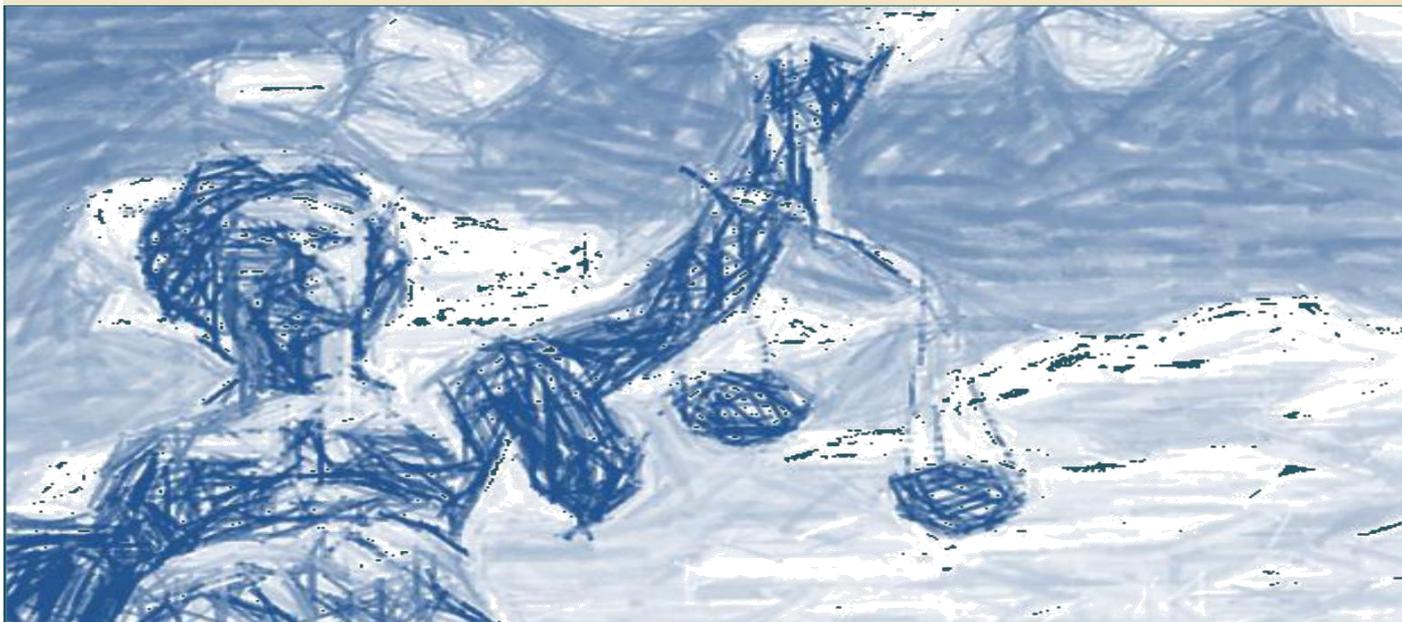


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# Rule of law conditionality in the Stabilisation and Association Agreement between Kosovo and the EU

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Policy Report 03/2016

Rule of law conditionality in the Stabilisation and Association Agreement  
between Kosovo and the EU

Author: \* Nicholas Doyle, \*\* Ana-Maria Enache, \*\*\*Albana Merja

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Group for Legal and Political Studies  
"Rexhep Luci" str. 10/5  
Prishtina 10 000, Kosovo  
Web-site: [www.legalpoliticalstudies.org](http://www.legalpoliticalstudies.org)  
E-mail: [office@legalpoliticalstudies.org](mailto:office@legalpoliticalstudies.org)  
Tel/fax.: +381 38 227 944

\* International Research Fellow

\*\* International Research Fellow

\*\*\*Research Fellow, Group for Legal and Political Studies

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# RULE OF LAW CONDITIONALITY IN THE STABILISATION AND ASSOCIATION AGREEMENT BETWEEN KOSOVO AND THE EU

## I. INTRODUCTION

The European Union (EU) announced for the first time that the Western Balkan countries had perspectives for EU membership at the European Council in Santa Maria da Feira in June 2000. Sixteen years later, with the exception of Croatia, Western Balkan countries achieved little progress with their accession process – Albania, the Former Yugoslav Republic of Macedonia (FYROM), Montenegro and Serbia are candidate countries, while Bosnia and Herzegovina (BiH) and Kosovo remain potential candidates.

In recent years, the EU is perceived to have become weary of enlargement; even so, the Union continues to remain involved in the Western Balkans, for the promise of European integration is widely perceived as a guarantee of the stability and reform of the countries in the region. With the stabilisation of the security situation in the region, the EU concentrated its efforts on creating instruments for helping Western Balkan countries address the sources of instability,

in order to prevent potential spill-over into the EU.<sup>1</sup> The Union designed the Stabilisation and Association Process (SAP) to serve as the main framework for engaging Western Balkan countries. The enlargement process remains the most successful foreign policy tool of the EU; in fact, the Union was awarded the Nobel Peace Prize in 2012 for having “for over six decades contributed to the advancement of peace and reconciliation, democracy and human rights in Europe”.<sup>2</sup>

The rule of law was officially placed at the centre of the enlargement policy in 2012 and has remained one of the “key priorities in the enlargement process”. In fact, in the most recent Enlargement Strategy designed for the period 2015-2019, the European Commission (EC) considered that the rule of law represented one of the four “fundamentals” for EU enlargement, which reflect the core values and general policy priorities of the EU.<sup>3</sup> In the framework of the EU, the notion of “rule of law” encompasses the following requirements: the existence of an independent and impartial judiciary; accountability of the government and its officials, combined with a tough stance against corruption on the part of politicians and decision-makers; the existence of a transparent, efficient and fair process for the preparation, approval and enforcement of laws, which also need to be clear, publicised, stable, fair and must protect

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*The rule of law is a fundamental value on which the EU is founded and is at the heart of the accession process. Countries aspiring to join the Union need to establish and promote from an early stage the proper functioning of the core institutions necessary for securing the rule of law.*

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EU Enlargement Strategy (2015)

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<sup>1</sup> Oproiu, M, “Current Challenges for EU Coherence in Promoting the Rule of Law in Kosovo”, *Europolity*, vol. 9, no. 2, 2015, at 148

<sup>2</sup> Oproiu, M, “Current Challenges for EU Coherence in Promoting the Rule of Law in Kosovo”, *Europolity*, vol. 9, no. 2, 2015, at 149

<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - EU Enlargement Strategy, Brussels, 10.11.2015 COM(2015) 611 final, at 5-6 [hereinafter referred to as “EU Enlargement Strategy”]

fundamental rights.<sup>4</sup> This shows that the rule of law is a far reaching concept, which penetrates almost every aspect of government policy. While it may appear as an abstract theoretical notion, the rule of law principle has tremendous practical implications.

The EU is involved in Kosovo in a multifaceted manner, which includes the **European Union Rule of Law Mission in Kosovo (EULEX)**, the **EU Special Representative** and financial assistance through the **Instruments for Pre-Accession**; it was the coherent use of these complex instruments that represented the most important test for EU. The Union ensures the furtherance of the rule of law mainly through the **Visa Liberalisation Dialogue**, the **SAP Dialogue** and the Structured Dialogue on the Rule of Law. The **Structured Dialogue on the Rule of Law** was created in 2012 and as a high level commitment that would advance both reforms in Kosovo and coherence efforts in Brussels; nevertheless, it proved to be particularly difficult to convey such its meetings and after three summits the initiative lost momentum.<sup>5</sup> In November 2014, EULEX, the EU Special Representative and the Kosovo Ministry of Justice established the **Joint Rule of Law Coordination Board**, as a lower-level forum for the Structured Dialogue on the Rule of Law. The three institutions signed a Compact Joint Rule of Law Objectives, for the period until 2014,<sup>6</sup> which later continued with a Compact 2.<sup>7</sup> This step was taken for the purpose of synchronising the rule of law priorities of the three institutional players, in an attempt to ensure coherence in strengthening the rule of law in Kosovo.

This paper will attempt to offer a thorough analysis of the rule of law requirements in the Kosovo Stabilisation and Association Agreement (SAA) and their implications. First, we will begin by offering an account of stabilisation and association agreements in general, including their role in the EU enlargement agenda and afterwards refer to the previous SAAs concluded with the other enlargement countries. Third, we will proceed to outlining the main provisions in the agreement signed between the EU and Kosovo which concern the rule of law sector; they will be analysed in the context of the equivalent provisions in previous SAAs, the recommendations contained in other EU documents and instruments (such as the Visa Liberalisation Roadmap, the EC Annual Country Reports and, where applicable, the SAP Dialogue), as well as by reference to the situation in other enlargement countries. Fourth, the paper will attempt to anticipate the main issues which may constitute obstacles for Kosovo in applying these provisions and the instruments made available by the EU to facilitate the implementation process. We will then refer to the mechanisms that will ensure the monitoring of the SAA before proceedings with a set of recommendations for the government of Kosovo.

## II. STABILISATION AND ASSOCIATION AGREEMENTS

Stabilisation and Association Agreements have played an important role in the Balkans for a decade and a half. SAAs are tailor-made contractual relations between the EU and enlargement countries in the framework of the SAP. They are a tool used by the EU to recognise the European perspective and potential for enlargement of the countries which become parties to them and to sanction increased integration and cooperation within third countries. For countries to enter into SAAs with the EU, they need to demonstrate “a credible engagement to undertake democratic

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<sup>4</sup>Europa (2013) *Rule of Law*, available at [http://ec.europa.eu/enlargement/policy/policy-highlights/rule-of-law/index\\_en.htm](http://ec.europa.eu/enlargement/policy/policy-highlights/rule-of-law/index_en.htm) (accessed 06/08/13)

<sup>5</sup>Oproiu, M, “Current Challenges for EU Coherence in Promoting the Rule of Law in Kosovo”, *Europolity*, vol. 9, no. 2, 2015, at 170

<sup>6</sup>Compact Progress Report, Joint Rule of Law Coordination Board, September 2013

<sup>7</sup>Compact 2, Joint Rule of Law Coordination Board, May 2015

reforms, respect and protect human rights, minorities and freedom of expression, and free and regular elections”, as well as take ensure the “implementation of the first economic reforms, readmission from Member States and commitment to the regional cooperation”.<sup>8</sup>

All SAAs set as their aims to “support the efforts” of the respective Western Balkan countries in various focus areas. This indicates that the EU and enlargement countries will share the burden of the stabilisation process and by this the EU commits itself to taking an active role assisting the enlargement countries achieve their accession goals. However, the term “supports” denotes that the primary role is to be played by the Western Balkans countries themselves, while the contribution of the EU will be only complementary - the EU will be focus mainly on creating the preconditions for the respective countries to reach their objectives.

Prior to the signing of the SAAs, the EC conducted feasibility studies for all other Western Balkan countries: Albania, Bosnia and Herzegovina, Croatia, FYROM, Serbia and Montenegro.<sup>9</sup> The study on the feasibility for a Stabilisation and Association Agreement between the European Union and Kosovo\*, released 10 October 2012, was performed for the purpose of determining whether the political and judicial authorities in Kosovo were capable of ensuring that the terms of a possible agreement were respected, applied and implemented.<sup>10</sup> It first found that the questions surrounding the statehood of Kosovo were not a bar to the conclusion of the SAA, as art. 2018 of the Treaty on the Functioning of the EU (TFEU) had in the past allowed for the signing of agreements with other entities than internationally recognised independent states or international organisations; the only requirement was that the other Contracting Party accepts that it can enter into an agreement which will be governed by public international law. The Commission emphasised in the study that, provided that an express reservation to that effect is made, the conclusion of an international agreement would not amount to recognition of Kosovo, neither by the EU nor by the individual Member States.<sup>11</sup> In order to prepare Kosovo the signing of the SAA, the Commission recommended reforms in the rule of law, public administration, protection of minorities and trade sectors.<sup>12</sup>

Following the joint report of the EC and the High Representative for Foreign Affairs and Security on Kosovo's progress <sup>13</sup> and the EC Recommendation to allow the opening of

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<sup>8</sup> 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, at 2 [hereinafter referred to as “Kosovo Feasibility Study”]

<sup>9</sup> Id.

