“STATE OF PLAY AND MAIN CHALLENGES FOR KOSOVO ON THE WAY TO THE EUROPEAN MEMBERSHIP”

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1. EU POLICY TOWARDS THE WESTERN BALKANS

In 1999 the European Union (EU) developed the Stabilisation and Association Process (SAp) as the main policy framework for European path of the Western Balkan (WB) countries, all the way to their future possible accession. This framework aims to bring peace, stability and economic development to the region and open the perspective of integration in the EU.

The perspective of WB for membership is clear.¹ Launched in the European Council meeting in Feira on 19 and 20 June 2000², in which EC recognised the countries concerned by the Stabilisation and Association Process to be potential candidates for EU membership, it was further reaffirmed in Zagreb (2000) and Copenhagen Summits (2002). Finally, in June 2003, the Thessaloniki EU-Western Balkans summit confirmed the EU’s support for the European perspective of the Western Balkan countries.

The Summit endorsed “The Thessaloniki Agenda for the Western Balkans: Moving towards European Integration”³, which aims at further strengthening the privileged relations between the EU and the region, also drawing on the enlargement experience.⁴ The EU’s enriched SAp, namely the European Partnerships, visa liberalization, regional initiatives, community programs and enhanced political dialogue, will remain the framework for the European course of the WB countries all the way to their future accession.

In June 2005 the European Council reaffirmed its commitment to implement the Thessaloniki agenda, noting that each country's progress towards European integration depends on its efforts to comply with the Copenhagen criteria and the conditionality of the Stabilisation and Association Process (SAp).⁵

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¹ Feira, Zagreb and Thessaloniki EU Council Conclusions
² COUNCIL REGULATION (EC) No 2666/2000 of 5 December 2000
⁴ Presidency Conclusions - Thessaloniki, 19 and 20 June 2003,
⁵ Communication from the Commission. “The Western Balkans on the road to the EU: consolidating stability and raising prosperity” 27.01.2006.
In December 2007, the European Council reaffirmed that “the future of the Western Balkans lies within the European Union”. In February 2008, the Council reiterated its commitment to fully and effectively support the European Perspective for the Western Balkans.

The communication of the Commission to the European Parliament and the Council of March 5th 2008\(^6\), reiterating that the future of the Western Balkans lies in the EU, stresses the importance of peace, stability and security in the Western Balkans and welcomes all efforts of these countries to come closer to the EU, meeting the necessary conditions. The EU commits to assist them in this endeavour and a Commission Staff Working Document\(^7\) accompanying the communication outlined EU activities of regional relevance to the WB countries and corresponding regional activities related to the European agenda of the WB.

### 2. THE EUROPEAN FUTURE OF KOSOVO

The EU-WB Summits’ were very successful as they opened a new era for the countries of the SAp and reassured the EU perspective for the region, including Kosovo. The enriched Thessaloniki agenda and introduction of European Partnerships and other enlargement process instruments intensified EU vs. Kosovo relations. The key relations between the two are defined in the European Partnership for Kosovo, whereas Kosovo participates in various SAp instruments.

The prospect of Kosovo for EU membership, pending the recognition of its independence by all EU member states that will allow for contractual relations at a state level\(^8\), clearly lies, same as for any country willing to join the EU, behind the completion of the Copenhagen Criteria\(^9\). They require that Kosovo:\(^{10}\):

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\(^8\) On 17th February 2008 Kosovo Assembly adopted the Declaration of Independence. The process of recognition of Kosovo is ongoing. On its meeting of 18th February the Council noted that Member States will decide their relations with Kosovo, in accordance with national practice and international law.


These are three basic criteria. The Copenhagen criteria include also: “the country to have created the conditions for its integration through the adjustment of its administrative structures”. See D Hall & D
• Has stable institutions guaranteeing democracy, the rule of law, human rights and respect for and the protection of minorities;
• Has a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union;
• Has the ability to take on the obligations of membership, including adherence to aims of political, economic and monetary union, i.e Acquis Communautaire.

