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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

on progress by Kosovo* in fulfilling the requirements of the visa liberalisation roadmap

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

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1. INTRODUCTION

The European Commission launched a visa liberalisation dialogue with Kosovo on 19 January 2012 and handed over to its government, on 14 June 2012, a roadmap towards a visa-free regime. Kosovo had already implemented a considerable set of reforms in 2010 and 2011, notably in the field of readmission and reintegration, which enabled the Commission to launch this dialogue in 2012.

The visa liberalisation roadmap identifies the legislation and all other measures that Kosovo needs to adopt and implement and the requirements it needs to fulfil in the short term to advance towards visa liberalisation. Kosovo should first adopt or amend in line with the EU *acquis* the legislation set out in the roadmap. It should then fully implement that legislation and all other measures specified in the roadmap.

A large body of legislation already exists in Kosovo in the areas covered by the visa roadmap. In some policy areas, the existing legislation is already in line with the essential elements of the EU *acquis*; in others, the adoption of new laws, further alignment with the *acquis* or the adoption of secondary legislation remains necessary.

The Commission held the first senior officials' meeting with Kosovo in the context of the visa dialogue on 14 June 2012, requesting that the Kosovo authorities provide a comprehensive report on the state of Kosovo's preparedness under the visa roadmap, with a focus on legislative alignment. The government delivered this report and a legal analysis on 15 September 2012. To evaluate Kosovo's progress in the visa dialogue, the Commission services conducted an assessment mission to Kosovo on 22-24 October 2012, assisted by several experts of EU Member States, the EU Office in Kosovo and EULEX.

The present document is the first regular report setting out the Commission's assessment of Kosovo's progress in fulfilling the requirements of the visa liberalisation roadmap. In line with the visa liberalisation roadmap, it evaluates the following, with a focus on legislative alignment with the EU *acquis*:

- (1) Kosovo's record in adopting or amending in line with the EU *acquis* the legislation set out in the roadmap;
- (2) Kosovo's record in implementing the legislation and all other measures set out in the roadmap;
- (3) The expected migratory and security impacts of the liberalisation of the visa regime.

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The present report draws upon the comprehensive report and legal analysis submitted by the Kosovo government, reports drafted by the EU Member States' experts participating in the assessment mission in October 2012, information submitted by the EU Office in Kosovo, EULEX and the EU Agencies, as well as detailed statistics compiled by EUROSTAT and submitted by EU Member States and Schengen Associated States. It formulates a set of recommendations in policy areas where the adoption of new laws, further alignment with the *acquis* or the adoption of secondary legislation remains necessary. As progress in the visa liberalisation dialogue will require the implementation and enforcement of all the measures set out in the visa roadmap, this report also makes a set of recommendations in the field of implementation.

The visa dialogue is conducted without prejudice to EU Member States' position on status.

2. ASSESSMENT OF REQUIREMENTS RELATED TO READMISSION AND REINTEGRATION

2.1. Readmission

The domestic legal framework regulating **readmission** consists of a law on readmission and secondary legislation. These measures lay down the rules and procedures for readmitting to Kosovo its citizens, third-country nationals and stateless persons who no longer fulfil the requirements of entry or stay in the requesting state. They regulate the readmission procedure, with provisions on competent authorities, deadlines, application forms, travel documents, data protection and transit. The readmission law contains provisions guaranteeing respect for the constitution and the laws on data protection, citizenship, travel documents and foreigners, as well as the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees.

Kosovo should apply its readmission law “without prejudice” to any readmission agreement it has concluded with third countries. Kosovo has concluded such agreements with 18 countries, including fourteen EU Member States, two Schengen Associated States and two Western Balkan states.¹ It has initialled bilateral agreements with three other countries and initiated negotiations with another nine countries.² The existing agreements oblige the contracting parties to readmit each other's citizens and third-country nationals who no longer fulfil the requirements of entry and stay. They also specify the forms to be filled in for readmission applications and contain provisions on time limits for requests, the costs of readmission, data protection, proof of identity, proof of entry and transit.

Readmission from EU Member States works mainly on the basis of bilateral agreements. It also tends to function, via UNMIK or EULEX, vis-à-vis Member States that do not recognise Kosovo. A readmission and return division in the ministry of internal affairs processes readmission applications, and the Kosovo police seek to identify returnees. In the absence of reliable personal identity documents, the identification of returnees often poses a problem for Kosovo authorities, leading to their rejection of readmission applications. The exchange of

¹ Austria, the BENELUX states (in a joint agreement), Bulgaria, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Malta, Slovenia, Sweden, Norway, Switzerland, Albania and Montenegro have concluded readmission agreements with Kosovo.

² Kosovo has initialled readmission agreements with Estonia and Croatia and initiated negotiations with Ireland, Italy, Latvia, Lithuania, Poland, Portugal, the United Kingdom, the former Yugoslav Republic of Macedonia and Turkey.

information with Member State authorities concerning the special needs of returnees, including victims of human trafficking, remains problematic.

The readmission law stipulates that a readmission application must be granted if the relevant Kosovo authorities have not replied within 30 days. Figure 6.6 shows a high number of pending readmission applications from Germany and Belgium, suggesting that this provision does not work in the case of all Member States. The readmission statistics supplied by Kosovo do not correspond to the figures furnished by Member States. Kosovo should corroborate its readmission statistics with those from Member States.

2.2. Reintegration

Kosovo has improved its **reintegration** policy in recent years. In 2010, the government adopted a revised strategy and action plan for reintegration and a reintegration programme supported by a reintegration fund.³ It boosted resources for this fund from EUR 500,000 in 2010 to EUR 3.4 million and EUR 3.2 million, respectively, in 2011 and 2012. The reintegration fund finances emergency services for returnees, such as transport upon arrival, temporary accommodation, medical aid, food and sanitation packages and housing, as well as sustainable reintegration services, such as language classes for minors, vocational training, employment assistance and support for business start-ups. A regulation clarifies the roles and responsibilities of national and municipal authorities involved in the reintegration of returnees, the decision-making process and the criteria for benefiting from this programme.

The institutional structure supporting reintegration was refined in 2012. An executive board, assisted by a secretariat, authorises payments from the reintegration fund, monitors implementation, coordinates tasks between ministries and reporting from municipalities. An office for reintegration, including a reception office at the airport, liaises directly with returnees. In 2012, this office was transformed into a department in the ministry of internal affairs and began to supervise the work of seven regional coordinators. At the local level, municipal offices for communities and return are in charge of reintegration and report to their regional coordinators.⁴ Municipal reintegration committees approve requests for emergency services locally; requests for sustainable reintegration services are approved at the central level. Some 250 local officials received training on reintegration in 2011. A case management system monitoring returnees' access to reintegration services remains outstanding.

In 2011, Kosovo spent only 11% of its reintegration fund, mainly on emergency services. In the first three quarters of 2012, authorities committed some 58% of the fund (EUR 1.8 million) to reintegration, including EUR 1 million to housing, EUR 360,000 to an employment-generation scheme and the rest to emergency services. The company supplying temporary accommodation to returnees was embroiled in a corruption scandal and lost its contract with the ministry of internal affairs.

Between January and September 2012, the reintegration department counted 2,968 returnees to Kosovo, of whom some three-quarters (2,181 persons) benefited from the reintegration fund. 61.5% of beneficiaries were ethnic Albanian; 30% belonged to the Roma, Ashkali and Egyptian minorities; and 4% to the Serbian minority. All beneficiaries received food and

³ Reintegration is also supported by the strategy for communities and return and the strategy for the integration of the Roma, Ashkali and Egyptian communities.

⁴ Such municipal offices for communities and return are still missing in three of Kosovo's 38 municipalities.

sanitation packages; 34% help with schooling; 18% firewood for heating; 18% shelter or housing support; 11% transport services upon arrival; and 17% vocational training or support with a business start-up. These figures demonstrate the preponderance of emergency support among the services financed by the reintegration fund.

3. ASSESSMENT OF REQUIREMENTS RELATED TO DOCUMENT SECURITY; BORDER/BOUNDARY AND MIGRATION MANAGEMENT; PUBLIC ORDER AND SECURITY; AND FUNDAMENTAL RIGHTS RELATED TO THE FREEDOM OF MOVEMENT

3.1. BLOCK 1: Document Security

The law on travel documents, the law on identity cards and secondary legislation lay down the rules and procedures for obtaining travel documents and ID cards. They include provisions that seek to guarantee the integrity of the issuance process and document quality in line with International Civil Aviation Organisation (ICAO) standards. The law on civil status, supported by secondary legislation, regulates **civil registration** and the issuance of breeder documents. Citizens are assigned a personal identification number at birth, during late registration or re-registration. Those who lost their civil status certificates may re-register using other records or testimony from relatives. Secondary legislation regulates the format and issuance of civil status certificates and access to records. The certificates contain a number of security features.

The law on personal names allows the registration of names only in the Latin alphabet, which rules out the Cyrillic alphabet in contravention of the constitution. Citizens may change their name once every five years, subject to restrictions that seek to prevent abuse. To do so, they must provide their birth certificate, marriage certificate, if applicable, and a certificate stating that they are not subject to any proceedings. When a name change is permitted, the personal identification number remains the same, but the new certificate displays the latest name. Kosovo has sought closer relations with INTERPOL to identify persons applying for a name change and those who have been banned from the Schengen area. It also intends to reject applications from persons on the Schengen entry ban list. In some cases, such as a married woman reverting to her maiden name, name changes cannot be rejected, but the new names are sent to INTERPOL for onward transmission to Member States.