<sup>10</sup> Kosovo Feasibility Study, at 3

<sup>11</sup> Id.; The Kosovo SAA contains such a reservation in art. 2

<sup>12</sup> Kosovo Feasibility Study, at 12-13

<sup>13</sup> Joint Report of the EC and the High Representative of the European Union for Foreign Affairs and Security 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, Brussels, 22.04.2013, JOIN(2013) 8 final, available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/ks\\_spring\\_report\\_2013\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/ks_spring_report_2013_en.pdf) (accessed 10.03.2016)

negotiations on a SAA with Kosovo\*,<sup>14</sup> the Council adopted the decision authorising the Commission to open negotiations with Kosovo in June 2013.<sup>15</sup> The draft text of the agreement was initialled in July 2014 and in April 2015 the EC submitted a proposal for a Council decision on the conclusion of the SAA.<sup>16</sup> The Council adopted the decision on the conclusion of the SAA in November 2015.<sup>17</sup>

Kosovo is the last Western Balkans country to have concluded a SAA with the EU; the document was signed on 27 October 2015 in Brussels by the Federica Mogherini, High Representative for Foreign Affairs and Security Policy and Johannes Hahn, Commissioner for European Neighbourhood Policy and Enlargement Negotiations, on the side of the EU and by Prime Minister Isa Mustafa and Minister of European Integration and Chief Negotiator Bekim Çollaku for Kosovo<sup>18</sup>. The Agreement was approved by the Kosovo Assembly on 2 November 2015<sup>19</sup> and by the European Parliament on 21 January 2016.<sup>20</sup> The signing of the Kosovo SAA signals to the government in Pristina that the EU is ready to “take concrete steps to realise Kosovo’s European perspective and rapprochement with the EU”. The Kosovo SAA is part of the efforts to establish and consolidate a stable European order based on cooperation<sup>21</sup> and it sets out both national, as well as regional objectives. The specific aims of the Kosovo SAA are the following:

- to support the efforts of Kosovo to strengthen democracy and the rule of law;
- to contribute to political, economic and institutional stability in Kosovo and the region;
- to provide an appropriate framework for political dialogue;
- to support the efforts of Kosovo to develop economic and international cooperation;
- to support the efforts of Kosovo to complete the transition into a functional market economy;

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<sup>14</sup>EC Recommendation for a Council Decision authorising the opening of negotiations on a Stabilisation and Association Agreement between the European Union and Kosovo\*, Brussels, 22.4.2013 COM(2013) 200 final available at:

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/ks\\_recommendation\\_2013\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/ks_recommendation_2013_en.pdf) (accessed 10.03.2016)

<sup>15</sup>European Commission Proposal for a Council Decision on the Conclusion, on behalf of the European Union, of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, on the one part, and of Kosovo\*, on the other part, Brussels, 30.04.2015, COM(2015) 181 final, 2015/0094 (NLE), at 1

<sup>16</sup>Available at: [http://eur-lex.europa.eu/resource.html?uri=cellar:29aa6ffa-ef38-11e4-a3bf-01aa75ed71a1.0001.03/DOC\\_3&format=HTML&lang=EN&parentUrn=CELEX:52015PC0182](http://eur-lex.europa.eu/resource.html?uri=cellar:29aa6ffa-ef38-11e4-a3bf-01aa75ed71a1.0001.03/DOC_3&format=HTML&lang=EN&parentUrn=CELEX:52015PC0182) (accessed 10.03.2016)

<sup>17</sup> The final text of the documents is not available: <http://data.consilium.europa.eu/doc/document/ST-10725-2015-REV-2-COR-1/en/pdf> (accessed 10.03.2016)

<sup>18</sup> Council of the European Union press release, 27.10.2015, available at: [http://www.consilium.europa.eu/press-releases-pdf/2015/10/40802204201\\_en\\_635821655400000000.pdf](http://www.consilium.europa.eu/press-releases-pdf/2015/10/40802204201_en_635821655400000000.pdf) (accessed 21.03.2016)

<sup>19</sup>Law No. 05/L -069 on Ratification of the Stabilisation and Association Agreement between the Republic of Kosovo, on the one part, and the European Union and the European Atomic Energy Community, on the other part

<sup>20</sup>European Parliament legislative resolution of 21 January 2016 on the draft Council decision on the conclusion, on behalf of the Union, of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part, P8\_TA-PROV(2016)0017

<sup>21</sup>Stabilisation and Association agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo\*, of the other part, preamble [hereinafter referred to as “Kosovo SAA”]

- to promote harmonious economic relations and gradually develop a free trade area between the EU and Kosovo;
- to foster regional cooperation.

For a third country as Kosovo, it is important to also outline the difference between Association Agreements (AA) and SAAs and understand the implications of each of them. Both instruments are concluded with non-EU countries; however, while the SAAs are part of the SAP, the AAs are signed as part of the European Neighbourhood Policy (ENP), which aims to develop “a special relationship between the EU and each of its partner countries, contributing to an area of security, prosperity and good neighbourliness”.<sup>22</sup> Moreover, the AAs are much more limited in scope and perspective, leading only to the liberalisation of trade,<sup>23</sup> while SAAs have more far reaching political implications, including in the area of justice and home affairs (JHA) and political cooperation. Therefore, the SAAs confirm the EU membership perspective of a third country, which the AAs do not. To date, the EU concluded AAs with countries such as Moldova, Algeria, Georgia and Israel.<sup>24</sup>

In the following chapters, we shall analyse the Kosovo SAA against the previous six SAAs. The latter were signed in over a decade, therefore they reveal important information concerning the development of the contractual basis between the EU and enlargement countries and the manner in which the EU enforced their implementation. SAAs take a varying length of time to negotiate. Below is a table illustrating the timelines of the six previous SAAs:

Year	Macedonia	Croatia	Albania	Montenegro	Bosnia and Herzegovina	Serbia
2000	SAA negotiations opened	SAA negotiations opened				
2001	SAA signed	SAA signed				
2002						
2003			SAA negotiations opened			
2004	SAA enters into force					
2005		SAA enters into force		SAA negotiations opened	SAA negotiations opened	SAA negotiations opened
2006			SAA signed			

<sup>22</sup>Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Neighbourhood at the Crossroads: Implementation of the European Neighbourhood Policy in 2013, Brussels, 27.3.2014, JOIN(2014) 12 final, at 2

<sup>23</sup> <http://eeas.europa.eu/association/> (accessed 5 February 2016)

<sup>24</sup>Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Neighbourhood at the Crossroads: Implementation of the European Neighbourhood Policy in 2013, Brussels, 27.3.2014, JOIN(2014) 12 final, at 10-11

2007				SAA signed		
2008					SAA signed	SAA signed
2009			SAA enters into force			
2010				SAA enters into force		
2011						
2012						
2013		Croatia joins the EU				SAA enters into force
2014						
2015					SAA enters into force	

Negotiations have ranged from one to three years and although structured, there is no specific deadline in which to complete this process. The varying length of time between the signing of the previous SAAs and their entering into force was the result of the ratification process which required that each EU member state to approve the respective SAA. Some countries ratified them almost immediately, but this process is not always timely, since the instrument has important trade and economic implications. However, this did not represent an issue of concern for Kosovo. Unlike all the other previous SAAs which were concluded between the candidate country and all the other EU Member States, in the case of Kosovo it was the EU, as a separate entity and in its international legal capacity, which entered into a direct contractual agreement with Kosovo. As a result, following the ratification of the agreement by the Assembly of Kosovo and the European Parliament in November 2015 and January 2016 respectively, the Kosovo SAA entered into force on the 1<sup>st</sup> of April 2016,<sup>25</sup> only 6 months after its signing.

This legal solution demonstrates “creative thinking” on the part of EU and Kosovo officials. It circumvented the need for ratification by individual member states, which would have stalled progress for an indefinite amount of time, given the non-recognition by five EU Member States. In this manner, the EU managed to strike a balance between, on the one hand, its commitment to further the EU perspectives of Kosovo; and, on the other hand respecting the position of Member States on the issue of the independence and not demanding that they ratify an agreement with Kosovo and implicitly accept its statehood. It is important, nevertheless, to note that this manner of conclusion of a SAA was chosen only in light of the special situation of Kosovo and Member States such as the UK emphasised that this will not set a precedent for future EU agreements.<sup>26</sup> Arguably the agreement signed with Kosovo could be seen as a “lesser SAA” in some sense, as it lacks the ratification, and thus the legitimacy, from Member State directly. Even so, the Kosovo SAA received the unanimous approval of the European Council, which contains representatives from all Member States, and underwent the ratification process by the European Parliament.

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<sup>25</sup> [http://eeas.europa.eu/delegations/kosovo/press\\_corner/all\\_news/news/2016/20160401\\_en.htm](http://eeas.europa.eu/delegations/kosovo/press_corner/all_news/news/2016/20160401_en.htm) (accessed 01.04.2016)

<sup>26</sup> <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmeuleg/342-i/34230.htm> (accessed 8.02.2016)

These mechanisms are sufficient to ensure that this document had an equal legal force and legitimacy for as all other SAAs. Additionally, it must be noted that the SAA is an instrument used in the pre-accession phase to structure the dialogue between the EU and the aspiring country. The legitimacy of the accession process and the interests of Member States are still fully protected; the provisions requiring that the accession treaty be ratified by every Member State remain very much in force and have not in any way been altered by the procedure by which the SAA was concluded.

The signing of the SAA accomplishes a number of goals for both the EU and the Republic of Kosovo. Firstly it liberalises trade with EU Member States with a single process, by conforming to one set of rules as opposed to 28 individual conditions; although Kosovo already enjoyed an autonomous preferential trade zone with the EU, an SAA will enhance this. Secondly it improves relations with the EU first by ensuring the political and economic alignment of Kosovo to EU values and second by implementing a preferable institutional framework in which regional cooperation is enabled and strengthened. Thirdly, it marks the establishment of a first contractual basis between the EU and Kosovo which is ultimately a symbolic action of commitment from both parties. There had been several agreements between the EU and the Republic of Kosovo guaranteeing certain support and the SAA seeks, to a certain extent, to incorporate all within a single overarching framework outlining all support and interaction between Kosovo and it the EU, its neighbours and other third parties.

### III. PREVIOUS SAAs AND THEIR CONTENT

The Kosovo SAA follows the same structure as the other six previous Balkan SAAs, in order to ensure a uniform approach to the SAP. All SAAs thus far addressed the following areas:

- Political dialogue
- Regional cooperation
- Free movement of goods
- Establishment, supply of services and capital (also titled “Movement of workers, establishment, supply of services and (movement of) capital” in earlier SAAs)
- Approximation of laws, law enforcement and competition rules
- Freedom, security and justice (also titled “Justice and home affairs” or “Justice, freedom and security” in earlier SAAs)
- Cooperation policies
- Financial cooperation

This shows that SAAs are expansive agreements covering very specific elements of economic and political cooperation. Kosovo’s SAA is unique for several reasons and the combination of the newness of the state, the remaining EU non-recognisers, the reduced capacity in some institutions and situation of the municipalities in the North lead to altered political considerations as a result. The rule of law section which forms the object of this paper occupies only a mere fraction of the total agreement, both in the case of Kosovo and also in the case of the other Balkan countries. The table below outlines the specific benchmarks provided for in the previous SAAs. The provisions marked in yellow indicate the article titles; below the various elements of those articles are outlined.

SAA Article	Macedonia	Croatia	Albania	Bosnia and Herzegovina	Montenegro	Serbia
<b>Reinforcement of institutions and rule of law</b>	x	x	x	x	x	x
Independence and effectiveness/efficiency of judiciary	x	x	x	x	x	x
Improving the functioning of police and other law enforcement bodies			x	x	x	x
Adequate training	x	x	x	x	x	x
Fighting corruption and organised crime			x	x	x	x
<b>Protection of personal data</b>			x	x	x	x
Harmonise legislation with community law			x	x	x	x
Establish independent supervisory bodies with resources to monitor and enforce legislation			x	x	x	x
<b>Visa, border management, asylum and migration</b>	x	x	x	x	x	x
Set up a framework for co-operation. Technical and administrative support needed for:	x	x	x	x	x	x
o Exchange of information on legislation and practices	x	x	x	x	x	x
o Drafting legislation	x	x	x	x	x	x
o Enhancing efficiency of institutions	x	x	x	x	x	x
o Training	x	x	x	x	x	x
o Security and detection of fake travel documents	x	x	x	x	x	x
o Border management			x	x	x	x
Co-operation should be based on Geneva convention relating to the status of refugees and fair treatment of nationals from other countries who reside legally on their territories.	x	x	x	x	x	x
<b>Prevention and control of illegal immigration; readmission</b>	x	x	x	x	x	x
Control illegal immigration	x	x	x	x	x	x
o Readmit own nationals and third party nationals	x	x	x	x	x	x
Provide appropriate identity documentation	x	x	x	x	x	x
Conclude readmission agreements with other SAP countries	x	x	x	x	x	x
Other joint efforts to stem trafficking	x	x	x	x	x	x
<b>Money laundering</b>	x	x	x	x	x	x
Cooperation to prevent financial system being used for money laundering.	x	x	x	x	x	x
May include administrative and technical assistance to develop implementation.	x	x	x	x	x	x
<b>Cooperation on illicit drugs</b>	x	x	x	x	x	x

Balanced and integrated response to drug issues.	x	x	x	x	x	x
Actions shall be based on the EU drug control strategy	x	x	x	x	x	x
Technical and administrative assistance	x	x				
<b>Counter Terrorism</b>			x	x	x	x
Use implementation of UNSCR 1373 2001			x	x	x	x
Exchange info about terrorist groups			x	x	x	x
Exchanging experience of combating terrorism			x	x	x	x
<b>Preventing and combating organised crime such as:</b>	x	x	x	x	x	x
Smuggling and trafficking in human beings;	x	x	x	x	x	x
Illegal economic activities, and in particular counterfeiting of currencies, illegal transactions	x	x	x	x	x	x
Relating to products such as industrial waste, radioactive material and counterfeit			x	x	x	x
Illegal or counterfeit products;			x	x	x	x
Corruption, both in the private and public sector, in particular linked to non-transparent			x	x	x	x
Administrative practices;			x	x	x	x
Fiscal fraud;			x	x	x	x
Identity theft;						x
Illicit trafficking in drugs and psychotropic substances;	x	x	x	x	x	x
Smuggling;		x	x	x	x	x
Illicit arms trafficking;		x	x	x	x	x
Forging documents;			x	x	x	x
Illicit car trafficking;			x	x	x	x
Cybercrime.			x	x	x	x
Terrorism.	x	x				
The technical and administrative assistance in this field may include:	x	x				
o Drafting of legislation in the field of criminal law;	x	x				
o Enhancing the efficiency of crime fighting institutions	x	x				
o Staff training and the development of investigative facilities;	x	x				
o The formulation of measures to prevent crime.	x	x				

The table reveals that after 2006 (when Albania's SAA was signed) the rule of law priorities remained fairly identical. Notable however are the inclusions after this point of articles on counter terrorism, personal data protection and certain forms of organised crime, which marks a slight change in the EU concerns. As it will be detailed later, the Kosovo SAA largely follows the same approach, even 14 years after the signing of the first SAAs in 2001 and 10 years after the introduction of the new priority areas with the 2006 Albania SAA.