A. KOSOVO IN THE STABILISATION AND ASSOCIATION PROCESS

The vehicle currently keeping Kosovo firmly anchored in the EU policy for the Western Balkans is the Stabilisation and Association Process Tracking Mechanism (STM). This mechanism was set up in November 2002 aiming to assist Kosovo authorities to benefit fully from the core elements of the Stabilisation and Association Process, notably, EU assistance, policy advice, monitoring of EU standards and trade concessions.

The day to day work of STM is conducted by the Agency for European Integration (AIE) within the Office of the Prime Minister. This agency is established by UNMIK Administrative Direction 2006/06 and is “responsible for coordination of Government actions in aligning practices and legislative activities with relevant European Union (EU) norms and standards in the context of the EU Stabilization and Association Process (SAP) with a view to facilitating economic, social and other reforms and capacity-building to support Kosovo’s involvement in European integration processes”\(^{11}\).

For its purposes, AIE has established a mechanism through which it coordinates activities among line ministries and governmental agencies. This mechanism is spread across line ministries in the form of Offices for European Integration, which function as focal points and reference offices for all EU related activities. This network is mainly facilitated to draft progress-reports and organize STM meetings, but also to report to European Commission on different issues. The government has established political and sectorial Working Groups to coordinate the work, implement, report and monitor the implementation of the European Partnership Action Plan.

\(^{11}\) UNMIK Administrative Direction 2006/06, Article 2.1
In early April 2008, a “Plan on European Integration 2008 – 2010”\textsuperscript{12} based on a proposal of the Agency for European Integration, has been approved by the Government of Kosovo. It contains a comprehensive set of measures for further strengthening of the central government coordination mechanism for the management of the process of European Integration, detailed concept documents for the approximation with and translation of the Acquis as well as strategies for information and communication and training on European Integration process.

AIE in close cooperation with the Ministry of Local Government Administration ensure that local governments are kept involved in the process of drafting, implementation, monitoring and reporting of the European Partnership Action Plan with regard to action required at the local level. Similar to the central level, focal points for EU related matters have been appointed in all municipalities.

\textbf{B. THE EUROPEAN PARTNERSHIP FOR KOSOVO}

Inspired by the accession partnerships for candidate countries, and adapted to the specificities of the SAp, European Partnerships were drawn in 2004 for each SAp country. European partnerships identify priorities for action in supporting efforts to move closer to the European Union and serve as a checklist to measure progress, and to provide guidance for Community and bilateral financial assistance. In response to this identification of priorities, the authorities are requested to draw up an Action Plan for the implementation of the European Partnership, which provides an agenda against which to measure progress of the countries in meeting European standards.

The EU Council of Ministers adopted in June 2004 the first European Partnership with Serbia and Montenegro including Kosovo\textsuperscript{13}. On 30 January 2006 the Council of the European Union adopted a new partnership that has been adapted to reflect the progress made over the year and to address new challenges and priorities for Kosovo. In both cases, Kosovo institutions, like all other countries in the SAp, were asked to develop an action plan to address implementation of European Partnership Priorities (EPP). The first European Partnership Action Plan (EPAP) for Kosovo was prepared in January 2005. In reply to the second European Partnership, the Kosovo Government prepared and on 9 of August 2006\textsuperscript{14} adopted the Kosovo European Partnership Action Plan 2006, 09 08 2006.

\begin{itemize}
\item \textsuperscript{12} Plan on European Integration 2008-2010, Agency for European Integration, OPM, March 2008
\item \textsuperscript{13} As defined under UNSCR 1244
\item \textsuperscript{14} Kosovo European Partnership Action Plan 2006, 09 08 2006
\end{itemize}
Action Plan 2006. Kosovo EPAP 2006 includes the essence of Kosovo Standards Implementation Plan (KSIP), which is an integral part of the plan.

