

VISA EXEMPTION FOR KOSOVO: How we got here and what's to come

—

September, 2018



GROUP FOR LEGAL
AND POLITICAL
STUDIES



GROUP FOR LEGAL
AND POLITICAL
STUDIES

Group for Legal and Political Studies

is an independent, non-partisan and non-profit public policy organization based in Prishtina, Kosovo.

Our mission is to conduct credible policy research in the fields of politics, law and economics and to push forward policy solutions that address the failures and/or tackle the problems in the said policy fields.

legalpoliticalstudies.org

Policy Note 07/2018

Visa Exemption for Kosovo: How we got here and what's to come

Author: Barbara Matias*

September 2018

© Group for Legal and Political Studies, September, 2018.

The opinions expressed in this document do not necessarily reflect those of Group for Legal and Political Studies donors, their staff, associates or Board(s). All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any mean without the permission. Contact the administrative office of the Group for Legal and Political Studies for such requests.

Group for Legal and Political Studies
"Rexhep Luci" str. 16/1
Prishtina 10 000, Kosovo
Website: www.legalpoliticalstudies.org
E-mail: office@legalpoliticalstudies.org
Tel/fax.: +381 38 234 456

*International Research Fellow, Group for Legal and Political Studies

VISA EXEMPTION FOR KOSOVO: HOW WE GOT HERE AND WHAT'S TO COME

Introduction

The chronicle of events that make up the visa liberalization dialogue between the European Union (EU) and Kosovo has been one of jagged buildup. Initiated back in 2012, developments in recent months have started progressing at a more significant rate toward the final goal of visa-free travel.

In keeping with this context, this policy note takes on a chronological and diagnostic approach. It seeks to situate the restored votes in the European Commission (EC) and European Parliament (EP) as well as the official progress reports from Brussels in the framework of the ongoing visa liberalization dialogue: how it has gained ground since 2012, why a breakthrough was reached in 2018, and what to expect from the following years in matters of exemptions and non-recognizer Schengen Area Member States.

Tracing the institutional roots of the visa liberalization dialogue

In his last State of the European Union address as European Commission President, Jean-Claude Juncker reiterated that “there is more to be done. We must find unity when it comes to the Western Balkans – once and for all. Should we not, our immediate neighborhood will be shaped by others”¹. The following day, 13 September 2018, the European Parliament voted in favor of opening negotiations on the abolition of the visa regime for citizens of Kosovo. The approval garnered 420 votes in favor, 186 votes against and 22 abstentions. Now, once the legislative proposal is adopted by the European Parliament and approved by the Council of the European Union, Kosovar citizens in possession of a biometric passport will no longer require visas when travelling up

to 90 days to the 26 member countries of the Schengen Area of free movement (i.e. the four European Free Trade Association countries Iceland, Liechtenstein, Norway and Switzerland and all EU Member States excluding Ireland and the UK).

The realization of visa-exempt travel is a bilateral process between the Republic of Kosovo and the European Union which traces its roots of support to the European perspective of the Western Balkans back to the 2003 Thessaloniki summit on enlargement. As part of the EU’s integration policy towards the Balkan Peninsula, in 2009 citizens of Serbia, Macedonia, and Montenegro were granted visa-free travel following noted reforms, and the subsequent year the same for citizens of Albania and Bosnia and Herzegovina. In parallel, Kosovo was a self-titled newborn country undergoing foundational state-building efforts, rendered isolated as the only country in the region with travel restrictions to the EU. In January 2012, a visa liberalization dialogue was at last launched with Kosovo. The opening of this process came about upon the Council of the EU’s conclusions that the set requirements regarding a functional policy for the readmission and reintegration of returnees had been fulfilled.

The roadmap on visa liberalization with Kosovo encompassed 95 detailed benchmarks among 4 blocks, significantly more conditions than those set for neighboring countries – “The visa liberalization dialogue will address four sets of issues: document security; border/boundary and migration management; public order and security; and fundamental rights related to the freedom of movement”². The roadmap pertains

¹ State of the European Union 2018 address, 12 September 2018.