Also part of the rule of law considerations, but included in other titles in the SAAs and absent from the above table are the provisions regarding rights. Under the heading of "General Principles" the "respect for democratic principles and human rights as proclaimed in the Universal Declaration of Human Rights" is stated. This article also asserts the "respect for the principles of international law [...] and rule of law as well as the principles of the market economy"<sup>27</sup>. This is present in all previous SAA. Another article related directly to rights has been included since 2008. Article 5 under the "General Principles" provides that: "International and regional peace and stability, the development of good neighbourly relations, human rights and the respect and protection of minorities are central to the Stabilisation and Association process."<sup>28</sup> Whilst there are other articles relating to various rights (such as economic) these two articles not only establish the Universal Declaration of Human Rights as a core provision of an SAA and governance but also stress the importance of "neighbourly relations" and the protection of minorities; two aspects that are particularly important to Kosovo's impending SAA with regard to the Northern majority-Serb municipalities.

## IV. RULE OF LAW PROVISIONS IN KOSOVO SAA

### a. Reinforcement of institutions and the rule of law

This article establishes from the outset that the consolidation of the rule of law and the reinforcement of institutions at all levels are the basis for cooperation on matters of freedom, security and justice. The express reference to consolidation of the rule of law is shared by all SAAs concluded with Western Balkans countries; this attaches tremendous importance to the rule of law principle in the development of the freedom, security and justice sector, which in turn is one of the key priorities of the EU<sup>29</sup> and an area for which the Strategic Agenda for the Union in Times of Change (2014 - 2020) sets concrete benchmarks.

The provisions on the judiciary suffered interesting changes over time, with the EU continuously refining the requirements that the countries had to fulfil in this respect. To this end, the first two SAAs (FYROM and Croatia) only referred to the independence and effectiveness of the judiciary and the training of the legal profession. Starting with the Albania SAA, the language changed and became more assertive and precise, requesting that the aim of cooperation be the strengthening of the judiciary and the improvement of its efficiency. The Kosovo SAA is the most advanced in this respect, adding as priority the strengthening of the impartiality and accountability of the judiciary.

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<sup>27</sup> Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, art. 2 [hereinafter referred to as "Albania SAA"]

<sup>28</sup> Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, at. 9

<sup>29</sup> Conclusions of the European Council of 27 June 2014

<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2079%202014%20INIT#page=2>

The SAAs signed with Albania, Bosnia and Herzegovina, Montenegro and Serbia also provide for the enhancement of police and other law enforcement bodies and providing for adequate training and fighting corruption and organised crime. The Kosovo SAA contains provisions to this end, but in a more detailed manner. First, it makes reference not only to law enforcement, but also to judicial structures. Second, it adds that structures need to be prepared for cooperation in civil, commercial and criminal matters. Finally, it is mentioned that the aim of these measures is to enable said structures to effectively prevent, investigate, prosecute and adjudicate organised crime, corruption and, as a novelty for the Kosovo SAA, also terrorism.

### - Implications for the government of Kosovo

The provisions of the Kosovo SAA are in line with the elements outlined by the EC in its 2015 Kosovo Report, which also focuses on the independence, impartiality, effectiveness and impartiality of the judiciary. In the latter, the Commission expressed concern at the efficiency and accountability in the justice system, pointing out that judicial structures are still prone to political interference and that disputed appointments and unclear mandates undermined the activity of the Kosovo Judicial Council (JKC), Kosovo Prosecution Offices and the Office of the State Prosecutor. For this reason the EC recommended that the pack of justice laws adopted in 2015 be amended to include transitional clauses and that a merit-based performance criteria and evaluation system within the initial term of appointment for judges be adopted. In order to meet the rule of law requirements in the justice system, the EC set the following objectives for Kosovo which are equally valid for the implementation of the obligations undertaken as part of the SAA:

- Implement the justice package, including through the adoption of secondary legislation;
- Ensure the necessary financial and human resources;
- Ensure lawful and timely appointments in critical institutions;
- Further reduce the backlog of cases.<sup>30</sup>

Fulfilling these obligations will likely pose serious challenges to the Kosovo government and will not be possible without genuine political commitment at all levels. The past three progress reports of the EC outlined endemic problems related to the independence, accountability, impartiality and efficiency of the Kosovo judiciary.<sup>31</sup> Ever since 2013 the Commission voiced concern at the political interference, the lack of efficient implementation of legislation and the need for the harmonisation of primary and secondary legislation.<sup>32</sup> In spite of the same problems being emphasised in each annual report of the EC, improvements were slow at best; consequently, the most recent EC report concluded that Kosovo was only in an early stage of developing a functional justice system.

The SAP Dialogue focused on more structural recommendations, meant to ensure coordination and cooperation at the central level. First and foremost, emphasis was added on the need to strengthen the capacity of the Kosovo Assembly, with a focus on the independent bodies over which the Assembly exercises oversight, the legal and procedural framework for the

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<sup>30</sup>Kosovo\* 2015 Report, Brussels, 10.11.2015, SWD(2015) 215 final, at 12-14 [hereinafter referred to as "Kosovo 2015 Report"]

<sup>31</sup>Kosovo\* 2014 Progress Report, Brussels, 8.10.2014 SWD(2014) 306 final, at 12-14 [hereinafter referred to as "Kosovo 2014 Report"]

<sup>32</sup>Kosovo\* 2013 Progress Report, Brussels, 16.10.2013, SWD(2013) 416 final, at 12 [hereinafter referred to as "Kosovo 2013 Report"]

functioning of the Assembly, as well as its administrative capacity. For the justice system, the Dialogue placed considerable importance on the cooperation with EULEX and recommended that the regular meetings of the Joint Rule of Law Coordination Board be resumed in order to improve effectiveness. The Dialogue also made recommendations for the functioning of the Kosovo Judicial Council and Kosovo Prosecutorial Council, for ensuring the security and protection of judges and prosecutors and foster international cooperation in justice and criminal matters.<sup>33</sup> Furthermore, recommendations were formulated for the improvement of the Kosovo Correctional Services and judicial reform, while insisting on the proper and rigorous implementation of the laws.<sup>34</sup>

The experience of the other countries in the Western Balkans shows that ensuring a functional justice system can be a lengthy process. The most recent EC country report concluded that 15 after the signing of the SAA, FYROM only achieved some level of preparedness in this area;<sup>35</sup> 9 years after the signing of the SAA Albania is still in an early stage of preparedness;<sup>36</sup> Montenegro is the only country which is moderately advanced in establishing a functional justice system 8 years after the signing of the SAA;<sup>37</sup> while Bosnia and Herzegovina and Serbia only reached some level of preparation 7 years after their respective SAAs were signed.<sup>38</sup> Even though all these countries are considerably more advanced on their EU paths than Kosovo, the latest EC reports showed that problems concerning the independence, accountability, impartiality of the judiciary are still persistent and exacerbated by political interference.<sup>39</sup> This is to show that fulfilling this obligation will likely represent a considerable challenge to Kosovo, as it has in the case of the other enlargement countries and progress is likely to be slow. Moreover, the government in Pristina needs to pay particular care to this area, as a lack of commitment in enacting the necessary reforms may even lead to a backsliding in this area, as it was the case with FYROM in the latest reporting period.<sup>40</sup>

## b. Protection of personal data

The SAAs signed with FYROM and Croatia did not contain clauses on the protection of personal data; they were only introduced starting with the Albania SAA. While maintaining the same objectives as previous SAAs, the Kosovo agreement frames the obligations of the parties differently. The previous SAAs started by imposing an obligation on the respective enlargement countries to harmonise their legislation with the applicable international frameworks and at the end provided that the parties shall cooperate to achieve this goal. By contrast, the Kosovo SAA

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<sup>33</sup>EU – Kosovo Stabilisation Association Process Dialogue (SAPD), Sectoral Committee on Justice, Freedom and Security, Conclusions, Brussels, 27 – 29 January 2015

<sup>34</sup>5th Plenary Meeting of the Stabilisation and Association Process Dialogue, Meeting Conclusions, Wednesday, 8 July 2015, Pristina, Kosovo, at 4

<sup>35</sup>European Commission, The Former Yugoslav Republic of Macedonia 2015 Report, Brussels, 10.11.2015, SWD(2015) 212 final, at 12-20 [hereinafter referred to as “FYROM 2015 Report”]

<sup>36</sup>European Commission, Albania 2015 Report, Brussels, 10.11.2015, SWD(2015) 213 final, at 12 [hereinafter referred to as “Albania 2015 Report”]

<sup>37</sup>European Commission, Montenegro 2015 Report, Brussels, 10.11.2015, SWD(2015) 210 final, at 12 [hereinafter referred to as “Montenegro 2015 Report”]

<sup>38</sup>European Commission, Bosnia and Herzegovina 2015 report, Brussels, 10.11.2015 SWD(2015) 214 final, at 12 [hereinafter referred to as “BiH 2015 Report”]; European Commission, Serbia 2015 Report, Brussels, 10.11.2015, SWD(2015) 211 final, at 4 [hereinafter referred to as “Serbia 2015 Report”]

<sup>39</sup>Albania 2015 Report, at 57; BiH 2015 Report, at 12; FYROM 2015 Report, at 12-15; Montenegro 2015 Report, at 12-14; Serbia 2015 Report, at 11-12

<sup>40</sup>FYROM 2015 Report, at 5

starts by referring to the obligation to cooperate; additionally, it no longer contains an obligation incumbent upon the authorities in Pristina to harmonise their national legislation and instead only prescribes that the purpose of this cooperation is to achieve a level of protection “corresponding to that of the EU acquis”. The Kosovo SAA also eliminated the reference to “other European and international legislation”.

This marks a shift in the approach to personal data; while previous SAAs placed the primary responsibility on enlargement countries, which had to harmonise their national legislation to reflect EU and international standards, the Kosovo SAA places the burden equally on the shoulders of both Brussels and Pristina, which are now equally responsible for ensuring an adequate level of protection for the Kosovo citizens. In our opinion, phrasing the obligation of the parties in these terms creates a much weaker and vaguer regime for the protection of personal data, since no account is given as to the manner in which the appropriate level of protection of personal data shall be achieved – be it by harmonising national legislation or other unspecified manners. While this approach may prove more opportune from a political point of view, offering the necessary flexibility to shape future cooperation according to the existing needs of both parties, it also entails a certain degree of uncertainty as to the manner in which the protection will be guaranteed and the responsibilities of the parties. Given that the EC considers the protection of personal data to be a fundamental right of individuals by analysing it as part of the “Human rights and the protection of minorities” chapter of the country reports, we consider that prioritising legal certainty over political opportunity would have been more appropriate in this area, in order to protect the owners of personal data from any risks or detrimental consequences that may affect their human rights.

### - Implications for the government of Kosovo

In view of the vagueness of these provisions and their dissimilarity to previous SAA obligations, it will prove challenging to anticipate the particular implications and possible challenges that the government of Kosovo may face. However, certain indications can be inferred from the EC country reports and the experience of the other Western Balkan countries. The latest EC report noted that the development of protection of personal data in Kosovo was in an early stage. The Commission recommended that Kosovo strengthen the capabilities of the National Agency for the Protection of Personal Data and establish and regularise the institutional and legal framework.<sup>41</sup> Although the Agency was established three years ago,<sup>42</sup> its development was slow and the recommendations in each annual EC report showed that more sustained efforts were necessary to achieve its full potential. In fact, it was the establishment of such supervisory bodies that both the Kosovo SAA<sup>43</sup> as well as the other EC country reports of 2015<sup>44</sup> placed at the forefront of the guarantee of protection of personal data. For these considerations, addressing the shortcomings in the functioning of the Agency for the Protection of Personal Data needs to be a priority for the government of Kosovo.

