

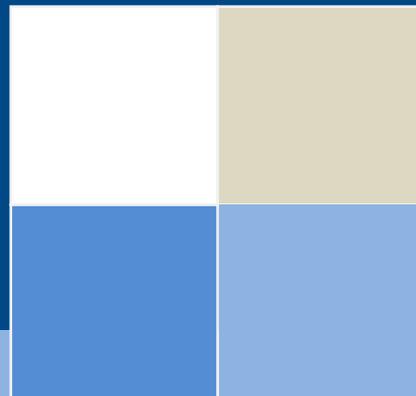
Policy Analysis - No. 02/2012



GROUP FOR LEGAL
AND POLITICAL
STUDIES

Readying Kosovo for SAA Negotiations:

A blueprint of achievements, slow reforms and
the path ahead



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March 2013

For his/her contribution, we would like to thank the external peer reviewer who provided excellent comments on earlier drafts of this policy product. GLPS internal staff provided very helpful inputs, edits and contributed with excellent research support.

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READYING KOSOVO FOR SAA NEGOTIATIONS: A BLUEPRINT OF ACHIEVEMENTS, SLOW REFORMS AND THE PATH AHEAD

I. Introduction

This Policy Analysis aims to identify and analyze Kosovo's progress relating to the short-term benchmarks highlighted in the 2012 European Commission's Feasibility Study for Kosovo released in early October¹ as well as those additional benchmarks issued in the 2012 Council Conclusion on Enlargement and SAA Process which was released in early December.² These benchmarks require short-term reforms and implementation in preparation for the start of SAA (Stabilisation and Association Agreement) negotiations between the Commission and Kosovo's Negotiation Team. While the purpose of this Policy Analysis is to support the completion of the short-term benchmarks that Kosovo must achieve for the Commission to win a mandate to begin SAA negotiations with Kosovo, these short-term benchmarks are only a stepping stone on Kosovo's path towards signing an SAA with the European Union. As such, in order to ensure Kosovo's long-term success in negotiating a Stabilization and Association Agreement, we also take into account the long-term reforms called for by the Commission and the Council and the impact that current patterns of reform, preparatory work, and implementation (resulting from efforts to achieve short-term benchmarks) may have on Kosovo's ability to achieve the long-term benchmarks.

Stabilisation and Association Agreements are instruments for countries that have been recognized by the EU for their European perspective and potential. In exchange for commitment to political, economic, trade or administrative reforms, the EU opens certain doors to increased integration.³ For instance, implementation of reforms on the path to signing an SAA can lead to tariff free access to EU markets and technical and financial assistance. However, in order to garner the benefits of an SAA with the European Union, Kosovo must focus first on achieving the short-term benchmarks that lead to the start of SAA negotiations and subsequently focus on making consistent progress in meeting the medium- to long-term benchmarks issued by the European Commission and Council.

¹ See COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo, Brussels, 10.10.2012, COM(2012) 602 final, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf.

² Council Conclusions on Enlargement and Stabilisation and Association Process, 3210th General Affairs Council Meeting, Brussels, 11 December 2012, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/134234.pdf

³ European Commissioner for Enlargement, Stefan Fule and EU Special Representative, Samuel Zbogar. EU Press Conference: European Commission to present 2012 Kosovo Feasibility Study. Attended 10 October 2012 at the EU Information and Cultural Centre, Prishtina, Kosovo.

II. Procedure

Kosovo is likely the next country to begin SAA negotiations with the European Union. The foundations of this process have been in the works for over a decade ago, and Kosovo still has a long way to go before signing an SAA with the European Union.

The EU introduced a Stabilisation Tracking Mechanism for Kosovo in November 2002 in order to orient Kosovo's policy in line with the *acquis*. After a decade of receiving financial and technical assistance from the EU and working alongside the EU to make democratic reforms and adapt Kosovo's legislation and policies to be in line with the *acquis*, a major stepping stone came on 10 October 2012 when the European Commission concluded that there were no legal obstacles for signing an SAA with Kosovo. On the same date, the Commission recommended that SAA negotiations with Kosovo start as soon as Kosovo has succeeded in completing thirteen benchmarks within the areas of rule of law, public administration, protection of minorities and trade.

The Commission and Kosovo have completed three cycles of Stabilization and Association Process Dialogue, allowing for the EU to monitor and advise Kosovo on measures to implement the European reform agenda and providing for EU consultation with civil society in Kosovo.⁴ By December 2012, Kosovo had put in place the basic administrative capacities and legal frameworks for many of the benchmarks.⁵ While the Government of Kosovo had hoped to fulfill the four short-term priority areas by December 2012,⁶ Kosovo must continue to take some doable steps in the short term in order to fulfill the thirteen initially issued benchmarks. Moreover, the Council issued an additional four benchmarks on 10 December 2012 that must be completed in order for Kosovo to begin SAA negotiations.

