

## Conclusions on Kosovo<sup>\*</sup>

*(extract from the Communication from the Commission to the Council and the European Parliament "Enlargement Strategy and Main Challenges 2010-2011", COM(2010)660 final)*

Kosovo has made progress as regards the **political criteria**. It has strengthened its commitment to the European agenda and policy reform and established a Ministry for European Integration. The government has ensured the successful conduct of the Stabilisation and Association Process (SAP) dialogue with the European Union. The authorities now need to step up the pace of reform. The capacity of the public administration remains weak and the judiciary is not functioning effectively. Rule of law remains a serious concern. Cooperation with the EU rule of law mission (EULEX) has improved and the authorities have launched a number of anti-corruption operations with EULEX support. These efforts need to continue and cover organised crime, drugs and money-laundering. Elections have been called following the resignation of the President of Kosovo.

Kosovo has made significant progress in decentralisation. Four new municipalities have been established and are now operational. Local elections were held at the end of 2009. A European Parliament mission considered that the election process took place in a peaceful environment with considerable voter participation, including among the Kosovo Serb community. However, concerns remain with regard to northern Kosovo. There have been a number of violent incidents. Decentralisation can only be completed with the participation of the local population. More needs to be done to ensure the integration of all communities and the delivery of public services in all municipalities. Support from local communities is important in this regard, including a constructive role in consolidating the rule of law. Parallel structures continue to operate hampering the decentralisation process.

In July, the International Court of Justice (ICJ) issued an advisory opinion, which concluded that Kosovo's declaration of independence did not violate general international law or UN Security Council resolution 1244 (1999). Following the UN General Assembly resolution of 9 September the EU has confirmed its readiness to facilitate a process of dialogue between Pristina and Belgrade to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people. Determined efforts are needed by all parties for the inclusive and effective functioning of regional fora.

Regarding **democracy and the rule of law**, there has been progress in strengthening executive and parliamentary structures, in particular as concerns European integration. However, the rule of law is in need of further strengthening and is an issue of serious concern.

In September, the Constitutional Court ruled that it is unconstitutional to hold at the same time the office of President of Kosovo and of Chairman/President of a political party. Following the ruling, the President of Kosovo resigned. The LDK then withdrew from the governing coalition. Elections have been called for 12 December 2010.

The *assembly* has established a public accounts committee. The Committee on European Integration has streamlined its rules and procedures. However, capacity to scrutinise draft legislation and to monitor its implementation after adoption remains weak. Parliamentary oversight of the government needs to be further strengthened.

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<sup>\*</sup> Under UNSCR 1244/99.

The main structures of *government* are in place and continue to function in line with relevant constitutional provisions. The Ministry for European Integration has made a good start and now needs to strengthen its capacity and consolidate its role in coordinating other government departments.

*Public administration reform* in Kosovo remains a major challenge. The legal framework has been developed further with the adoption of the laws on civil service and on salaries. The capacity of the public administration to deliver the necessary services to all people in Kosovo needs to be substantially strengthened. Kosovo's public administration remains weak.

Kosovo has made progress as regards reform of the *judicial system*. Major judicial reform has been launched by adoption of four reform laws on courts, on prosecution, on the Kosovo Judicial Council and on the Kosovo Prosecutorial Council. The law on courts introduces a new salary system, which significantly improves the situation of judges. The vetting of judges and prosecutors has also been completed. Over 340 judges and prosecutors have been appointed by the President to positions at all levels of the judiciary. This includes the appointment of local members of the Kosovo Judicial Council who have elected the Council's president. After passing the bar exam, the first prospective judges and prosecutors have graduated from the Kosovo Judicial Institute in December 2009. However, there have been cases of political interference in the judicial system, notably in the reappointment process of judges and prosecutors. There is still a significant backlog of cases, particularly in civil matters, including property rights. Kosovo institutions need to attach sufficient importance to support investigations and judicial follow-up of war crimes. Plans to implement the reform of judiciary need to be prepared and resources allocated. Kosovo is still at an early stage in addressing priorities in the area of justice.

The legal framework on *anti-corruption* has improved with the adoption of laws on the anti-corruption agency and on declaration and origin of the property and gifts to senior public officials. The law on preventing conflict of interest in exercising public functions has been amended. The law on financing political parties is not fully in line with European standards. However, results in the fight against corruption are limited. The main areas of concern continue to be the procurement process and the judicial and law enforcement systems. EULEX has had to continue exercising its executive mandate in high profile cases. There are a number of ongoing anti-corruption investigations. In April, searches were undertaken at the ministry of transport; in July, the Kosovo Police arrested the central bank governor in cooperation with EULEX. The government has cooperated with these investigations. Corruption remains prevalent in Kosovo and is a very serious problem. The legal framework remains incomplete and does not fully comply with European standards.

