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* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.



EUROPEAN
COMMISSION

HIGH REPRESENTATIVE OF THE
EUROPEAN UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

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JOINT REPORT TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

**on Kosovo's* progress in addressing issues set out in the Council Conclusions of
December 2012 in view of a possible decision on the opening of negotiations on the
Stabilisation and Association Agreement**

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JOINT REPORT TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

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1. Introduction

In October 2012, the Commission issued a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo.¹ The study concluded that Kosovo is largely ready to open negotiations for a Stabilisation and Association Agreement. It also suggested that the Commission would propose negotiating directives for such an agreement, once Kosovo takes a number of specific steps on the rule of law, public administration, protection of minorities and trade.

The Council Conclusions of December 2012 took note of the feasibility study and of the Commission's intention to propose negotiating directives for a Stabilisation and Association Agreement once Kosovo meets these short-term priorities. The Council also called on Kosovo to continue implementing in good faith all agreements reached in the dialogue between Belgrade and Pristina to date and to engage constructively on the full range of issues.

In addition to the dialogue between Belgrade and Pristina and the short-term priorities of the feasibility study, the Council Conclusions put emphasis on efforts to strengthen public administration reform and consolidate the rule of law, in particular by providing evidence of the fight against organised crime and corruption, judicial reform and freedom of expression. The Conclusions confirmed that the initiatives launched by the Commission, including the Structured Dialogue on the Rule of Law, the visa liberalisation dialogue and the Stabilisation and Association Process Dialogue play an important role in guiding Kosovo's reform efforts on these priority areas.

The Council underlined the importance for Kosovo to strengthen its close cooperation with EULEX and respect the renewed mandate of the mission. The Conclusions welcomed the Commission's on-going efforts to negotiate a framework agreement with Kosovo concerning its participation in Union programmes. The Council also noted Kosovo's membership of the European Bank for Reconstruction and Development and the possibility for the European Investment Bank to enhance its role in Kosovo.

With a view to a possible decision to open negotiations for a Stabilisation and Association Agreement with Kosovo, the Council made a commitment to examine progress on all the above issues. The Council also committed itself to examine the report during this Presidency and – provided the assessment is positive – to adopt the negotiating directives.

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¹ COM(2012) 602 final

Taking these elements into consideration, this report is divided into three parts. The first part analyses Kosovo's progress in addressing the short-term priorities identified in the feasibility study. The second part looks at all the other issues identified in the December Council Conclusions, including the political dialogue between the Prime Ministers of Kosovo and Serbia facilitated by the High Representative of the Union for Foreign Affairs and Security Policy, and implementation of the agreements reached to date. The final part of the report draws conclusions.

2. Kosovo addressing short-term priorities of the feasibility study

According to the feasibility study, Kosovo needed to take further steps on rule of law, public administration, protection of minorities and trade before the Commission would propose negotiating directives for a Stabilisation and Association Agreement.

- *Rule of law: demonstrate a clear commitment to deliver results in the fight against organised crime and corruption, including launching investigations and ensuring continuous good cooperation with EULEX. Support the work of the Special Investigative Task Force. While implementing the new structure of courts, ensure that the Special Prosecution responsible for cases of organised crime, war crimes and corruption maintains its competencies. Adopt the legislation on confiscation of assets and revise the law on prevention of money laundering and financing of terrorism. Adopt a new anti-corruption strategy.*

Kosovo's political leaders and law enforcement and judicial authorities have maintained their commitment to the fight against organised crime and corruption. Kosovo authorities and EULEX work in partnership on practical operational matters on a daily basis, either through mentoring and advising activities or 'peer-to-peer cooperation' in joint investigations. Cooperation between Kosovo and EULEX is good. The results of the partnership are becoming more evident. An important recent example is the dismantling of a human smuggling criminal network across Europe at the end of January. Joint EULEX-Kosovo police efforts contributed to the arrest of 103 persons in ten different countries across Europe, including Kosovo. Since October last year, the Kosovo Special Prosecution has launched investigations into six cases of corruption (two cases are handled by local special prosecutors) and six organised crime cases (four with a cross border dimension, two cases are dealt with by local special prosecutors). Cooperation between EULEX prosecutors and local prosecutors in the Special Prosecution office has intensified over the reporting period. The special anti-corruption department of the Kosovo police, in cooperation with EULEX, launched eight investigations during the period of October 2012 – January 2013 covering criminal acts such as organised crime, abuse of official duty, giving and receiving bribery, and fraud.