In October 2011, Kosovo started issuing **biometric travel documents**. Upon discovery of financial irregularities, the cooperation between the ministry of internal affairs and the contracted company was suspended. The travel documents assessed in October 2012 met all but one of the EU standards for security features: their design contained the required security features; their format complied with ICAO standards.⁵ An electronic chip stored the document holder's personal data, facial image and fingerprints, in compliance with ICAO standards. The data pages were optically personalised and included a variety of security features, but did not meet EU standards as concerns the age from which fingerprints should be included in travel documents. The EU standard is 12 years of age, a measure applied by Member States to prevent the trafficking of children. Kosovo's law on travel documents exempts from this requirement children up to the age of 16.

Kosovo has not sent to third countries its 'public key infrastructure' certificates generated as part of the biometric travel document issuance process, as it has been unable to join the ICAO

⁵ These standards are set out in ICAO Document 9303 (Part 1) of Annex 9 to the Chicago Convention.

Public Key Directory. Lost and stolen travel documents are recorded and forwarded to Kosovo's international law enforcement cooperation unit for onward transmission to INTERPOL's Stolen and Lost Travel Document (SLTD) database. However, Kosovo's travel document code is not included in the list of codes used in the INTERPOL database. Some 6,000 records are available that could potentially be transferred to the SLTD.

The issuance of **identity cards** is guided by international standards.⁶ Kosovo ID cards contain a number of security features and the document holders' biometric identifiers, including their facial image and fingerprints, encoded in a two-dimensional barcode with a machine-readable option. The security features of these ID cards comply with ICAO standards. Amendments to the law on identity cards adopted in 2012 will enable the production of biometric ID cards, but Kosovo has not yet announced when it would start producing such documents.

A civil status system based on European best practices contains data that are accurate, complete and up-to-date, with data subjects at the system's foundation. Kosovo's civil status system falls short of these standards, despite considerable progress in recent years. A civil registration agency in the ministry of internal affairs manages all civil status and registration records and issues to citizens, at municipal level, civil status certificates, ID cards and travel documents. Municipal civil status offices record all life events in separate registry books for births, marriages and deaths; upload such data to a central civil status register; and issue civil status certificates. The number of such offices in Kosovo should not hamper the civil registration agency's ability to audit these offices' compliance, notably concerning name changes, with the relevant legislation. Municipal civil registration centres process applications for ID cards and travel documents in the following manner; they verify applicants' identity on the basis of civil status certificates; collect photos, fingerprints and signatures; upload such data to a central civil registry; and issue the required ID cards or travel documents.

The integration of civil status and registration data in a single civil status central registry is under way. The registry books in Kosovo have all been scanned and uploaded to an electronic archive, and certified copies of the original registry books are being returned from Serbia and added to this archive. Staff have received training on using the new central registry. However, data quality in the central registry remains low, apart from registrations of birth; the marital status and deaths of data subjects are not yet updated; data entries are not fully cross-referenced or matched; several inconsistencies and gaps exist between different databases; and the audit mechanism to monitor modifications to data entries remains weak.

Staff at the civil registration agency have received training on a new code of ethics, and a small inspectorate in the civil registration agency investigates corruption. Nevertheless, implementation needs to improve: fraudulent name changes and incorrect data in travel and identity documents still occur, and there have been allegations of corruption in the production of biometric travel documents and vehicle registration plates. Increasing the reliability of the civil registration process will require appropriate resources for audit, training and the vetting of all public officials engaged in civil registration.

⁶ These standards are set out in ICAO Document 9303 (Part 3) of Annex 9 to the Chicago Convention.

3.2. BLOCK 2: Border/Boundary and Migration Management

3.2.1. Border/boundary management

The law on border control and surveillance covers most of the provisions laid down in the Schengen Borders Code, but its definitions and some of its provisions appear not be in line with this code.⁷ The terminological confusion includes the concepts of border control, border checks, border surveillance, minimum checks, thorough checks and second line checks. The articles governing inter-agency co-operation are too widely defined and do not regulate cooperation in detail. This law should be amended accordingly.

The secondary legislation on local border traffic and the relevant permit is in line with the Schengen *acquis*.⁸ In future, local border traffic could cover large areas adjacent to Kosovo, with a considerable impact on migratory flows through Kosovo. An efficient system should be established, in close cooperation with neighbouring countries, to manage the issuance, control and use of local border traffic permits.

The **IBM** strategy adopted in 2012 draws upon the Western Balkans model, which lacks the comprehensive approach to IBM set out in the 2006 Council Conclusions, the Schengen Borders Code and the Schengen Catalogue. The key elements of IBM, namely border control, crime prevention and implementation of the four-tier access control model, are missing from this strategy, and training is inadequately covered. This strategy should be redrafted, bearing in mind all key recommendations and best practices set out in the 2006 Council Conclusions, the Schengen Borders Code and the Schengen Catalogue.⁹

In a well-functioning IBM system, strategic risk analysis is used to manage risks and threats to border security. All Kosovo authorities involved in border/boundary management have recently developed their risk analysis systems, with the border/boundary management centre starting to play a key role in risk management. At regional and local level, risk analysis should be practiced systematically to enhance operational planning, capacity building and a proactive approach to border/boundary management. Kosovo has also encountered technical difficulties in the operation of its border management system in the north of Kosovo. This should be rectified.

Kosovo's IBM strategy functions as a piece of 'quasi legislation' that grants different roles and responsibilities to and organises cooperation between the various authorities involved in border/boundary management. The IBM action plan sets out how common goals in border/boundary management should be achieved. Strategic cooperation has improved at the central level, but inter-agency cooperation at the regional or local level could not be assessed. The border/boundary management centre is the only cooperation body whose roles and responsibilities are adequately regulated by the law on border control and surveillance and secondary legislation. Other authorities' roles and responsibilities in border/boundary management should also be legally defined. Kosovo should, therefore, draft legislation that defines the roles and responsibilities of all public authorities involved in border/boundary management, including operational cooperation and information sharing for the purpose of preventing and combating irregular migration and cross-border crime.

⁷ Schengen Borders Code (Regulation 562/2006)

⁸ Local Border Traffic Regulation (Regulation 1931/2006)

⁹ Schengen Borders Code (Regulation 562/2006); Council conclusions of 4-5 December 2006; Schengen Catalogue on External Border Control, Return and Readmission

Law enforcement cooperation with neighbouring countries improved in 2012. Kosovo has strong relations with Albania and, to a lesser extent, the former Yugoslav Republic of Macedonia in police cooperation, customs cooperation and border cooperation, including joint patrols, information exchange and regular joint meetings.¹⁰ Kosovo and the former Yugoslav Republic of Macedonia have established a joint communication centre for police cooperation. All three border/boundary-related authorities in Kosovo—the border police, customs and the food and veterinary agency—participate in such cooperation. Relations are also developing in the field of border checks. A new joint border-crossing point with the former Yugoslav Republic of Macedonia is being established, and there are plans to open new border-crossing points with Montenegro. Kosovo should endeavour to conclude agreements on law enforcement cooperation with all neighbouring countries.

In 2012, Kosovo and Serbia, with EU facilitation, made substantial progress in implementing the IBM Agreed Conclusions of 2 December 2011. This included opening four interim crossing points before the end of December 2012 and preparing the establishment of two more interim crossing points in 2013. The parties also agreed the geographical coordinates of six permanent crossing points, to be established in the future; provisions on law enforcement information exchange, customs information exchange and mutual legal assistance; and posting liaison persons to follow all issues related to the normalisation of relations between the two sides. The IBM agreement should be fully implemented in a coordinated manner.

In coordination with Montenegro, Kosovo should also delineate the mutual border. Kosovo should also explore modalities of cooperation with FRONTEX.

3.2.2. *Migration management*

The law on foreigners regulates a number of issues related to the issuance of visas, **legal migration and irregular migration**. Given its wide scope, it only partly complies with the EU *acquis*. The law on foreigners, the law on border control and surveillance and the secondary legislation should, therefore, be comprehensively redrafted so that their definitions and core provisions comply with the Schengen Borders Code and EU legislation on legal migration¹¹ and irregular migration.¹² Amendments should address the following:

- The law on foreigners stipulates that foreigners may enter and stay in the territory of Kosovo if they hold a valid travel document that includes a valid visa or temporary stay permit. The entry conditions defined in the law on foreigners, as well as transport carriers' obligation to verify travellers' identity, due diligence procedures and exceptions in the case of recognised refugees, as set out in the law on foreigners

¹⁰ Kosovo has a customs cooperation agreement with Montenegro and a police cooperation agreement with Croatia.