The SAP Dialogue offered more guidance in this respect. While it also insisted on the improvement of the National Agency for the Protection of Personal Data, it also recommended that the Law on Data Protection be amended, that cooperation at the institutional level be

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<sup>41</sup> Kosovo 2015 Report, at 21

<sup>42</sup> Kosovo 2013 Report, at 51

<sup>43</sup> Kosovo SAA, art 84

<sup>44</sup> Albania 2015 Report, at 57; BiH 2015 Report, at 21; FYROM 2015 Report, at 57; Serbia 2015 Report, at 53

improved, with the aim of ensuring full compliance with the legislation, that sanctions mechanisms be set up and that a manual on the implementation of the Law on Data Protection be created.<sup>45</sup>

The experience of the other enlargement countries showed that the creation of an appropriate institutional framework is a laborious endeavour, which requires often adjustments. For example, even Albania, which signed the SAA in 2006, has still to ensure the appropriate strength of the Commissioner for Right to Information and Data Protection and to guarantee an appropriate level of independence for it.<sup>46</sup> The Commission also pays consideration to the coherence of the entire legal system, which is essential for ensuring an appropriate level of protection; therefore, it noted with concern the backsliding registered in Bosnia and Herzegovina, whereby the general regime of the protection of personal data was being altered by contradictory provisions in special laws.<sup>47</sup>

As opposed to the other enlargement countries, Kosovo is not explicitly requested to harmonise its legislation to EU standards. This difference was already visible in the 2015 EC reports; the EC assessed the level of harmonisation for all Western Balkan countries,<sup>48</sup> except for Kosovo, where reference is only made to the institutional setup. However, aside from the institutional structures, the EU standards also attached particular importance to detailed provisions concerning the processing, notification of processing, remedies and liability and transfer of data<sup>49</sup> and it is the synergy of all these layers that creates the appropriate protection of personal data of EU citizens; the same consistency is necessary in Kosovo as well. In light of this difference, it would be advisable that future EC reports set clearer guidelines for Kosovo to assist it in setting up a comprehensive framework, capable of ensuring the appropriate level of protection.

It would appear that the obligation to ensure that its legislation was aligned to the EU *acquis*, notably the Data Protection Directive (Directive 95/46/EC) and the Framework Decision on the processing of personal data processed in the framework of police and judicial cooperation in criminal matters (Framework Decision 2008/977/JHA) in force at the time was nevertheless incumbent upon the government of Kosovo, not on the basis of the SAA, but as part of the Visa Liberalisation Roadmap.<sup>50</sup> One reason which could explain why the Kosovo SAA does not contain an obligation to harmonise its legislation with the EU *acquis* on data protection would be that, by the time of the signing of the SAA, Kosovo had already fulfilled this obligation, making it redundant to be included in the SAA. The third report concerning visa liberalisation of December 2015 concluded that Kosovo had already fulfilled all its obligations in the area of data protection,

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<sup>45</sup>EU – Kosovo Stabilisation Association Process Dialogue (SAPD), Sectoral Committee on Justice, Freedom and Security, Conclusions, Brussels, 27 – 29 January 2015, at 2

<sup>46</sup>Albania 2015 Report, at 57

<sup>47</sup>BiH 2015 Report, at 21

<sup>48</sup>Serbia 2015 Report, at 54; FYROM 2015 Report, at 57; BiH 2015 Report, at 21

<sup>49</sup>Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

<sup>50</sup>Visa Liberalisation Roadmap, at 13

including the one concerning the harmonisation of legislation.<sup>51</sup> With this report released only a few months after the signing of the SAA it is reasonable to assume that the legislative measures had already been taken prior to the signing of the SAA, making it unnecessary to include an obligation to this end in the Agreement. Nevertheless, the Kosovo government needs to be mindful that the harmonisation is a continuous obligation, as the Commission itself pointed out;<sup>52</sup> therefore, with the adoption of the new EU data protection framework<sup>53</sup> the authorities in Pristina will have to incorporate these future amendments into their national legislation.

### c. Visa, border/boundary management, asylum and migration

The article sets out fairly similar requirements as the ones provided for in previous SAAs. It starts by imposing on the parties an obligation to cooperate and set up a framework for cooperation; starting with the Albania SAA, all subsequent SAAs mention that the cooperation will take into account and make full use of the other existing initiatives in this area, as appropriate. All SAAs then list a number of areas in which the cooperation will take the form of technical and administrative assistance which are common to all SAAs, the only difference being that, following the Albania SAA, this list also started including border management. The article continues by establishing as basis for the cooperation the commitment of the parties to implement in their national legislation the principles enshrined in the 1951 Geneva Convention on Status of Refugees and the Additional Protocol, on the one hand, and on the protection of legal migrants on the other. More recent SAAs only make slight improvements, by referring explicitly to the other rights of refugees and asylum seekers.

Concerning legal migration, the Kosovo SAA also reflects the approach opted for in the area of protection of personal data and establishes a shared responsibility between the EU and Kosovo; to this end, instead of placing the burden for the integration of third country nationals onto the authorities of the enlargement country, the Kosovo SAA provides that the parties shall “explore possibilities” to establish measures that would provide incentives and support to the government of Kosovo to promote the integration of non-EU nationals residing legally on its territory. Not only is the burden for the integration process shared by the EU and Kosovo, but the SAA also reads that the government in Pristina may also receive incentives and support from the EU in this area, which was not the case with any of the previous enlargement countries. Interestingly, this provision reflects art. 79(4) of the Treaty on Functioning of the EU, whereby “The European Parliament and the Council [...] may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories [...]”. Therefore, through the SAA, Kosovo is placed on a privileged position, by being awarded rights which had previously been reserved for EU Member States.

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<sup>51</sup> Report from the Commission to the European Parliament and the Council, Third report on progress by Kosovo\* in fulfilling the requirements of the visa liberalisation roadmap, {SWD(2015) 706 final}, Brussels, 18.12.2015, COM(2015) 906 final, at 9 [hereinafter referred to as “Visa liberalization roadmap third report”]

<sup>52</sup> Visa liberalisation roadmap third report, at 9

<sup>53</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC **and** Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

However, the current wording raises the question whether promoting the integration of third country nationals remains an obligation for the parties or not. Whereas the previous SAAs provided that “the Parties agree [...] to promote an integration policy”, the Kosovo SAA only states that “the Parties agree to explore possibilities to establish measures to provide incentives and support for the actions of Kosovo with a view to promoting the integration”. The new language no longer places the emphasis on promotion of integration, but rather on the support and incentives that may be provided to the government of Kosovo for this purpose. Moreover, the phrase “explore possibly” reflects considerably less commitment of the part of the Parties in this area, since this exploration may or may not materialise into concrete policies.

The inclusion of such a provision in the SAA comes as a surprise, since it represents a departure of the commitment the EU made to increase its efforts in the area of integration of third country nationals. In the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Council and the Committee of the Regions – “An open and secure Europe: making it happen” the EC recognised that integration remained a challenge in Europe, and added that “further efforts are needed in the area of integration”; it further emphasised that the commitment to effective integration of migrants should be strengthened, as such will contribute to “reap the full benefits of migration”.<sup>54</sup> At the same time, the Europe 2020 strategy sets as one of its priorities the increase in the integration of migrants in the work force; the EC gave assurance that it would develop a new agenda for migrants’ integration, “to enable them to take full advantage of their potential”.<sup>55</sup> In this context, the scaling down of the obligations undertaken by the EU and of the expectations from the government of Kosovo compared to previous SAAs appears inconsistent with the priorities set and the commitments made the EC to ensure a better integration of migrants.

### - Implications for the government of Kosovo

In spite of the work still needing to be done, the Commission already noted that Kosovo is “moderately advanced”, due to the political commitment demonstrated by the authorities.<sup>56</sup> As a general recommendation, the EC 2015 Kosovo report provided that the government of Kosovo needed to fully implement the intelligence-led policy approach in matters of border/boundary management, including by making use of the potential of the National Centre for Border Management. In relation to the latter, the Commission also recommended that clearer communication be ensured on intelligence requirements, from central to regional and local level.<sup>57</sup>

The EC report offers very little guidance with respect to the steps that need to be taken by Kosovo in this field and more information can be inferred from the Visa Liberalisation Roadmap. In 2012, the Commission set out clear objectives for Kosovo in the areas of border/boundary management, asylum and migration. The Roadmap insisted on the cooperation of the Kosovo government with EULEX and KFOR to achieve these benchmarks and made recommendations concerning the alignment of Kosovo legislation with the EU *acquis*, the implementation of current

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<sup>54</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Council and the Committee of the Regions – “An open and secure Europe: making it happen”, at 2-4

<sup>55</sup> Communication from the Commission – “EUROPE 2020: A strategy for smart, sustainable and inclusive growth”, Brussels, 03.03.2010, COM(2010) 2020 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF> (accessed 22.02.2016), at 10 & 19

<sup>56</sup> Kosovo 2014 Report, at 49

<sup>57</sup> Kosovo 2015 Report, at 56

agreements, the improvement of border/boundary management, the adoption of appropriate strategies and action plans and the exploration of possibilities of cooperation with the relevant EU agencies. The latest report on the implementation of the Visa Liberalisation Roadmap revealed that Kosovo fulfilled the great majority of its obligations in this area.<sup>58</sup> The only outstanding duty in this area is represented by the ratification of the delineation agreement with Montenegro. Such a benchmark would represent a mere formality in most European countries, but will probably prove difficult to attain in the case of Kosovo. The demarcation agreement is one of the two issues which polarised the Kosovo society and politics in the past year, with the other being the establishment of the Association/Community of Serb Municipalities, intended to grant a certain degree of autonomy to Kosovo municipalities containing a significant Serb population. These two instruments intended to ease regional and ethnic tensions were ill received in Kosovo, with the opposition blocking the work of the Assembly for at least five months by setting off tear gas repeatedly inside the Assembly building and organising frequent protests which rallied the considerable public support.

Concerning the sub-topic of migration management, the latest EC report showed that Kosovo had fulfilled all requirements set by the Commission – it had aligned its legislation with the EU *acquis*, deployed its visa information system (KVIS) to 15 out of the 30 diplomatic or consular missions of Kosovo, limited the issuance of visas at the border crossing points only to truly exceptional circumstances and took steps to interlink the databases on law enforcement and migration. In the area of asylum, Kosovo aligned its legislation to the EU *acquis*, set up the necessary institutional structures to offer international protection and enhanced its cooperation with the UNHCR. To fully comply with the requirements of the EU, the authorities in Pristina are required to monitor the reasons for its low recognition rate for asylum seekers.<sup>59</sup>

The other 2015 EC reports revealed that some of the other enlargement countries shared similar problems as Kosovo. To this end, the Commission recommended that the countries strengthen their efforts to address the great number of manifestly unfounded asylum applications in EU Member States. Second, concerning border controls, the EC requested that the phenomenon of unaccompanied minors leaving the country be curtailed. Third, the countries were requested to strengthen their capacity to deal with mixed migratory flows, paying particular attention to vulnerable groups and minors. In general, the approach of the EC revolved around the idea of strengthening institutional capacity and coordination and cooperation among relevant institutions, further invest in the border management system in order to keep pace with the current challenges.<sup>60</sup>

#### d. Legal migration

Separate provisions on legal migration constitute a novelty of the Kosovo SAA, as in the previous SAAs this issue was only touched upon in the section on visa and migration. Similarly to previous sections, the agreement provides for an increased role on the part of the EU in “supporting Kosovo in the approximation of its legislation with the EU *acquis* on legal migration”. What is noteworthy is that this is the only occasion in the SAP when a SAA recognised rights for one of the parties, in this case special rights of Kosovo citizens under the EU *acquis* in certain key areas. This

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<sup>58</sup> Visa liberalisation roadmap third report, at 4

<sup>59</sup> Visa liberalisation roadmap third report, at 4-5

<sup>60</sup> Albania 2015 Report, at 61-62; BiH 2015 Report, at 59; FYROM 2015 Report, at 61; Montenegro 2015 Report, at 62; Serbia 2015 Report, at 61

does not create legal consequences, being just a restatement of pre-existing rights. However it is a rather peculiar provision; the SAA is intended to serve as a contract between the two parties and, as such, should only provide for their rights and obligations and not contain declaratory statements. Although it may appear to be simply a linguistic aspect, this provision can be regarded as an important achievement of the Kosovo negotiation team. This constitutes a very powerful political statement which, combined with the other situations of departure from the previous SAAs, show that the two sides were on equal footing in the negotiation process and the Kosovo side ensured that it will not carry the burden of the pre-accession process alone, but rather it will share the responsibility with the EU.

#### e. Prevention and control of illegal migration; readmission

For the first time, the Kosovo SAA separated the provision on illegal migration and readmission into two separate articles, contributing to the clarity of the SAA. Concerning illegal migration, the provisions of the SAAs evolved from stating that the parties “agree to cooperate” (FYROM and Croatia) to providing that they “shall cooperate” (Albania, BiH, Montenegro and Serbia) to prevent and control illegal immigration, to eliminating any reference to an obligation to cooperate from the Kosovo SAA; in the Kosovo SAA, cooperation is mentioned only as a means to prevent and control illegal migration (“With a view to cooperating in order to prevent and control illegal migration[...]), it no longer represents a distinct obligation.

We also noticed a slight difference in the manner in which the role of Stabilisation and Association Council (SAC) is regulated, but which will have a significant impact on the SAP. Previous SAAs provided that the SAC would examine “[what] *other* joint efforts can be made” (emphasis added) by the parties to this end, signifying that the SAC would have a complementary role and the SAA would be the main instruments clarifying the rights and obligations of the parties. By contrast, the Kosovo SAA reads only that the SAC would examine “joint efforts that can be made by the Parties [...]”, thus reducing the role of the SAA in regulating illegal immigration and placing the SAC at the forefront of the efforts in this area. This transformation has the effect of diminishing the commitment of the parties in addressing illegal immigration, with the elimination of the explicit legal obligations and duty to collaborate to the best of their abilities. All their contributions will be subjectively evaluated by the SAC, which will determine what they “can” make; this represents a tremendously vague criterion and no guidance is provided to the SAC in determining this ability. Consequently, the this agreement is considerably weaker than previous SAAs in the way it regulates illegal migration and leaves room for a diminishing of the efforts of both the EU and Kosovo in this area.