Within the framework of the Joint Rule of Law Coordination Board based in Pristina, the three co-chairs of the Board (Deputy Prime Minister and Minister of Justice, the EUSR/Head of EU Office and Head of EULEX) signed a document ('Compact') on 9 November. This document provides a framework setting out key rule of law principles and joint objectives, and identifies the means by which they are to be implemented. The Board intends to review its implementation regularly. At its meeting on 7 March, it had a first discussion on a Compact Tracking Mechanism. Kosovo authorities have invited EULEX to monitor the recruitment of officials in senior positions in key rule of law institutions including the police

and the judiciary. Practical cooperation as well as strong political commitment by the Kosovo authorities to support the work of EULEX and the implementation of its mandate need to be maintained.

Kosovo authorities continue to be willing to support the work of the Special Investigative Task Force. The new court structure was introduced on 1 January 2013 and its implementation has started successfully. The outcome of the implementation of the judicial reform can only be fully appreciated once the process has been completed. In this context, Kosovo has maintained the competences of the Special Prosecution, in line with its commitments following the feasibility study. If the on-going implementation of judicial reform proves to be effective and confirms the need and after a thorough review in close coordination with the EU, Kosovo and the EU may begin a joint reflection on how to best adapt the Special Prosecution's competences to the restructured criminal justice system.

During the second half of 2012, Kosovo adopted new strategies and action plans against organised crime, narcotics and terrorism. It also has a strategy and an action plan against trafficking in human beings. The anti-corruption policy framework was completed by a new anti-corruption strategy accompanied by an action plan adopted on 11 February. The Assembly also approved a law on the confiscation of assets and revised the law on the prevention of money laundering and financing of terrorism. This legislation and these strategies have improved both the policy and legal frameworks for the fight against organised crime and corruption, and Kosovo needs to continue their implementation.

- *Public administration: adopt the necessary secondary legislation of laws on civil service and on salaries for the civil service. Allocate premises to the Ombudsperson Institution and ensure its budgetary independence through obliging the government to include the Ombudsperson's draft budget proposal into the global draft budget submitted to the parliament without changes.*

Since the adoption of the feasibility study, Kosovo has enacted secondary legislation of laws on the civil service and on salaries for the civil service necessary for their implementation. This includes the regulation on civil servants' career promotion, the regulation on conditions for restrictions on the right to strike in specific services in the civil service, the regulation for care procedures for civil servants due to disability and health problems, the regulation on allowances in salaries and other compensations for civil servants, and the regulation on working hours and compensation for civil servants of the Assembly.

On 3 December, in agreement with the Ombudsperson Institution, the Ministry of Public Administration issued a decision allocating the current premises of the Constitutional Court to the Ombudsperson. The Constitutional Court is to move to the EU-funded Palace of Justice upon its completion later this year. The new premises and their location are appropriate for the Ombudsperson Institution and ensure easy access for the general public. The Ombudsperson Institution proposed its budget in June 2012. The government included it into the global draft budget, which was submitted to the Assembly without modifications.

- *Protection of minorities: ensure existence of a body enabling direct consultation on the promotion and protection of religious and cultural heritage with religious communities, notably the Serbian Orthodox Church.*

The Minister of Environment and Spatial Planning adopted the administrative instruction on establishing the Implementation Monitoring Council (IMC) on 12 February. The Council has five members: representatives of the Serbian Orthodox Church, Ministry of Environment and Spatial Planning, Ministry of Culture Youth and Sport, OSCE and EU. The Ministry of Environment and Spatial Planning and EU representatives co-chair the IMC. The IMC held its first working meeting on 26 February when all parties have confirmed their strong commitment to this process. The second meeting addressing concerns of the Church took place on 3 April.

