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**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***

{SWD(2012) 339 final}

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

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on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo*

1. INTRODUCTION

The main principles of the Stabilisation and Association Process (SAP) were set out in a Commission Communication of May 1999¹ and were confirmed by the Council in June 1999. Through this process, the European Union (EU) expresses its determination to take up the challenge and responsibility to contribute to the stability of the Western Balkans region. In return for compliance with the relevant conditions, the EU offers the countries tailor-made contractual relations: Stabilisation and Association Agreements. The conditions for establishing contractual relations with the Western Balkans countries are set in the Council Conclusions of April 1997. The main elements include a credible engagement to undertake democratic reforms, respect and protect human rights, minorities and freedom of expression, and free and regular elections. The Council also expects implementation of the first economic reforms, readmission from Member States and commitment to the regional cooperation.

The Feira European Council (June 2000) gives a clear signal to the Western Balkans region establishing the status of potential candidates for membership. This message is further reinforced by the summit in Zagreb (November 2000). The European Council Conclusions of March 2003 state that the future of the Western Balkans is within the EU and strong political will and sustained efforts are required to secure it. The Thessaloniki agenda for the Western Balkans of June 2003 makes clear that the Western Balkans countries and support to their preparation for the future integration into the European structures and ultimate membership into the Union is a high priority for the EU.

To date, feasibility studies have been prepared for Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Serbia and Montenegro. Stabilisation and Association Agreements have subsequently been signed with all these countries. The December 2011 Council recalls the EU's willingness to assist the economic and political development of Kosovo through a clear European perspective, in line with the European perspective of the region. The Council underlines the need to take concrete steps to that effect. In February 2012, the Council takes note of the intention of the Commission to launch the feasibility study for a Stabilisation and Association Agreement between the European Union and Kosovo, without prejudice to Member States' position on status, or any future decisions to be taken by the Council.

In the context of the Council Conclusions of February 2012, the Commission made a Declaration stating that "the Commission's feasibility study will examine whether the political, economic and legal criteria for a Stabilisation and Association Agreement are

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¹ COM(1999) 235 final.

fulfilled. The launch of the feasibility study for a Stabilisation and Association Agreement with Kosovo is without prejudice to the legal status and Member States' positions on the recognition of Kosovo".

Methodology

This study is based on the findings presented in the Commission Staff Working Document.² This has been compiled on the basis of a questionnaire completed by the Kosovo authorities, an assessment mission of 20 experts, contributions from the EU Office in Pristina, international organisations and non-governmental organisations. The study assesses whether Kosovo is ready to negotiate and subsequently can implement a Stabilisation and Association Agreement. The document identifies priority issues to be addressed before negotiations can start and priority areas that Kosovo would need to address to be able to meet its obligations under a Stabilisation and Association Agreement.

Legal aspects

The possibility for the Union to conclude international agreements is not limited to generally recognised independent states or international organisations. Such agreements can be concluded with any entity with regard to which the other Contracting Party accepts that it can enter into an agreement that will be governed by public international law. In the past, the EU has concluded several international agreements with entities other than sovereign states.

These agreements were concluded by the Council on the basis of Article 218 Treaty on the Functioning of the EU (TFEU) (or the predecessor articles, Article 300 -and previously 228-EC). In this context, it is important to note that the use of Article 218 TFEU, as the legal basis for an agreement with Kosovo, does not constitute recognition of Kosovo by the Union as an independent state nor does it constitute recognition by individual Member States of Kosovo, provided that an express reservation to that effect is made. Equally, it does not constitute a reversal of recognition by the Member States which have already recognised.

There is no legal obstacle for the Union to conclude on that basis an association agreement with Kosovo. There is no precise definition of that notion in EU-law: Article 217 TFEU indicates that such an agreement establishes "an association involving reciprocal rights and obligations, common action and special procedure". It follows from the Union's practice that association agreements create special, privileged links with a third country. In particular, association agreements always lay much emphasis on the shared values and principles, comprise an important trade component, provide for approximation of the country's national legislation and policies with all core policies of the Union, and organise cooperation on almost any area of Union competence. The association is developed through an institutional framework, which not only includes a decision-making mechanism, but provides also intensive dialogue at civil service level.