The extensive table illustrated in this report details the progress that has been made on each of these fourteen benchmarks and the remaining steps that must be taken before Kosovo can begin SAA negotiations. Moving forward, the President and Prime Minister, the Government, and the Parliament are the main institutions responsible for driving the reform process onward; in addition, the Constitutional Court may play a role.⁷

When Kosovo has achieved all seventeen of the benchmarks, the Commission will deliver the mandate to begin SAA negotiations with Kosovo to the member states on the European Council for approval. The Council will then vote whether to begin negotiations. The vote to begin negotiations must be unanimous in order for Kosovo to be granted a start date for SAA negotiations.

⁴ European Commission. (10 October 2012). "Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo."

⁵ European Commissioner for Enlargement, Stefan Fule and EU Special Representative, Samuel Zbogar. EU Press Conference: European Commission to present 2012 Kosovo Feasibility Study. Attended 10 October 2012 at the EU Information and Cultural Centre, Prishtina, Kosovo.

⁶ Samuel Zbogar. Meeting: Kosovo Assembly's Committee for European Integration. October 2012.

⁷ European Commission. (10 October 2012). "Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo."

III. The Legality of signing an SAA with Kosovo

On 10 October 2010, the European Commission announced and published in their Feasibility Study for Kosovo that there is no legal obstacle to concluding a Stabilisation and Association Agreement with Kosovo.⁸ Status differences do not pose a legal obstacle⁹ because the European Union can conclude international agreements with recognized independent states or international organisations, but also “with any entity with regard to which the other contracting party accepts that it can enter into an agreement that will be governed by public international law.”¹⁰ As long as Kosovo’s “political and judicial authorities are capable to ensure that the terms of the agreement are respected, applied and implemented,” an SAA can exist between Kosovo and the Union.

Article 217 TFEU says that such an (SAA) agreement establishes an association involving reciprocal rights and obligations, common action and special procedure with a third country, while emphasizing shared values and principles, trade components, an approximation of the third country’s legislation and policies with those of the Union, and cooperation with the Union.¹¹ Agreements between the EU and entities other than sovereign states have been concluded by the Council on the basis of Article 218 Treaty on the Functioning of the EU (TFEU).¹² While Article 218 TFEU serves as the legal basis for an SAA agreement with Kosovo, such an agreement does not equate with the Union’s (or member states’) official recognition of Kosovo as an independent state.¹³

As it stands, 22 Member States recognize Kosovo, while 5 do not; legally, each member state maintains their own capacity to recognize Kosovo as an independent state with or without an SAA agreement in place. While five Member States do not recognize Kosovo as an independent state, as long as Kosovo is able to implement the obligations that would arise from an SAA there is no legal obstacle for moving forward. However, while non-recognition does not stand in the way of an SAA between the EU and Kosovo in legal terms, non-recognition and the politics of member states may stand in the way of an SAA in political terms. All member-states on the European Council must vote in favor of granting Kosovo a start date for SAA negotiations, and, at the end of the road, the SAA must be ratified unanimously by all member-states of the Council and by all member-states’ parliaments in order for the SAA negotiations to take place and for the SAA to take effect.

IV. Commission’s View on Kosovo

The Feasibility Study includes the Commission’s first direct acknowledgement of Kosovo E integration future and suggests that the Commission plans to bring “Kosovo into the mainstream of

⁸ European Commissioner for Enlargement, Stefan Fule and EU Special Representative, Samuel Zbogar. EU Press Conference: European Commission to present 2012 Kosovo Feasibility Study. Attended 10 October 2012 at the EU Information and Cultural Centre, Prishtina, Kosovo.

⁹ Ibid.

¹⁰ European Commission. (10 October 2012). “Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo.”

¹¹ European Commission. (10 October 2012). “Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo.”P. 3.

¹² European Commission. (10 October 2012). “Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo.”

¹³ Ibid.

the enlargement process”.¹⁴ This is a milestone; Kosovo views this step as a demonstration that the European Union, at least the European Commission as a whole, no longer discriminates against Kosovo in regards to Kosovo’s European future.¹⁵

In recent statements the European Commission has appeared increasingly positive about Kosovo’s prospects in relation to the European Union (although continued integration will undoubtedly be a long-term process). Most notably, the European Commission reported, in line with their Enlargement Package, that “improved relations between Serbia and Kosovo are needed so that each can continue on their respective paths toward the European Union, while avoiding that either can block the other in the process.” This was a major relief for Kosovo to know that while Serbia is steps ahead of Kosovo on the path to the European Union, the EU would take steps to ensure that Kosovo will also have a European future.

