.

Unofficially, the slow softening of the EU's rigorous visa regime can also be seen as a first small success of the growing pressure and lobbying from the countries of the Western Balkans.

3.3 Visa relief as a common cause in the Western Balkans

The issue of visa relief created a common cause in the Western Balkans. It has become a catalyst for cooperation among different groups in this fractious region. For instance, the Catholic, Jewish, Muslim and Orthodox communities in Bosnia and Herzegovina have started to work together in an effort to gain more travel opportunities for the country's citizens. Perhaps most remarkably, the common cause has brought together Serbian and Albanian experts. They have jointly published a study on *A joint European Vision: Free Movement for Goods and People in Kosovo and Serbia*.²³ A similar study was published by the Citizens' Pact for South Eastern Europe, which functions as a network of non-governmental organisations and municipalities throughout south-eastern Europe.²⁴ The Citizens Pact, founded in response to the signing of the Stability Pact in 1999, has launched the "Visa Abolishment Campaign", "with the aim to enable the abolishment of [the] visa within South Eastern Europe and the liberalisation/abolishment of the visa regime based on the Schengen Treaty".²⁵ Another initiative lists "the best stories from visa queues", thereby reflecting the humiliating and sometimes ridiculous aspects of applying for a visa.²⁶ Of course, these few initiatives are only a snapshot of the whole range of activities launched in the region in order to achieve visa-free travel.

And indeed, the common action comes as a reaction to serious problems caused by the EU's visa regime. Initially, the visa regime was thought of as an instrument to protect EU citizens from potential threats posed by third-country nationals and to distinguish among 'worthy' and 'unworthy' guests. The introduction of these obstacles to enter the EU territory, however, simultaneously gave birth to a demand for illegal activities to circumvent them and other various negative side-effects. According to a report by the ICG (2005), 70% of all Serbian students have never left their country, thus only having a vague idea of what the EU may be like. Moreover, their compatriots in Bosnia and Herzegovina and Albania are obviously opting more and more to study where they receive a warmer welcome, which is the case, for instance, in Pakistan and Saudi Arabia. Many return with fundamentalist ideas. The feeling of being located in a 'Balkan ghetto', to which of the EU applies a 'consular sadism' has created a strong sense of humiliation and of holding a pariah status. Isolation leads to intolerance, about which the ICG stated "[although] the EU claims that it does not want a Balkan region plagued with extreme nationalism and religious intolerance on its borders...that is what its visa policies are helping to create" (ICG, 2005, p. 10).

²³ See the newspaper article "Visa issue makes for common cause in the Western Balkans", *SETimes*, 5 June 2006 (<http://setimes.com>).

²⁴ See VC Experts Group Research (2004).

²⁵ For further information about the Citizens Pact campaign see the organisation's website (at http://www.citizenspact.org.yu/new/index.php?option=com_content&task=category§ionid=4&id=13&Itemid=26).

²⁶ See the website <http://www.needvisa.net/new/best/19.htm>.

4 Conclusions

The aim of this paper has been to assess the EU's strategies for encouraging the Western Balkan countries to deepen their reform efforts in the field of justice and home affairs.

The analysis has considered the EU's pre-accession strategy as a major framework for exerting influence on the domestic political processes and structures of the Western Balkan states. The EU has given all the Western Balkan states the prospect of acceding to the EU one day. Since the principle of conditionality includes the obligation to implement the EU's *acquis* in justice and home affairs in full, it is rather a question of when and how, not if these countries will adhere to the *acquis*. The EU assists them with the CARDS financial programme, in which justice and home affairs is included in a prominent manner and is in some countries *the* most prominent area of cooperation. Nevertheless, the application of the EU's pre-accession framework to this regional setting suffers from two critical shortcomings, namely the EU's "commitment deficit" (Anastasakis & Bechev, 2003, p. 15), which generates doubts about the credibility of the EU's membership promise, and the uncertain timeframe within which compliance with EU rules will be rewarded. To counterbalance these shortcomings, the EU uses its visa regime for the region as a threat and a main incentive for strengthening reform efforts. Five of the six Western Balkan countries are placed on the EU's negative visa list, meaning that their citizens require a visa to enter the common EU territory. Lately, the EU has begun initial negotiations on visa facilitation agreements with the Western Balkan states, aimed at facilitating travel for certain categories of the population and reducing the handling fees for all citizens of the region. The most important precondition for a successful conclusion is the signing of readmission agreements with the European Community and other reform steps in domestic justice and home affairs.