The regulation of the cooperation on readmission reflects the same change in nuances that was already noted in other sections; the FYROM and Croatia SAAs provided that the parties “agree” to readmit their respective nationals, while the subsequent SAAs, including the one concluded with Kosovo, established that the parties “shall” readmit their nationals. This marks a firmer political commitment on the part of both the EU and Kosovo.

Concerning the readmission of third country nationals, the first two SAAs (with FYROM and Croatia) established that this procedure shall form the object of a readmission agreement between the respective enlargement country and the EU “*upon request*” (emphasis added) and that, pending such agreement, the FYROM and Croatia respectively agreed to conclude bilateral readmission agreements, also “upon request”. The case of Albania was different from that of other enlargement countries; Albania already had a readmission agreement with the EU at the time of the signing of the SAA, therefore the later imposed an obligation on the parties to readmit third country nationals, by virtue of this agreement. The Bosnia and Herzegovina and Montenegro

SAA also provide that the parties “agree” to conclude readmission agreements, however this is no longer done “upon request”. Serbia is another country that already had a readmission agreement at the time of the conclusion of the SAA, therefore it is only obliged to implement this agreement. Finally, in the case of Kosovo, there is no obligation for the Parties to conclude a readmission agreement, the SAA constitutes the legal basis for the readmission of third country nationals, while the specific procedures for readmission shall form the object of a separate agreement.

The obligation to conclude readmission agreements with SAP countries is also severely diluted in the case of Kosovo; while all four previous countries had “agreed” to conclude such agreements, Kosovo is only bound to “explore possibilities” to conclude such agreements “should objective circumstances so permit”. Although the reference to “objective circumstances” is meant to protect Kosovo from the barriers represented by the non-recognition by some of the SAP countries, we consider that the framing of the obligation to merely “explore possibilities” makes it considerably weaker than necessary and does not demand a real effort on the part of Kosovo in this respect.

The final provision also reflects the general spirit of the SAA, whereby the EU is invited to take an active role in assisting the respective countries in the conclusion of such agreement: “The EU will explore possibilities to assist the respective countries throughout this process, should objective circumstances so permit”. In spite of the fact that the obligation is also framed as “explore possibilities”, it represents a complete novelty for a SAA and represents a political gain on the part of the Kosovo delegation, which by this ensured a pledge on the part of the EU in assisting its European course.

### - Implications for the government of Kosovo

The Kosovo 2015 report of the EC established that one of the priorities of Kosovo in this area was to mobilise the required political commitment necessary to ensure effective long-term policies to address irregular migration and its underlying factors.<sup>61</sup> The Commission notified the government of Kosovo ever since 2014 that it needed to address the dramatic increase of irregular migration to the EU.<sup>62</sup> On the specific issue of readmission, the latest EC report noted that Kosovo set in place a functional readmission process and concluded a number of readmission agreements. However, the other facet of the readmission process which is the long-term integration of returnees still poses challenges. To this end, the Commission recommended that the government in Pristina make full use of the budget of the reintegration fund and of the resources available to support reintegration, and increase the capacity of municipalities to conduct reintegration at the local level.<sup>63</sup>

Detailed obligations concerning readmission were also included in the Visa Liberalisation Roadmap. In general, they referred to the implementation of domestic and international legislation, the strengthening of relevant institutions, sharing of detailed statistics with the EC and EULEX and ensuring rapid and effective procedures for the identification and return of individuals.<sup>64</sup> The latest EC report concluded that Kosovo fulfilled all its obligations in this respect and that the readmission of Kosovo citizens functions well.<sup>65</sup>

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<sup>61</sup> Kosovo 2015 Report, at 56

<sup>62</sup> Kosovo 2014 Report, at 49

<sup>63</sup> Kosovo 2015 Report, at 58

<sup>64</sup> Visa Liberalisation Roadmap, at 6

<sup>65</sup> Visa liberalisation roadmap third report, at 2

Irregular migration remains an issue of concern for the other Western Balkans countries as well. The EC made repeated recommendations for the countries in the region to address this issue, by prioritising investigations of facilitators of irregular migration, conducting regular information campaigns for travellers and addressing socioeconomic factors. Similarly to the SAA, the country reports outline that these efforts should include cooperation and information exchange with EU Member States and among relevant national institutions and also stress that the efforts need to have the appropriate resources allocated and to be systematic in order to render the desired results. The EC also highlighted the evolving nature of the challenges stemming from irregular migration and cross-border crime, thus recommending investments in border management.<sup>66</sup>

#### f. Money laundering and terrorism financing

This section was not subject to substantial changes over time and the Kosovo SAA is quite similar in this respect to the ones concluded with Albania, Bosnia and Herzegovina, Montenegro and Serbia. Only the first two SAAs (FYROM and Croatia) were slightly different, in the sense that they provide that the parties “agree on the necessity of making every effort and cooperating” (which in subsequent SAAs was formulated in a more forceful manner - “shall cooperate closely”). Similarly to the others, the Kosovo SAA provides for cooperation between the parties “in order to prevent the use of their financial systems for laundering of proceeds from criminal activities [...] as well as for the purpose of financing terrorism” and for technical and administrative assistance to Kosovo.

#### - Implications for the government of Kosovo

In the latest report, the Commission outlined some gaps in the legal framework which remained to be addressed, with respect to the manipulation and declaration of assets by public officials. In line with the SAA, the EC recommended that Kosovo align its legislation and practices to the FATF guidelines.<sup>67</sup> However, as it has been noted ever since 2013, the legal framework was not the most serious concern, but rather its proper implementation.<sup>68</sup> Also for the past two years the EC added that cooperation and interaction between the relevant bodies was vital and had to be enhanced.<sup>69</sup>

The Visa Liberalisation Roadmap also addressed this area, by requesting the adoption and implementation of legislation concerning the prevention, investigation, prosecution and adjudication of these crimes and in general by establishing a sound anti-money laundering system.<sup>70</sup> The latest report on the progress of visa liberalisation noted that Kosovo implemented the 2014 strategy to prevent money laundering and terrorism financing, but only achieved very few convictions for such offences and therefore had to address this issue.<sup>71</sup>

The need for coordination between the relevant bodies was outlined in the case of other Western Balkan countries as well. The EC also stressed the need for the establishment of a solid anti-money laundering prevention system. Attention was also afforded to the strengthening of the institutional capacity of the main institution mandated with the anti-money laundering fight.

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<sup>66</sup> Albania 2015 Report, at 62; BiH 2015 Report, at 59; FYROM 2015 Report, at 61-64; Montenegro 2015 Report; at 62; Serbia 2015 Report, at 61

<sup>67</sup> Kosovo 2015 Report, at 58

<sup>68</sup> Kosovo 2013 Report, at 48

<sup>69</sup> Kosovo 2015 Report, at 58; Kosovo 2013 Report, at 48

<sup>70</sup> Visa Liberalisation Roadmap, at 11

<sup>71</sup> Visa liberalisation roadmap third report, at 7

Moreover, the Commission also underlined the need for long-term solutions, which would deter further criminal activities, through systematic asset confiscation.<sup>72</sup>

### g. Cooperation on illicit drugs

This section in the Kosovo SAA also replicates the provisions in previous agreements and remained largely unchanged over time. The main commitment made by the parties is that they “shall cooperate to ensure a balanced and integrated approach towards drugs”. The Kosovo SAA eliminated the reference that the cooperation will be framed within the “respective powers and competencies” of the parties; in our opinion, change does not impact the obligations of the parties.

In the view of the first three SAAs (FYROM, Croatia and Albania), drug policies should target the supply, trafficking and demand, as well as ensure an effective control of precursors, while all subsequent SAAs also add the need to reinforce the structures for combating illicit drugs and stress that these policies should address the health and social consequences of drug abuse. The FYROM and Croatia SAAs also contained provisions concerning technical and administrative assistance, which were eliminated from subsequent SAAs.

### - Implications for the government of Kosovo

The EC reports on Kosovo repeatedly outlined that the country was a transit and storage area, primarily for heroin.<sup>73</sup> Kosovo started to address this issue only in the past few years, therefore the results it achieved thus far have been very limited, compared to those of its neighbours. The authorities developed programs to address and prevent addiction, however, more efforts are needed to raise awareness of the consequences of drug abuse. Concerning the fight against drug trafficking, the Commission noted that drug seizure remains low and that Kosovo needs to further implement an intelligence-led policing in this field.<sup>74</sup>

The EC offers little guidance on the measures that the enlargement countries need to implement in this area. However, Kosovo can take advantage of the experience of the other Western Balkan countries and consider some of the measures that have proven effective in their case. Albania and Montenegro made sustained efforts to ensure the seizure of drugs; in the case of the latter, the methods that rendered best results were risk analysis and numerous joint controls by police and customs authorities, while the former used aerial surveillance to identify and destroy drug plantations.<sup>75</sup> However, the storage and destruction of seized drugs remain serious concerns in almost all enlargement countries. The institutional and legal frameworks are largely in place in all countries, but their implementation still poses considerable challenges. In Bosnia and Herzegovina, the lack of political will causes the Commission for Suppression and Abuse of Narcotic Drugs to not yet be functional, while in Serbia the necessary financial resources are still lacking and so is the clear and proper delineation of the responsibilities and powers of the various institutions. Concerning early warning, such a system has not yet been implemented in Serbia, but efforts are being made in FYROM to establish it. The action plan of Montenegro includes trainings on drug prevention and the country developed cooperation with

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<sup>72</sup>Montenegro 2015 Report, at 16; Serbia 2015 Report, at 16; FYROM 2015 Report, at 17-19

<sup>73</sup>Kosovo 2013 Report, at 49; Kosovo 2014 Report, at 50

<sup>74</sup>Kosovo 2015 Report, at 59

civil society organisations to ensure the rehabilitation of drug addicts. Finally, Serbia focused on developing good international and regional cooperation.<sup>76</sup>

#### **h. Preventing and combating organized crime and other illegal activities**

The Kosovo SAA marks a significant shift in regulating the conduct of parties in this. The first difference resides in the manner in which cooperation is provided for; while previous SAAs established that the parties “agree to cooperate” (FYROM and Croatia) or “shall cooperate” (BiH, Montenegro and Serbia) on preventing and fighting criminal activities, according to the Kosovo SAA, the cooperation will focus on reinforcing Kosovo structures which are responsible for conducting these activities. The focus of the cooperation is henceforth shifted from the direct fight against organised crimes to the reinforcement of Kosovo structures which, in turn, will be responsible for leading the battle. This delineates more clearly the obligations of the parties and also indicates that Kosovo is expected to take the lead in this process. Therefore, the involvement of the EU will be reduced and its responsibility will be transferred to aiding the government of Kosovo with its efforts.

Whereas all previous SAAs contained an exemplifying list of serious crimes, which was expanded over time, the Kosovo SAA opted for a clearer and more concise approach, stating only that the cooperation would focus on “forms of serious crime with a cross-border/boundary dimension”. This however raises the question whether serious crimes which are confined to the territory of Kosovo (such as corruption and fiscal fraud, which were explicitly referred to in previous SAAs) would still form the object of cooperation or would be excluded for lacking the “cross-border/boundary dimension”.

The most recent SAAs paid particular attention to the issue of counterfeiting of currency / means of payment. While the Serbia SAA only mentioned the issue briefly, Kosovo and Montenegro SAAs include extensive provisions in this respect, pertaining to the cooperation with the EU, prevention and possible assistance on the part of the EU for exchange, assistance and training in the protection against currency counterfeiting. Even between these two SAAs, an important difference can be noticed in the manner of regulating compliance with international conventions. While Montenegro accepted the obligation to “adhere” to any such conventions, Kosovo only vowed to “abide” by them. This difference is explained by the issue of the statehood of Kosovo which is still not definitely settled at the international level and may bar its ratification of certain international conventions; therefore imposing on it an obligation similar to the one provided for Montenegro would have proven an excessive burden. However, nothing can prevent Kosovo from “abiding” by these conventions, from applying the standards provided for by them, even without being a party to the respective international instruments.