The Feasibility Study shows that the Commission is ready to negotiate to accept Kosovo in the EU at the end of the road. The Feasibility Study has already indicated mid-term priorities for Kosovo, suggesting the Commission’s expectation that the mandate for SAA negotiations will be accepted and that Kosovo will be negotiating an SAA and on track to candidacy when the four priority areas are complete.

V. Acquisition of Mandate

Once the Commission has judged that Kosovo has achieved the priority benchmarks, the Commission will put forward a mandate to open negotiations.¹⁶ According to Stefan Fule, the European Commission will present the mandate to Member States as soon as Kosovo delivers on a limited number of specific deliverables.¹⁷ (These can be found in the table in section 6). While the Commission and Government of Kosovo were hoping that these benchmarks could be fulfilled in a couple of months (for the mandate to be presented in December 2012), the Commission will now have to wait for spring 2013 to come forward with the mandate. This mandate must receive unanimous approval by the member-states of the Council, in order for Kosovo to win a start date for SAA negotiations.

The EU Special Representative to Kosovo expects all member-states, despite their position on Kosovo’s status, will vote to approve the start of SAA negotiations with Kosovo. As mentioned in Section 3 on the legality of signing an SAA with Kosovo, an SAA would not necessarily affirm recognition of Kosovo as a state by the European Union and each member state would maintain their own capacity to recognize or not recognize Kosovo as an independent state. As such, no member state should object to the mandate due to issues over Kosovo’s status.

¹⁴ European Commissioner for Enlargement, Stefan Fule and EU Special Representative, Samuel Zbogar. EU Press Conference: European Commission to present 2012 Kosovo Feasibility Study. Attended 10 October 2012 at the EU Information and Cultural Centre, Prishtina, Kosovo.

¹⁵ Samuel Zbogar. Meeting: Kosovo Assembly’s Committee for European Integration. October 2012.

¹⁶ European Commissioner for Enlargement, Stefan Fule and EU Special Representative, Samuel Zbogar. EU Press Conference: European Commission to present 2012 Kosovo Feasibility Study. Attended 10 October 2012 at the EU Information and Cultural Centre, Prishtina, Kosovo.

¹⁷ Eurasia Review. (14 October 2012). “Fule: Explaining Feasibility Study in Kosovo – Speech.” Retrieved from http://www.eurasiareview.com/14102012-fule-explaining-feasibility-study-in-kosovo-speech/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+eurasiareview%2FVsnE+%28Eurasia+Review%29

On the other hand, the EU only signs Stabilisation and Association Agreements with likely candidates for the EU; as such, the EU should be ready to accept Kosovo into the EU at the end of this road – as a member *state*. Wariness from member-states – who believe that the indecisive political nature of the legal platform for beginning SAA negotiations will set in motion a process of which the end point is accession and recognition – may discourage member-states who do not recognize Kosovo from embarking down this road.

The current legal platform for beginning SAA negotiations likely cannot maintain itself throughout the process and provide for the SAA with Kosovo to be ratified on the same legal basis. The Commission states in their official communication that “the precise legal nature of the agreement would have to be determined at the end of the negotiations, in view of its actual content and taking duty into account the legal context.”¹⁸ As such, the current legal platform which is politically indecisive regarding Kosovo’s status may buy time for Kosovo and the Commission to embark on the SAA process, while they hope that, at the end of the road, a new legal platform can be negotiated that allows for the ratification of an SAA with Kosovo or member-states have loosened their stance of non-recognition.

Whether the Commission and Kosovo’s international diplomacy can convince non-recognizing member-states to ratify an SAA at the end of the road is a hurdle that must be dealt with in the coming years. However, the most immediate effect of this dilemma is the wariness that non-recognizing member-states might feel in setting a process in motion for which SAA ratification and accession is the traditional end-point; this wariness may cause the Council to delay SAA negotiations even further, as they already have by issuing additional benchmarks in December 2012, the month in which the Commission had initially been hoping to present the mandate for approval. In other words, acquiring the mandate from the Council may be more difficult than expected and may require the Commission and Kosovo to jump additional hurdles before Kosovo can begin SAA negotiations. However, the Commission has made it clear that they pushed forward with preparations for SAA, issued the Feasibility Study, and supported Kosovo’s developments according to critical benchmarks with an understanding that when Kosovo is politically, economically, and organizationally prepared to embark on SAA, the Council and non-recognizing member-states will not stand in the way. The Council’s issuing of additional SAA-preparation benchmarks also suggests that member states are present in the process and are ready to contribute, and not impede, the short-term goal of embarking in SAA negotiations with Kosovo.