Consequently, the Union can conclude such an agreement with a third country if its political and judicial authorities are capable to ensure that the terms of the agreement are respected, applied and implemented. It is precisely the purpose of this feasibility study to examine whether the political and economic development of Kosovo would allow it to undertake the extensive obligations of an association agreement. From the legal point of view, however, it suffices to find that the fact that some Member States do not recognise Kosovo as an

² SWD(2012) 339 final.

independent state does not constitute a legal obstacle for the Kosovo authorities to implement the obligations that would arise from an association agreement. The association of Kosovo to the European Union is not in conflict with the fact that the Member States of the Union have different positions on the status of Kosovo under international law. Moreover, the precise legal nature of the agreement would have to be determined at the end of the negotiations, in view of its actual content and taking duly into account the legal context.

The international presence³ in Kosovo does not constitute an obstacle for the Kosovo authorities to implement the obligations arising from a Stabilisation and Association Agreement. Such an agreement would not be in contradiction with the United Nations Security Council Resolution 1244 of 1999 and is consistent with the current presence of the United Nations Interim Administration Mission in Kosovo.

The International Civilian Office (ICO) was set up to supervise the implementation of the Comprehensive Proposal for a Status Settlement for Kosovo. On 10 September, the International Steering Group (ISG), having determined that Kosovo had substantially implemented the terms of the Comprehensive Settlement proposal and Kosovo having adopted the necessary constitutional and legal framework, declared the end of the supervision of Kosovo's independence, and the end of the mandate of the International Civilian Representative. As a consequence, the International Civilian Office will be closed by the end of 2012. Following this process, the EU will take on a more prominent role in Kosovo.

The central aim of the EU rule of law mission, EULEX, is to assist and support the Kosovo authorities in key areas of the rule of law – police, judiciary and customs. Its mandate has certain executive responsibilities. If an association agreement were concluded, this EU mission would, within its remit, support the Kosovo authorities in the implementation of such an agreement.

Aspects related to the north of Kosovo

The north of Kosovo refers to an area which includes the municipalities of Leposaviq/Leposavić, Zubin Potok and Zvečan/Zvečan as well as the part of Mitrovicë/Mitrovica municipality north of the river Ibër/Ibar. This area is predominantly inhabited by Serbs.

Serbia has continued to fund and maintain certain structures in this part of Kosovo. This includes not only hospitals and schools, but also municipal administrations, security services and judicial structures. Currently, the Mitrovica District Court can only operate with the support of EULEX judges. The Serbian power utility maintains an unlicensed branch in the north, unlicensed Serbian mobile telephony companies continue to operate and the population in the north frequently uses alternative roads to cross the border/boundary line.

The north of Kosovo faces a difficult economic situation. The local population is overly dependent on public employment and social assistance financed by Belgrade. The area's

³ It can be recalled that the presence in Bosnia and Herzegovina of a High Representative, supported by the Office of the High Representative (OHR), appointed by the Peace Implementation Council to oversee the civilian implementation of the Dayton Peace Agreement, was not considered a legal impediment for the signature of a Stabilisation and Association Agreement between the European Union and Bosnia and Herzegovina.

potential in terms of natural resources, such as the Trepça/Trepča mine, remains largely under-developed.

In 2011, a census was conducted across Kosovo, but it did not include data on these parts of Kosovo. At the time of the last Kosovo elections, the turnout in these municipalities was extremely low. In May 2012, the municipalities of Zubin Potok and Zvečan/Zvečan unilaterally organised separate local elections at the same time as elections were held in Serbia. These elections were not recognised by Pristina, Belgrade or international community.