The priorities listed in the European Partnership have been selected on the basis that it is realistic to expect Kosovo can carry out or take them substantially forward over the next years. A distinction is made between short-term priorities, which are expected to be accomplished within one to two years, and medium-term priorities, which are expected to be accomplished within three to four years.\textsuperscript{15} As the financing is supported by Instrument for Pre Accession (IPA), the assistance is conditional on further progress in satisfying the Copenhagen criteria, whereas monitoring is ensured through the STM mechanisms, notably annual EC Progress Reports.

In the European Partnership for Kosovo the priorities fall into the following categories:

\textit{Key priorities:} functioning democracy and rule of law, provision of public services, a transparent and accountable public administration and continuing of reforms of local self-government; respect and tolerance between communities encouraging the return; fight against corruption and organized crime; full cooperation with ICTY, creation of favourable conditions for investment, trade, employment and economic growth.

1. \textit{Political requirements:} relate to democracy and the rule of law (public administration, elections, judiciary, witness protection and combating corruption) human rights and rights of minorities (ombudsman, return of refugees and displaced persons, reintegrating Roma communities, respecting official languages, participation by all communities, cultural heritage, legislation on public broadcasting and media self-regulation, legal framework for NGOs, property rights, combating discrimination, gender equality. They also focus on regional cooperation and good neighbourly relations, regional and international cooperation on law enforcement and implementation of regional free trade agreements.

2. \textit{Economic requirements:} privatization process, restructuring and incorporation of publicly owned enterprises, restructuring public utilities, sustainability of public finances, defining and applying macroeconomic and budgetary priorities in cooperation with the IMF, budgetary discipline and control of public spending, capacity of banking sector, framework to guarantee

investments, framework for trade and trade-related policies, flexible social policies to promote employment, social cohesion, combating poverty and social exclusion, improving quality of education and training. In conjunction with sectoral strategies, a medium-term development plan and strategy should promote economic development while taking into account fight against poverty, the expenditure framework and public investment programme

3. **European Standards**: relates to the *acquis communautaire* such as internal market (free movement of goods and capital, customs and taxation, public procurement, intellectual property law and statistics), sectoral policies (industry and SMEs, rural development, environment, transport, energy, the information society and the media, financial control), and the area of justice, freedom and security (visas, border control, asylum and immigration, money laundering, drugs, police and combating organized crime and terrorism).

In all cases, Kosovo has devised measures and action to make progress in the alignment towards EU compatible policies.

The European Partnership covering chapters of political, economic and *acquis* criteria is an excellent exercise for Kosovo to deepen its legislative alignment with compatible EU norms and principles. At this stage, fulfilling the SAp conditionality on planning, execution, reporting and respecting timetable of measures and actions show Kosovo’s readiness to engage in more congruent alignment, eventually towards an SAA. However, Kosovo should take maximum caution in alignment and transposition of laws and policies with its administrative, technical and financial capabilities to do so. A respectful and competent central government mechanism needs to be up and running. The Agency for European Integration needs to perform a strong coordination and facilitation role, whereas the implementation shall lie with the line ministries. This body needs to become central point of information and communication with Brussels services and enjoy sufficient, sustainable and competent staff.\footnote{Anëtarësimi në Bashkimin Europian, Venera Hajarullahu and Fatmir Curri, Platforma Civile për Zgjedhjet 2007, p. 63, Forum 2015}

Successful EPAP implementation is impeded by weak administrative capacities. Drafting new laws which are compatible with *acquis* often requires special skills and experience. Kosovo faces lack of experience within administration and limited capacities and institutional memory in working with complex documents.\footnote{Ibid, p.63 - 64} Moreover, alignment of key government documents such as Kosovo
Strategy and Development Plan (KDSP), Medium Term Expenditure Framework (MTEF), Public Investment Program (PIP) with EPAP to make the best use of the Pre-Accession Assistance IPA\textsuperscript{18} is of great challenge. The coordination capacity of Kosovo institutions assessed in this exercise with its key functions on approximation of legislation, translation, institution building, coordination of foreign and bilateral assistance, information and communication and gradual preparation for EU negotiations is rather technical, but so fundamentally important to set the basis for further contractual relationship.