² European Union External Action, Visa Liberalization with Kosovo – Roadmap, 2013, pg. 5. Available at:

legislative reforms the country had to implement regarding the wide range of issues tied to a guarded and non-abusive framework for visa-free travel. Domestically, the government of Kosovo approved the Visa Liberalization Action Plan (VLAP) on April 2013 and established structures to coordinate the process: the Steering Committee on Visa Liberalization at the political party level and the Secretariat for Visa Liberalization led by the Ministry of European Integration and the Ministry of Internal Affairs³.

In order to offer a contrasting frame of reference, it is useful to look into the other visa liberalization dialogues the EU was conducting simultaneously with Eastern Partnership countries⁴. Georgia started its process in June 2012, mere months after that of Kosovo, and was exempt from the visa requirements in March 2017. Ukraine saw its visa liberalization dialogue launch in October 2008, the VLAP presented in 2013 and, just as recently as June 2018, was granted visa-free travel. The case of Kosovo has proven to be unique in many ways.

Throughout the process, the EU Commission has published four progress reports regarding the adoption and implementation of the reforms on the Kosovo visa dialogue. The reports assess the progress made on the comprehensive measures, present data on potential migratory and security impacts and put forth recommendations to national authorities. The last report, dated 4 May 2016, made the leap into making a legislative proposal for the lifting of visa requirements for citizens of Kosovo upon the

fulfillment of two remaining roadmap criteria: ratification in the Assembly of the demarcation agreement with Montenegro and fighting corruption and organized crime⁵. The report itself reads that “Kosovo fulfills fourteen of the fifteen requirements in the area of border/boundary management. The Commission’s third report noted that the border/boundary delineation agreement with Montenegro, which has been signed by both parties, should be ratified before Kosovo is transferred to the visa-free list. (...) Kosovo fulfills fourteen of the fifteen requirements in the area of combating organized crime, corruption and terrorism, as well as sufficient elements of the fifteenth key priority”.

From the demarcation ratification to the EC positive recommendation and LIBE approval

The game-changer occurred on 21 March 2018, when the Assembly of Kosovo ratified the demarcation agreement with Montenegro even amid political unrest. The attainment of this benchmark triggered significant advances in the visa liberalization process. Firstly, the immediate-following month saw the release of the EC 2018 report on Kosovo which confirmed the country’s definitive fulfillment of the final criteria – not only regarding the demarcation issue but progress on the fight against corruption given data gathered through a technical evaluation mission (i.e. a sustainable track record of investigations and final court rulings in serious organized crime and corruption

https://eeas.europa.eu/sites/eeas/files/visa_liberalisation_with_kosovo_roadmap.pdf.

³ Republic of Kosovo Ministry of Internal Affairs, Visa Liberalization Process. Available at: <http://mei-ks.net/en/visa-lib-process>.

⁴ European Commission, “Migration and Home Affairs - Visa liberalization with Moldova, Ukraine and Georgia”. Available at: https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/visa-liberalisation-moldova-ukraine-and-georgia_en.

⁵ European Commission, Fourth report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap - COM(2016) 276 final, 4 May 2016. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/fourth_progress_report_on_kosovo_visa_liberalisation_roadmap_en.pdf.

case)⁶. Amid this momentum, the European Commission issued on 18 July 2018 a positive recommendation on proposal for visa liberalization for Kosovo citizens to move forward, in light of the country meeting the two outstanding requirements⁷. That same day, Dimitris Avramopoulos, Commissioner on Migration, Home Affairs and Citizenship, issued a press release with a direct call on EU institutions - "It is now in the hands of the European Parliament and the Council to move forward and adopt the Commission's proposal from May 2016 - and I encourage them to do so swiftly"⁸.

The liberalization impetus did not cease there. On August 2018, the EP Committee on Civil Liberties, Justice and Home Affairs (LIBE) further approved the legislative proposal for visa liberalization for Kosovar citizens. The vote was prompted by a proposal report drafted by rapporteur Tanja Fajon. The proposal report highlighted the isolation of the country, noting that "Visa-free travel does not only enable people-to-people contacts, better cross-border cooperation, cultural, educational and professional exchange, but it also helps to curb irregular immigration by putting criminals out of business. (...) Visa-free regime presents one of the most tangible and concrete

achievements for the country's European perspective and it brings about the realization of free movement as one of the fundamental principles of the European project"⁹.