Following the deployment of Kosovo police and customs to the border/boundary crossing points over the summer 2011, a number of barricades were erected. Most have now been dismantled. There is still a barricade on the main bridge across the Ibër/Ibar river. The current situation with outbursts of violence and frequently heightened tensions is not sustainable. KFOR and EULEX have an important role to play in helping maintain calm.

Belgrade/Pristina dialogue

The situation in the north of Kosovo remains a challenge for Kosovo, Serbia, Western Balkans region and international community. Following the UN General Assembly Resolution of September 2010, the EU has facilitated a dialogue between Pristina and Belgrade. The dialogue was launched in March 2011 to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people. To date, the parties have reached agreements on free movement of persons, customs stamps, recognition of university diplomas, cadastre records, civil registries, IBM and on regional cooperation. Both Kosovo and Serbia need to continue implementing in good faith all agreements reached to date and to engage constructively on full range of issues with the facilitation of the EU.

Further progress on the issues in the north will require all relevant actors involved to work together in a constructive spirit. The Kosovo authorities need to do their part. They need to promote a multi-ethnic Kosovo and to respect the particular needs of the local population. Kosovo has continued preparing an agenda for the north in line with the Council Conclusions of December 2011. Non-Serb minorities in the north will also benefit from normalisation in this part of Kosovo.

The current situation is challenging and needs to be urgently improved. In this regard, the Commission considers that the benefits of a Stabilisation and Association Agreement would serve as an encouragement for the population of all of Kosovo, including the north.

2. RELATIONS BETWEEN THE EUROPEAN UNION AND KOSOVO

Kosovo has gradually strengthened its structures dealing with European integration processes. Kosovo has established a National Council for EU Integration chaired by the President. The objective of this National Council is to mobilise Kosovo institutions to deliver on its EU reform agenda. The Ministry of European Integration leads a Task Force for European Integration. The Ministry has demonstrated a good ability to mobilise other ministries and institutions by coordinating a comprehensive contribution of Kosovo to the preparation of this feasibility study.

Review of the 2009 Communication on Kosovo – Fulfilling its European perspective⁴

In 2009, the Commission issued a Communication on Kosovo, which included recommendations for a number of practical steps the EU could take to ensure Kosovo's continued progress towards Europe.

The EU has launched a visa liberalisation dialogue and presented the visa liberalisation roadmap to the Kosovo authorities; the Kosovo authorities have now submitted their first report. The EU agreed to extend the Autonomous Trade Measures for Kosovo in 2011. Kosovo has also been included in the Convention on Pan-Euro-Med Cumulation of Origin, in which it can actively participate once a trade agreement is in place. Kosovo continues to prepare for integration into the economic and fiscal surveillance framework. In December 2011, the Council recognised that Kosovo's socio-economic development would also be enhanced through membership of the European Bank for Reconstruction and Development.

In March 2011, the Commission recommended to the Council to authorise it to negotiate a framework agreement allowing Kosovo to participate in EU programmes. The Commission and Kosovo have completed three cycles of the Stabilisation and Association Process Dialogue. This Dialogue has proven an effective mechanism to monitor and advise Kosovo on measures it has to take to implement its European reform agenda. This mechanism also provides for consultations with civil society organisations.

Kosovo benefits from the Instrument for Pre-Accession Assistance cross-border cooperation programmes with Albania, the former Yugoslav Republic of Macedonia and Montenegro. Kosovo's allocations for Erasmus-Mundus, Tempus and the Young Cell scheme under the Instrument have increased. Overall, within the 2007-2013 framework, € 635.4 million is available to Kosovo.

Jointly with the Kosovo authorities, the Commission launched a Structured Dialogue on the Rule of Law. This demonstrates the political commitment of the Kosovo authorities and the Commission to address challenges in this area early in the enlargement process.