The constitution guarantees *human rights and the respect for and protection of minorities* and lists the main international agreements and instruments directly applicable in Kosovo. However, the institutional set-up and the lack of political will hamper the effective implementation of legal standards in this area. The process of integrating the Serb community is ongoing. The authorities need to do more to address key concerns such as access to property, missing persons, returns and education.

There has been some progress on *civil and political rights*. The government needs to do more as regards the *prevention of torture*, allegations of *ill-treatment* and excessive use of force by police and *prison* staff. Conditions in *prisons* are still a concern. There has been limited progress as regards *access to justice*.

*Freedom of expression* is still not guaranteed in practice. The independence and impartiality of the public broadcaster need strengthening. Journalists continue to receive threats in response to their reporting. They also face difficulties in accessing official documents. The

legislation on *freedom of association* does not facilitate the sustainable development and funding of non-governmental organisations. The capacity of *civil society* to monitor and assess the government's performance is increasing. However, civil society is still weak and not systematically consulted by the municipalities and the government within the legislative process.

*Economic and social rights* are still not fully guaranteed. The legal framework for the protection of *women* has been strengthened. There has been some progress in the area of juvenile justice. However, the protection of *children's* rights remains weak. The government needs to tackle child labour and child trafficking more effectively. The social integration and protection of vulnerable groups, in particular abandoned children, returnees and people with disabilities, needs to be improved. Kosovo has launched an *anti-discrimination* awareness-raising campaign with special emphasis on discrimination based on age and sexual orientation. The implementation of anti-discrimination legislation remains inadequate. The implementation of court orders guaranteeing the exercise of *property rights* has improved. However, the significant backlog of cases and other long-standing issues seriously hamper the re-possession of property.

There has been limited progress as regards *respect for and protection of minorities and cultural rights*. The Ministry of Culture has set up a directorate for cultural heritage. The reconstruction of religious sites has continued. Kosovo Police has taken over responsibility from KFOR for the protection of certain religious and cultural sites. However, the law on cultural heritage is not fully implemented. The monitoring council envisaged in the 2008 law on special protective zones is still to be established. The Ministry for Communities and Return increased its efforts to assist minority returns of *refugees* and *internally displaced persons*. The number of voluntary returnees is increasing across Kosovo.

In December 2009, Kosovo adopted an action plan for the implementation of the strategy for integration of Roma, Ashkali and Egyptian communities. The government has established the structures to implement this strategy. The process of relocating families from lead-contaminated areas in northern Kosovo has begun' allowing the closure of Cesmin Llug/Ćesmin Lug camp. This process needs to be completed as soon as possible. Living conditions for Roma, Ashkali and Egyptian communities and their access to education, health care and social protection are still issues of very serious concern. The participation of Kosovo in the Roma Decade needs to be consolidated.

Concerning *regional and international obligations*, during the reporting period Kosovo continued to cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY). More than ten years after the end of the armed conflict, there are estimated to be 1,800 missing persons. The authorities need to demonstrate greater efforts in this area. Kosovo attended the EU-Western Balkans High-Level Meeting in Sarajevo in June. However, Kosovo needs to adopt a constructive approach in order to ensure its effective participation in cooperation initiatives, such as the Regional Cooperation Council and the Central European Free Trade Agreement (CEFTA). Concerning CEFTA, Kosovo needs to be pragmatic and seek a constructive way forward to ensure the effective implementation of this agreement. The Kosovo customs stamps, which the Special Representative of the UN Secretary General has confirmed to be in compliance with UNSCR1244/99, have not been recognised by Serbia and Bosnia and Herzegovina. An acceptable and sustainable solution for the participation of both Kosovo and Serbia in key regional fora needs to be agreed as soon as possible. This is essential for inclusive and functioning regional cooperation.

The impact of the economic crisis on the **economy** of Kosovo has been limited. Real GDP continued growing mainly driven by public expenditure. There are growing risks to the

sustainability of this growth profile. Unemployment remains very high. Inflation has been volatile, reflecting fluctuating food and fuel prices. Policy formulation and implementation continued to lack predictability. An agreement has been reached with the IMF on a programme with the aim to limit fiscal risks and revert to fiscal sustainability. Firms continue to face weak rule of law, the lack of a reliable electricity supply, poor infrastructure and limited access to financing. These are barriers to effective business and economic development.