- *Trade: implement the government decision on the restructuring of the Ministry for Trade and Industry, put in place a mechanism to lead and coordinate negotiations within Kosovo and prepare an impact analysis of trade aspects of a Stabilisation and Association Agreement.*

Kosovo has completed the restructuring of the Ministry of Trade and Industry. The new organisational structure of the Ministry ensures an effective organisation of the bodies in charge of negotiating the trade related parts of the Stabilisation and Association Agreement. Appointments to key positions have been made.

Stakeholders, including economic operators, can provide their input into Kosovo's trade policy through formal and regular consultations. These consultations are held in the economic council, the inter-ministerial council on trade policy and the trade policy working group, and in its five sub-groups (trade agreements, trade facilitation, industry, agriculture and services). In February, the Kosovo government adopted a decision on the structure of the negotiating team for the Stabilisation and Association Agreement. Within this structure, the Ministry of Trade and Industry will lead the technical group supporting the negotiations on trade related aspects of the Agreement.

The Ministry of Trade and Industry has completed its first impact analysis of trade aspects of a Stabilisation and Association Agreement. The analysis includes an assessment of the effects of trade liberalisation on trade flows, public finance, output and employment. It is clear that this document needs to continue evolving, taking into account new and updated data. At the same time, the proposed methodology and the first results of the analysis provide a good basis for Kosovo to prepare for the negotiations.

3. Other issues of December Council Conclusions

Engagement of Kosovo in the dialogue between Pristina and Belgrade and implementation of the agreements

The dialogue between Belgrade and Pristina, following the Serbian elections, was upgraded to a high level political process with the facilitation of the High Representative.

A series of high level meetings between the two prime ministers started in October 2012. The HR was very clear with the two sides from the start on the concept of the process: it would be a step by step process, going from easier to more complicated issues and it would not be open ended. The objective was the gradual normalisation of the two sides' relations, without prejudice to the two parties' positions on status, and achieving progress for both in their respective EU path.

Ten meetings have taken place between October 2012 and the end of April 2013². A meeting also took place on 6 February between Presidents Nikolic and Jahjaga.

In the first part of the high level dialogue until December 2012 the discussions dealt with the set of what was considered easier issues such as completion of IBM implementation, religious and cultural heritage, liaison arrangements. Some first significant results were already achieved in those first months.

The most important was IBM implementation. By the end of December 2012 four Gates, including the two Gates in northern Kosovo, were operational and, since the end of February all six Gates between Serbia and Kosovo are operational. In the context of the implementation discussions, the two sides also agreed to start customs collection and to establish a Fund for the development of northern Kosovo. Regarding free movement, the ID card travel regime is operational and works well. The agreement on customs stamps continues to be implemented by both sides. There was good progress on civil registry and implementation should be completed by January 2014. Regarding cadastre, both sides are still in the process of taking the necessary preparatory steps. The agreement on acceptance of university diplomas is proceeding smoothly. Serbia's cooperation with EULEX has continued to improve in a number of areas. This will need to intensify as the normalisation between both parties intensifies. Direct high-level contacts and regular contacts at operational level continue to facilitate cooperation, including in the fight against organised crime. Serbia is committed to a full implementation of the police protocol with EULEX.

Other significant results achieved by the two Prime Ministers are the agreement on setting liaison arrangements and the agreement on the improvement of protection of religious and cultural heritage sites (creation of special/multi-ethnic police unit in Kosovo).

In the second part of the high level dialogue, since January 2013, the meetings of the two Prime Ministers focused on northern Kosovo and delivering structures which meet the security and justice needs of the local population in a way that ensures the functionality of a single institutional and administrative set up in Kosovo, in line with the December 2012 Council Conclusions.

During their talks, the two sides agreed that the outcome of their discussions should be a set of principles and arrangements that would give the Kosovo Serb community a new vision of their future, by addressing their concerns and needs but in a way that preserved the functionality of the Kosovo institutions and legal framework.