EU presence in Kosovo

The double-hatted office of the EU Special Representative and the International Civilian Representative has been decoupled. The office of the EU Special Representative and the European Commission Liaison Office have been merged into one EU Office. This has enhanced the EU's presence and visibility in Kosovo. To reflect increasing capacities of the Kosovo authorities, the mandate of EULEX has been reconfigured and downsized. To assist the Kosovo authorities in facing the remaining challenges, its mandate has been extended until June 2014. Kosovo needs to maintain good cooperation with the mission and actively support the implementation of its mandate. The Commission is cooperating closely with EULEX throughout its reconfiguration to ensure a smooth transition and sustained support to the Kosovo authorities.

Kosovo in the regional context

Kosovo participates in the Regional Cooperation Council, the Energy Community Treaty, the South East-Europe (SEE) Transport Observatory and CEFTA, and is ready to participate in

⁴ COM(2009) 534 final.

other regional initiatives. The formula for Kosovo's participation in regional cooperation arrangements agreed in February 2012 is a good basis for Kosovo to increase and extend its direct participation in these mechanisms. These include the Transport Community Treaty, judicial cooperation, and arrangements for employment and social policies within the framework of SEE Employment and Social Policy Network and the SEE Health Network. It should also ensure Kosovo's full participation in the Roma Decade.

3. ASSESSMENT

3.1. Political issues

Kosovo's political system is based on the principles of a parliamentary democracy. These principles are enshrined in its constitution and legal framework. Over the past three years, the **functioning of democratic institutions and the respect for the rule of law** have been consolidated. The necessary institutions have been established.

The president, government and parliament are the main institutions responsible for driving forward the reform process. The Constitutional Court has played an important role in guaranteeing democratic principles and respect of the constitution, for example through its judgements on the mandate of the current President. The cooperation on legislation between the government and the parliament has also been gradually improving. Kosovo has demonstrated sufficient commitment to the democratic principles of governance to start negotiating a Stabilisation and Association Agreement. To meet its obligations under such an agreement, Kosovo needs to continue to implement democratic reforms. In particular, the Assembly and its committees need to strengthen their oversight of the executive and the security sector, through improved scrutiny of legislation and monitoring of implementation of policies and laws. The financial and administrative independence of the Assembly from the government needs to be strengthened. This can be achieved through adopting legislation on the status of civil servants of the Assembly. It is also important to ensure that the draft budget of the Assembly is modified by the government in consultation with the Assembly before the government submits the budget proposal to the Assembly for adoption.

Kosovo has held regular elections at both central and municipal levels. The electoral system allows for competition between different political parties and free choice for voters. This has resulted in a differing composition of governing coalitions over time. The most recent general elections in 2010/2011 demonstrated that new political parties can enter the Assembly. Kosovo is ready to start negotiating a Stabilisation and Association Agreement. At the same time, these elections were marked by serious shortcomings and technical difficulties. Therefore, Kosovo needs to ensure that the legal framework improves to better reflect best practices and standards in the EU to meet its obligations under such an agreement.

On the rule of law, the legal framework is complex, including legislation from the former Yugoslavia and from the Federal Republic of Yugoslavia, UNMIK legislation and new Kosovo legislation. Some elements of the necessary legislative reforms for the fight against organised crime have been put in place. Several important laws are still missing or need amendment, notably in the area of money laundering and asset confiscation. In the short term, Kosovo needs to demonstrate a clear commitment to deliver results in the fight against organised crime, including launching investigations, in close coordination with EULEX. Kosovo needs to adopt new legislation on confiscation of assets and adapt to the *acquis* the law on the prevention of money laundering and financing of terrorism.

Enforcement of the legal framework for the fight against various forms of organised crime remains an important challenge. For Kosovo to meet its obligations under a Stabilisation and Association Agreement, concrete evidence of results in fighting organised crime needs to be given as a matter of priority. Kosovo also needs to continue in strengthening and implementing its legislation particularly on prevention and fighting against trafficking in human beings, drugs, their precursors and weapons trafficking. Kosovo also needs to improve the reliability of its statistics.