#### **- Implications for the government of Kosovo**

The latest EC report concluded that Kosovo was in an early stage of preparedness in the fight against organised crime. In spite of the progress made at the investigative level, through the improvement of inter-institutional cooperation and information exchange, long-term results are still lacking, with low numbers of final convictions and rare final asset confiscations. The Commission once again drew attention on a phenomenon which characterises all levels of the government of Kosovo – the excessive reliance on strategies and action plans, which do not yet

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<sup>76</sup> Albania 2015 Report, at 63-65; BiH 2015 Report, at 61; FYROM 2015 Report, at 65; Montenegro 2015 Report, at 66; Serbia 2015 Report, at 64

render concrete results.<sup>77</sup> To this end, the EC recommended that the authorities in Kosovo pursue organised crime-related investigations with the aim of securing final convictions, apply systematically tools for financial investigations and asset confiscations, fully develop an intelligence-led policing approach and collect, harmonise, analyse and use relevant criminal statistics.<sup>78</sup> The situation did not change from the previous year, the EC having also made the same observations in 2014.<sup>79</sup> In the previous report, the Commission recommended that the authorities in Kosovo show zero tolerance towards corruption and organised crime and mobilise clear political will to address these issues.<sup>80</sup> One particularly thorny issue for Kosovo is represented by the foreign terrorist fighters. With a legal framework in place criminalising the phenomenon, the authorities in Pristina are expected to now enhance their efforts to identify, prevent and disrupt the flow of foreign terrorist fighters traveling to conflict areas.<sup>81</sup>

The Visa Liberalisation Roadmap also provided for precise steps that needed to be undertaken by the authorities in Pristina to combat organised crime. The majority of these recommendations referred to the adoption and implementation of appropriate legislation, ensuring proactive investigations and prosecutions, the proper implementation and strategies and action plans, strengthening the capacity of law enforcement structures, improve the cooperation and coordination between the various authorities, ensuring the effective enforcement of court decisions and sharing detailed statistics with Member States, the EC and EULEX. <sup>82</sup> Unfortunately, as a result of the deficiencies in the judicial system, the track record of adjudicating organised crime cases remains low; this can however be rectified through a better selection and targeting of high-profile cases and through the formation of multidisciplinary teams, composed of special prosecutors, police officers, customs and tax officials, both for the investigative phase, as well as for the follow-up and monitoring activities.<sup>83</sup>

The latest report on the progress of Kosovo revealed that most of the requirements had been met. Regarding the intelligence-led policing, the approach of the EC remains consistent; after requesting in the country report that Kosovo needs to “**fully** develop” (emphasis added) an intelligence-led approach, in the report on the progress of the visa liberalisation process the Commission noted that Kosovo strengthening this approach and needs to sustain this tendency. However, the authorities in Pristina still have to address three major issues. The first is to ensure the transfer a sufficient number of judges and support staff to the serious crimes departments. Second, Kosovo needs to develop a track record of investigations, final court rulings and confiscations in serious organised crime and corruption cases. Finally, measures need to be taken to ensure the operational independence of the Public Procurement Review Body through strict integrity plans.<sup>84</sup>

On matters of anti-corruption, the SAP Dialogue focused on the strengthening and the coherence of the legal system, as well as the reporting on the Action Plan on Anti-Corruption and the increase of the capacity of the Basic Prosecution Offices. Concerning the fight against drugs, the Sectoral Committee made suggestions which addressed prevention, including by the development of a school curriculum, coordination between various institutions, through the

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<sup>77</sup> Kosovo 2015 Report, at 5

<sup>78</sup> Kosovo 2015 Report, at 18

<sup>79</sup> Kosovo 2014 Report, at 50

<sup>80</sup> Kosovo 2014 Report, at 53

<sup>81</sup> Kosovo 2015 Report, at 60

<sup>82</sup> Visa Liberalisation Roadmap, at 12

<sup>83</sup> Visa liberalisation roadmap third report, at 6

<sup>84</sup> Visa liberalisation roadmap third report, at 7-8

appointment of a national focal point and the establishment of a drug observatory, and the exchange of information. On the fight against economic crimes, the recommendations that emerged during the dialogue concerned legislative improvements and the cooperation with civil society in this process,<sup>85</sup> as well as the application of tools for financial investigations and asset confiscations, the conduct of joint investigations and the upgrading of expertise of the institutions involved.<sup>86</sup>

The Structured Dialogue on the Rule of Law also set as priorities first that Kosovo develop the capacity to investigate and prosecute cases of cross-border organised crime, in particular drug trafficking and trafficking in human beings and second that it enact effective asset recovery mechanisms, for the purpose of disrupting the economic foundations of these crimes.<sup>87</sup> Additionally, the Dialogue revealed the need for the establishment of an effective tracking mechanism that would harmonise the statistical data on serious crimes, with the final aim of providing concrete evidence of the results achieved in fighting organised crime. It was in this high-level forum that the government of Kosovo pledged to address the fight against organised crime and corruption “with absolute priority”. The participants in the Dialogue concluded that “[t]he key for achieving progress in these fields lies in actions and in commitment”; hence, a comprehensive approach is expected on the part of the Kosovo government, one which would ensure the adequate implementation of legislation and strategies and the good functioning of cooperation and tracking mechanisms.<sup>88</sup>

According to the EC, all other countries in the Western Balkans achieved some level of preparedness in this area, therefore their experience could provide guidance to the government in Pristina. In their case, the cooperation between various institutions, especially police and prosecution offices, proved to be paramount in this process; however, all these efforts need to be directed at eventually ensuring the dismantling of the criminal networks. In the case of Bosnia and Herzegovina, the Commission recommended the establishment of multi-agency investigation teams for complex cases. Montenegro established a special police-prosecution unit and focused on specialising the police force to deal with such crimes; the EC proposed that the same specialisation be implemented in the judiciary. Equally important is the strengthening of the police force, through the establishment of a merit-based recruitment and promotion system, reinforcement of the functions and independence of the internal control sector of the police, eliminate political influence in the police work and the fair and transparent implementation of legislative and policy measures. In spite of all the efforts made by the EU and by the countries themselves, the latest EC country reports show that the rate of final convictions in organised crime cases remains very low compared to the estimated scale of the regional and domestic criminal market. One very important manner of ensuring long-lasting results in the fight against organised crime is through the confiscation of criminal assets. Unfortunately, none of the Western Balkan countries demonstrated the capacity to carry out confiscations in a sustained

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<sup>85</sup>EU – Kosovo Stabilisation Association Process Dialogue (SAPD), Sectoral Committee on Justice, Freedom and Security, Conclusions, Brussels, 27 – 29 January 2015, at 5-9

<sup>86</sup>5th Plenary Meeting of the Stabilisation and Association Process Dialogue, Meeting Conclusions, Wednesday, 8 July 2015, Pristina, Kosovo, at 4

<sup>87</sup>Structured Dialogue on the Rule of Law with Kosovo, Brussels, 30 May 2012, Conclusions, at 1

<sup>88</sup>Third meeting of the Structured Dialogue on the Rule of Law - 16 January 2014, Operational conclusions, at 2

manner. Still, several countries created agencies for the management of confiscated assets, a measure which may also prove beneficial for Kosovo.<sup>89</sup>

SOCTA methodology (serious and organised crime threat assessment) may represent a useful tool in portraying a strategic picture of the organised crime situation. Montenegro and Albania already prepared such strategies in 2014 and 2015 respectively, FYROM is in the process of drawing up its own strategy, while in the case of Serbia the Commission recommended that steps be taken in this respect.<sup>90</sup>

### i. Combating terrorism

The first SAA to include distinct obligations concerning the fight against terrorism was the SAA signed by Albania; the FYROM and Croatia SAAs only referred to terrorism in the list of examples of serious crimes that the parties agreed to combat. This section sets a general obligation of cooperation between the parties. In the case of Kosovo, the reference according to which the cooperation shall take place “in compliance with the international conventions” the parties ratified was eliminated, in order to circumvent the difficulties it may encounter in becoming a party to international conventions. However, previous SAAs also provided that the cooperation shall take place in accordance with their “respective laws and regulations”; this reference was also removed in the case of Kosovo, a removal for which we can find no justification.

The Kosovo SAA is less precise than the previous SAAs in framing the cooperation between the parties. All other SAAs provided that it will be carried out in the framework of the applicable international instruments and for specific means by which this was to take place (e.g. exchange information, experience sharing); no such provisions can be found in the Kosovo SAA. Instead, the latter establishes that the cooperation shall be “consistent with the rule of law, human rights and fundamental freedoms, international law”, which only sets out underlying principles, but no specific obligations. Once again, with regards to international conventions and treaties, given the special circumstances of Kosovo, its obligation changed into a duty to “abide” by them.

### - Implications for the government of Kosovo

The latest EC report on Kosovo referred to the increase in the phenomenon of foreign terrorist fighters and radicalisation, noting that the authorities in Pristina stepped up their efforts in this respect, but adding that the effective addressing of this threat needed a dedicated approach by the intelligence and law enforcement community and a coherent judicial policy towards offenders.<sup>91</sup> Ever since 2013 the EC drew attention on the emergence of certain concerns in this respect and recommended the monitoring of the phenomenon;<sup>92</sup> however, it wasn't until 2014 that it recognised the seriousness of this risk and recommended that Kosovo enhance its cooperation with neighbouring countries.<sup>93</sup>

Foreign terrorist fighters and radicalisation appear to be the most serious terrorist threats in the region and they engulfed most of the Western Balkan countries. The fight against these phenomena needs to include prevention mechanisms which involve religious leaders and

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<sup>89</sup> Albania 2015 Report, at 18-19, BiH 2015 Report, at 18; FYROM 2015 Report, at 17; Montenegro 2015 Report, at 16 & 65; Serbia 2015 Report, at 15-16

<sup>90</sup> Albania 2015 Report, at 19; FYROM 2015 Report, at 20; Montenegro 2015 Report, at 18; Serbia 2015 Report, at 17

<sup>91</sup> Kosovo 2015 Report, at 20

<sup>92</sup> Kosovo 2013 Report, at 51

<sup>93</sup> Kosovo 2014 Report, at 53

communities, as well as social and frontline workers, the education system and youth organisations. Bosnia and Herzegovina adopted a strategy modelled from the EU counter-terrorism strategy, which encompasses four principles: prevention, protection, pursuit and response.<sup>94</sup>

## V. LOOKING FORWARD

The signing of the SAA represented a significant step towards the future EU accession of Kosovo and a recognition of the efforts made by the authorities in Pristina. However, one must bear in mind that Kosovo still has a painstaking journey ahead; the previous hurdles were only the warm up and the SAA represents barely the start of this marathon race.

The Kosovo SAA is not fundamentally different from the previous SAAs, as the EU intended to ensure a harmonized methodology for the SAP. The departure from the previous models was usually determined by the need to accommodate the special status of Kosovo or the normal necessity to refine legal provisions. Referring to the rule of law, it should be noted that this area has been shown to require sustained reforms in the past, both on the part of Kosovo, as well as the other enlargement countries, in order to be aligned with the *acquis*. In this respect, the SAA sets out plans for the future, but will also serve as a legal framework that encapsulates the ongoing interaction between the EU and Kosovo.<sup>95</sup>

Throughout the SAA, reference is also made to the cooperation between Kosovo and Serbia,<sup>96</sup> as it was expected, seeing how the Commission reports insisted that the EU prospects of both Serbia and Kosovo were interlinked.<sup>97</sup> Surprisingly, however, is that the agreement makes no mention of the Serb community or the situation in the northern municipalities of Kosovo; these issues formed a consistent part of the EU-brokered dialogue between Kosovo and Serbia and are vital in the normalisation of relations between the two countries, therefore one would have found reasonable to assume that they would be included in the SAA. Instead, the SAA only refers to the normalisation of relations in general, which would eventually lead to the signing of a legally binding agreement.<sup>98</sup>

The latest EC report revealed that overall Kosovo was in an early stage of preparation in the evaluated criteria (political, economic and the ability to assume the obligation of membership), below the regional average, which is “moderately prepared”. On numerous occasions, the report insisted that the authorities in Pristina needed to display a genuine commitment towards the reforms they enact and to make real efforts to effectively implement the legislative and institutional frameworks which had been created. These remarks hold true for the future implementation for the SAA as well.

In 2015, the Commission concluded that the institutional and legal frameworks in Kosovo suffer from overarching deficiencies. The political sector is characterised by instability and polarisation between the various parties. For two years, Kosovo has been engulfed in a serious political crisis, which poses serious threats to its European perspectives, as it lead to the inability of the government to deliver on the commitments in made as part of the EU accession process. First, following the June 2014 elections, Kosovo was unable to establish an Assembly and form a

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<sup>94</sup>Albania 2015 Report, at 19-20; BiH 2015 Report, at 20; FYROM 2015 Report, at 20; Montenegro 2015 Report, at 19

<sup>95</sup>EU Office in Kosovo staff member interview 09/08/13

<sup>96</sup>Kosovo SAA, art 5 & 13

<sup>97</sup>Kosovo 2015 Report, at 62; Serbia 2015 Report, at 23

<sup>98</sup>Kosovo SAA, art 13

Government for six months, which, as the EC repeatedly noted, severely affected the functioning of the entire state apparatus; among the most notable effects were delays in the reform process and in the appointment of members to supervisory authorities. Second, starting in October of last year, the Assembly has been unable to hold normal plenary sessions for several months, due to violence acts exercised by the opposition, as a means of manifesting their disagreement with the settlements reached by the government with Serbia and Montenegro. Independently from such incidents, the Assembly displayed incapability to exercise its democratic function in general – important laws were adopted in the fast-track procedure, without real debate, the rules of procedure were not properly observed, it was unable to discharge its responsibility to supervise the activity of independent institutions, regulatory authorities and agencies or to oversee the government.<sup>99</sup>

Deficiencies were noted by the Commission also in the activity of the government, which for example established the legal and institutional framework for the Ombudsperson, but later undermined its work by not providing it with suitable premises to perform its mandate. The Ombudsperson and the other independent supervisory bodies were in the majority of cases overlooked by the central and local authorities, which disregard their recommendations.<sup>100</sup> In the view of the EC, the public administration also suffered from numerous shortcomings. At the internal level, it lacked a merit-based recruitment and promotion system, and the human resources to properly apply legislation and principles, while the professional development of public servants remained unsatisfactory. At the policy level, planning was fragmented and not prioritised at the central level, the government focused on achieving the outputs rather than assessing the impact of its policies and the overall organisation was not conducive to ensuring lines of accountability.<sup>101</sup>