² 19 October, 7 November, 4 December and 17 January, 20 February, 4 March, 20 March, 2 April, 17 April and 19 April

Throughout the high level process the two sides showed commitment and engagement. The two Prime Ministers in particular established a good working relationship and showed political courage and maturity in discussing issues of great sensitivity and complexity, often with a difficult political atmosphere in the background. They should be commended. In the last phase of the dialogue Deputy Prime Ministers from both sides joined the meetings and their presence brought an additional element of local political legitimacy and expertise to the table.

The discussions on northern Kosovo and the Kosovo Serb community concerns were concluded on 19 April with the initialling of a "First agreement of principles governing the normalisation of relations".

The agreement provides for the establishment of an Association/Community of Serb municipalities in Kosovo which will function/operate within the existing legal framework of Kosovo. The Association/Community will have a statute and its own bodies on the basis of the other existing Association in Kosovo and will have a representative role to the central government.

On police, the text of the agreement affirms the principle of a single police force in Kosovo and the integration of all police in northern Kosovo to the Kosovo Police. A regional Police commander is appointed for the four northern municipalities. He is nominated by the Ministry of Internal Affairs of Kosovo from a list provided by the four mayors. This means that it was agreed that the four mayors of the northern Serb majority municipalities would consult the Association/Community and submit a list to the Ministry of Internal Affairs who will make the nomination from this list.

On judiciary, the text affirms the principle of integration and functioning of all judicial authorities within the Kosovo legal framework. An Appellate Court in Pristina is established to deal with all Kosovo Serb majority municipalities and a division of this Court will sit permanently in northern Mitrovica.

Municipal elections, according to the agreement will be organised in the northern municipalities in 2013 with the facilitation of the OSCE.

The text of the agreement also provides for concluding the discussions on energy and telecoms by mid-June.

The two parties have agreed that neither side will block, or encourage others to block the other side's progress in their respective EU paths.

As to next steps, the two parties agreed to adopt an implementation plan by 26 April and to establish an implementation committee with the facilitation of the EU.

The EU also expects that the two parties, in the spirit of the new understanding/relation between them and without prejudice to the positions on the status of Kosovo, will continue to work further for the normalisation of relations between them and in this framework will address, among other issues, Kosovo's integration/participation in international bodies.

Public administration reform

The feasibility study concluded that the legal framework necessary for a stable and professional public administration is largely in place. By meeting the short-term priorities set out in the study, Kosovo has further improved its legal framework and has created the conditions for the implementation of the laws on civil service and on salaries of civil servants. Kosovo has now started focusing its efforts on implementing legislation, the public administration reform strategy and its action plan.

Kosovo has also made good efforts to strengthen the Ombudsperson Institution. Its budget approved by the Assembly for this year has increased from last year's €636,000 to just above €1 million. This allows an increase of staff from 48 to 60 employees.

Public administration reform is a long term effort. Other Western Balkan countries benefitting from Stabilisation and Association Agreements continue to face this challenge. Kosovo's progress to date provides for the necessary basis (legislative and policy frameworks) to move forward in this important area.

Consolidating rule of law

The feasibility study concluded that the core institutional and legal framework to ensure the rule of law in Kosovo is in place. On a number of occasions, Kosovo leaders have reiterated their political commitment to the *fight against organised crime and corruption*. This political commitment provides a good basis for the law enforcement and judicial authorities in Kosovo to further improve their performance, notably as regards providing evidence of the fight against organised crime and corruption. Kosovo needs to continue implementing measures to prevent and combat trafficking in human beings, drugs and weapons.

Some important cases have been brought to trial by the prosecution. Last November, the District Court of Pristina confirmed the indictment filed by the prosecution for charges of abuse of official position or authority, and fraud against former ministers; the court procedure is on-going. In November 2012, the District Court of Pristina also confirmed the indictment against the former manager of the Pristina municipality procurement office and five other officials for abuse of official position or authority.