The new European Partnership was launched in November 2007 and has set the priorities for Kosovo’s Institutions. Any further progress will be measured through implementation of key, short-term and mid-term priorities of the European Partnership. The Action Plan that is being elaborated in response to these requirements should practically identify measures ranging from political decisions, legal and institutional interventions to administrative capacity and capital investments needed.

Mobilising existing and attracting competent human resources is of urgent matter. In the meantime, continuing to invest in training programmes to build up domestic capacities in EU affairs is recommended. Moreover, the SAp countries are now eligible for technical assistance by TAIEX\textsuperscript{19}. So far we face very limited usage of this EU funded technical assistance. Recent extension of the instrument of TWINNING\textsuperscript{20} to all SAp countries is a right step, taking into account country specific needs. More has to be done in order to make the most use of this Community programs aiming at building administrative and technical skills to deal with the EU requirements. All in all, an arduous and onerous work is knocking the doors of responsible authorities in Kosovo.\textsuperscript{21}

\textsuperscript{18} Instrument for Pre Accession (IPA). Within 2007-2009 MIPD , EC assistance for Kosovo is €199,1 million.
\textsuperscript{19} TAIEX-Technical Assistance Information Exchange Office
\textsuperscript{20} TWINNING arrangements will allow experts from EU Member States to work as advisers to the institutions of Kosovo, including for monitoring the compatibility of national legislations of SAp countries with the community acquis
\textsuperscript{21} Anëtarësimi në Bashkimin Europian, Venera Hajrullahu and Fatmir Curri, Platforma Civile për Zgjedhjet 2007, p. 64, Forum 2015
C. APPROXIMATION OF THE LEGISLATION WITH THE ACQUIS

The legal basis for the approximation of Kosovo’s legislation with Acquis is contained in section 5.7 of Constitutional Framework for Provisional Institution of Self-Government (PISG) of Kosovo. It requires them to align their legislation and practices in all areas of responsibility with relevant European and international standards and norms\(^{22}\).

According to the UNMIK Administrative Direction 2006/6 the Agency for European Integration is the responsible institution to coordinate and oversee the approximation of Kosovo’s legislation with *Acquis Communautaire*\(^{23}\). However, for the time being Kosovo is not fully approximating its legislation with Acquis, currently the Kosovo’s legislation is only undergoing through the procedure of compatibility checking, meaning that AEI is checking only if a draft law does or does not violate the general principles of the *Acquis Communautaire*.

The approximation of legislation is of a high importance and it should be treated very seriously. It is a complex and dynamic process which requires sustainable and appropriate rules and mechanisms. On the other side capacities to carry out this process are very limited and an urgent action in recruitment of young professionals with EU legislation background is needed.

The approximation of legislation is part of the whole EU integration process and has to be considered as such. In terms of legislation process there is a necessity to adopt a National Plan for the Approximation of Kosovo’s legislation which serves as a tool for coordination, planning and reporting of approximation process.

On the other side, the process of approximation is to be either preceded or at least occurring in parallel with the translation of the *Acquis*. The process of Acquis translation not only helps the approximation process but is also a condition to be fulfilled for EU membership. Possible ways of cooperation should be explored with other SAP countries which share the same languages. Such cooperation would contribute: firstly, in diminution of the costs, secondly, in preventing the duplication of the work and accelerating the process, and finally in using equal legal terminology.