Concerning the judiciary, some of the most relevant observations of the Commission referred to the slow administration of justice, insufficient accountability of judicial officials and the susceptibility to political interference. The EC noted with concern that the activity of key institutions was undermined as a result of disputed appointments and unclear mandates. The fight against corruption failed to render the desired results, mainly as a result of undue political intrusion and a general disconnect and lack of integration between the main institutions.<sup>102</sup>

Through its annual reports, the EC offers a detailed account of the state of play in Kosovo. The 2015 assessment found severe institutional, political and legal difficulties which impacted the rule of law directly or indirectly; a comparison with previous reports revealed that these issues have persisted for several years and progress was very limited. Since the SAA will have to be implemented by and in this very context, we are to expect a series of difficulties in the process. Nonetheless, Kosovo will not walk the path of EU accession alone; in its conclusions on the SAP, the European Council reiterated that the EU will render support to Kosovo's socio-economic development as part of its European reform agenda.<sup>103</sup>

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<sup>99</sup> Kosovo 2015 Report, at 6-7

<sup>100</sup> Kosovo 2015 Report, at 9

<sup>101</sup> Kosovo 2015 Report, at 10-11

<sup>102</sup> Kosovo 2015 Report, at 12-16

<sup>103</sup> Council of the European Union, Enlargement and Stabilisation and Association Process – Council Conclusions, Brussels, 15 December 2015 (OR. en) 15356/15 ELARG 73 COWEB 150, at 19

## VI. NEXT STEPS

Although a demanding process, Kosovo will not be alone in its EU accession endeavour and will receive substantial support from the Union, especially financially. The European Union prepared the following instruments for financing external action in the period 2014-2020:

- the Development Cooperation Instrument (DCI),
- the European Instrument for Democracy and Human Rights (EIDHR),
- the European Neighbourhood Instrument (ENI),
- the Instrument contributing to Stability and Peace (IcSP),
- the Instrument for Pre-Accession Assistance (IPA II) and
- the Partnership Instrument for cooperation with third countries.<sup>104</sup>

The framework for each of these instruments laid out in a separate regulation, nonetheless the EU designed a set of common rules and procedures to serve their implementation, which are contained in Regulation (EU) No 236/2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action (Common Implementing Regulation - CIR). Kosovo cannot benefit from the DCI, since the instrument excludes countries which are eligible for IPA II,<sup>105</sup> and neither from the ENI.<sup>106</sup> For these reasons, these two instruments shall not be analysed in the following sections.

### - IPA

IPA II were established through Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 (IPA II Regulation). The legal framework is supplemented by the Commission Implementing Regulation No 447/2014 of 2 May 2014 on the specific rules for implementing Regulation (EU) No 231/2014 of the European Parliament and of the Council (IPA Implementing Regulation). These instruments will support the eligible countries in achieving their objectives for EU membership in the following areas: political reforms, including the rule of law, economic, social and territorial development, strengthening the ability to fulfil membership obligations and strengthening regional integration and territorial cooperation. The areas of focus correspond to the spheres analysed by the EC in the annual country reports and through this correspondence the EU ensures a consistent approach to the enlargement process. The progress on these objectives will be monitored and assessed on the basis on pre-defined, clear and transparent indicators, including country-specific indicators, where applicable, taking into account the EC annual reports as a point of reference.<sup>107</sup>

The assistance will be provided in accordance with the enlargement policy framework and taking into account the Enlargement Strategy, the annual progress reports and the relevant resolutions of the European Parliament.<sup>108</sup> The implementation of IPA II will be coordinated by the

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<sup>104</sup> Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action, preamble

<sup>105</sup> Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020, Art. 1(a)(iv)

<sup>106</sup> Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument, Art. 1(1)

<sup>107</sup> Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II), art. 2-3 [hereinafter referred to as "IPA II Regulation"]<sup>108</sup> IPA II Regulation, art 4

European Commission. To this end, the EC will adopt annual action programmes, based on the indicative programming documents of IPA II, which specify the objectives pursued, the expected results and the main activities, methods of implementation, budget, indicative timetable and any associated support measures and performance monitoring arrangements.<sup>109</sup>

IPA II also brings a novelty intended to enhance and focus the assistance, by introducing strategy papers for each country. Through these papers and in light of the specific needs of the respective country and the EU enlargement agenda, the Commission will define the priorities for action, identify the policy areas which will be supported through assistance and lay down the indicative allocation of funds per policy area, broken down per year.<sup>110</sup>

The respect for the rule of law is referred to as one of the principles that govern the implementation of its instruments for financial assistance, including IPA II and the strengthening of this area is one of the main objectives of IPA II assistance. However, as the European Parliament and the Council already recognised, this sector is essential in the accession process and later as EU Member States, but remains a challenge for most beneficiaries; for this reason, they recommend that assistance address these issues “as early as possible”.<sup>111</sup>

Although the instruments will be places at the disposal of the enlargement countries by the EU, their respective governments, including that of Kosovo, are the ones that need to assert the central role in the ownership of the programme and the implementation of IPA II.<sup>112</sup> In order to ensure transparency, coherence and a better coordination both within the countries, but also in the relation with the EU, the Commission established that Kosovo and the other beneficiaries shall appoint National IPA Coordinators (NIPAC), a National Authorising Officer (NAO) and Operating Structures.<sup>113</sup> Currently, Mr Demush Shasha, Secretary-General of the Ministry of European Integration serves as NIPAC.<sup>114</sup>

The Commission will conclude a framework agreement with Kosovo, setting out specific agreements arrangements for the management, control, supervision, monitoring, evaluation, reporting and audit of IPA II; this will require that the beneficiary transpose into its legal order the relevant EU regulatory requirements.<sup>115</sup> At the beginning of 2016, the government of Kosovo announce that it had approved the initiative to sign the agreement with the EC and that the document itself will be concluded following additional negotiations. <sup>116</sup>

## - IPA II strategy for Kosovo

The Indicative Strategy Paper establishes the priorities for financial assistance that the EU will make available to Kosovo for the period 2014-2020; it serves as a tool which will direct financial assistance in areas which are key to achieving the enlargement requirements. In order to ensure

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<sup>109</sup> Regulation(EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action, art. 2 [hereinafter referred to as “IPA II Common Rules”]

<sup>110</sup> IPA II Regulation, art 6

<sup>111</sup> IPA II Regulation, preamble

<sup>112</sup> Commission Implementing Regulation(EU) No 447/2014 of 2 May 2014 on the specific rules for implementing Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession assistance (IPA II), art. 4 [hereinafter referred to as “IPA II Implementation”]

<sup>113</sup> IPA II Implementation, art. 7

<sup>114</sup> <http://www.mei-ks.net/en/secretary-general/> (accessed 05.04.2016)

<sup>115</sup> IPA II Implementation, art. 5

<sup>116</sup> <http://www.mei-ks.net/en/news/the-government-of-kosovo-adopts-the-initiative-for-the-signing-of-ipa-2015-worth-of-12878-million/> (accessed 14.03.2016)

efficiency, effectiveness, facilitate cooperation eliminate duplication of efforts and ensure long-term results, the assistance will also take into account Kosovo's own means and the support provided through other EU instruments and by other stakeholders.<sup>117</sup>

In view of the multitude of donors and actors which are already providing assistance in the rule of law sector, the EC decided that IPA II will focus on the judiciary and home affairs, with a strong emphasis on the fight against organised crime and corruption.<sup>118</sup> One of the greatest advantages of this strategy paper is that it sets out clear objectives and indicators and identifies possible risks.

	<b>Objectives</b>	<b>IPA assistance</b>	<b>Results</b>	<b>Indicators</b>	<b>Risks</b>
<b>Justice</b>	<ul style="list-style-type: none"> <li>• improve independence, effectiveness, accountability and impartiality of the judiciary</li> <li>• enhance access to justice, in particular for non-majority communities and vulnerable groups</li> <li>• improve capacity and mechanisms to implement legislation and strategies and to enforce judicial decisions</li> </ul>	<ul style="list-style-type: none"> <li>• approximate the legal system to EU standards - capacity-building, advising and monitoring of judicial institutions</li> <li>• support judicial education and training in all official languages</li> <li>• ensure capital investment with direct effect on access to courts, delivery of justice, independence and impartiality of the judiciary</li> <li>• support the Kosovo correctional service</li> </ul>	<ul style="list-style-type: none"> <li>• legislation is further enhanced</li> <li>• professionalism is strengthened</li> <li>• independence, efficiency, integrity and accountability of the judiciary is strengthened</li> <li>• the backlog of open cases is substantially reduced</li> <li>• improved enforcement of judicial rulings is ensured</li> <li>• consistency of jurisprudence is introduced and implemented</li> <li>• access to justice is improved</li> <li>• the penitentiary system complies with international standards</li> </ul>	<ul style="list-style-type: none"> <li>• progress made towards meeting Copenhagen criteria (EC)</li> <li>• composite indicator Access to Justice (WJP) and Judicial independence (WEF)</li> </ul>	<ul style="list-style-type: none"> <li>• lack of human and financial capacities to implement reforms and to process cases in a reasonable timeframe</li> <li>• continued political interference in the judicial and correctional system</li> </ul>
<b>Home Affairs</b>	<ul style="list-style-type: none"> <li>• produce concrete evidence of results in fighting corruption, organised crime and drugs trafficking</li> <li>• enhance capacity to prevent, investigate, prosecute and convict cases of organised crime</li> </ul>	<ul style="list-style-type: none"> <li>• provide capacity-building and equipment for police, customs, tax administration, and other rule of law institutions</li> <li>• advise and monitor key institutions</li> <li>• support regional cooperation to fight cross-border organised crime and trafficking</li> </ul>	<ul style="list-style-type: none"> <li>• rationalisation of the institutional set-up to fight and prevent corruption; improved co-operation between law enforcement bodies, the judiciary and other relevant bodies</li> <li>• better trained / experienced staff in law enforcement institutions to deal with economic and other forms of organised crime</li> </ul>	<ul style="list-style-type: none"> <li>• progress made towards meeting Copenhagen criteria (EC);</li> <li>• composite indicators Global Corruption (TI) and Control of Corruption (WB);</li> </ul>	<ul style="list-style-type: none"> <li>• potential delays in the implementation of key strategies on anti-corruption and the fight against organised crime</li> <li>• organisational and administrative capacities may affect inter-institutional coordination and cooperation</li> </ul>

<sup>117</sup>European Commission, Instrument for Pre-Accession Assistance (IPA II), Indicative Strategy Paper for Kosovo\*(2014-2020) adopted on 20/08/2014, at 3 [hereinafter referred to as "IPA II Strategy Paper Kosovo"]

<sup>118</sup>IPA II Strategy Paper Kosovo, at 20

	<ul style="list-style-type: none"> <li>• enhance civilian oversight of the rule of law institutions</li> </ul>		<ul style="list-style-type: none"> <li>• existence of a track record of successful investigations, prosecutions and final convictions in corruption and organised crime cases</li> <li>• effective enforcement of anti-money laundering legislation</li> </ul>		<p>To mitigate these risks, specific capacity-building measures will be targeted to inter-agency cooperation to improve coordination and information sharing.</p>
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The principal means by which the EU will support and monitor the rule of law sector will be through the use of simultaneous twinning action in strategic institutions, although the EC leaves room for the employment of other interventions as well.<sup>119</sup> For the period 2014-2020 the EU allocated a total of 645.5 million euro worth of IPA II funds for Kosovo. The "rule of law and fundamental rights" area will receive 162.2 million euro, out of which 73.1 million are planned for the period between 2014 and 2017, and 53.1 for 2018-2020.<sup>120</sup>

### - Regional overview

The following table shows the proportion of the total IPA II funds which were assigned for the "rule of law and fundamental rights" section, as outlined in the strategy papers of the Western Balkan countries.

<b>Country</b>	<b>Proportion allocated to rule of law and fundamental rights IPA II (2014-2020)</b>	<b>Proportion allocated to Justice and Home Affairs IPA I (2011-2013)</b>
<b>FYROM</b>	12.5%	8%
<b>Albania</b>	15%	15%
<b>Montenegro</b>	19%	8%
<b>Bosnia and Herzegovina</b>	20%	17.5%
<b>Serbia</b>	17.5%	12%
<b>Kosovo</b>	25%	30%

The comparative analysis shows that, Kosovo has the largest allocation of IPA funds for the development of the rule of law and fundamental rights in the entire region. This is unsurprising, as Kosovo is considerably less advanced on the EU accession path than its neighbours and has to undertake major reforms. Overall, the proportion of IPA funds dedicated to this area increased, with Montenegro standing out for which the proportion more than doubled. Kosovo represents the exception; in its case a reduction of 5% was registered. This decrease is not significant and the 2015 country report issued by the EC concluded that Kosovo is only in an early stage of

<sup>119</sup> IPA II Strategy Paper Kosovo, at 25

<sup>120</sup> IPA II Strategy Paper Kosovo, Annex I

preparedness in all sub-areas pertaining to the rule of law; therefore, the adjustment was most likely the result of an increase of funds from other sources, which reduced the necessity for IPA II instruments.

The comparison also reveals an indirect correlation between the amount of time that passes since the signing of the SAA and the proportion of rule of law funds – the more time elapsed since the countries concluded the SAAs, the smaller the proportion of assistance to the rule of law area – which suggests that the previous instruments were effective. The country that departs from this trend is Serbia which signed the SAA after Bosnia and Herzegovina and Montenegro, but has a lower proportion of IPA II allocated for this sector than the other two, which may indicate that the former had achieved progress faster.