Kosovo has put in place important elements of the legislative framework necessary for the fight against corruption. Examples include legislation on declaration of assets, preventing conflicts of interest in exercising public functions, whistle-blowers, public procurement and financing of political parties. It is important that Kosovo now achieves tangible results in this area.

Over the past three years, the prosecution service and the police have been reorganised to strengthen their capacity to tackle corruption. Kosovo also has an Anti-Corruption Agency with the right of administrative investigation and reporting. The capacity of the Agency corresponds to its responsibilities. In the short term, Kosovo needs to demonstrate a clear commitment to deliver results in the fight against corruption, including launching investigations, in close coordination with EULEX. Kosovo needs to adopt a new anti-corruption strategy.

To meet its obligations under a Stabilisation and Association Agreement, Kosovo also needs to effectively implement its anti-corruption legislation and establish an effective mechanism for prevention of corruption. As a matter of priority, Kosovo needs to provide concrete evidence of results in its fight against corruption. This would include successful investigations and prosecutions of appointed and elected officials guilty of corruption. Kosovo also needs to improve the reliability of the statistics in this area.

The Council Conclusions of April 1997 underline the importance of satisfactory readmission procedures. Within the framework of the visa liberalisation process, Kosovo has adopted a law on readmission and continues to cooperate on readmission issues with EU Member States. It needs to fully implement its law on readmission and needs to ensure the reintegration of the returned persons.

Over the past three years, Kosovo has adopted legislation for major judicial reforms. The principles of impartiality, independence, accountability and efficiency are at the heart of this reform. The reforms change the structure of the court system and the prosecution. A Prosecutorial Council has been established and the Judicial Council has been strengthened. Key institutions of the judiciary are in place, although in the court in northern Mitrovica only EULEX judges are present. They have progressively increased their capacity and have a good understanding of how to take these reforms forward. The efforts made to reduce the backlog of old cases are now slowly showing results. While implementing the new structure of courts, Kosovo needs to ensure that the Special Prosecution responsible for cases of organised crime, war crimes and corruption maintains its competencies.

It is clear that Kosovo faces many important challenges in this area. To meet its obligations under a Stabilisation and Association Agreement, Kosovo needs to continue improving the effectiveness, accountability and impartiality of the judiciary. It needs to successfully implement the four main judicial reform laws, including by ensuring their consistency. Kosovo needs to take measures to decrease the total backlog of cases. The Kosovo authorities

need to provide appropriate security and protection to judges, prosecutors, witnesses and plaintiffs, as well as court staff. Kosovo needs to ensure trials are conducted in appropriate premises and in line with court procedures. Recruitment of judges and prosecutors from minorities, as set out in the legislative framework, needs to continue.

The legal framework providing for the basic conditions for a stable and professional civil service is largely in place. Legislation is inspired by the latest approaches to **public administration** in Europe. The capacity of the public administration at the central level are better developed than those at the municipal level. Kosovo has also established the institution of the Ombudsperson, which is a key independent body to promote human and fundamental rights. The Ombudsperson however faces challenges, notably in terms of budget and premises.

In the short term, Kosovo needs to adopt the necessary secondary legislation on civil service and on salaries for the civil service. Furthermore, it needs to allocate premises to the Ombudsperson and to ensure its budgetary independence. The government needs to include the Ombudsperson's draft budget proposal without modifications into the global draft budget submitted to the parliament.

At the same time, Kosovo needs to continue to implement the necessary reform of the public administration. To meet its obligations under a Stabilisation and Association Agreement, Kosovo needs to make progress in implementing the public administration strategy and action plan and related legislation. It also needs to ensure sustainable public administration reform, including the necessary funding and staffing. The share of persons belonging to minorities in the public administration needs to be increased. An efficient and professional public administration is key for the successful implementation of an agreement.

The constitution of Kosovo and the overall legislative framework provide guarantees for basic **human rights and the protection of minorities**. Although Kosovo is not a member of the UN or the Council of Europe, its constitution stipulates that key UN and Council of Europe conventions and protocols are directly applicable in Kosovo and take precedence over Kosovo's legislation. Over the past three years, Kosovo has taken steps to implement these provisions in practice.