¹¹ Single Permit Directive (Directive 2011/98/EU); Directive on the conditions of admission of third-country nationals for studies and training (Directive 2004/114/EC); Directive on admitting third-country nationals for research (Directive 2005/71/EC); Directive on the right to family reunification (Directive 2003/86/EC); Directive on long-term residents (Directive 2003/109/EC); Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (Directive 2004/81/EC)

¹² Return Directive (Directive 2008/115/EC); Directive on assistance in case of removal by air (Directive 2003/110/EC); Directive providing for minimum standards for sanctions against employers of illegally staying third-country nationals (Directive 2009/52/EC)

and the law on border control and surveillance, are not in line with the Schengen Borders Code;

- On the basis of the law on foreigners, the government has adopted a decision and drafted secondary legislation on the issuance of visas in consulates and at border/boundary-crossing points. Kosovo's planned new visa regime will affect 87 countries, but its implementation will be delayed until July 2013. The citizens of these countries may obtain visas at Kosovo's consulates, while some may do so at Kosovo's border/boundary-crossing points.¹³ Granting such wide consular powers to the border police is not in line with the Visa Code,¹⁴ which permits the issuance of visas at border-crossing points only under exceptional circumstances. The introduction of a visa information system will also require substantial investment in an IT system that links the relevant databases with the visa register. Despite external support, the infrastructure is not yet in place. The law on foreigners, the law on border control and surveillance and the secondary legislation should be amended to ensure their full compliance with the Visa Code on the issuance of visas at border-crossing points;
- The law on foreigners requires a work permit for issuing a temporary stay permit to foreigners, while the law on granting a permit for work and employment to foreign citizens requires a stay permit for the issuance of a work permit. This contradiction should be addressed. Neither law matches the definitions employed in the relevant EU legislation on family members, stateless persons or unaccompanied minors. There are no provisions on the employment of persons who have been granted a stay permit on humanitarian grounds, for family reunification or for studies or research. The clauses on family reunification do not meet EU standards. The law on foreigners does not regulate the stay of foreigners who have been victims of trafficking;
- The law on foreigners regulates the return of irregular migrants and detention prior to removal. However, it does not define procedures for a fair and transparent return policy, including provisions on return decisions, removal, entry bans, absconding, voluntary departure and vulnerable persons. The return procedure is unclear; procedural safeguards are missing. This law does not lay down specific rules on the return of vulnerable persons, unaccompanied minors or victims of trafficking. The possibility of extending voluntary departure or postponing return is missing. There are no penalties for employers employing illegally-staying third-country nationals;
- The law on foreigners stipulates that orders to leave should be accompanied by an entry ban, but does not provide rules on the withdrawal or suspension of an entry ban. There are no exceptions to the application of an entry ban for victims of trafficking or clear provisions on legal remedies against removal, legal assistance and representation. The rules on detention do not define competent authorities, detention conditions, contacts with legal representatives or family members, or the treatment of vulnerable persons. The principle of *non-refoulement* is included in the law on foreigners, in line with international standards, but there are no safeguards relating to pending returns, family unity or emergency health care. The best interests of the child and family unity are not covered;

¹³ The citizens of EU Member States do not require visas under Kosovo's planned new visa regime.

¹⁴ Visa Code (Regulation 810/2009)

- The law on foreigners does not contain provisions ensuring the socio-economic integration of refugees. To enhance their integration, including in the labour market, refugees should be granted a secure legal status in Kosovo, preferably in the form of a permanent stay permit issued after the expiry of a temporary stay permit;
- Kosovo has developed a new database on asylum and migration. Once functional, this could contribute to data collection and the analysis of migration to Kosovo. Yet, authorities' right of access has not been defined. In full compliance with the data protection law, the law on foreigners should be amended to regulate data processing in the field of migration and asylum, data access and data sharing among authorities.

The criminal code contains provisions on the smuggling of migrants, with appropriate sanctions, defining this crime as an action to obtain financial or material benefits from a foreigner's illegal entry to Kosovo. It also provides sanctions for persons who intentionally assist a foreigner's illegal entry to Kosovo. These provisions are largely in line with the EU Directive defining the facilitation of unauthorised entry, transit and residence.¹⁵

A new strategy and an action plan on migration are currently being drafted. This strategy should provide a comprehensive framework for migration management, including legal and irregular migration, in line with international best practices. It should set clear goals; define roles and responsibilities; clarify the scope of cooperation with third countries; and develop a migration profile for Kosovo.

3.2.3. *Asylum*

The law on **asylum** regulates the qualification and status of applicants for international protection, material reception conditions and asylum procedures in Kosovo. It does not fully comply with the EU *acquis* and the 1951 Geneva Convention.¹⁶ It covers, *inter alia*, the procedural aspects of asylum; different forms of protection, such as refugee status, subsidiary protection and so-called temporary protection; the rights and duties of applicants; the principle of *non-refoulement*; the termination of the asylum procedure; appeal; and document issuance. The law's structure is incoherent. Various definitions, including those relating to asylum-seekers, vulnerable persons, foreign citizens and stateless persons, are not fully in line with the EU *acquis* and the Geneva Convention. The definitions of safe countries of origin and safe third countries are not in line with the Asylum Procedures Directive. The law does not describe the principles of the asylum procedure. There is an additional category of so-called 'temporary protection,' but its purpose and scope are not clear.

The needs of vulnerable persons are not properly addressed and are limited to minors, women and persons with mental or physical disabilities. These provisions are not fully in line with the Reception Conditions Directive and the Qualification Directive. The rights of asylum seekers and procedural guarantees appear to be unduly restricted, particularly as concerns the examination of applications, the use of one's mother tongue in applications, the use of interpreters and the right to communicate with the UNHCR. The role of the UNHCR appears not to be in line with the Asylum Procedures Directive or the Geneva Convention.

¹⁵ Directive defining the facilitation of unauthorised entry, transit and residence (Directive 2002/90/EC)

¹⁶ Directive on reception conditions for asylum-seekers (Directive 2003/9/EC), the Qualification Directive (Directive 2004/83/EC and Recast Directive 2011/95/EC), the Asylum Procedures Directive (Directive 2005/85/EC) and the Temporary Protection Directive (Directive 2001/55/EC)

There are no clear provisions on the rights and obligations of refugees and persons under subsidiary or so-called ‘temporary protection,’ and several basic principles are not listed in the law, such as access to education, assistance with integration, the right to own property and the right to employment, falling short of the standards of the Qualification Directive and the Geneva Convention. Legal remedies do not include the right of appeal against the rejection of an application for subsidiary or ‘temporary protection,’ which falls short of the standards of the Asylum Procedures Directive. Time limits on interrupting asylum procedures are not clearly defined.

Kosovo received only 31 asylum applications by November 2012 and 189 in 2011. This year, the department of citizenship, asylum and migration in the ministry of internal affairs also faced a number of allegations of corruption in managing asylum facilities and rental accommodation for returnees. These allegations should be vigorously investigated by the relevant authorities. Kosovo should explore modalities of cooperation with EASO.

3.3. BLOCK 3: Public order and security

Kosovo overhauled its **criminal justice system** in 2012, with a new law on courts, a new law on prosecution, a new criminal code and a new code of criminal procedure entering into force on 1 January 2013. The laws on the Judicial Council and the Prosecutorial Council entered into force in 2011. These six pieces of legislation complement the law on Special Prosecution, which sets out the exclusive and subsidiary competences of special prosecutors in charge of investigating and prosecuting, *inter alia*, organised crime, corruption and terrorism.

The new court structure will consist of Basic Courts, a Court of Appeal and the Supreme Court. The law on courts establishes serious crime departments within the Basic Courts and the Court of Appeal to adjudicate serious crime cases, including those that fall under the exclusive and subsidiary competences of the Special Prosecution. The government has considered establishing a special criminal chamber in the Basic Court of Pristina to adjudicate serious crimes in areas that mirror the exclusive and subsidiary competences of the Special Prosecution. It remains unclear how such a special criminal chamber would relate to the serious crime departments to be set up in Basic Courts and in the Court of Appeal.

Kosovo should implement its judicial reform in a manner that improves the independence, effectiveness, accountability and impartiality of the judiciary, including by devoting sufficient financial and human resources to operating the new court system. Judges and prosecutors underwent a vetting procedure in 2009. The Judicial and Prosecutorial Councils should make a particular effort to prevent political interference in the investigation, prosecution and adjudication of crimes; ensure the transparent recruitment, vetting and appointment of judges and prosecutors, filling vacant positions notably from minorities; and enforce disciplinary action in all cases involving corruption in the judiciary. The Judicial Council should continue to implement its strategy to reduce the backlog of pending court cases.

A new **criminal code** was adopted in April 2012 and entered into force in January 2013. It contains provisions, *inter alia*, on the smuggling of migrants, trafficking in human beings, the production and trafficking of drugs, organised crime, corruption and arms trafficking. Its provisions respect the exclusive and subsidiary competences of the Special Prosecution. However, the provisions on corruption offences require further examination. The provisions on expelling foreigners from Kosovo are not fully in line with those of the law on foreigners. The section on criminal records does not include provisions on information exchange with third countries.

A new **code of criminal procedure** was adopted on 22 December 2012 and entered into force on 1 January 2013. Some of its provisions are in line with EU standards, including those on data protection. Other provisions constitute grounds for concern. The new code contains some provisions that may affect the principle of the non-retroactivity of legislation. The draft code stipulated that ongoing cases would be handled by the previous code, while the transitional provisions of the adopted code also apply to criminal proceedings initiated before 1 January 2013, cases in which indictments have been filed and confirmed, and cases in which indictments have been filed but not yet confirmed. The new code incorporated a transitional period of only ten days, leaving insufficient time for all actors to prepare for its implementation. This could cause problems in the administration of justice. Finally, the potential retroactivity of the code's new provisions on pre-trial witness testimony may restrict the admissibility of pre-trial testimony as grounds for a conviction in criminal trials that are already in process. Several provisions of the code of criminal procedure deserve further examination.