As regards the **economic criteria**, Kosovo has achieved limited progress towards establishing a functioning market economy. Considerable reforms and investments are needed to enable it to cope over the long term with competitive pressure and market forces within the Union.

A broad consensus on the fundamentals of market-oriented economic policies has been maintained. The use of the euro, the low levels of external debt and the narrow exports' base have limited the economy's exposure to external financial and demand shocks. The banking sector continued to expand and remained stable and profitable. The Privatisation Agency of Kosovo has continued the privatisation of socially owned enterprises. The first successful public private partnership project has been concluded and an international consortium has been selected to develop the Pristina International Airport under a concession for twenty years.

However, the policy mix is increasingly vulnerable as a result of strong government expenditure growth. In particular, the building of a new motorway weighs heavily on public finances. Deficiencies in policy formulation and implementation have increased the already high uncertainty in the economy. Economic statistics improved somewhat, but still remain inadequate. Unemployment remains very high particularly among the young. The current account deficit has widened due to strong domestic demand and an underdeveloped production base. The public electricity company has continued to receive substantial subsidies from the state budget for the import of electricity and loans for financing of its investment programme. The weak rule of law, uncertainty over property rights and high interest rates continue to impact negatively on the business environment and on economic development. The informal sector remains an important challenge.

Progress in aligning Kosovo's legislation and policies with **European standards** continues to be mixed. The legal framework has been developed further in the areas of customs, taxation, free movement of goods, statistics, migration, education and anti-terrorism. Approximation is at an early stage as regards competition, intellectual property, environment, agriculture and food safety, integrated border management, asylum, money-laundering and personal data protection. Alignment with European standards remains limited in the areas of employment and social policies, financial control, drug-trafficking, trafficking in human beings and organised crime.

In the area of the EU **internal market** there has been some progress, in developing the legal framework for *free movement of goods, including consumers' protection*. However, the overall legal framework needs to be reinforced. Alignment with European standards in the areas of *free movement of persons*, as well as *freedom to provide services* and *the right of establishment* is limited. The area of *free movement of capital* is already well advanced. However, further efforts are necessary as regards effective regulation.

Legal provisions for *customs* are generally compatible with European standards and efforts to fight corruption have been undertaken. Efforts to tackle smuggling need to be enhanced. Customs controls need to be strengthened in northern Kosovo. Administrative capacity has improved, but remains insufficient. There have been positive developments as regards legislation and capacity-building in the area of *taxation*. Further efforts are necessary to

ensure the effective implementation of the laws in force, to enforce payment of taxes, to widen the tax base and, as a consequence, to reduce the sizeable informal economy. The backlog of cases against decisions of the Customs Service and the Tax Administration has increased.

In the area of *competition*, there has been no progress on anti-trust policy or state aids rules. Administrative capacity has improved but the implementation of competition policy is overall at an early stage. Cooperation among the institutions involved in competition issues needs to be strengthened. The Competition Commission needs to be more closely involved in large privatisation and restructuring initiatives.

Kosovo is still to adopt a new procurement law. The government has undertaken efforts in this regard. The implementation in practice of the existing law gives rise to concerns. The role of public procurement officers needs to be strengthened with a view to reinforce monitoring of the implementation of procurement contracts. Independence and professionalism in the public procurement system need to be enhanced. The authorities need to do more to tackle corruption in this area. Kosovo's provisions on concessions diverge significantly from European standards.

Key legislation still needs to be put in place on *intellectual property rights*. Significant efforts are needed on enforcement and awareness-raising. Kosovo's intellectual property rights regime is at an early stage and implementation is very weak.

There has been limited progress in alignment in the areas of *employment* and *public health*. Poor administrative capacity and an inadequate legal framework are issues of concern. Social protection and inclusion in Kosovo, as well as *social dialogue*, need to be improved. The legal framework in the area of *education* has been brought closer to European standards; increased administrative capacity is necessary to implement the reforms. Kosovo has developed a five-year *research* programme expected to improve capacities in this sector. This area has been made a priority.

As regards **sectoral policies**, development and *SMEs* need to be promoted more effectively and different strategies affecting this area should be better co-ordinated. Efforts should be stepped up in the areas of *agriculture* and food safety, in particular as regards the implementation of adopted legislation and upgrading agrifood establishments. A number of *environment* laws have been adopted. However, implementation of EU environment standards is still at an early stage.

The *transport* infrastructure remains underdeveloped. Kosovo has embarked on a road-building programme that does not reflect planned traffic flows, and the size of the programme crowds out investments in other modes of transport, particularly railways. Alignment with European standards in the area of aviation has improved. In December 2009, Kosovo adopted the aviation security and quality control programmes.