There are important challenges that need to be addressed by Kosovo in order to meet its obligations under a Stabilisation and Association Agreement. This area is particularly important in light of the new EU Strategic Framework and Action Plan on Human Rights and Democracy adopted by the Council in June 2012. Kosovo needs to investigate and prosecute any physical attacks against journalists and complete the parliamentary procedure changing the Criminal Code on criminal liability of the media and protection of journalist sources. Kosovo also needs to streamline and simplify the multitude of different bodies dealing with the protection of human and fundamental rights to ensure effective monitoring and enforcement of the legal framework in this area. Kosovo needs to make progress in enforcing property rights, for example through decreasing the backlog of cases and improving enforcement of judicial and administrative decisions. Legislation on personal data protection needs to be further harmonised with EU standards and administrative capacities strengthened in this area.

The legislative framework for the protection of minorities is in place, including constitutional guarantees. According to Kosovo's constitution, the Council of Europe Framework Convention for the Protection of National Minorities is directly applicable in Kosovo. Persons

belonging to minorities are well represented in the Assembly and in political functions at the government level.

With strong international support, Kosovo has continued offering the possibility of return for displaced persons. Overall, over 23,000 persons belonging to minorities have returned to Kosovo since 2000.

Kosovo has also started implementing decentralisation, including the establishment of new municipalities with a majority of minority population. In the short term, Kosovo needs to ensure existence of a body enabling direct consultation on the promotion and protection of religious and cultural heritage with religious communities, notably the Serbian Orthodox Church.

To meet its obligations under a Stabilisation and Association Agreement, Kosovo needs to promote a multi-ethnic Kosovo, by creating conditions for Kosovo Serbs to feel part of Kosovo's future and to facilitate return for persons wishing to do so. The Commission also expects that Kosovo will continue to implement decentralisation, notably in the new municipalities and thereby help the integration of Kosovo Serbs. Budget, staff and premises need to be allocated to the Office of the Language Commissioner.

Kosovo also needs to implement legislation on protection of the cultural heritage and of the Serbian Orthodox Church, notably laws on the historic centre of Prizren and on the village Velika Hoča/Hoçë e Madhe. The Kosovo public broadcaster needs to ensure broadcasting in Serbian language. Attacks motivated by ethnicity or religion need to be investigated and perpetrators brought to justice and discrimination tackled. With regard to Roma, Ashkali and Egyptians who still live in very poor conditions, Kosovo needs to demonstrate progress on implementation of the strategy and action plan, including through allocation of the necessary resources.

On war crimes, Kosovo has maintained good cooperation with the International Criminal Tribunal for the former Yugoslavia. Kosovo also needs to support the work of the Special Investigative Task Force of EULEX.

3.2. Economic issues

Kosovo has implemented the initial essential reforms towards establishing a fully functioning market economy. This is sufficient to establish contractual relations with countries from the Western Balkans, as stated in the Council Conclusions of April 1997. At the same time, Kosovo's economy faces many important challenges. Unemployment is very high and the private sector remains weak. Informalities are widespread and the rule of law needs to be enhanced to improve the business environment and support private sector development. Significant further efforts are needed to better target economic policies, address fiscal consolidation, job creation and competitiveness issues, and promote private investments to achieve more sustainable and inclusive growth.

3.3. Ability to assume the obligations resulting from a Stabilisation and Association Agreement

The Commission analysis confirms that for majority of the sectors, Kosovo has put in place elements of the legislative framework and the basic administrative capacity. This is sufficient to start negotiating a Stabilisation and Association Agreement. At the same time, the Staff

Working Document highlights that there are significant gaps and many issues that need to be addressed by Kosovo, to meet its obligations under such an agreement.