The correct implementation of the new law on courts, the new law on prosecution, the new criminal code and the new code of criminal procedure is an essential prerequisite of improving the independence, effectiveness, accountability and impartiality of the judiciary in Kosovo. Therefore, Kosovo should consider conducting a general review of the functioning of the restructured criminal justice system in the second half of 2013, including an assessment of the implementation of these four laws.

3.3.1. Preventing and combating organised crime, corruption and terrorism

Kosovo has established a legislative and institutional framework to combat **organised crime** and corruption, but cooperation between the police, customs and prosecutors in investigating and prosecuting such crimes should further improve.¹⁷ Cooperation between the police and prosecution needs to improve to ensure an increase in the number of prosecutions following investigations and to ensure a pro-active approach to fighting serious crime in line with the strategy and action plan on intelligence-led policing. The investigative capacity of the police is adequate, but that of customs should improve. Cooperation between the prosecution and the Financial Intelligence Unit (FIU) should improve to ensure a pro-active approach to launching investigations into inexplicable wealth. The functioning of the FIU and its cooperation with the police improved in 2012. The foundations of a new witness protection programme were laid in 2012, but substantial budgetary allocations and capacity-building will be necessary in this field. Kosovo is expected to adopt a new anti-corruption strategy and action plan and has already adopted a new strategy and action plan against organised crime. It should make a particular effort to establish a track record of investigations, prosecutions and final court rulings in cases concerning organised crime and corruption, including drug trafficking, trafficking in human beings, arms trafficking and money-laundering.

The **Special Prosecution** plays an important role in investigating and prosecuting serious crimes in Kosovo. Special prosecutors include EULEX prosecutors and Kosovo public prosecutors, with the authority and responsibility to conduct criminal investigations and prosecute serious crimes that fall under the Special Prosecution's exclusive¹⁸ and subsidiary¹⁹

¹⁷ cf. European Court of Auditors, European Union Assistance to Kosovo Related to the Rule of Law, Special Report No. 18, 2012

¹⁸ Exclusive competences include the investigation and prosecution of, *inter alia*, terrorism, war crimes, organised crime and money-laundering.

competences. In 2012, the government considered amending the competences of the Special Prosecution or extending to all prosecutors in Kosovo the Special Prosecution's exclusive competence to investigate and prosecute money-laundering cases. Such reforms should only be undertaken in the light of further experience of how the restructured criminal justice system works in practice. The exclusive and subsidiary competences of the Special Prosecution should be maintained. In the context of the general review of the criminal justice system mentioned above, Kosovo and the EU may begin a joint reflection on how best to adapt the Special Prosecution's competences to the restructured criminal justice system.

The legal and institutional framework to combat the **trafficking of drugs** and precursors is in place. However, the resources to implement Kosovo's anti-drug policy are insufficient, and an intelligence-led approach is lacking. Kosovo's efforts to disrupt the trafficking of heroin from Afghanistan via Turkey to EU markets, and the trafficking of cocaine from Latin America via Montenegro and Albania to the EU, remain inadequate. Kosovo continues to face difficulties in reducing the cultivation and trafficking of cannabis to the EU. Drug seizures increased in 2012 but remain modest; the judicial follow-up of investigations, inadequate. Kosovo began cooperating with the EMCDDA in 2009. Its law on drugs, psychotropic substances and precursors incorporates international standards in the fight against drug trafficking, as well as the preventive aspects of drug addiction. The criminal code contains penalties for drug trafficking. The drug strategy and action plan address demand and supply reduction. Kosovo should considerably improve its efforts to combat drug trafficking.

The legal and institutional framework against **trafficking in human beings** is under development. Kosovo remains a place of origin and transit for victims of trafficking. The trend of trafficking women to the EU for sexual exploitation continues. Child trafficking for the purpose of begging and facilitated irregular migration, often using forged or counterfeit documents, remain matters of serious concern. The new criminal code contains provisions on trafficking in human beings and the smuggling of migrants. It increased penalties for the trafficking of children. The police launched a number of criminal investigations of trafficking in human beings in 2012, but the prosecution of such crimes and convictions remain low. Although planned in the legislative programme, the government has not yet adopted a law on trafficking in human beings. A strategy and action plan against trafficking in human beings is in place. However, Kosovo should considerably improve its efforts to combat trafficking in human beings and facilitated irregular migration, including by drafting a new law on trafficking in human beings.

The **trafficking of small arms and light weapons** continues to afflict Kosovo. The criminal code contains provision on arms trafficking, and Kosovo has a strategy and action plan against arms trafficking. Terrorism originating in Kosovo poses a lesser threat to Kosovo and the EU than organised crime and corruption. Kosovo has a counter-terrorism and domestic security strategy and action plan. These strategies should be fully implemented.

The law on the prevention of **money-laundering and terrorist financing** establishes the FIU as an independent institution that provides financial intelligence to investigative bodies in the field of money-laundering and terrorist financing. The responsibilities of the EULEX-led Financial Intelligence Centre have recently been transferred to Kosovo's FIU. The FIU's cooperation with banks improved in 2012, with a growing number of cash transactions

¹⁹ Subsidiary competences include the investigation and prosecution of, *inter alia*, the smuggling of migrants, trafficking in human beings, drug trafficking, unlawful gambling, tax evasion, weapons trafficking, the abuse of office, bribery and fraud in office.

reported. The government has also drafted, with assistance provided by the EU and the Council of Europe, amendments to this law to address concerns in four areas: national risk assessment, the criminalisation framework, sanctions for non-compliance and international cooperation. These amendments seek to update the law's definitions in line with Financial Action Task Force (FATF) recommendations; strengthen the operational independence of the FIU; and refine the provisions on information exchange, customer due diligence, suspicious transaction reports, supervisory responsibilities, sanctions and casinos. The exchange of information with third countries has improved: the FIU has concluded memoranda of understanding with seven countries.²⁰ Under Slovenian sponsorship, Kosovo wishes to apply for membership of the Egmont Group of FIUs. Kosovo should consider future amendments to its legislation on the prevention of money-laundering and terrorist financing on specialised training and statistical indicators and implement the relevant strategy and action plan.

Asset confiscation is regulated, to a certain extent, by the criminal code and code of criminal procedure. The government has drafted a law establishing extended powers for the confiscation of assets. This would enable conviction-based confiscation and, within limits, the confiscation of accumulated wealth. The powers of confiscation extend to assets that are not material benefits of a criminal offence, assets acquired by a defendant who died or left Kosovo and assets transferred to another party. In the case of a *bona fide* purchase, transferred assets may not be confiscated. This draft introduces the concept of a 'reversed burden of proof,' requiring defendants to prove how they acquired their sequestered assets. An agency managing sequestered or confiscated assets supports judicial and law enforcement authorities with the execution of decisions on sequestering and confiscating assets. Kosovo should adopt and implement the draft law establishing extended powers for the confiscation of assets.

Kosovo has developed an extensive legislative and institutional framework against **corruption**, including laws on the declaration of assets by public officials, the prevention of conflicts of interest in the public sector, whistle blowers, public procurement and political party financing. An anti-corruption agency is in charge of implementing the laws on the declaration of assets and the prevention of conflicts of interest. This agency may launch preliminary investigations of corruption, transferring to the police or prosecutors suspected corruption cases. It has signed a memorandum of understanding with EULEX. Despite its mandate, it can only verify the origin of assets when it suspects that they have been acquired illegally. Its expertise in identifying and following up corruption risks in the public sector, including via risk assessments in vulnerable sectors, remains limited. Kosovo should consider whether additional resources are necessary for this agency to discharge its duties.

An anti-corruption council was set up in 2012, under the aegis of the president, to improve coordination among the various bodies involved in the fight against corruption. The Special Prosecution has also established an anti-corruption task force, while the police has set up a directorate against economic crime and corruption. The overlapping roles and responsibilities of these anti-corruption bodies should be clarified.

Despite a modern public procurement law in place, the abuse of public procurement procedures continues to be a major problem in Kosovo. This law should be fully implemented, with any abuse investigated and prosecuted. The law on **political party financing** should be amended in a manner that prohibits or strictly regulates donations from

²⁰ These countries include the following: Slovenia, Croatia, Albania, Montenegro, the former Yugoslav Republic of Macedonia, San Marino and Turkey.

legal entities that also provide goods and services to the public administration, obliges political parties to have a single bank account and defines time limits for publishing financial reports. Kosovo's entire anti-corruption framework should be implemented to achieve concrete results in the fight against corruption.

A new law on the **police** regulates the duties and powers of the police. Secondary legislation, notably on the use of force and firearms by police officers, data protection and disciplinary measures, remains outstanding. The law on the police inspectorate regulates the powers of the independent police inspectorate, which handles complaints and disciplinary action and may launch criminal investigations against police officers. Relations between the police and the police inspectorate improved in 2012, and the inspectorate also launched several new investigations in 2012. Secondary legislation is necessary for the full implementation of the law on the police inspectorate, which have not yet been adopted. All the necessary secondary legislation for the law on police and the law on the police inspectorate should be adopted and implemented.