VI. Overview of Benchmarks

The following table identifies the thirteen benchmarks issued by the European Commission in the October 2012 Feasibility Study and the four benchmarks issued in the December 2012 Council Conclusion on Enlargement and SAA Process. The Commission’s benchmarks are categorized under four areas of reform: rule of law priorities, public administration reform, protection of minorities, and trade. The Council’s benchmarks also relate to public administration and rule of law reform but expand upon the Commission’s priority areas to include the EU facilitated Dialogue between

¹⁸ European Commission. (10 October 2012). “Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo.”P. 4.

Kosovo and Serbia, and the north of Kosovo. Kosovo must fulfill each of these benchmarks to move to the next step of the SAA process. Once the Commission considers Kosovo to have fulfilled each of the benchmarks listed in the table below, the Commission will bring a mandate to begin SAA negotiations to the Council for approval. In the table below, each of the fourteen benchmarks is identified along with the progress made thus far and remaining steps that Kosovo must take.

European Commission: Short-Term Objectives for Kosovo		
Rule of law		
European Commission: Short-Term Objectives for Kosovo	What has been accomplished?	Way Forward/Remaining Steps
1. Demonstrate a clear commitment to deliver results in the fight against organized crime and corruption, including launching investigations and ensuring continuous good cooperation with EULEX.	<ul style="list-style-type: none"> - Kosovo Institutions officially confirmed preservation of the SPRK, at the same time committing to further strengthening practical cooperation with EULEX, and upon request cooperate closely with STIF by extending its prosecutorial competencies, should it be required to conduct any prosecutorial proceedings in the territory of the Republic of Kosovo. - Compact Agreements and updated Terms of Reference with EULEX have been approved. - KPC has adopted the Strategy on cooperation between law enforcement agencies on fight against organized crime and corruption. - KJC has continued with necessary reforms for the implementation of the new courts structure as of 1 January 2013. 	<ul style="list-style-type: none"> - Kosovo has put in place important elements of the legislative framework necessary for the fight against corruption. The main challenge for the government is to effectively implement its anti-corruption legislation. -Kosovo needs to demonstrate a clear commitment to deliver results in the fight against organised crime.
2. Support the work of the Special Investigative Task Force.	Upon request Kosovo institutions have confirmed their commitment to cooperate closely with the SITF by extending its prosecutorial competencies, should it be required to conduct any prosecutorial proceedings in the territory of the Republic of Kosovo.	Kosovo institutions should share data and information, and pursue continuous communication with SITF.
3. 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.	According to the government, the Special Prosecution responsible for cases of organised crime, war crimes and corruption will maintain its competencies.	
4. Adopt the legislation on confiscation of assets.	Law on confiscation of assets has been approved in the Government and passed the first reading in the Assembly.	The Assembly adopted the new law (11 February 2013).
5. Revise the law on prevention of money laundering and financing of terrorism.	<ul style="list-style-type: none"> - The Government has approved a new law on prevention of money and financing of terrorism. Article 3 of the draft law had initially opposed the EC recommendations on Special Prosecution responsibilities – <i>“Investigation or prosecution of criminal acts of money laundering defined in this law is authorized for all prosecutors in the Republic of Kosovo based on their territorial and subjective</i> 	The Assembly adopted the new revised law (11 February 2013), which is now in accordance with EC recommendations on Special Prosecution responsibilities.

	<i>competency</i> ¹⁹ ”.	
6. Adopt a new anti-corruption strategy.	The Government has drafted a new Anti-Corruption Strategy.	The Assembly adopted the Anti-Corruption Strategy (11 February 2013).
Public administration		
European Commission: Short-Term Objectives for Kosovo	What has been accomplished	Way Forward/Remaining Steps
7. Adopt the necessary secondary legislation of laws on civil service and on salaries for the civil service.	The following regulations have been adopted by the Government, at its meeting on 7 December 2012: 1. Regulation on conditions for restrictions on the right to strike in specific services in civil service; 2. Regulation for care procedures for civil servants due to disability and health problems. Whereas, final piece of secondary regulation has been adopted at the Government meeting on 18 December 2012. 3. Regulation on allowances in salaries and other compensations for Civil Servants.	The Government has approved the foundational secondary legislation on civil service.
8. Allocate premises to the Ombudsperson Institution		The government has to allocate permanent residence to the Ombudsperson Institution. The Government has pledge that one of the current Kosovo institutions building will be granted to the office of the Ombudsperson.
9. Ensure the 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.	The Ombudsperson's budget for 2013 has already been incorporated into the 2013 budget and has been approved by the government and adopted by the Assembly.	The budgetary independence of the Ombudsperson has been granted via the “good will” of the government but not in a concrete and legally sustainable way. To ensure the Ombudsperson's budgetary independence, the government should amend the law on Ombudsperson.
Protection of minorities		
European Commission: Short-Term Objectives for Kosovo	What has been accomplished	Way Forward/Remaining Steps
10. 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.	This process has been carried out by Ambassador Dimitris Moschopoulos, Head of the Greek Liaison Office in Pristina and EU facilitator for the protection of religious and cultural heritage of the church in Kosovo. The Government of Kosovo has approved an administrative instruction on	Due to political disharmony between the Serbian Orthodox Church and the Government of Kosovo, the body on the promotion and protection of religious and cultural heritage with religious communities is still to be established. However, major developments have taken place.