Trade is a key sector in the context of a Stabilisation and Association Agreement. Kosovo has a liberal trade regime and is a very open economy, with few restrictions to trade. Kosovo is a member of CEFTA and has a tariff-free regime for all industrial goods and agriculture products with all members of CEFTA. Kosovo also enjoys customs-free access to the EU market for manufactured products and almost all agricultural products, through the EU's autonomous regime. Kosovo has been taking steps to modernise the regulatory framework related to the free movement of goods with a view to approximation with the *acquis* by adopting new legislation in line with EU standards and eliminating non-EU compatible regulations.

The Ministry for Trade and Industry is being reorganised to improve capacity in this area in view of the trade-related parts of a Stabilisation and Association Agreement. The restructuring has not yet been fully completed. Therefore, in the short term Kosovo needs to implement the government decision on the restructuring of the Ministry and put in place a structure to lead and coordinate such negotiations. To improve the understanding of the impact of trade provisions of a Stabilisation and Association Agreement on Kosovo's economy, Kosovo needs to prepare an analytical study, including a clear statement of its negotiating priorities.

There are further areas in which Kosovo needs to make progress to meet its obligations under a Stabilisation and Association Agreement. One of the key elements is implementation of the legal framework on trade, competition and internal market issues. Illegal animal trade and slaughtering continues and Kosovo needs to enhance control of these practices. The controls at livestock markets also need to be strengthened. Kosovo would benefit from improved business statistics.

To meet its obligations under a Stabilisation and Association Agreement, Kosovo needs to enhance facilities dedicated to the phytosanitary and veterinary import controls as well as the capacity to transfer samples. The transfer of the food safety and veterinary inspectors from municipalities to the Kosovo Food and Veterinary Agency needs to be finalised. Data entry into the animal identification, registration and movement database needs to be systematised. The laboratories involved in food controls need to be accredited.

4. OVERALL CONCLUSIONS AND RECOMMENDATIONS

Kosovo has made considerable progress on its path towards the EU since the conflict of the late 1990s. It has put in place a stable institutional and legal framework required for democratic governance and protection of human rights, of all minorities living in Kosovo as well as of rights of returning displaced persons.

The core institutional and legal framework to ensure the rule of law is in place. The legislation provides for strong guarantees of the independence of the judiciary. The basic institutions of the judiciary have started to perform their role. The legal framework necessary for a stable and professional public administration is also largely in place.

Kosovo has implemented the initial essential reforms towards establishing a functioning market economy. Kosovo has a liberal trade regime and is overall, a very open economy, with few restrictions to trade. One of the key economic challenges Kosovo faces is a very high level of unemployment.

Through engagement in the EU-facilitated dialogue with Serbia, Kosovo has demonstrated commitment to regional cooperation and stability. Kosovo has also established good relations with most of its neighbours. It participates in some of the regional fora and chaired CEFTA.

Over the past three years, Kosovo has increased its capacity to meet obligations stemming from a Stabilisation and Association Agreement. Kosovo is currently the only country of the Western Balkans that does not yet have contractual relations with the EU or benefit from the visa liberalisation. In trade, it relies on EU autonomous trade measures.

From a legal point of view, the EU can conclude a Stabilisation and Association Agreement with Kosovo, as per Articles 217 and 218 TFEU. A Stabilisation and Association Agreement between Kosovo and the EU can be concluded in a way that it respects the positions of Member States on the status of Kosovo. On several occasions, the Council has confirmed the European perspective of the Western Balkans. Most recently, the Council confirmed this perspective for Kosovo in December 2011. Kosovo's European ambitions enjoy strong support from the general public in Kosovo.

The situation in the north of Kosovo remains an important challenge for Kosovo, the Western Balkans region at large as well as the EU. All actors involved need to take positive and proactive steps to help resolve this situation. It is for the Kosovo authorities to promote a multi-ethnic Kosovo. They need to create conditions for Kosovo Serbs to feel they have future in Kosovo. The current situation is not an obstacle to negotiate the agreement, but further improvements are required for Kosovo to meet the obligations under a Stabilisation and Association Agreement. It is in the interest of people living in this part of Kosovo to benefit from the provisions of a possible future Stabilisation and Association Agreement. The EU is committed to help all parties concerned to find solutions to improve the lives of people living in the north of Kosovo.