In 2012, Kosovo drafted a law on the **interception of telecommunication**, which would enable the police, the Kosovo intelligence agency, customs and EULEX to lawfully intercept electronic communication and to request the content, location and traffic data of electronic communication for the purpose of law enforcement or domestic security. Whilst the purpose and scope of the draft law appear to be in line with the provisions of the e-Privacy directive,²¹ concerns have been raised as regards its alignment with the provisions of the Data Retention Directive.²² Future legislation on interception needs to clearly distinguish between judicial interception and interception for intelligence services, in line with European best practices. The government should consider regulating data retention for law enforcement purposes, notably as concerns its scope, purpose, proportionality, data categories, data access, retention periods and legal remedies, in line with the Data Retention Directive.

The law on **witness protection** was adopted in 2011 and entered into force in 2012. It regulates the protection of witnesses of serious crimes. It is largely in line with European best practices, but its implementation requires secondary legislation on issues such as a change of identity, budgetary provisions, safe house requirements and questionnaires for victims. An international agreement for relocation, based on the EUROPOL format, was signed in January 2013. Once operational, Kosovo's witness protection directorate will work alongside the EULEX witness security programme, which is still responsible for protecting witnesses of crime under EULEX's mandate.

3.3.2. *Law enforcement cooperation*

Kosovo has concluded **police cooperation** agreements with Austria, Sweden, Croatia, Albania and the former Yugoslav Republic of Macedonia; agreements on combatting trafficking in human beings with France and the former Yugoslav Republic of Macedonia; a security cooperation with Germany; and an agreement to combat organised crime and irregular migration with Hungary. It has customs cooperation agreements with ten countries.²³

²¹ Directive 2002/58/EC, Article 15(1)

²² Directive 2006/24/EC

²³ These countries include the following: Bulgaria, the Czech Republic, Germany, Ireland, Sweden, the United Kingdom, Switzerland, Canada, the United States and Saudi Arabia.

Kosovo established an international law enforcement cooperation unit (ILECU) in 2011. This unit, as elsewhere in the Western Balkans, seeks to facilitate strategic and operational cooperation with the law enforcement authorities of neighbouring countries and EU Member States. As a constituent unit of the police, Kosovo's ILECU has access to all domestic databases. It should process personal data strictly in line with the law on data protection. The police have also recently enabled EULEX's access to the police information system and border management system. Such information sharing is likely to benefit the investigation of serious crimes in Kosovo, but the police and EULEX should also seek to formalise the exchange of criminal information and intelligence in a technical arrangement.

Kosovo's strategic and operational law enforcement cooperation with neighbouring countries and EU Member States works on an informal basis. Law enforcement cooperation with Albania and the former Yugoslav Republic of Macedonia is strong; relations with Serbia, via EU facilitation, and Bosnia and Herzegovina are improving. Kosovo is planning to deploy law enforcement liaison officers to Austria, Hungary, Germany, Sweden and Switzerland. Kosovo should continue deepening law enforcement cooperation with all interested neighbouring countries and EU Member States. It should explore modalities of cooperation with EUROPOL, INTERPOL and regional law enforcement organisations.

3.3.3. *Judicial cooperation in criminal matters*

Kosovo has concluded agreements on **mutual legal assistance** with Croatia, the former Yugoslav Republic of Macedonia and Turkey; agreements on extradition with the former Yugoslav Republic of Macedonia and Turkey; and agreements on the transfer of sentenced persons with Belgium, Switzerland, the former Yugoslav Republic of Macedonia and Turkey. Negotiations with Germany, Italy and Albania on mutual legal assistance, extradition and the transfer of sentenced persons have been completed. Kosovo has approached another 23 states to negotiate further agreements.²⁴

In addition to these bilateral agreements, the law on international legal cooperation provides a legal basis for mutual legal assistance with third countries. EULEX continues to act as an interface with non-recognising states under the terms of a technical arrangement with the ministry of justice. The law on international legal cooperation requires reciprocity for the processing of requests for mutual legal assistance. Kosovo has sent several requests to Serbia, but refused to process such requests from Serbia in the absence of reciprocity.

Although not a member of the Council of Europe, Kosovo should consider ratifying all the relevant Council of Europe conventions in the field of mutual legal assistance. It should also explore modalities of cooperation with EUROJUST.

3.3.4. *Data protection*

The right to the **protection of personal data** is safeguarded by the constitution, the law on access to official documents and the law on personal data protection. Further data protection rules are set out in the law on the classification of information and security clearance. A regulation on the data protection agency and secondary legislation on assessing the officials of the data protection authority seek to implement this legal framework.

²⁴ These countries include the following: Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Lithuania, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Slovenia, Sweden, Croatia, Switzerland, Norway and Turkey.

The data protection law regulates data processing by public and private bodies, obligations of data controllers and processors and the rights of data subjects. It provides sanctions for serious violations of data protection provisions. This law largely complies with the EU *acquis*, but further progress in data protection requires the implementation of the relevant regulation and secondary legislation.

This law contains a set of restrictions on the information to be given to data subjects, the right of access and the right to supplement, correct or delete data. Public security constitutes such an exception. This clause is in line with the EU *acquis*, but its implementation should be monitored. Most Member States have provisions that allow the restriction of data subjects' right of access to their personal data on public security grounds. The scope and possible exemptions regarding data subjects' rights requires further clarification.

The independence of the chief supervisor of the data protection agency is established by the data protection law. While the formal aspects of independence are guaranteed, these provisions must be implemented in practice. The *de facto* independence of supervisors appears appropriate: all five supervisors have been appointed and took up their posts.

This agency has its own budget administered independently in accordance with the data protection law. Its budget appears appropriate, and the agency has filled most of its posts. It has established working groups to draft regulations on the processing of personal data in police and judicial cooperation in criminal matters. A list of countries and international organisations with an adequate level of data protection has been approved by the data protection council. Despite insufficient staffing, it has conducted fifty inspections and audits among public and private organisations to assess their compliance with data protection rules.

This agency is also consulted prior to the adoption of legislative and administrative measures relating to the processing of personal data. It has been consulted on thirteen draft laws and regulations, but was not consulted prior to the adoption of the law on police or the new criminal code of procedure. In line with its mandate, this agency should be consulted in future on all draft legislation involving the processing of personal data.

3.4. BLOCK 4: Fundamental Rights related to the Freedom of Movement

Human and fundamental rights are enshrined in Kosovo's constitution. The constitution lists the main international agreements and instruments directly applicable in Kosovo.²⁵ In case of conflict, the international agreements that Kosovo has ratified take precedence over domestic legislation. The human and fundamental rights enshrined in these agreements are to be interpreted in line with the decisions of the European Court of Human Rights.

The constitution empowers individuals to refer to the constitutional court violations of their fundamental rights. The assembly has a committee on human rights, gender equality, missing persons and petitions with a mandate to review all issues pertaining to human rights, to review petitions by citizens and to oversee the implementation of laws within its competence.

²⁵ These instruments include the Universal Declaration of Human Rights; the European Convention on Human Rights and its Protocols; the International Covenant on Civil and Political Rights and its Protocols; the Council of Europe Framework Convention for the Protection of National Minorities; the Convention on the Elimination of All Forms of Racial Discrimination; and the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child. Kosovo is a member of neither the UN nor the Council of Europe.

Kosovo has established structures at central and municipal level to assist with the protection, promotion and enforcement of human and fundamental rights. A new strategy and action plan on human rights is due to be drafted soon.

Kosovo has a solid legal framework for the protection of human and fundamental rights. There are a large number of institutions and authorities at different levels of government with responsibilities relating to the implementation of such rights. Kosovo is currently working on secondary legislation in this area, which should include the consultation of municipal authorities.

The European Framework Convention for the Protection of National Minorities, which mandates the protection of persons from threats, hostility, violence or discrimination as a result of their ethnic, cultural, linguistic or religious identity, is directly applicable in Kosovo. The domestic legal framework also includes provisions urging Kosovo institutions to protect the security and safety of **minorities** through, *inter alia*, the law on the protection and promotion of the rights of communities and their members and the law on the use of languages. Kosovo has a strategy and action plan on the integration of the Roma, Ashkali and Egyptian minorities, but the situation of these minorities remains very poor. The implementation of this strategy and action plan remains limited, mostly due to a lack of political will and weak capacity in ministries and municipalities.

Kosovo has a legal framework guaranteeing **anti-discrimination**, including a gender equality law, an anti-discrimination law, a law regarding the employment of persons with disabilities and an ombudsman law. The anti-discrimination law is being reviewed to strengthen its sanction mechanism. However, there has been limited progress in the area of social inclusion, including anti-discrimination. Combined with weak civil society activism, the anti-discrimination law has not yet created an effective protection mechanism against discrimination. The lesbian, gay, bisexual, transvestite and transsexual (LGBT) community faces stigmatisation and the threat of violence. Despite the legislation, people with disabilities face serious problems in accessing infrastructure, assistance, medical care, employment and protection from discrimination. The legal framework should be enforced to ensure gender equality in Kosovo.