### - The European Instrument for Democracy and Human Rights (EIDHR)

The EIDHR was created by Regulation (EU) No 235/2014 of the European Parliament and of the Council<sup>121</sup> for the purpose of providing assistance to the “development and consolidation of democracy and the rule of law and of respect for all human rights and fundamental freedoms”.<sup>122</sup> The current financial instrument follows and builds on the EIDHR 2007-2013 and on the previous European Initiative for Democracy and Human Rights, which ran between 2000-2006.

Among the areas in which the EIDHR will provide assistance, the following are relevant for the implementation of the rule of law provisions contained in the Kosovo SAA:

- strengthening the rule of law, promoting the independence of the judiciary and of the legislature, supporting and evaluating legal and institutional reforms and their implementation, and promoting access to justice, as well as supporting national human rights institutions;
- promoting and strengthening ad hoc international criminal tribunals and the processes of transitional justice;
- supporting the transition to democracy and reforms to achieve effective and transparent democratic and domestic accountability and oversight, including in the security and justice sectors, and strengthening measures against corruption;
- providing support for international and regional instruments and bodies in the area of human rights, justice, the rule of law and democracy;
- supporting civil society activities, including capacity-building of non-governmental organisations, aimed at promoting and monitoring the implementation of international and regional instruments concerning human rights, justice, the rule of law and democracy.<sup>123</sup>

The EIDHR is addressed to a multitude of actors other than governments, such as civil society organisations, public-sector non-profit agencies, institutions and organisations and networks at local, national, regional and international level and it intends to assist them into becoming an effective force for political reform and defence of human rights.<sup>124</sup> Even though this form of

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<sup>121</sup> Regulation (EU) No 235/2014 of the European Parliament and of the Council establishing a financing instrument for democracy and human rights worldwide [hereinafter referred to as “EIDHR Regulation”]

<sup>122</sup> EIDHR Regulation, art. 1

<sup>123</sup> EIDHR Regulation, art. 2

<sup>124</sup> Instrument for Democracy and Human Rights Worldwide, Multiannual Indicative Programme (2014-2017), at 3

assistance is not available to the government of Kosovo, it can represent an important instrument for civil society organisations which advocate the respect for the rule of law and for human rights.

### - Instrument contributing to Stability and Peace (IcSP)

Regulation 230/2014 of the European Parliament and of the Council created the IcSP as a successor of the Instrument for Stability (IfS) 2014-2020 and a means of “increasing the efficiency and coherence of the Union's actions in the areas of crisis response, conflict prevention, peace-building and crisis preparedness, and in addressing global and trans-regional threats”.<sup>125</sup> The assistance will be provided to three categories of situations: first, situations of crisis or emerging crisis to prevent conflict; second conflict prevention, peace-building and crisis preparedness and third addressing global and trans-regional threats and emerging threats. The Instrument is designed mainly to address the following issues: democracy and good governance, human rights and humanitarian law, including children's rights and the rights of indigenous peoples, non-discrimination, gender equality and the empowerment of women, conflict prevention and climate change.<sup>126</sup> In line with the Thematic Strategy Paper 2014-2020, the IcSP can assist the implementation of the rule of law provisions in the Kosovo SAA in the following areas:

- Strengthening capacities for participation and deployment in civilian stabilisation missions
- Improve post-conflict recovery
- Strengthen the capacity of law enforcement and judicial and civil authorities involved in the fight against terrorism, organised crime and all forms of illicit trafficking (such as drug trafficking, including synthetic drugs, trafficking in human beings, including people smuggling, money laundering)<sup>127</sup>

### - Partnership Instrument for cooperation with third countries (PI)

The instrument was established through Regulation (EU) No 234/2014 of 11 March 2014 to advance the interests of the EU and to promote, develop and consolidate the principles of democracy, equality, respect for human rights and fundamental freedoms and the rule of law.<sup>128</sup> Designed as a global instrument,<sup>129</sup> it could serve to assist Kosovo in implementing the rule of law commitments contained in the SAA. However, in practice, the government of Kosovo may not access it in the following period, as the 2014-2017 Multi-Annual Indicative Planning envisages that it will be deployed primarily in the Asia-Pacific, the Americas, the Gulf, Central-Asia and Russia, and only for activities which are not covered by the ENI.<sup>130</sup>

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<sup>125</sup> Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace [hereinafter referred to as “IcSP Regulation”]

<sup>126</sup> IcSP Regulation, art. 2-5

<sup>127</sup> Instrument contributing to Stability and Peace (IcSP) Thematic Strategy Paper 2014-2020, at 35

<sup>128</sup> Regulation (EU) No 234/2014 of the European Parliament and of the Council of 11 March 2014 establishing a Partnership Instrument for cooperation with third countries, art. 3 [hereinafter referred to as “PI Regulation”]

<sup>129</sup> PI Regulation, art. 2

<sup>130</sup> Partnership Instrument First Multi-annual Indicative Programme for the period 2014-2017, at 7

## VII. MONITORING

The implementation of the SAA will be monitored at three levels – the EU level, the Kosovo level and by a joint EU-Kosovo Stabilisation and Association Parliamentary Committee.

At the **EU level**, there will not be a dedicated mechanism to monitor the implementation of the SAA; instead the EC country reports will represent "the major tool to monitor progress in the implementation of the SAA and the overall progress in Kosovo EU integration process".<sup>131</sup> Additionally, as in the case of other Western Balkan countries, the Stabilisation and Association Council and the government will hold annual meetings in order to assess the annual progress, and in this endeavour they will also take into account the country reports.<sup>132</sup> The Structured Dialogue on Rule of Law could have also played a prominent role in the monitoring of the rule of law sector, but the initiative was discontinued several years ago. However, should it be revitalised, it would offer valuable assistance to both parties in the implementation of the provisions related to this area.

In **Kosovo**, the monitoring will be ensured by the national and international institutions. Ever since 2012 the government prepared an Action Plan on Negotiation of the Stabilisation and Association Agreement which was meant to serve as a "key Government strategy on its path towards the accession into the EU"; it includes "[a]n objective to be met in order to assume obligations under an SAA and outline of the measures to be taken." The implementation of the Action Plan is monitored through the electronic and monitoring system developed together with the EC.<sup>133</sup>

Additionally, in March 2016 2015, the government of Kosovo adopted the National Plan for the Implementation of the SAA (NPISAA) which represents "the main national policy document for EU membership". The NPISAA provides for both mid-term reforms (covering the period 2016-2020), as well as short-term measures (for the year 2016) and mid-term priorities (for the period 2017-2020), which include a normative and an implementation component. The implementation of the National Plan will be the responsibility of all state administration bodies, each within the scope of their competences; the monitoring of the implementation process will be done by the Government of Kosovo as a whole, but also by the individual members of the cabinet, each state administration body and other institutions.<sup>134</sup> The overall coordination at the national level will be ensured by the Ministry of European Integration (MEI), with MEI officials assigned the authority to monitor the implementation of the National Programme in their respective sectors.<sup>135</sup> The priorities and measures envisaged for implementing the obligations arising out of the rule of law provisions of the SAA are addressed under the corresponding *acquis* chapters, namely Chapter 23 on Judiciary and Fundamental Rights and Chapter 24 on Justice, Freedom and Security.

**EULEX** will continue to have an important role in the monitoring and the strengthening of the rule of law in Kosovo, particularly in the justice, customs and police sectors. However, given the

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<sup>131</sup> EU Office in Kosovo staff member interview 21/08/13

<sup>132</sup> Council of the European Union (2013) *Joint Press Release*, available at [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/er/138340.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/138340.pdf) (accessed 21/08/13)

<sup>133</sup> Republic of Kosovo, Government, Action Plan on Negotiation of the Stabilisation and Association Agreement, December 2012, Pristina, available at: <http://www.mei-ks.net/repository/docs/Englisht.pdf> (accessed 09.03.2016), at 14 [hereinafter referred to as "Kosovo SAA Action Plan"]

<sup>134</sup> NPISAA March 2016, at 13

<sup>135</sup> Republic of Kosovo, Government, National Programme for Implementation of the Stabilisation and Association Agreement (NPISAA), March 2016, Pristina, available at [http://www.mei-ks.net/repository/docs/3\\_pkzmsa\\_miratuar nga kuvendi final\\_eng\\_.pdf](http://www.mei-ks.net/repository/docs/3_pkzmsa_miratuar nga kuvendi final_eng_.pdf) (accessed 05.04.2016), at 11-13

on-going transfer of responsibilities from the mission to the government, we will see a decreasing involvement of EULEX in the implementation of the rule of law provisions in the SAA, which will be increasingly taken over by the government of Kosovo and the EU Office.

The SAA also provides for the establishment of a **joint EU-Kosovo** body, in the form of the Stabilisation and Association Parliamentary Committee. The Committee will be composed of members of the European Parliament and of the Kosovo Assembly, who will meet at least once a year and exchange views and which may also make recommendations to the SAC.<sup>136</sup>

## VIII. RECOMMENDATIONS FOR THE GOVERNMENT

1. The government needs to complete the on-going negotiations and conclude the agreement with the European Union concerning IPA II funds that would make the financial resources available to Kosovo. This would enable the government to make use of these financial resources to advance the necessary reforms in the relevant areas, including the rule of law.
2. It is imperative that the government ensure the adequate expenditure of the available funds, in order to advance the necessary reforms in the rule of law sector. In order to assist in this respect, IPA II became more strategic and better targeted in order to meet the specific needs of each country.
3. The government should continue with the implementation of the recommendations made by the EU as part of the other mechanisms, such as the Feasibility Study, the Visa Liberalisation Roadmap and the Country Report. These mechanisms address a series of common topics which need to be addressed as part of the SAA as well, therefore the implementation of these recommendations and the achievement of the benchmarks set will considerably benefit the implementation of the SAA.
4. It is advisable that the government of Kosovo make use of the available cooperation mechanisms established for the strengthening of the rule of law in general and the implementation of the SAA in particular. Such platforms are represented by the Visa Liberalisation Dialogue, the SAP Dialogue, the Joint Rule of Law Coordination Board and the Stabilisation and Association Parliamentary Committee. An increased cooperation with EULEX and the EU Special Representative in Kosovo can also help in this respect. Additionally, since the activity of the Structured Dialogue on the Rule of Law was discontinued, this may represent an appropriate moment to evaluate whether a revival of this mechanism would be opportune.
5. The government can contribute to the respect for the rule of law by advancing the membership of Kosovo to international structures which upheld these principles and target specific components of the rule of law area. Considerable support can be ensured through the Council of Europe (CoE) which has a comprehensive approach to the rule of law and addresses the justice system, establishes common standards and policies and attempts to respond to the various threats to the rule of law; in order to further these priorities, the CoE established various structures such as the Justice and Cooperation Department,<sup>137</sup> the Group of States against Corruption (GRECO),<sup>138</sup> the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of

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<sup>136</sup> Kosovo SAA, art. 13(4)

<sup>137</sup> [http://www.coe.int/t/DGHL/COOPERATION/CAPACITYBUILDING/default\\_en.asp](http://www.coe.int/t/DGHL/COOPERATION/CAPACITYBUILDING/default_en.asp) (accessed 05.04.2016)

<sup>138</sup> [http://www.coe.int/t/dlapil/codexter/default\\_EN.asp](http://www.coe.int/t/dlapil/codexter/default_EN.asp) (accessed 05.04.2016)

Terrorism (MONEYVAL)<sup>139</sup> and the Committee of Experts on Terrorism (CODEXTER).<sup>140</sup> An equally valuable opportunity is represented by the membership to the Financial Action Task Force (FATF), a “policy-making body” which works towards bringing about national legislative and regulatory reforms in the areas of money laundering, terrorism financing and other related threats to the integrity of the international finance system.<sup>141</sup>

6. Important lessons can be drawn from the experience of neighbouring Western Balkan countries, which have been making efforts to ensure the implementation of their respective SAAs. Kosovo shares a common history with the other enlargement countries and important social, cultural and political similarities, which may assist the government in Pristina in anticipating future hurdles and selecting appropriate means to overcome them.

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139 <http://www.coe.int/t/dghl/monitoring/moneyval/> (accessed 05.04.2016)

140 [http://www.coe.int/t/dlapil/codexter/about\\_en.asp](http://www.coe.int/t/dlapil/codexter/about_en.asp) (accessed 05.04.2016)

141 <http://www.fatf-gafi.org/about/> (accessed 05.04.2016)

## POLICY REPORTS

Policy Reports are lengthy papers which provide a tool/forum for the thorough and systematic analysis of important policy issues, designed to offer well informed scientific and policy-based solutions for significant public policy problems. In general, Policy Reports aim to present value-oriented arguments, propose specific solutions in public policy – whereby influencing the policy debate on a particular issue – through the use of evidence as a means to push forward the comprehensive and consistent arguments of our organization. In particular, they identify key policy issues through reliable methodology which helps explore the implications on the design/structure of a policy. Policy Reports are very analytical in nature; hence, they not only offer facts or provide a description of events but also evaluate policies to develop questions for analysis, to provide arguments in response to certain policy implications and to offer policy choices/solutions in a more comprehensive perspective. Policy Reports serve as a tool for influencing decision-making and calling to action the concerned groups/stakeholders.