\(^{22}\) UNMIK/REG/2001/9, Constitutional Framework for Provisional Self-Government, 15 May 2001

\(^{23}\) UNMIK Administrative Direction 2006/6
D. EC ASSISTANCE UNDER EUROPEAN PARTNERSHIP

The Community Assistance for Reconstruction, Development and Stabilization (CARDS) programme was established by the Council Regulation (EC) 2666/2000\(^24\) with the aim of providing assistance to Western Balkan countries, including Kosovo. To date, EU assistance including the EU Member States assistance amounted to 2.6 billion Euro. Out of this total, EC assistance accounts for almost 1.8 billion Euro in the period since 1999 and included (I) CARDS and other EC support 1,174 million Euro, (II) support to UNMIK Pillar IV 126 million Euro, (III) exceptional financial assistance (including budgetary support) 115 million Euro and (IV) humanitarian assistance (for the period 1999-2002) 378 million Euro\(^25\).

The Instrument of Pre-Accession Assistance (IPA) is a new EU financial instrument established by Council Regulation (EC) No 1085/2006\(^26\) on 17 July 2006. As of 1 January 2007 IPA replaces all existing instruments\(^27\) and it simplified and streamlined EU external assistance within pre-accession period. In case of Kosovo, the IPA funds will be used to a) progressively align its legislation with the Acquis Communautaire and b) to support social, economic and territorial development including, inter alia, infrastructure and investment related activities, in particular in the areas of regional, human resources and rural development.

The assistance shall be based in European Partnership Action Plan (EPAP) and shall "cover the priorities and overall strategy resulting from a regular analysis of the situation in each country…"\(^28\). Multi Annual Indicative Planning Document (MIPD) 2007 - 2009 is the key strategic planning document for assistance to Kosovo under the Instrument for Pre-Accession Assistance (IPA) which totals to 199,1 million Euros for the years to come. IPA regulation requires from beneficiary countries to have ownership over the programming process.

In order to do so, several aspects have to be ensured: Legislative framework, Institutional framework and Administrative Capacity.

First, Kosovo has to ensure that legislative framework is put in place in order to allow for multi-annual programming. It shall also in its legal acts foresee clauses for budget flexibility as co-financing is one of IPA preconditions. Kosovo is undergoing the process of approximation of

\(^{24}\) For more info see [http://ec.europa.eu/enlargement/pdf/financial_assistance/cards/general/2666_00_en.pdf](http://ec.europa.eu/enlargement/pdf/financial_assistance/cards/general/2666_00_en.pdf)

\(^{25}\) See [http://unmikonline.org/reports/N9917289.pdf](http://unmikonline.org/reports/N9917289.pdf)


\(^{27}\) PHARE, ISPA, SAPARD, Turkey pre-accession instrument and CARDS.

\(^{28}\) Ibid Article 6(3).
legislation, therefore, it has to ensure that relevant pieces of legislation are EU compatible.

Second, to be able to absorb IPA funds and to be in position to coordinate and programme EU aid, more and sophisticated institutional structures have to be put in place. This includes planning and establishing all structures at national and local level, as well as implementation bodies with clear role and responsibilities.

Third, the European Integration responsible body needs to be able to respond to the requirements of EC assistance, namely IPA. The programming, implementation of projects funded under EC require coherent and well build structures with competent and well trained personnel.

Although Kosovo will in the first instance be only recipient of the components I and II under IPA, it should nevertheless prepare its future Decentralised Implementation System (DIS) for the managements of the components III, IV and V, as based on the experience of other countries, the process of preparing for DIS would take at minimum 2-3 years.²⁹

With regards to key strategic documents, linkage has been very difficult since the Kosovo National Development plan (KDSP) hasn’t been finalized and this represents a difficulty at the outset when it comes to programming of EU assistance.

3. CHALLENGES AHEAD

The main challenges for Kosovo on the way to EU membership lie in understanding the process and its consequences; having a full dedication and commitment from the government by placing European Integration as a top agenda; strong and sustainable institutions; administrative capability to prepare and implement coherent, consistent and well coordinated strategies and plans conducive to economic development and EU integration process.