On the 30 August meeting, the seventh point on the Committee's agenda regarded the '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: Kosovo' and resulted in a positive vote on the decision to enter into inter-institutional negotiations¹⁰. The MEPs of the LIBE committee backed the proposal with 30 votes in favor, 10 against and 2 abstentions¹¹.

It moved Kosovo one step closer to joining its fellow Balkan neighbors in the sought-after visa-free travel country list. Following the request and positive nod from the standing Committee, the European Parliament also voted in favor of opening talks to lift visa restrictions for Kosovar citizens. This important step came amidst a full year of momentum for the European integration process of Kosovo: the recent EU enlargement strategy plan brought renewed interest integration and the Prishtina-Belgrade dialogue on the normalization of

⁶ European Commission, Kosovo 2018 Report – SWD (2018) 156 final, 17 April 2018. Available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>.

⁷ European Union Office in Kosovo, "Visa Liberalisation: Commission confirms Kosovo fulfils all required benchmarks - press release", 18 July 2018. Available at: https://eeas.europa.eu/delegations/kosovo/48592/visa-liberalisation-commission-confirms-kosovo-fulfils-all-required-benchmarks_en.

⁸ European Commission, "Press Remarks by Commissioner Avramopoulos on Visa Liberalisation – Kosovo", 19 July 2018. Available at: https://ec.europa.eu/commission/commissioners/2014-2019/avramopoulos/announcements/press-remarks-commissioner-avramopoulos-visa-liberalisation-kosovo_en.

⁹ European Parliament, 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 and those whose nationals are exempt from that requirement (Kosovo) - (COM (2016)0277 – C8-0177/2016 – 2016/0139(COD)), 9 September 2016. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0261+0+DOC+XML+V0//EN&language=en>.

¹⁰ Committee on Civil Liberties, Justice and Home Affairs, Draft Agenda, 30 August 2018. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bCOMPARL%2bLIBE-OJ-20180829-1%2b02%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>.

¹¹ Committee on Civil Liberties, Justice and Home Affairs, Result of roll-call votes of 30 August. Available at: <http://www.europarl.europa.eu/cmsdata/152425/rev-30-august-2018.pdf>.

relations entered its final phase of negotiations, all the while an objective realization of domestic reforms was achieved to fulfill requirements. With European Parliament elections scheduled for next May, it is beneficial for Kosovo that the process is at last moving swiftly. It would avoid more controversial voting outcomes should a shift to the political right take place as a result of the newly-elected MEPs.

The backing by the European Parliament of the decision of the LIBE committee was achieved with 420 votes in favor, 186 against and 22 abstentions¹². In light of the conflicting views Member States share with regards to Kosovo's independence and sovereignty, it is additionally interesting to examine how MEPs from each EU Member State voted¹³. Cyprus, one of the five non-recognizers, was the only country to fully vote against the legislative proposal. On the other hands, all MEPs from Bulgaria, Croatia, Estonia, Ireland, Luxemburg, Malta and Slovenia voted in favor. Despite not holding a 100% approval rate, Member States Germany, Finland, Hungary, Italy, Lithuania, Latvia, Poland, Portugal and Sweden were among the most favorable to the legislation, while France, Greece, Netherlands and Spain stood mostly against its passing. The EP therein confirmed the mandate for inter-institutional negotiations with the Council on the proposal to waive visa requirements for Kosovo's citizens.

Such a succession of steps until the final agreement is reached had been dutifully

originally laid out in the Visa Liberalization Roadmap reached bilaterally between the EU and Kosovo. The document determines that: "Once all the requirements set out in this roadmap will have been met, the Commission will present a proposal to the European Parliament and the Council to lift the visa obligation for Kosovo citizens via an amendment of Council Regulation (EC) 539/2001. Without prejudice to Member States' positions on status at the time of its proposal, the Commission would consider proposing to transfer Kosovo from Part 2 of Annex I to the appropriate part of Annex II of this Regulation. This proposal will cover only the holders of biometric travel documents. Pursuant to Article 77(2)(a) of the Treaty on the Functioning of the European Union, the European Parliament and the Council shall decide in accordance with the ordinary legislative procedure"¹⁴. The abovementioned Council Regulation (EC) No 539/2001 of 15 March 2001 regards the 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 requirement¹⁵. Once inter-institutional negotiations are concluded, the legislation amendment is approved by the EP and adopted by the Council - Kosovo would then be put under Annex 1(2) which pertains entities and territorial authorities that are not recognized as states by at least one member state. As is noticeable in the Roadmap excerpt, the individual stance of each Member State regarding the recognition of

¹² European Parliament, "Parliament in favour of lifting visa requirements for Kosovars – press release", 13 September 2018. Available at: <http://www.europarl.europa.eu/news/en/press-room/20180912IPR13304/parliament-in-favour-of-lifting-visa-requirements-for-kosovars>.