¹⁹Project Law Amending and Supplementing the Law No. 03/L-196 ON THE PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING

	establishment of a body dealing with promotion and protection of religious and cultural heritage with religious communities. This body will be composed of five members: two ministers, representatives of the international presence in Kosovo, representatives of the Serbian Church. ²⁰	
Trade		
European Commission: Short-Term Objectives for Kosovo	What has been accomplished	Way Forward/Remaining Steps
11. Implement the government decision on the restructuring of the Ministry for Trade and Industry.	-On 7 December 2012, the Government adopted a new MTI Regulation on Internal Organisation and Systematization of Job Positions. -MTI is in the recruitment process for the following positions: 1. Director-General of the Agency for the Support of Private Sector Development; 2. Director-General of Accreditation Directorate; 3. Director-General of Metrology Agency; 4. Director-General of Industrial Property Agency; 5. Head of Quality Infrastructure Division - Department of Industry; 6. Head of Petroleum Market Regulation Division – Department of Market Regulation for Oil and Strategic Goods; 7. Head of Market Protection Division – Trade Department; 8. Head of Tourism Division – Department of Industry; 9. Head of State Reserve Goods Division – State Reserve Department; 10. Head of Trade Agreements Division – Trade Department. - The necessary procedures for selection of candidates for the above positions are expected to be completed by the end of February 2013.	The ministry should finalise the recruitment process via a merit-based and professional, as opposed to partisan, process.
12. Put in place a mechanism to lead and coordinate negotiations.	Inter-institutional mechanism for coordination of trade policy has been established in 2010. It consists of: <ol style="list-style-type: none"> 1. Trade Policy Council; 2. Trade Policy Working Group; 3. Trade Policy sub-working groups on: a. Agriculture, b. Services, c. Industry, d. Trade Facilitation, and e. Trade Agreements. Since October 2012, the following meetings have taken place: <ol style="list-style-type: none"> A. Sub-Working Group on Services (4 October 2012); B. Sub-Working Group on Trade Facilitation (31 October 2012); C. Sub-Working Group on Agriculture (26 November 2012). 	
13. Prepare an impact analysis regarding impact that trade aspects of a SAA will	The Ministry of Trade and Industry prepared an impact analysis of trade and sent it to the	MTI should finalise the study, and prove its policy integrity and merit.

²⁰ SETimes.com. Kabashaj, Safet. (13 November 2012). "A step forward in cultural, religious heritage." Retrieved from http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2012/11/13/feature-01

have on Kosovo's economy.	European Commission for comments.	Deadline: beginning of March
“Council Conclusion on Enlargement and SAA Process” Kosovo - 10/12/2012		
1. Strengthen public administration reform.		- Kosovo needs to implement the public administration strategy and action plan and all related legislation, and prove that it is willing to depoliticize and professionalize the civil service, and strengthen its human capacities.
2. Consolidate rule of law <ul style="list-style-type: none"> • by providing evidence of the fight against organised crime and corruption, • judicial reform, • freedom of expression. 	<ul style="list-style-type: none"> - The Government has approved a new Anti-Corruption Strategy, which was also adopted by the parliament. - Kosovo has adopted legislation for major judicial reforms. - The provisions of Criminal Code have been revised. 	<ul style="list-style-type: none"> - Kosovo should report to the EC evidence of the fight against organised crime and corruption, and should commit itself far more reliably on the fight against political corruption. - Kosovo should take measures to reduce the total backlog of court cases, and prove sustainability as regards the strengthening of institutional capacities to organize the fight against crime and corruption. - Kosovo institutions should implement the judicial reform properly and credibly.
3. Continue to implement in good faith all agreements reached with Belgrade	All agreements are being implemented.	
4. To further develop an outreach plan for northern Kosovo		Kosovo's Government needs to strengthen the capacity for and come up with an inclusive plan to include northern Kosovo under the rule of law and policy communication, and to convince citizens there on the benefits of the Ahtisaari Plan.
<ul style="list-style-type: none"> • With a view to a possible decision to open negotiations for an SAA with Kosovo, the Council will examine on the basis of a report to be presented by the Commission and the HR/VP in spring 2013 on the progress on all the above issues (short term objectives + Council recommendations). The Council will assess the report during the next Presidency.²¹ 		

VII. Preparing for Negotiations

In order to embark on SAA negotiations, Kosovo must have a team in place that can functionally negotiate an SAA with the EU over the coming years. Because primary aspects of an SAA focus on opening doors for increased trade and eliminating trade limitations, the benchmarks categorized under trade focus on readying the Ministry of Trade and Industry and related stakeholders for negotiations. These benchmarks include restructuring the Ministry for Trade and Industry, putting in place a mechanism to lead and coordinate negotiations with the EU, and preparing an analysis of the impact that SAA trade provisions will have on Kosovo (including a statement of Kosovo's negotiating priorities).