Public support is of high importance and needs to be gained with clear arguments in favour of EU integration and membership. The planed strategy needs to involve media, journalists, social partners, CSO's and public opinion makers. Same goes for the area of communication. Accountability, transparency and timely information of the progress in the process by the government side is essential. The strategies for information and communication of the EU integration process need urgently to start being implemented.

²⁹ Absorption for EU pre-accession funds, Mojmir Mrak & Dragan Tiley, Forum 2015, March 2008, p.61
A strong link must be ensured between the political and decision making bodies and administrative, operational and technical level to implement and deliver on agreed priorities. This link should be ensured through daily involvement of the Deputy Prime Minister in charge for EU affairs. Streamlining assistance and to concentrating on the priorities within EU integration process is one of his main challenges.

For Kosovo, a real challenge will be to set one coherent, consistent and well coordinated plan for the adoption of EU policies and law, namely National Plan for Adoption of the Acquis (NPAA). Consensus over NPAA needs to be reached in the Kosovo Assembly and accepted by the government as legislative program. It must become a referent document for setting up and reorganizing institutions, setting budget priorities, programming of foreign assistance and formulation of negotiation positions. The role of the Parliamentary Commission for Integration is instrumental in monitoring the implementation of the NPAA.

IPA now creates a single, unified financial instrument for pre-accession assistance and this for the whole period of the financial framework 2007 till 2013. To be able to absorb IPA funds as well as coordinate and programme EU aid, Kosovo government needs to develop the required legislative and institutional framework and in accordance develop administrative capacities. Ownership of programming should be increasingly assumed and responsibility of implementation activities gradually taken over. Ministry of Finance needs to get on board at early stages, including budget planning process, whereas IPA programming is lead by National IPA Coordinator. One voice policy between National Aid Coordinator and Central Donor Coordination mechanism needs to be reached.

Strengthening the administration so it can be entrusted the management of EU funds over time with the progressive decentralisation of EU aid requires an urgent attention. Decentralised implementation makes pre-accession assistance more effective. In addition, decentralised management must be seen as a learning process by itself for Kosovo. This will eventually lead to the management of large amounts of EU funds, once Kosovo becomes a Member State.

A true challenge will be to set a clear division on the functioning and coordination between the central European Integration Coordination Body, at the moment the AEI, and the Ministry of Foreign Affairs (MFA, including the mission in Brussels, once established. An automatic
distribution and flow of information needs to serve the MFA and Mission. MFA has to lead on all political and outward directed aspects of the EU integration process and the AEI to proceed with technical and coordinative inward oriented activities in the EU integration reforms.

Kosovo needs to immediately start preparing for the SAA negotiations. This involves preparation of the negotiation team and appropriate network of experts in the SAA fields, including preparation of the negotiation positions. With regards to this, an early involvement of business community and wider public is recommended because of the tangible consequences of SAA for this part of society.

However, a genuine challenge is the implementation of agreed binding documents with the EU such as EP or SAA. A strong monitoring mechanism needs to take place to follow the implementation of the obligations and accordingly produce communication and reporting tools. In years to come the challenge will be to establish SAA bodies which are lead by competent experts with strong leadership capacity. A challenge will involve the preparation for the negotiations for EU membership buy having clear division of responsibilities between key players. The strong leadership and work over NPAA is an exercise for the preparation of the negotiation positions.

Administrative capacities to run the EU integration process, to negotiate and implement the SAA, to transpose and translate the EU legislation, to negotiate for membership and to be an equal member of the EU have proved to be a precondition to a successful process. The lack of capacities within the Public Administration in Kosovo require an immediate action: this involves, starting immediately and systematically to prepare the administration, to conduct a Public Administration Reform and set a comprehensive action plan. The challenge involves: designing a training strategy and operational action plan; establishing specialized training centres, scholarship schemes with special attention to communication, negotiation and language skills.\(^\text{30}\)

\(^{30}\) Anëtarësimi në Bashkimin Europian, Venera Hajrullahu and Fatmir Curri, Platforma Civile për Zgjedhjet 2007, p. 65, Forum 2015