¹³ VoteWatchEurope, "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 (Kosovo) – vote details", 13 September 2018. Available at: <https://www.votewatch.eu/en/term8-listing-the-third-countries-whose-nationals-must-be-in-possession-of->

[visas-when-crossing-the-externa.html###vote-tabs-list-4](https://www.votewatch.eu/en/term8-listing-the-third-countries-whose-nationals-must-be-in-possession-of-visas-when-crossing-the-externa.html###vote-tabs-list-4).

¹⁴ European External Action Service, Visa Liberalization with Kosovo – roadmap, 2013, pg. 5.

¹⁵ Official Journal of the EU, 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, 21 March 2001. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001R0539&from=EN>.

Kosovo as an independent sovereign state was made a priority in initial negotiations, in that the lifting of visa restrictions for Schengen countries would not imply state recognition by those all such countries. As is known, currently five EU and Schengen countries still have not recognized Kosovo's independence: Cyprus, Greece, Romania, Slovakia and Spain.

All eyes are now on the forthcoming decision by the Council of the European Union. This step entails a qualified majority vote from the EU Ministers for Internal Affairs to approve the change of Council Regulation (EC) 539/2001. Once all steps have been performed successfully, it is up to the EP and Council of Ministers to sign the final legal act which is to come into force after its publication in the official journal of the European Union. From this moment onward, Kosovar citizens in possession of a biometric passport will no longer require visas when travelling up to 90 days. All things considered, the process of raising the liberalization proposal report and of inter-institutional negotiations is transparent, even if bureaucratic. The trickier and not so clear-cut issue remains to be seen once visa restrictions are lifted: how will the Member States which don't recognize Kosovar passports handle Kosovar citizens being allowed visa-free access to the Schengen Area of free movement?

The case of the Schengen Area of free movement and the non-recognizers Member States

The present policy note has sought to examine the uphill battle – both on the part of EU institutional proceedings and of

Kosovo's capacity to fulfill requirements – of the visa liberalization dialogue between the EU and Kosovo. It has been a lasting process which seems to have overcome its standstill into a now decisive moment of concrete developments. Nevertheless, one major issue remains: the five non-recognizers in the EU and Schengen Area.

While Cyprus, Greece, Romania and Slovakia have yet to recognize Kosovo, they recognize Kosovar passports and allow entry into their territory. Spain is the sole Member State which prohibits entry to Schengen visa holders from Kosovo. This is not a problem in matters of external borders and Spain being the country of arrival into the Schengen Area, yet it becomes a problem for national Spanish authorities when internal borders are concerned. Tapping into the Schengen Borders Code - Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 – the text is clear in determining, in its primary article, that "This Regulation provides for the absence of border control of persons crossing the internal borders between the Member States of the Union. It lays down rules governing border control of persons crossing the external borders of the Member States of the Union"¹⁶. Whereas numerous chapters and articles are solely dedicated to external border control and checks, even establishing a dedicated coordination agency itself, FRONTEX, virtually nothing is determined on matters of internal borders crossings. Article 22 stipulates that "Internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out"¹⁷. In fact, the absence of internal borders is one of the main pillars of EU integration. The accepted exception to it is when a Member States cites a serious

¹⁶ Official Journal of the EU, REGULATION (EU) 2016/399 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), 23 March 2016, Article

1. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0399&from=EN>.

¹⁷ *Ibid*, Article 22.

threat to public policy or internal security and is therefore allowed to temporarily reintroduce border controls¹⁸. For instance, amidst the recent unprecedented refugee influxes into the EU, several Member States temporarily reinstated border controls in order to better manage entry irregular migration flows into their territory and secure proper screening standards for forced migrants, often related to deficiencies at an external border control level.