The legal framework supporting **minorities' access to travel and identity documents**, including civil registration, is satisfactory, but implementation remains limited. A recent OSCE report found that, despite municipalities' obligation to provide services in all official languages, individuals who belong to minorities that are in a numerical minority in a given municipality are often unable to communicate with civil registration officials and obtain documents in their own language. Illiterate members of minorities face additional obstacles in completing forms to access civil registration.²⁶

Persons belonging to the Serbian minority have raised concerns about the freedom of movement in the context of Kosovo's implementation of the agreement with Serbia on the freedom of movement. They have faced delays in obtaining driving licences and vehicle registration documents, as well as in language compliance, all of which may have an adverse impact on the freedom of movement. The ombudsperson has taken up some of these complaints, mostly related to the lack of implementation at municipal level.

²⁶ OSCE, Access to civil registration in Kosovo, Pristina, July 2012

Ethnically-motivated crime is committed against all minorities in Kosovo, including Albanians in areas where they do not constitute a majority. There has been an increase in ethnically-motivated crime committed against Serbian returnees, and security for Serbs south of the river Ibar has deteriorated.

Municipal community safety councils, chaired by local mayors and made up of members representing minorities within a municipality, are the main local bodies mandated to address the security of minorities. The functioning of these councils remains inconsistent, and many municipalities have yet to establish such bodies. The government adopted a strategy and action plan for community safety in 2011.

4. ASSESSMENT OF SECURITY AND MIGRATORY IMPACTS OF VISA LIBERALISATION

4.1. Security impact of visa liberalisation with Kosovo

Kosovo continues to face major challenges in effectively preventing and combating organised crime and corruption. Criminal activities such as the trafficking of heroin, cocaine and cannabis, facilitated irregular migration, trafficking in human beings, arms trafficking, as well as cigarette and fuel smuggling are widely undertaken.²⁷ The combination of lucrative cross-border illicit activities, economic underdevelopment and limited administrative capacity create considerable incentives for bribery, money-laundering and the abuse of public procurement procedures. Despite marginal improvements detected by the OECD²⁸ and Transparency International²⁹ in 2012, corruption remains a major problem in Kosovo.

Kosovo has established a legislative and institutional framework to combat organised crime and corruption, but cooperation between the police, customs and prosecutors in investigating and prosecuting such crimes should further improve. Cooperation between the police and prosecution needs to improve to ensure an increase in the number of prosecutions following investigations and to ensure a pro-active approach to fighting serious crime in line with the strategy and action plan on intelligence-led policing. The investigative capacity of the police is adequate, but that of customs should improve. Cooperation between the prosecution and the Financial Intelligence Unit (FIU) should improve to ensure a pro-active approach to launching investigations into inexplicable wealth. The functioning of the FIU and its cooperation with the police improved in 2012. The foundations of a new witness protection programme were laid in 2012.

The resources to implement Kosovo's anti-drug policy are insufficient, and an intelligence-led approach is lacking. Kosovo's efforts to disrupt the trafficking of heroin from Afghanistan via Turkey to EU markets, and the trafficking of cocaine from Latin America via Montenegro and Albania to the EU, remain inadequate. Kosovo continues to face difficulties in reducing the cultivation and trafficking of cannabis to the EU. Drug seizures increased in 2012 but remain modest; the judicial follow-up of investigations, inadequate.

The legal and institutional framework against trafficking in human beings is under development. Kosovo remains a place of origin and transit for victims of trafficking. The

²⁷ EUROPOL, EU Organised Crime Threat Assessment, 28 April 2011

²⁸ OECD, Support for Improvement in Governance and Management, Kosovo Assessment, March 2012

²⁹ In Transparency International's Corruption Perception Index (CPI), Kosovo ranked lowest in the Western Balkans in 2010 and 2011, but overtook Albania in 2012.

trend of trafficking women to the EU for sexual exploitation continues. Child trafficking for the purpose of begging and facilitated irregular migration, often using forged or counterfeit documents, remain matters of serious concern. The trafficking of small arms and light weapons continues to afflict Kosovo.

Kosovo has an extensive legislative and institutional framework against corruption. The anti-corruption agency is in charge of implementing the laws on the declaration of assets and the prevention of conflicts of interest. However, its expertise in identifying and following up corruption risks in the public sector, including via risk assessments in vulnerable sectors, remains limited. Two other anti-corruption bodies have overlapping roles and responsibilities in the fight against corruption, which limits their effectiveness in this endeavour.

Despite a modern public procurement law in place, the abuse of public procurement procedures remains a major problem in Kosovo. The law on political party financing does not prohibit donations from legal entities that also provide goods and services to the public administration.

Under the current state of legislative and institutional development, Kosovo's capacity to effectively combat organised crime and corruption remains limited, with a potentially severe impact on the EU's internal security. Compared to the threats posed by organised crime and corruption, terrorism originating in Kosovo appears to pose a lesser threat to the EU's internal security.

Kosovo is encouraged to consider the recommendations set out in this report to limit the threats posed by organised crime and corruption to the EU's internal security.

4.2. Migratory impact of visa liberalisation with Kosovo

The Commission has continued to monitor the five performance indicators set out in the visa roadmap, namely the visa refusal rate, the rate of refused entry to the Schengen area, the number of illegal stays in EU Member States, the number of asylum applications and the number of rejected readmission applications. A substantial decrease in these performance indicators over the course of the visa dialogue will be used as an indicative reference to assess the migratory impact of visa liberalisation with Kosovo.

Between 2010 and 2011, the following trends could be observed:

- The visa refusal rate for Kosovo citizens showed considerable variation in the Schengen area;
- The number of Kosovo citizens refused entry to EU Member States doubled from 315 to 645;
- The number of Kosovo citizens found to be illegally staying in Member States fell from 5,060 to 4,180;
- The number of asylum applications lodged by Kosovo citizens in Member States fell from 14,325 to 9,865, while the recognition rate, at 6%, remained fairly stable;
- The number of rejected and pending readmission applications fell from 243 to 199.

Figures 6.1 to 6.6 in the Annex set out the data underlying these observations:

- According to current rules, all short-stay visas issued by Member States for Kosovo citizens are visas with limited territorial validity (LTV).³⁰ The statistics submitted by Member States and Schengen Associated States in 2011 confirmed considerable variation in the Schengen area: Switzerland (16,288), Germany (12,526), Italy (7,066) and Greece (4,083) issued the highest number of LTV visas for Kosovo citizens;
- The number of Kosovo citizens refused entry to EU Member States increased from 315 to 645 between 2010 and 2011, driven by higher figures in France and Hungary;
- The number of Kosovo citizens found to be illegally staying in Member States fell from 5,060 to 4,180 between 2010 and 2011. Germany, France, Austria, Sweden and Switzerland reported the highest number of illegal stays by Kosovo citizens;
- The number of asylum applications lodged by Kosovo citizens in Member States fell from 14,325 to 9,865 between 2010 and 2011. France, Belgium, Germany, Sweden and Switzerland continued to receive the highest number of asylum applications from Kosovo. The recognition rate of asylum applications, at first instance, remained fairly stable at 5.7% and 6% in 2010 and 2011, respectively, indicating that Member States still granted a form of international protection to applicants from Kosovo;
- The number of rejected readmission applications fell from 243 to 199 between 2010 and 2011.³¹ The number of pending readmission applications also fell from 1,572 to 903 between 2010 and 2011. Germany and Belgium continued to report the highest number of rejected and pending readmission applications from Kosovo.

Kosovo is encouraged to consider the set of recommendations set out in this report so as to mitigate the potential migratory impact on the EU of a visa-free regime with Kosovo.

5. RECOMMENDATIONS FOR KOSOVO

Building upon the assessment in the previous chapters on the progress made by Kosovo in fulfilling the requirements of the visa liberalisation roadmap and without prejudice to EU Member States' position on status, the Commission recommends that the Kosovo authorities take appropriate action in the following areas:

5.1. Readmission

- Readmit from all EU Member States Kosovo citizens, third-country nationals and stateless persons who no longer fulfil the conditions of entry and stay in those states;
- Implement the readmission law;

³⁰ A short stay visa with limited territorial validity ('LTV') entitles the holder to stay only in the Member State(s) for which the visa is valid. A LTV visa may be issued in cases where the traveller does not fulfil all the entry conditions, when at least one Member State does not recognise the travel document on which the visa will be affixed or when, for reasons of urgency, a visa is issued without carrying out, when applicable, the prior consultation.

³¹ The sample of Member States and Schengen Associated States, as set out in Figure 6.6, included the following: Belgium, Bulgaria, the Czech Republic, Germany, Greece, France, Italy, Hungary, the Netherlands, Austria, Slovenia, Slovakia, Sweden, Norway and Switzerland.