While Kosovo has restructured the Ministry of Trade and Industry and sent the impact analysis to the EU for approval, the Government of Kosovo still must finalize its administrative and institutional mechanisms that will coordinate and lead SAA negotiations. The Government of

²¹European Council. (11 December 2012). "Council Conclusion on Enlargement and Stabilization and Association." Brussels. Retrieved from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/134234.pdf

Kosovo has engaged regional and international experts to support the process of establishing Kosovo's negotiating team. The Minister for European Integration will lead the negotiating team. The minister's staff will serve as the secretariat for negotiations, with approximately 70 people to administer and provide technological support for the negotiations. Alongside regional experts and the Minister for European Integration (as head of the negotiating team), the Ministers of Trade, Foreign Affairs, Agriculture, and Labour will also sit on the negotiating team. The Government of Kosovo has already made an action plan to monitor the ministries and their accomplishments. In total, over 500 people will be part of/provide support for the negotiating team.²² In order to ensure the high functioning capacity of this negotiating team, the Government must, immediately, accelerate their preparations and demonstrate their institutional dedications.

With such a great number of staff in the negotiation process, the team must be exceedingly organized in terms of administration, communication, assignment of tasks, accountability, and establishing a chain of command and reporting. Kosovo must offer trainings to all involved focused on streamlining the communication and reporting structures of the negotiating team, approximating EU legislation, and domestic capacity building. Moreover, the negotiation team must be sustainable with low levels of employee turnover and high levels of employee experience and capability. The whole structure will likely be used for a decade – throughout SAA negotiations and SAA ratification, as Kosovo takes steps towards EU integration and candidacy, and even as a support for continued progress in the EU facilitated dialogue. The long-term durability, stamina, and usability that will be required of this negotiating team highlights a very important aspect of Kosovo's SAA preparation: the rules, laws, and structures that are established during SAA negotiation preparation serve as a foundation for Kosovo's success with SAA, integration, and accession in the future. The rules, laws, and structures that Kosovo is establishing in order to fulfill the seventeen Commission and Council benchmarks will determine the benefits and challenges, successes and failures that Kosovo will face along the long road to SAA ratification, continued integration, and candidacy. The process of establishing these foundations requires greater seriousness, credibility, and professionalism from the government.

VIII. Accommodating Long-term Priorities

The Commission, for the first time on October 10, 2012, formally acknowledged Kosovo as a potential EU candidate with “a European perspective like the rest of the Western Balkans.”²³ However, before Kosovo can receive a date for SAA negotiations, it must achieve the seventeen short-term priorities listed in the table above; and before Kosovo can sign an SAA with the European Union it must focus on a number of medium- to long-term benchmarks that will guide Kosovo towards SAA ratification and, years even decades down the road, greater integration, candidacy, and ultimately accession. Many of these medium- to long-term priorities have been identified in the Feasibility Study and the Commission's Enlargement Package, both issued in October 2012. While the priority areas require hard work from the government and stakeholders, their fulfillment also depends on Kosovo's “ability to build a strong consensus within Kosovo society.”²⁴ Kosovo must avoid nearsightedness in pursuing SAA negotiations and must lay foundations that will

²² Vasolli, Besnik. (October 2012). Personal Communication.

²³ European Commission. (10 October 2012). “Commission outlines next steps for EU enlargement.” Press Release.

²⁴ European Commission. Memo/12/780: Ibid.

carry Kosovo throughout negotiations and beyond. This can be achieved by not only focusing on the four priority areas that require focus in preparation for SAA negotiations, but by ensuring that all steps take into account the long-term priorities identified by the Commission and Council and the rules, laws, and structures that will be required for negotiating an SAA, ratifying an SAA, and increased integration and ultimate candidacy post-SAA.

Kosovo must focus on the following priority areas in the medium- to long-term in order to meet its obligations under an SAA: the rule of law, judiciary, public administration, electoral reform and the democratization of the Assembly, human and fundamental rights, protection of minorities, trade and internal market issues, and phytosanitary and veterinary issues.²⁵ The Commission has also identified a number of specific deliverables that would be required of Kosovo in order to meet its obligations in each priority area under an SAA. Each priority area and its sub-criteria are detailed below.