The municipal court in Pejë/Peć in October and November 2012 convicted and sentenced 34 individuals, including high officials of the Business Faculty in Pejë/Peć, on charges including abuse of official position or authority, misappropriation in office, fraud in office and falsifying official documents. The court judgment also prohibits the exercise of official duty for these sentenced and convicted officials. In January 2013, a mixed panel of Kosovo and EULEX judges at the Basic Court of Pejë/Peć convicted nine defendants of offences relating to smuggling of migrants. Overall, in 2012 Kosovo courts have resolved 183 cases regarding 'abuse of official position and authority', 6 cases of organised crime, 22 cases of trafficking in human beings, 186 cases of narcotic related offences and 24 cases of weapons related offences.

These concrete results of joint efforts of Kosovo and EULEX demonstrate the closeness of their practical cooperation. At the same time, the fight against organised crime and corruption remains a challenge and Kosovo needs to continue making progress in this area both on its own and in cooperation with EULEX.

The feasibility study concluded that the basic institutions of the *judiciary* have started to perform their role, and that legislation provides for strong guarantees of the independence of the judiciary. On 1 January, the laws on courts and on prosecution entered into force, introducing a new court and prosecution structure. It replaces the former structure of municipal and district courts by seven basic courts and one court of appeal. Its implementation has started without major difficulties. The new legal framework contributes to the independence, effectiveness, accountability and impartiality of the judicial system in Kosovo and its implementation will be subject to further review in the future.

The new criminal code and criminal procedural code entered into force at the same time as the laws on courts and prosecution. This has brought about a major overhaul of Kosovo's judicial and criminal justice system. The new criminal code contains provisions, *inter alia*, on the smuggling of migrants, trafficking in human beings, the production and trafficking of drugs, organised crime, corruption and arms trafficking. Its provisions respect the exclusive and subsidiary competences of the Special Prosecution. It is too early in the process to qualify the practical impact of these judicial reforms, as their implementation has only just started. It is to be expected that the practical implementation of such complex reforms will necessitate further legislative modifications.

The feasibility study confirmed that *freedom of expression* is guaranteed in the constitution. Kosovo abrogated the two articles on criminal liability and protection of journalist sources from the criminal code in October last year. The new criminal procedural code also includes journalists in the category of witnesses exempt from the duty to testify. As a result, media are not criminally liable. On 28 February, the relevant committee of the Assembly organised, with the support of the OSCE, a public hearing for representatives of journalist associations. At the hearing, issues that affect media freedoms, in particular physical attacks and threats against journalists, were discussed. At the end of last year, Kosovo police, in cooperation with EULEX, launched an investigation into threats to members of a non-governmental organisation, which had issued a magazine on LGBT issues.

Kosovo authorities continue to be regularly challenged in the Assembly, the media, by civil society or by public protests. Kosovo needs to continue creating an environment conducive to freedom of expression and needs to ensure that attacks on journalists are thoroughly investigated.

Toolbox supporting Kosovo in its reform efforts

To guide Kosovo's reform efforts, the Commission has developed a number of instruments. *The Stabilisation and Association Process Dialogue*, launched following the 2009 Commission Communication *Kosovo – Fulfilling its European Perspective*,³ has proven to be an essential tool in mobilising, discussing and prioritising Kosovo's overall European reform agenda. The *Structured Dialogue on the Rule of Law* is setting common EU-Kosovo priorities to tackle rule of law challenges. It provides for strong political guidance on reform to consolidate the rule of law. The *visa liberalisation dialogue* with Kosovo was launched in January 2012 and as in the other countries of Western Balkans, it is a core framework for Kosovo to adopt and implement reforms in the rule of law area. In all these processes, the

³ COM(2009) 534 final

Ministry of European Integration is playing an important role. It has set-up solid mechanisms within Kosovo to prioritise, coordinate and ensure the delivery of results.