This policy has caused serious problems, however, and various side-effects such as strong perceptions of humiliation among the peoples concerned. Therefore this strategy creates tension with the broader objectives for the region. Although the EU's overall aim is to integrate these countries and to support them in their transformation towards stable democracies and open, European-oriented societies, its visa regime functions as an obstacle to this very aim by confining the movement of persons, such that they lose sight of the wider horizon.

Based on these conclusions, there are some policy recommendations for both European actors and officials in the Western Balkans. First, the EU should keep track of recent progress and set out clear timetables and steps for how visa facilitation (and subsequently visa-free travel) can be achieved. In interviews, Macedonian officials have stated that they had demanded that their European counterparts provide them with roadmaps of what should be done in order to be removed from the negative visa list, but their request was rejected.²⁷ In this respect, the EU should change its strategy and provide each of the countries with the requirements necessary to achieve a different visa regime. With roadmaps and a programme for progress, the message that the EU wants to avoid a 'Balkan ghetto' but only seeks to enhance sustainable reforms of the respective governments is more credible and therefore more sellable.

In turn, the Western Balkan countries listed on the negative visa list should continue to view the visa issue as a priority and persist in their efforts to fight organised crime and illegal immigration. A strong emphasis should be placed on signing readmission agreements with both the European Community and EU member states. Overall, the way Bulgaria and Romania managed to move off the negative visa list should be carefully studied and taken as an example.

²⁷ Derived from an interview by the author (Int. 12, Mac-1; Int. 13, Mac-2), 27 April 2006.

References

- Anastasakis, Othon and Dimitar Bechev (2003), *EU Conditionality in South East Europe: Bringing Commitment to the Process*, South East European Studies Programme, University of Oxford (retrieved from <http://emins.org/dokumenti/eu-conditionality.pdf>).
- Apap, Joanna, Sergio Carrera and Kemal Kirisci (2004), *Turkey in the European Area of Freedom, Security and Justice*, EU-Turkey Working Papers, No. 3, CEPS, Brussels (retrieved from <http://www.ceps.be>).
- European Commission (2001a), *CARDS Assistance Programme to the Western Balkans: Regional Strategy Paper 2002 – 2006*, DG for External Relations, Brussels (retrieved from http://www.reliefweb.int/library/documents/2001/ec_balkans_22oct.pdf).
- (2001b), “EU Justice and Home Affairs policy and the Western Balkans”, Conference paper from the European Commission for the “Second Regional Conference for South East Europe”, Brussels (retrieved from http://www.seerecon.org/region/documents/ec/ec_jha.pdf).
- (2001c), *Report from the Commission to the Council – Regarding Bulgaria in the perspective of the adoption of the Regulation determining the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt of that requirement*, COM(2001) 61 final, Brussels (retrieved from [http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=52001DC0061\(01\)&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=52001DC0061(01)&model=guichett)).
- (2001d), “The Stabilisation and Association Process and CARDS Assistance 2000 to 2006”, European Commission Paper for the “Second Regional Conference for South-eastern Europe”, Brussels (retrieved from http://www.seerecon.org/region/documents/ec/ec_sap_cards_2000-2006.pdf).
- (2004a), Communication, The Instruments for External Assistance under the Future Financial Perspective 2007-2013, COM(2004) 626 final, Brussels, 29.9.2004 (retrieved from http://europa.eu.int/eur-lex/en/com/cnc/2004/com2004_0626en01.pdf).
- (2004b), Opinion on the application of Croatia for membership of the European Union, COM(2004) 257, Brussels, 20.4.2004 (retrieved from http://www.mei.hr/Download/2004/05/31/cr_croat.pdf).
- (2005a), Communication, A European Future for Kosovo, COM(2005) 156, Brussels, 20.4.2005 (retrieved from http://www.delprn.ec.europa.eu/en/eu_and_kosovo/COM_2005_156.pdf).
- (2005b), Communication, Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union, COM(2005) 562 final, Brussels, 9.11.2005 (retrieved from <http://www.ehs.org.mk/DOCS/Final%20opinion%20Macedonia.pdf>).
- (2005c), Communication, 2005 enlargement strategy paper, COM(2005) 561 final, Brussels, 9.11.2005 (retrieved from http://europa.eu.int/comm/enlargement/report_2005/pdf/package_v/com_561_final_en_strategy_paper.pdf).
- (2006a), *Bosnia and Herzegovina 2006 Progress Report*, SEC(2006) 1384 Brussels, 8.11.2006 (retrieved from http://ec.europa.eu/enlargement/pdf/key_documents/2006/Nov/bih_sec_1384_en.pdf).