In the *energy* sector, there are major challenges with respect to enforcing electricity payments and managing an unsustainable growth in power demand. In April, Kosovo adopted an energy strategy covering the period 2009-2018. In October 2010, after considerable delay, the package of key laws in this area (on energy, on electricity and on the energy regulator) was adopted.

There has been limited progress in the area of *information society and media*. The independence and resources of the Telecommunications Regulatory Authority needs to be strengthened and the independence of the Independent Media Council guaranteed in the current revision of the IMC law. A long-term solution needs to be found for the funding of the public service broadcaster.

There has been some progress as regards *financial control*. However, Kosovo is still at an early stage in introducing international standards. The lack of financial independence of the Office of the Auditor-General is still a concern. In July, Kosovo adopted the law on official *statistics*. However, administrative capacity remains weak and further efforts are needed to improve sectoral statistics and, in particular, business and macro-economic statistics.

Progress has been mixed in the area of **justice, freedom and security**. Kosovo has made some progress as regards *integrated border management*. Kosovo has taken over responsibilities from KFOR for managing the border with Albania. However, considerable efforts are needed to ensure management of borders in line with EU standards. The north remains a particular challenge. EULEX has intensified its activities at gates 1 and 31. Kosovo has achieved limited progress in the area of *asylum*. The number of asylum requests has considerably increased, but overall has remained low. Most asylum-seekers leaving Kosovo for other destinations did so without adequate control by the Kosovo authorities.

There has been progress on alignment with European standards on *migration*. Kosovo has adopted a readmission law, which is broadly in line with EU requirements. Kosovo has signed a number of bilateral readmission agreements. The authorities have continued to deal efficiently with readmission requests from European countries. This needs to continue. A revised strategy for integration of repatriated persons has been adopted as well as an action plan for its implementation.

*Money-laundering* remains an issue of serious concern. Kosovo has adopted a law against money-laundering and financing of terrorism. Cooperation between the Customs Service and the Financial Intelligence Centre has improved. The Centre has also improved its cooperation with banks. However, Kosovo is still at an early stage in adopting and implementing European standards in this area. Capacity to investigate and prosecute money-laundering cases is still weak. Kosovo authorities do not have sufficient capacity to assume responsibility for the management of money-laundering cases. Overall, limited progress has been made in addressing economic and financial crime.

There has been limited progress in preventing *drug-trafficking*. Security of storage rooms for seized drugs has been upgraded. The authorities have conducted a number of successful operations. However, seizures, arrests and prosecutions remain at a low level. Efforts in tackling drug-trafficking are still at an early stage.

Kosovo has made some progress in *policing*. Public order has been maintained. The enthronement ceremony of the patriarch of the Serbian Orthodox Church took place in a peaceful atmosphere. The new organisational structure of the Kosovo Police has been approved, including job descriptions for senior management. The strategy and action plan on small and light arms control and collection have been adopted. The collection of illegal weapons has increased. However, the Kosovo Police needs to build an intelligence-led policing capability in order to tackle serious crime more effectively.

There has been limited progress in tackling *organised crime*. Kosovo has adopted a strategy on crime prevention. Special prosecutors have been appointed to deal with organised crime. A series of bilateral agreements with third countries have been signed in this area. However, Kosovo needs to put in place an effective witness protection framework. There have been no high-level convictions. There have been cases of intimidation of judges and prosecutors. Organised crime continues to be a very serious concern. The authorities need to step up their efforts to tackle organised crime operating in Western Balkans and Europe, notably through investigations, arrests, confiscation of assets and convictions. Kosovo needs to deliver concrete results in this area.

There has been limited progress as regards *trafficking of human beings*. There have been a number of arrests in a case of smuggling of human beings. Kosovo has adopted international standards of care for victims of trafficking. However, the number of detected cases and identified victims of trafficking remains low and does not fully reflect the scale of the phenomenon. The level of punishment of perpetrators is not always adequate. The capacity of Kosovo institutions to investigate, prosecute and convict trafficking in human beings needs to be strengthened. As regards the anti-*terrorism* measures, some progress has been made. The capacity of the counter-terrorism unit within the Kosovo Police has been enhanced.

Kosovo has made limited progress in *personal data protection*. A law on the protection of personal data has been adopted. The data protection supervisory authority is yet to be established. Individuals in Kosovo are not sufficiently informed about their rights regarding protection of their personal data. Progress in this area is key for Kosovo's international cooperation in the area of justice and home affairs.