- *Rule of Law*: “provide concrete evidence of results in fighting organized crime and corruption as a matter of priority, and strengthen legislation and its implementation particularly on prevention and fighting against trafficking in human beings, drugs, their precursors and weapons trafficking. Improve the reliability of statistics on the fight against serious and organized crime and corruption. Actively support implementation of the mandate of EULEX, including of the Special Investigative Task Force. Ensure readmission from Member States.”²⁶
- *Judiciary*: “take measures to reduce the total backlog of cases. Implement the judicial reform, including by ensuring consistency among the laws on courts, Judicial and Prosecutorial Councils and prosecution. Provide appropriate security and protection measures for judges and court staff, as well as for prosecutors, witnesses and plaintiffs, and provide effective safeguards against threats or intimidation. Ensure trials are conducted in appropriate premises and in line with the court procedures. Continue recruiting judges and prosecutors from minorities, as set out in the legislative framework.”²⁷
- *Public administration*: “make progress in implementing the public administration strategy and action plan and related legislation. Ensure a sustainable public administration reform, including the necessary funding and staffing. Increase the overall share of persons belonging to minorities in the public administration.”²⁸
- *Electoral reform and the Assembly*: “ensure that the legal framework for elections better reflects best practice in the EU and that implementation is also in line with international standards. Assembly to enhance its oversight of the executive, including of the security sector, through improved scrutiny of legislation and monitoring of implementation of policies and laws. Assembly's financing and administration to be made more independent from the government, notably through adopting legislation on the status of civil servants of the Assembly, ensuring that the draft budget of the Assembly is modified by the government in consultation with the Assembly before it is submitted to the Assembly for adoption.”²⁹

²⁵ European Commission. Memo/12/780: Ibid.

²⁶ European Commission. (10 October 2012). “Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo.”P. 13.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

- *Human and fundamental rights*: “investigate and prosecute any physical attacks against journalists and complete the parliamentary procedure to change the Criminal Code on criminal liability of media and protection of journalist sources. Streamline and simplify the multitude of bodies dealing with the protection of these rights to ensure effective monitoring and enforcement of the legal framework in this area. Make progress on the enforcement of property rights for example through decreasing the backlog of cases and improving enforcement of judicial and administrative decisions. Harmonise legislation on personal data protection with EU standards and focus on its implementation, notably by drafting secondary legislation and building up administrative capacities.”³⁰
- *Protection of minorities*: “promote multi-ethnic Kosovo; create conditions for Kosovo Serbs to feel part of Kosovo's future and conditions for the return of persons who wish to do so. Continue implementing decentralisation, notably in the new municipalities. Allocate budget, staff and premises to the Office of the Language Commissioner. Implement legislation related to the protection of cultural heritage and the Serbian Orthodox Church. Ensure broadcasting in Serbian by the public broadcaster. Investigate and prosecute any physical attacks motivated by ethnicity or religion and bring perpetrators to justice. Progress on implementing the strategy and action plan for the Roma, Ashkali and Egyptians, including through the allocation of the necessary resources.”³¹
- *Trade and internal market issues*: “implement the legal framework on trade, competition and internal market. Enhance the control of the continuing illegal animal trade and slaughtering and strengthen the controls at livestock markets. Improve business statistics.”³²
- *Phytosanitary and veterinary issues*: “enhance the facilities for phytosanitary and veterinary import controls as well as the capacity to transfer samples. Strengthen food safety and phytosanitary controls, including through finalising the transfer of the food safety and veterinary inspectors from municipalities to the Kosovo Food and Veterinary Agency. Systematise data entry into the animal identification, registration and movement database. Accredite the laboratories involved in food controls.”³³

In addition, Kosovo will have to make progress relating to both the EU-facilitated Kosovo-Serbia Dialogue and the situation in the north of Kosovo. While the Council added short-term deliverables (for Kosovo to begin negotiations) relating to both of these priority areas, Kosovo’s commitment to these priority areas is expected to continue throughout SAA negotiations. Kosovo must also continue to implement agreements facilitated under the Dialogue throughout the Dialogue and SAA negotiation processes. And while the northern situation is “not an obstacle to negotiate the agreement...further improvements are required for Kosovo to meet the obligations” under an SAA.³⁴ Two valuable lessons must be considered in observing the medium- to long-term priority areas, which must be observed if Kosovo is to meet its obligations under an SAA.

First, a strategy for the north of Kosovo and implementation of all Dialogue agreements were originally priority areas left for after the start of negotiations until, in December 2012, these

³⁰ Ibid. P. 13 – 14.

³¹ Ibid. P. 14.