- (2006b), *Montenegro 2006 Progress Report*, Commission Staff Working Document, SEC(2006) 1388, Brussels, 8.11.2006 (retrieved from http://ec.europa.eu/enlargement/pdf/key_documents/2006/Nov/mn_sec_1388_en.pdf).
- (2006c), Communication, Enlargement Strategy and Main Challenges 2006-07, including the annexed special report on the EU's capacity to integrate new members, COM(2006) 649 final, Brussels, 8.11.2006 (retrieved from http://ec.europa.eu/enlargement/pdf/key_documents/2006/Nov/com_649_strategy_paper_en.pdf).
- (2006d), Communication, The Western Balkans on the road to the EU: Consolidating stability and raising prosperity, COM(2006), 27 final, Brussels, 27.01.2006 (retrieved from http://europa.eu.int/comm/enlargement/docs/pdf/com_2006_27_en_acte.pdf).
- European Council (1995), Council Regulation (EC) No. 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the member states, OJ L 234, 03.10.1995 (retrieved from http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31995R2317&model=guichett).
- (1999a), Council Regulation (EC) No. 574/1999 of 12 March 1999 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States, OJ L 072, 18.03.1999 (retrieved from <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31999R0574:EN:HTML>).
- (1999b), *The Schengen acquis: Integrated into the European Union*, General Secretariat of the European Council, Brussels (retrieved from <http://ue.eu.int/uedocs/cmsUpload/SCH.ACQUIS-EN.pdf>).
- (2000a), Council Regulation (EC) No. 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No. 1628/96 and amending Regulations (EEC) No. 3906/89 and (EEC) No. 1360/90 and Decision 97/256/EC and 1999/311 EC, OJ L 306, 07.12.2000 (retrieved from <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:32000R2666:EN:HTML>).
- (2000b), Presidency Conclusions of the Santa Maria de Feira European Council of 19–20 June 2000, SN200/1/00, Brussels.
- (2001a), Council Regulation (EC) No. 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 81, 21.3.2001 (retrieved from http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_081/l_08120010321en00010007.pdf).
- (2001b), Council Regulation (EC) No. 2415/2001 of 10 December 2001 amending Regulation (EC) No. 2666/2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia and Regulation (EC) No. 2667/2000 on the European Agency for Reconstruction, OJ L 327/3, 12.12.2001 (retrieved from http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_327/l_32720011212en00030004.pdf).

- (2003a), EU–Western Balkans Forum: Joint Conclusions, 15578/03, JAI, 361, Brussels, 2.12.2003 (retrieved from <http://register.consilium.eu.int/pdf/en/03/st15/st15578.en03.pdf>).
- (2003b), The Thessaloniki agenda for the Western Balkans: Moving towards European Integration, Western Balkans, Council Conclusions, General Affairs and External Relations Council, 16.06.2003 (retrieved from http://ec.europa.eu/enlargement/enlargement_process/accesion_process/how_does_a_country_join_the_eu/sap/thessaloniki_agenda_en.htm).
- (2004), Press Release from the 2069th meeting of the General Affairs and External Relations Council, 12770/04 (Press 276), held in Luxembourg on 11 October (retrieved from http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/gena/82211.pdf).
- (2005a), Stabilisation and Association Agreement between the European Commission and their Member States, of the one part, and the Republic of Croatia, of the other part, OJ L 26, 28.1.2005 (retrieved from http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_026/l_02620050128en00030220.pdf).
- (2005b), Presidency Conclusions of the Brussels European Council of 15–16 December, SN 15914/1/05 REV 1, Brussels, 30.01.2006.
- (2006a), Council Conclusions on the Western Balkans, 2761st meeting of the General Affairs and External Relations Council Brussels, 13–14 November 2006 (retrieved from http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/gena/91641.pdf).
- (2006b), Presidency Statement on the EU–Western Balkan Forum on Justice and Home Affairs, Tirana, 16–17 November 2006.
- (2006c), Press Release from the 2725th Council Meeting on Justice and Home Affairs, 8402/06 (Press 106), held in Luxembourg, 27 April (retrieved from <http://www.belgium.iom.int/document/89376.pdf>).
- Foreign & Commonwealth Office (2002), “UK leads international drive to tackle organised crime in Balkans”, Press Release, FCO, London, 25 November (retrieved from <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391638&aid=1038154663301>).
- Frattini, Franco (2006), “The role of internal security in relations between the EU and its neighbours”, speech given at the Ministerial Conference in Vienna on 4 May (retrieved from <http://www.libertysecurity.org/article907.html>).
- General Affairs Council (2001), “Annex”, *Council Report – Review of the Stabilisation and Association Process*, Luxembourg, 11.06.2001 (retrieved from <http://www.eudelyug.org/en/documents/01-06-2001-luxembourg.htm#1>).
- Grabbe, Heather (2000), *The Sharp Edges of Europe: Security Implications of Extending EU Border Policies Eastwards*, Occasional Paper No. 13, Institute for Security Studies, Paris, March (retrieved from <http://www.iss-eu.org/occasion/occ13.html#Summary>).
- (2003), “Europeanization Goes East: Power and Uncertainty in the EU Accession Process”, in Kevin Featherstone and Claudio M. Radaelli (eds), *The Politics of Europeanization*, Oxford: Oxford University Press, pp. 303-31.
- ICG (2005), *EU Visas and the Western Balkans*, Europe Report No. 168, International Crisis Group, Brussels, 29 November (retrieved from <http://www.crisisgroup.org>).