Other elements of Kosovo's European perspective of the December Council Conclusions

In December, the Council recalled the EU's willingness to assist the economic and political development of Kosovo through a clear European perspective, in line with the European perspective of the region. It again underlined the need to take concrete steps to this effect. In its 2009 Communication on Kosovo, the Commission proposed to examine the opportunity of *a framework agreement with Kosovo on the general principles of its participation in EU programmes*. In October 2012, the Council authorised the Commission to negotiate such an agreement. At the beginning of this year, the Commission concluded the negotiations and it intends to adopt proposals for Council decisions on the signature and conclusion of a framework agreement with Kosovo shortly.

Kosovo became a member of the *European Bank for Reconstruction and Development* (EBRD) and a Country of Operations in December 2012. The EBRD is preparing a three year country strategy. This will allow the Bank to broaden and diversify its intervention in support of Kosovo's socio-economic development. An EBRD mission visited Kosovo in December. The Bank offices in Pristina moved to larger premises with a view to increasing its staff in Kosovo. The President of the Bank visited Kosovo on 8 February.

The *European Investment Bank* is currently discussing a framework agreement with the government of Kosovo. The parties need to agree areas in which the Bank will invest. The intention is to approve and sign the agreement in spring. EIB operations can start soon thereafter. A joint EIB-Commission mission visited Kosovo in December 2012. The EIB does not plan to have a permanent presence in Kosovo.

4. Conclusions

Since the adoption of the feasibility study in October 2012 and the Council conclusions of December 2012, Kosovo has met all the short-term priorities identified in the study.

Kosovo has demonstrated its commitment to the fight against organised crime and corruption. It has adopted the necessary legislation and strategic documents, and maintained the competences of the Special Prosecution. A number of investigations into organised crime and corruption have been launched. Kosovo has maintained good cooperation with EULEX and continues to be willing to support the work of the Special Investigative Task Force.

New premises have been allocated to the Ombudsperson Institution. The government refrained from modifying the proposed budget of the Ombudsperson prior to submission of the draft general budget to the Assembly. The secondary legislation necessary for the implementation of the public administration reform has also been adopted.

The new Implementation and Monitoring Council bringing together Serbian Orthodox Church, Kosovo authorities, the EU and the OSCE was put in place and has started to function.

The Ministry of Trade and Industry has been restructured and appointments to key positions have been made. A mechanism to lead and coordinate negotiations on trade issues in the context of a Stabilisation and Association Agreement is in place. Kosovo will be able to define its negotiating position on the basis of the impact analysis of trade aspects of a Stabilisation and Association Agreement.

As a result, the Commission submits its proposal for a Council decision authorising the opening of negotiations on a Stabilisation and Association Agreement between the European Union and Kosovo.⁴

Kosovo has taken very significant steps towards visible and sustainable improvement in relations with Serbia, in line with the Council conclusions of December 2012. Kosovo has actively and constructively engaged in the EU-facilitated dialogue with Serbia and entered discussions on the whole range of issues necessary to achieve visible and sustainable improvement in relations with Serbia.

The dialogue was upgraded to a high level political process with the facilitation of the High Representative. Ten meetings have taken place between October 2012 and the end of April 2013. A meeting also took place on 6 February between Presidents Nikolic and Jahjaga. Implementation of agreements reached in the dialogue to date has also continued. On Integrated Border Management, joint interim crossing points were opened on all six gates and they are up and running. The agreement on protection of religious and cultural heritage sites of December 2012 is being implemented. The agreement on customs stamps continues to be implemented by both sides. There was good progress on civil registry and implementation should be completed by January 2014. Regarding cadastre, both sides are still in the process of taking the necessary preparatory steps. The agreement on acceptance of university diplomas is proceeding smoothly.

The two sides also agreed to start customs collection and to establish a Fund for the development of northern Kosovo. In the second part of the high level dialogue, since January 2013, the meetings of the two Prime Ministers focused on northern Kosovo leading to the initialling of the agreement of 19 April 2013 on a "First agreement of principles governing the normalisation of relations".

On this basis, the Commission considers that Kosovo has engaged seriously and constructively in taking steps towards a visible and sustainable improvement of relations with Serbia.

⁴ COM(2013) 200 final