The analysis presented in the Staff Working Document and summarised in this Communication suggests that Kosovo is largely ready to open negotiations for a Stabilisation and Association Agreement. It is also essential that Kosovo continues implementing in good faith all agreements reached between Belgrade and Pristina to date and that it engages constructively on the full range of issues with the facilitation of the EU. On this understanding, the Commission will propose negotiating directives for such an agreement, once Kosovo takes the following steps:

- *Rule of law:* demonstrate a clear commitment to deliver results in the fight against organised crime and corruption, including launching investigations and ensuring continuous good cooperation with EULEX. Support the work of the Special Investigative Task Force. While implementing the new structure of courts, ensure that the Special Prosecution responsible for cases of organised crime, war crimes and corruption maintains its competencies. Adopt the legislation on confiscation of assets and revise the law on prevention of money laundering and financing of terrorism. Adopt a new anti-corruption strategy.
- *Public administration:* adopt the necessary secondary legislation of laws on civil service and on salaries for the civil service. Allocate premises to the Ombudsperson Institution and ensure its budgetary independence through obliging the government to include the Ombudsperson's draft budget proposal into the global draft budget submitted to the parliament without changes.

- *Protection of minorities:* ensure existence of a body enabling direct consultation on the promotion and protection of religious and cultural heritage with religious communities, notably the Serbian Orthodox Church.
- *Trade:* implement the government decision on the restructuring of the Ministry for Trade and Industry, put in place a mechanism to lead and coordinate negotiations within Kosovo and prepare an impact analysis of trade aspects of a Stabilisation and Association Agreement.

Kosovo needs to continue demonstrating its commitment to the overall EU reform agenda, including by increased alignment of legislation with the *acquis*. To meet its obligations under a Stabilisation and Association Agreement, Kosovo needs to make progress in the following areas in particular:

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

Make progress on the enforcement of property rights for example through decreasing the backlog of cases and improving enforcement of judicial and administrative decisions. Harmonise legislation on personal data protection with EU standards and focus on its implementation, notably by drafting secondary legislation and building up administrative capacities.

- *Protection of minorities:* promote multi-ethnic Kosovo; create conditions for Kosovo Serbs to feel part of Kosovo's future and conditions for the return of persons who wish to do so. Continue implementing decentralisation, notably in the new municipalities. Allocate budget, staff and premises to the Office of the Language Commissioner. Implement legislation related to the protection of cultural heritage and the Serbian Orthodox Church. Ensure broadcasting in Serbian by the public broadcaster. Investigate and prosecute any physical attacks motivated by ethnicity or religion and bring perpetrators to justice. Progress on implementing the strategy and action plan for the Roma, Ashkali and Egyptians, including through the allocation of the necessary resources.
- *Trade and internal market issues:* implement the legal framework on trade, competition and internal market. Enhance the control of the continuing illegal animal trade and slaughtering and strengthen the controls at livestock markets. Improve business statistics.
- *Phytosanitary and veterinary issues:* enhance the facilities for phytosanitary and veterinary import controls as well as the capacity to transfer samples. Strengthen food safety and phytosanitary controls, including through finalising the transfer of the food safety and veterinary inspectors from municipalities to the Kosovo Food and Veterinary Agency. Systematise data entry into the animal identification, registration and movement database. Accredite the laboratories involved in food controls.

The Commission invites Kosovo to intensify reforms in these areas and focus on implementation. The pace of progress depends on Kosovo. Public and political consensus in Kosovo on the EU reform agenda are key to its swift implementation. The Commission will continue to monitor Kosovo's progress through the Stabilisation and Association Process Dialogue, the Structured Dialogue on the Rule of Law, the visa dialogue process as well as through its regular progress reports.