³² Ibid.

³³ Ibid.

³⁴ Ibid. P. 12.

medium- to long-term priority areas were made manifest as required short-term deliverables. This suggests that the European Union is using this short-term stepping stone to push Kosovo to lay realistic foundations that medium- to long-term deliverables will rely upon. Moreover, this action suggests that the European Union is increasingly interested to receive and approve of these foundations before moving Kosovo forward. Lastly, this action illustrates the European Union's (Council's) willingness to delay the start of SAA negotiations and include additional short-term benchmarks in order to better ensure Kosovo's ability to realistically implement these foundations in practice in the medium- to long-term.

Second, rule of law, public administration, protection of minorities, and trade are priority areas that require Kosovo's focus in the short-term (in order to begin SAA negotiations) and in the medium- to long-term (in order to negotiate and fulfill its obligations under an SAA). The EU's stipulation of these four priority areas as both short-term requirements and medium- to long-term requirements suggest that achieving the objectives under these priority areas is a step-by-step process wherein the long-term success will depend on the nature and strength of the foundations (rules, laws, and structures) laid in the short-term. As such, it is critical that these rules, laws, and structures – the required short-term deliverables that will move Kosovo towards the start of SAA negotiations – can be realistically implemented in line with the existing legislation (and The passed between now and the start of negotiations) and can be realistically and efficiently implemented by the structures and teams of personnel responsible for ensuring success in reform, and thus, in meeting Kosovo obligations in negotiations and under an SAA.

IX. Recommendations for the Government of Kosovo on pursuing an SAA

1. Rule of Law: demonstrate a clear commitment to deliver results in the fight against organized crime and corruption. Actively taking appointed and elected officials who engage in corruption and members of organized crime to court and prosecuting the guilty. The expected results would be a rise in the number of those prosecuted for organized crime and corruption, destabilization of crime networks, and a dissuading effect on would-be criminals.
2. Kosovo institutions must share data and information and have open channels of communication with the Special Investigative Task Force. The EU should see a tangible rise in the number of communications and number of shared documents between the Government of Kosovo and the SITF.
3. The Government must allocate permanent residence to the Ombudsperson as soon as possible. This is a simple task and should not be delayed any longer.
4. The Government should amend the Law on the Ombudsperson in order to legislatively safeguard budgetary independence. As it stands, the Government has offered the Ombudsperson budgetary independence for the current fiscal year but has supported no legislative alteration to safeguard the budgetary independence of the Ombudsperson in the long term.
5. The body on the promotion and protection of religious and cultural heritage with religious communities, notably the Serbian Orthodox Church should be established. This has been difficult due to the lack of willingness of the Serbian Orthodox Church to recognize and cooperate with the Government of Kosovo. The Government of Kosovo should call for EU

support in negotiating (and de-politicizing) the creation of this body and should stress the importance of moving forward for the benefit of religious Kosovo Serbs currently living in Kosovo.

6. The Ministry of Trade and Industry should incorporate comments from the EU into a revised version of the Trade Impact Analysis. The EU has received the first draft and will return the draft to the Government of Kosovo for revision. The Government of Kosovo should act swiftly to provide the EU with a final draft.
7. Kosovo should continue its commitment to implementing all Dialogue agreements and engaging in the Dialogue itself. While internal ethnic tension (and acts of ethnic-based violence or destruction) threaten to set both parties off track and lose the will to engage with the other state in Dialogue, Kosovo must continue to be steadfast in engaging in this form of relationship building with the European Union and its neighbors.
8. Kosovo must develop an outreach plan for the northern Kosovo. The Council's late inclusion of this as an additional benchmark for beginning SAA negotiations is telling. Undoubtedly, due to Kosovo's lack of will and success in establishing a comprehensive agenda for the north of Kosovo, in providing financial and technical resources for the north, and in establishing a Serbian-language broadcasting channel that could support the social and political inclusion of those Kosovo Serbs living in the north, the EU has doubts related to whether Kosovo can offer a serious commitment to the citizens living in the northern territory. This added benchmark demands short-term proof that Kosovo is willing to commit the time and planning enough to develop an outreach plan that could be realistically implemented and effective at generating life-improving measures in the north and Kosovo-political and social inclusion for those citizens living in the north of Kosovo.

Policy Analysis

Policy Analysis in general is a policy advice paper which particularly aims to influence the key means through which policy decisions are made in both local and central levels of government. The purpose of Policy Analysis is to address, more in-depth, a particular problem, to examine the arguments related to a concerned policy, and to analyze the implementation of the policy. Through Policy Analysis, Group for Legal and Political studies seeks to stimulate wider comprehensive debate on the given issue via presenting informed policy-relevant choices and recommendations to the key stakeholders and parties of interest.