- Continue negotiating readmission agreements with interested Member States and the main transit countries and countries of origin of irregular migration to Kosovo;
- Reduce the number of pending readmission requests from all Member States, in line with the provisions of the readmission law or bilateral readmission agreements;
- Improve data exchange with Member State authorities concerning the special needs of returnees, including victims of human trafficking;
- Corroborate domestic readmission statistics with those from EU Member States;

5.2. Reintegration

- Commit and disburse the reintegration fund;
- Supply transparent financial data on commitments and payments from this fund;
- Shift the focus of the reintegration programme from emergency to sustainable reintegration services;
- Increase the number of beneficiaries from the reintegration programme;
- Enhance the role of regional coordinators and municipal reintegration committees in financial decision-making;
- Set up a case management system to track returnees' access to reintegration services;

5.3. Document security

- Amend the law on personal names to permit name registrations in the Cyrillic alphabet; ensure the strict application of this law to eliminate fraudulent name changes; verify the identity of all applicants for name changes;
- Amend the secondary legislation on applications for travel documents to ensure that fingerprints are taken from all applicants above the age of twelve;
- Ensure the production and issuance of biometric identity cards in full compliance with International Civil Aviation Organisation (ICAO) standards;
- Put into use the new civil status system; ensure the reliability of the single civil status central registry by improving data quality; updating, cross-referencing and matching all data entries; eliminating inconsistencies between databases; and strengthening audit procedures;
- Ensure the integrity of the civil registration process by investigating all corruption cases; implement the code of ethics; vet and train all staff at the civil registration agency, municipal civil status offices and municipal civil registration centres;

5.4. Border/boundary management

- Draft a law on inter-agency cooperation that defines the roles and responsibilities of all public authorities involved in integrated border/boundary management;

- Amend the definitions and corresponding provisions of the law on border control and surveillance and secondary legislation in line with the Schengen Borders Code;
- Ensure the operation of the border management system;
- Conclude agreements in law enforcement cooperation with all neighbouring countries, including operational cooperation and information sharing for the purpose of preventing and combating irregular migration and cross-border crime;
- Amend the IBM strategy on the basis of the 2006 Council Conclusions, the Schengen Borders Code and the Schengen Catalogue to cover all key elements of IBM;
- In line with the IBM Agreed Conclusions of 2 December 2011 and in a coordinated manner establish the interim and permanent crossing points as scheduled; implement the provisions on law enforcement information exchange, mutual legal assistance and customs information exchange; exchange a liaison person with Serbia;
- In coordination with Montenegro, delineate the mutual border;
- Explore modalities of cooperation with FRONTEX;

5.5. Migration management

- Amend the list of entry conditions and transport carriers' obligations in the law on foreigners and the law on border control and surveillance in line with the Schengen Borders Code;
- Amend the law on foreigners, the law on border control and surveillance and the corresponding secondary legislation so that visa issuance at border/boundary-crossing points is in line with the Visa Code;
- Harmonise the provisions of the law on foreigners and the law on granting a permit for work and employment on work permits and stay permits;
- Amend the law on foreigners so that its provisions meet the essential elements of the EU *acquis* on legal and irregular migration;
- In line with the data protection law, amend the law on foreigners to regulate authorities' processing of, access to and sharing of data on migration and asylum;
- Complete the new migration strategy involving all competent stakeholders, including by developing a migration profile for Kosovo;

5.6. Asylum

- Amend the law on asylum so that its provisions comply with essential elements of the EU *acquis* on asylum and the Geneva Convention;
- Investigate allegations of corruption in the management of asylum facilities and rental accommodation for returnees;
- Explore modalities of cooperation with EASO;

5.7. Preventing and combating organised crime, corruption and terrorism

- Implement the reform of the criminal justice system in a manner that improves the independence, effectiveness, accountability and impartiality of the judiciary, including by devoting sufficient resources to operating the new court system;
- Prevent political interference in the investigation, prosecution and adjudication of crimes; ensure the transparent recruitment, vetting and appointment of judges and prosecutors; enforce disciplinary action in all corruption cases in the judiciary;
- Reduce the backlog of pending court cases;
- Clarify the provisions of the criminal code concerning corruption offences; align its provisions on the expulsion of foreigners with the law on foreigners; incorporate in the provisions on criminal records information exchange with third countries;
- Clarify several provisions of the code of criminal procedure, including its transitional provisions and those on pre-trial witness testimony so as not to curtail the admissibility of evidence;
- Consider conducting a general review of the functioning of the restructured criminal justice system in the second half of 2013, including an assessment of the implementation of the new law on courts, the new law on prosecution, the new criminal code and the new code of criminal procedure;
- Establish a track record of investigations, prosecutions and final court rulings in cases concerning organised crime and corruption, including drug trafficking, trafficking in human beings, arms trafficking and money-laundering;
- Maintain the exclusive and subsidiary competences of the Special Prosecution;
- Consider future amendments to the legislation on the prevention of money-laundering and terrorist financing on specialised training and statistical indicators;
- Adopt the draft law establishing extended powers for the confiscation of assets;
- Draft a law on trafficking in human beings;
- Implement the law on public procurement;
- Amend the law on political party financing in a manner that strictly regulates donation rules and clarifies the reporting obligations of political parties;
- Adopt the secondary legislation necessary for implementing the law on the police and the law on the police inspectorate;
- Ensure that future legislation on interception distinguishes clearly between judicial interception and interception for intelligence services, in line with European best practices, while the provisions on data retention for law enforcement purposes comply with the EU *acquis* on data retention;
- Adopt the secondary legislation necessary for implementing the law on witness protection; implement the international agreement for witness relocation;

- Clarify the roles and responsibilities of all anti-corruption bodies in Kosovo; consider whether additional resources are necessary for the anti-corruption agency to discharge its duties;
- Implement all strategies and action plans in the field of public order and security, including the new strategies and action plan against organised crime and corruption;

5.8. Law enforcement cooperation

- Conclude law enforcement cooperation agreements with interested neighbouring countries and EU Member States, potentially covering the exchange of strategic and operational data, including criminal records, in line with data protection rules;
- Step up operational law enforcement cooperation with interested neighbouring countries and EU Member States;
- Consider concluding a technical arrangement with EULEX on the exchange of criminal information and intelligence;
- Explore modalities of cooperation with EUROPOL, INTERPOL and regional law enforcement cooperation organisations;

5.9. Judicial cooperation in criminal matters

- Amend the law on international legal cooperation in line with the relevant EU *acquis* and Council of Europe conventions; consider ratifying all the relevant Council of Europe conventions in the area of mutual legal assistance in criminal matters;
- Conclude agreements on mutual legal assistance in criminal matters with interested neighbouring states and EU Member States;
- Explore modalities of cooperation with EUROJUST;

5.10. Data protection

- Clarify the scope of restrictions applying to data subjects' right of access to and their right to supplement, correct or delete personal data;
- Implement the data protection law and its secondary legislation;
- Implement the provisions of the data protection law guaranteeing the independence of the chief supervisor of the data protection agency;
- Ensure that the data protection agency is consulted on all future draft legislation concerning the processing of personal data;

5.11. Fundamental rights related to the freedom of movement

- Amend the anti-discrimination law to strengthen its sanction mechanism; enforce the anti-discrimination framework for women, members of the LGBT community and people with disabilities;

- Amend the law on foreigners to enhance the socio-economic integration of refugees; amend the law on citizenship to ease refugees' acquisition of citizenship;
- Draft a new strategy and action plan on human and fundamental rights;
- Implement and enforce the strategy and action plan on the integration of the Roma, Ashkali and Egyptian minorities;
- Implement in coordination with Serbia the agreement on the freedom of movement;
- Investigate and prosecute all ethnically-motivated crimes;
- Ensure the functioning of municipal community safety councils throughout Kosovo.

6. STATISTICS

6.1. Applications for short-term Schengen visas in Prishtinë/Prishtina, Kosovo, 2010-2011

Year	Visa category	Belgium	Germany	Greece	Finland	Hungary	Italy	Slovenia	Switzerland	Norway	Total
2010	A visas issued	-	0	-	-	-	-	-	-	0	0
	B visas issued	1	1	19	-	10	2	1	-	0	34
	C visas issued (MEV included)	2,128	13,283	5,099	17	2,767	345	2,493	3,147	532	29,811
	Multiple C visas issued	726	1,214	-	52	1,834	2,357	2,482	-	69	8,734
	C visas applied for	2,942	17,079	5,477	742	3,968	1,038	3,073	4,668	759	39,746
	Total A, B, C visas issued	2,129	13,284	5,118	17	2,777	347	2,494	3,147	532	29,845
	Total A, B, C visas applied for	2,945	17,080	5,496	742	3,981	1,040	3,073	4,668	759	39,784
	Total A, B, C visas not issued	816	3,796	378	725	1,175	693	579	1,521	227	9,910
	Not issued rate for A, B, C visas	27.71%	22.22%	6.88%	97.71%	29.52%	66.63%	18.84%	32.58%	29.91%	24.91%
	Total LTV visas issued	5	11,629	3,749	563	8	4,301	3	12,305	519	17
D visas issued	135	3,585	39	-	160	3,087	35	2,481	17	9,539	
"D+C" visas issued	-	-	-	-	-	-	-	-	3	0	3
Total A, B, C, LTV, D, "D+C" visas issued	2,269	28,498	8,906	580	2,945	7,735	2,532	17,936	1,068	1,068	72,469
Rate LTV visas issued / B+C visas issued	0.23%	87.54%	73.25%	3311.76%	0.29%	1239.48%	0.12%	391.01%	97.56%	97.56%	110.8%
A visas issued	0	0	0	0	0	0	0	0	0	0	0
C visas issued (MEV included)	1,647	1,281	565	7	2,937	258	2,804	416	637	637	10,552
Multiple C visas issued	436	1,063	190	92	1,786	258	2,790	174	101	101	6,890
C visas applied for	2,735	6,170	725	916	4,152	2,037	3,884	5,099	820	820	26,538
C visas not issued	1,088	4,889	160	909	1,215	1,779	1,080	4,683	183	183	15,986
Total A, C visas issued	1,647	1,281	565	7	2,937	258	2,804	416	637	637	10,552
Total A, C visas applied for	2,735	6,170	725	916	4,152	2,037	3,884	5,099	820	820	26,538
Total A, C visas not issued	1,088	4,889	160	909	1,215	1,779	1,080	4,683	183	183	15,986
Not issued rate for A, C visas	39.78%	79.24%	22.07%	99.24%	29.26%	87.33%	27.81%	91.84%	22.32%	22.32%	60.2%
Total LTV visas issued	-	12,526	4,083	769	1	7,066	-	16,288	630	630	41,343
Total A, C, LTV visas issued	1,647	13,807	4,648	776	2,938	7,324	2,804	16,684	1,267	1,267	51,895
Rate LTV visas issued / C visas issued	0.00%	977.83%	722.65%	10,985.71%	0.03%	2,738.76%	0.00%	3,910.58%	98.90%	98.90%	391.8%