- Kostovicova, Denisa (2005), "Policy Brief: EU Against and the Challenge of the Weak State in the Balkans", presented at the seminar "Austrian Presidency of the EU: Regional Approaches to the Balkans, Centre for the Study of Global Governance" held in Vienna on 18 November, LSE, London and Association Bosnia and Herzegovina.
- Lavenex, Sandra and Emek M. Ucarer (2004), "The External Dimension of Europeanization: The Case of Immigration Policies", in *Cooperation and Conflict: Journal of the Nordic International Studies Association*, Vol. 39, No. 4, pp. 417-43.
- Lehne, Stefan (2004), "Has the 'Hour of Europe' come at last? The EU's strategy for the Balkans", in Judy Batt (ed.), *The Western Balkans: Moving on*, Chaillot Paper No. 70, Institute for Security Studies, Paris, pp. 111-25.
- Monar, Jörg (2000), *Justice and Home Affairs in a Wider Europe: The Dynamics of Inclusion and Exclusion*, ESRC "One Europe or Several?" Programme Working Paper 07/00, Centre for European Politics and Institutions, Department of Politics, University of Leicester (retrieved from <http://www.one-europe.ac.uk/pdf/monarW7.PDF>).
- (2001), "The Dynamics of Justice and Home Affairs: Laboratories, Driving Factors and Costs", *Journal of Common Market Studies*, Vol. 39, No. 4, pp. 747-64.
- Pastore, Ferruccio (2001), *Reconciling the prince's two 'arms': Internal-external security policy coordination in the European Union*, Occasional Paper No. 30, Institute for Security Studies, Paris (retrieved from <http://aei.pitt.edu/695/01/occ30.pdf>).
- Pippan, Christian (2004), "The Rocky Road to Europe: The EU's Stabilisation and Association Process for the Western Balkans and the Principle of Conditionality", *European Foreign Affairs Review*, 9, pp. 219-45.
- Salzburg Declaration (2006), "The Salzburg Declaration: EU/Western Balkans Joint Press Statement", Press Release, Salzburg, 11.03.2006 (retrieved from http://www.eu2006.at/en/News/Press_Releases/March/1103EUWesternBalkansStatement.html).
- Smith, Karen E. (2003), *European Union Foreign Policy in a Changing World*, Cambridge: Polity Press.
- Stability Pact for South Eastern Europe (2006), *Chairman's Conclusions, Regional Table of the Stability Pact*, held in Belgrade on 30 May, Special Coordinator of the Stability Pact for South Eastern Europe, Brussels (retrieved from <http://www.stabilitypact.org/rt/RTBELGRADEChairmans%20Conclusions%20of%20the%20Regional%20Table%20Belgrade%20-%20Final.pdf>).
- Ucarer, Emek M (2002), "Guarding the Borders of the European Union: Paths, Portals, and Prerogatives", in Sandra Lavenex and Emek M. Ucarer (eds), *Migration and the Externalities of European Integration*, Lanham/Boulder/New York/Oxford: Lexington Books, pp. 15-33.
- UNHCR (2003), *The EU Enlargement Process and the External Dimension of the EU JHA Policy*, United Nations High Commissioner for Refugees, Geneva.
- VC Experts Group Research (2004), *Liberalisation of Visa Regime in the Region of South Eastern Europe: Obstacles and Possible Solutions*, Citizens Pact for South East Europe (retrieved from <http://www.citizenspact.org.yu/>).

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