It was always made clear, to cite the roadmap itself, that “The visa dialogue will be conducted without prejudice to Member States’ position on status”¹⁹. In the proposal report by Tanja Fajon, EU Rapporteur for visa liberalization for Kosovo, the underlining issue was also laid bare: “Undoubtedly, the non-recognition issue has also had a severe impact on Kosovo’s economy and its development, as well as on the everyday life of the people. (...) The Member States have committed themselves to the process of visa liberalization for Kosovo once the conditions are met without prejudice to the Member States’ position on status. The rapporteur expects that the recognition of the status of Kosovo will not have negative consequences on the adoption process of this proposal”²⁰. In other words, much like the signing of the Stabilization and Association Agreement as a contractual relationship between the EU and Kosovo did not imply the recognition of the latter by all Member States in the EU itself, so does the lifting of visa requirements for Kosovo does not imply the granting of recognition by the remaining non-recognizer Member States in the EU. Nonetheless, it does open an exceptional situation for Spain

as a Schengen country without borders control which, at the same time, does not allow entry to passport holders from a soon-to-be visa-exempt country. Short stay visas may be exceptionally issued to Kosovar citizens by Spanish authorities only in particular cases when a specific purpose is provided (i.e. training, sports event).

As the roadmap for visa dialogue with Kosovo also cites, any final decision on this matter is pursuant to Article 77(2)(a) of the Treaty on the Functioning of the European Union, which refers to the existence of a common policy on visas and other short-stay residence permits²¹. In consideration of this framework, it is to be expected that Spain will have no lawful manner to verify entry of Kosovar citizens when passing internal borders, possibly only in instances of air travel. For this added reason, the visa liberalization process carries an extra significance for the country, for it could positively push troubled bilateral relations between Kosovo and non-recognizers.

Concluding remarks

Human mobility has become the new norm in our globalized world and Kosovo has similarly become an isolated player in this globalized state of affairs and opportunities. The enduring visa liberalization dialogue between the EU and Kosovo is a clear manifestation of the callous international obstacles the country must overcome to be treated as an equal in the international and European scene. A detailed examination of the visa liberalization process offers a better

¹⁸ *Ibid*, Article 25.

¹⁹ European External Action Service, Visa Liberalization with Kosovo – roadmap, 2013, pg. 5.

²⁰ European Parliament, 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 and those whose nationals are exempt from that requirement (Kosovo) -

(COM(2016)0277 – C8-0177/2016 – 2016/0139(COD)), 9 September 2016.

²¹ Official Journal of the EU, Treaty of Lisbon - Amending the Treaty on European Union and the Treaty establishing the European Community (2007/C 306/01), 17 December 2007. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>.

understanding of the role soft power and political will play - in this case going from the delineation of the visa dialogue roadmap in 2013, to the consecutive progress reports up until 2016, irrevocably to the major domestic political events in Kosovo which propelled institutional political events in the European Commission and the European Parliament in the present year.

In hosting five non-recognizer Member States, the EU has long advocated for the integration of Kosovo in a cautious and, in

this way, unfair manner. Indeed, the setting of extraordinary benchmarks delayed the need for the inevitable: treating Kosovo as an equal state actor and potential candidate in the Balkan Peninsula. Now that all benchmarks have been met by the Kosovar government and taking into account that the European sentiment is strong in Kosovo, it is the right time more than ever for EU institutions to accelerate the process and end Kosovo's status as the last Balkan country with visa requirements.

Policy Notes

Policy Notes provide short, concise, timely, informative, and policy oriented analysis on specific issues. Policy Notes are short papers which outline the rationale for choosing a particular policy alternative of action in a current policy/issue debate. They are commonly published in response to a specific event and advocate for the professional stand of the Group for Legal and Political Studies. Indeed, the Policy Note is an action and advocacy-oriented document, which provides arguments for the adoption/amendment of a particular policy choice. Policy Notes aim to influence the target audience on the significance/implications/solutions of the current problem, and therefore brings recommendations to policy-makers, civil society and media, and the general public.



**GROUP FOR LEGAL
AND POLITICAL
STUDIES**

legalpoliticalstudies.org