Source: European Commission, Directorate-General for Home Affairs

6.2. Kosovo citizens refused entry at the Schengen external borders, 2009-2011

Member State or Associated State	2009	2010	2011
Belgium	0	5	40
Bulgaria	45	70	50
Czech Republic	5	0	5
Denmark	0	0	0
Germany	45	60	50
Estonia	0	0	0
Ireland	5	0	5
Greece	140	90	75
Spain	0	0	0
France	70	30	280
Italy	0	20	35
Cyprus	0	0	0
Latvia	0	0	0
Lithuania	0	0	0
Luxembourg	0	-	0
Hungary	5	10	85
Malta	0	0	0
Netherlands	5	0	5
Austria	15	10	15
Poland	0	0	0
Portugal	0	0	0
Romania	0	-	0
Slovenia	0	0	0
Slovakia	0	0	0
Finland	0	0	0
Sweden	0	0	0
United Kingdom	50	20	0
Iceland	0	-	-
Liechtenstein	10	5	0
Norway	0	0	0
Switzerland	40	45	45
Total (EU-27)	385	315	645
Average (EU-27)	14	13	24
Standard deviation (EU-27)	31	24	56

Source: EUROSTAT and DG Home Affairs calculation

6.3. Kosovo citizens found to be illegally present in EU Member States, 2009-2011

Member State or Associated State	2009	2010	2011
Belgium	75	90	250
Bulgaria	10	20	5
Czech Republic	10	15	20
Denmark	0	5	0
Germany	1,605	1,935	1,715
Estonia	0	0	0
Ireland	50	35	15
Greece	45	30	25
Spain	0	0	0
France	835	575	630
Italy	5	40	15
Cyprus	0	0	0
Latvia	0	0	0
Lithuania	0	0	0
Luxembourg	75	80	-
Hungary	20	20	50
Malta	0	0	0
Netherlands	25	20	20
Austria	1,390	740	530
Poland	0	5	10
Portugal	0	0	0
Romania	0	0	0
Slovenia	0	0	0
Slovakia	0	0	0
Finland	250	0	0
Sweden	-	1,335	810
United Kingdom	185	115	85
Iceland	0	-	-
Liechtenstein	-	0	-
Norway	0	-	0
Switzerland	0	0	1,285
Total (EU-27)	4,580	5,060	4,180
Average (EU-27)	176	187	161
Standard deviation (EU-27)	417	451	376

Source: EUROSTAT and DG Home Affairs calculation

6.4. Asylum applications lodged by Kosovo citizens, 2009-2011

Member State or Associated State	2009	2010	2011
Belgium	2,515	3,230	2,320
Bulgaria	0	0	0
Czech Republic	20	5	5
Denmark	120	160	135
Germany	1,900	2,205	1,885
Estonia	0	0	0
Ireland	30	15	10
Greece	10	0	0
Spain	0	0	0
France	4,580	5,285	3,240
Italy	290	300	110
Cyprus	0	0	0
Latvia	0	0	0
Lithuania	0	0	0
Luxembourg	130	160	140
Hungary	1,785	380	210
Malta	0	0	0
Netherlands	45	60	30
Austria	1,305	610	340
Poland	0	0	0
Portugal	0	0	0
Romania	0	0	0
Slovenia	30	20	20
Slovakia	0	0	0
Finland	240	140	75
Sweden	1,235	1,715	1,320
United Kingdom	40	40	25
Iceland	0	0	0
Liechtenstein	5	5	20
Norway	0	245	145
Switzerland	695	600	660
Total (EU-27)	14,275	14,325	9,865
Average (EU-27)	529	531	365
Standard deviation (EU-27)	1,053	1,206	812

Source: EUROSTAT and DG Home Affairs calculation

6.5. First instance decisions on asylum applications lodged by Kosovo citizens, 2009-2011

Member State or Associated State	Total decisions			Positive decisions			Recognition rate		
	2009	2010	2011	2009	2010	2011	2009	2010	2011
Belgium	1,065	1,820	2,760	115	140	240	10.8%	7.7%	8.7%
Bulgaria	0	0	0	0	0	0	0	0	0
Czech Republic	20	10	0	5	0	0	25%	0	0
Denmark	70	150	140	15	35	25	21.4%	23.3%	17.9%
Germany	1,355	2,255	1,850	75	90	50	5.5%	4%	2.7%
Estonia	0	0	0	0	0	0	0	0	0
Ireland	30	15	10	0	0	0	0	0	0
Greece	0	0	0	0	0	0	0	0	0
Spain	0	0	0	0	0	0	0	0	0
France	2,460	3,480	3,395	110	105	100	4.5%	3%	2.9%
Italy	255	335	220	75	80	95	29.4%	23.9%	43.2%
Cyprus	0	0	0	0	0	0	0	0	0
Latvia	0	0	0	0	0	0	0	0	0
Lithuania	0	0	0	0	0	0	0	0	0
Luxembourg	-	90	90	-	5	5	0	5.6%	5.6%
Hungary	650	85	135	0	0	0	0	0	0
Malta	0	0	0	0	0	0	0	0	0
Netherlands	25	55	35	5	0	0	20	0	0
Austria	1,115	665	365	80	70	35	7.2%	10.5%	9.6%
Poland	0	0	0	0	0	0	0	0	0
Portugal	0	0	0	0	0	0	0	0	0
Romania	0	0	0	0	0	0	0	0	0
Slovenia	25	25	20	10	0	0	40%	0	0
Slovakia	0	0	0	0	0	0	0	0	0
Finland	85	215	85	10	15	5	11.8%	7%	5.9%
Sweden	1,300	975	1,200	105	35	50	8.1%	3.6%	4.2%
United Kingdom	45	40	20	15	5	10	33.3%	12.5%	50%
Iceland	-	0	0	-	0	0	0	0	0
Liechtenstein	5	0	5	0	0	0	0	0	0
Norway	0	245	125	0	0	0	0	0	0
Switzerland	245	370	255	45	80	55	18.4%	21.6%	21.6%
Total (EU-27)	8,500	10,215	10,325	620	580	615	7.3%	5.7%	6%
Average (EU-27)	315	378	382	23	21	23			
Standard deviation (EU-27)	602	822	867	39	39	51			

Source: DG HOME calculation based on EUROSTAT data

6.6. Readmission applications processed by Kosovo, 2009-2011

Year	Member State or Associated State	Total readmission applications	Rejected applications	Pending applications	Returns
2009	Belgium	58	12	14	32
	Bulgaria	0	0	0	0
	Germany	2,385	91	1,753	541
	France	500	24	0	476
	Italy	80	-	3	77
	Hungary	-	-	-	133
	Austria	-	-	-	234
	Slovenia	85	-	10	75
	Slovakia	0	0	0	0
	Norway	-	-	-	125
	Switzerland	403	35	0	368
	Total	3,511	162	1,780	2,061
2010	Belgium	61	3	18	40
	Bulgaria	0	0	0	0
	Czech Republic	7	0	0	7
	Germany	2,339	197	1,536	606
	France	522	21	4	497
	Italy	65	-	1	64
	Hungary	-	-	-	60
	Austria	-	-	-	253
	Slovenia	68	-	13	55
	Slovakia	0	0	0	0
	Norway	-	-	-	103
	Switzerland	419	22	0	397
Total	3,481	243	1,572	2,082	

Year	Member State or Associated State	Total readmission applications	Rejected applications	Pending applications	Returns
2011	Belgium	365	17	50	298
	Bulgaria	0	0	0	0
	Czech Republic	1	0	0	1
	Germany	1,483	155	832	496
	France	372	9	9	354
	Italy	77	-	2	75
	Hungary	-	-	-	62
	Austria	-	-	-	140
	Slovenia	35	-	10	25
	Slovakia	0	0	0	0
	Norway	-	-	-	100
	Switzerland	259	18	0	241
	Total	2,592	199	903	1,792
	2012	Belgium	355	14	104
Germany		691	80	302	309
Greece		21	0	0	21
France		226	10	8	208
Italy		39	-	0	39
Hungary		-	-	-	64
Netherlands		18	1	7	10
Austria		-	-	-	94
Slovenia		15	-	8	7
Sweden		489	15	0	474
Norway		-	-	-	50
Switzerland		225	11	0	214
Total		2,079	131	429	1,253

Source: EU Member States and Associated States