



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 22 November 2012**

**16619/12**

**FIN 890  
COWEB 196  
CIVCOM 452  
COPS 440  
PESC 1431  
COSDP 1012  
RELEX 1069  
JAI 831  
EU-LEX 60**

**COVER NOTE**

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from: Mr Vítor CALDEIRA, President of the European Court of Auditors  
date of receipt: 6 November 2012  
to: Mrs Erato KOZAKOU-MARCOULLIS, President of the Council of the  
European Union

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Subject: Special report No 18/2012: European Union Assistance to Kosovo related to  
the rule of law

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Sir,

I enclose a copy of special report No 18/2012 entitled "European Union Assistance to Kosovo related to the rule of law" together with the Commission's and the European External Action Service's replies.

The special report was adopted by the Court at its meeting on 16 October 2012 and is accompanied by the replies from the Commission, which was notified of the preliminary findings on 27 July 2012.

(Complimentary close).

(s.) Vítor CALDEIRA

Encl.: Special report No 18/2012: European Union Assistance to Kosovo related to the rule of law<sup>1</sup>

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<sup>1</sup> In English only. The other languages of this report are available on the European Court of Auditor's website: <http://eca.europa.eu/>.

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## Special Report No 18/2012

(pursuant to Article 287(4), second subparagraph, TFEU)

**European Union Assistance to Kosovo** related to the rule of law

together with the Commission's and European External Action Service's replies

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**ABBREVIATIONS**

CONOPS	Concept of Operations
CPCC	Civilian Planning and Conduct Capability
CSDP	The Common Security and Defence Policy
EEAS	European External Action Service
EULEX	European Union Rule of Law Mission in Kosovo
EUO	European Union Office in Kosovo
EU SR	European Union Special Representative
ICO	International Civilian Office
IfS	Instrument for Stability
IPA	Instrument for Pre-Accession Assistance
JRCB	Joint Rule of Law Coordination Board
KFOR	Kosovo Force
MIPD	Multi-annual Indicative Planning Document
MMA	Monitoring, Mentoring and Advising
NATO	The North Atlantic Treaty Organization
OECD	The Organisation for Economic Co-operation and Development
OPDAT	Office of Overseas Prosecutorial Development, Assistance and Training
OPLAN	Operation Plan
PPO	Public Prosecutors Office
PSC	Political and Security Committee of the Council
UNMIK	United Nations Interim Administration Mission in Kosovo

## **EXECUTIVE SUMMARY**

I. The European Union (EU) is providing major assistance to the rule of law in Kosovo<sup>2</sup>. In particular it has deployed since 2008 its largest ever Common Security and Defence Policy (CSDP) mission in the form of the European Union Rule of Law Mission ('EULEX'). EULEX has had approximately 2 500 staff working on capacity building and carrying out some executive functions. In addition, the European Commission has been managing rule of law projects, also mainly focused on capacity building, funded from the Instrument for Pre-Accession Assistance (IPA). From 2007 to 2011, the period covered by the audit, the EU budget funded 680 million euro in support to the rule of law.

II. The audit addressed the question of whether EU assistance to Kosovo in the field of the rule of law is effective. To do this the Court assessed whether assistance is achieving its intended results and what has been its impact on overall progress in the different areas of the rule of law (police, justice, customs, anti-corruption). It also examined the management of the assistance, particularly with regard to coordination and the management of EULEX. The audit included a sample of seventeen EU interventions in Kosovo.

III. The audit found that EU assistance to Kosovo in the field of the rule of law has not been sufficiently effective. Some of the objectives of individual interventions have been achieved, albeit frequently with delays and doubts about the sustainability of the results. However, overall progress in improving the rule of law is slow, particularly with regard to the fight against organised crime and corruption, above all in the north of Kosovo.

IV. In the first place, the limited effectiveness of EU assistance can be explained by the specific circumstances of Kosovo. Nevertheless, the audit

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<sup>2</sup> This designation is without prejudice to positions on status, and is in line with UN Security Council Resolution 1244 and the ICJ opinion on the Kosovo declaration of independence.

found there were significant areas where better management by the EEAS and Commission could have made EU assistance more effective.

V. The effectiveness of EU assistance has been hindered by objectives not being sufficiently clearly defined as well as major coordination challenges for Commission and EULEX operations. Moreover, EULEX has suffered from staffing constraints. While Commission projects were generally adequately managed, the EEAS and Commission could have made more use of policy dialogue and conditionality to strengthen the rule of law.

VI. The Court recommends:

- The Council and Commission should ensure rule of law objectives for Kosovo are linked to concrete benchmarks against which progress can be assessed and take into account EU internal security objectives.
- The EEAS and Commission to improve their coordination should review Commission programming and procurement procedures to ensure they are responsive to EULEX's operational needs, and prepare an exit strategy for EULEX which would entail the Commission taking over EULEX's capacity building functions.
- The EEAS should work with the Member States to ensure that future CSDP missions operate with the full authorised number of staff and that they are deployed for the necessary time period and have the appropriate skills to be effective.
- The Council and Commission should ensure that future CSDP missions have a legal personality.
- The EEAS and Commission should ensure that the allocation of staff in the EU Office in Pristina to managing rule of law support reflects the high priority given by the EU to this area.



- The Council, the EEAS and the Commission should ensure that their policy dialogues with Kosovo focus particularly on strengthening the rule of law and are linked to incentives and priority conditions.

## **INTRODUCTION**

### ***Background***

1. Within the former Yugoslavia, Kosovo was an autonomous province in the Republic of Serbia, one of the six republics originally making up the country<sup>3</sup>. It had an ethnic Albanian majority but with a significant Serb minority. Following a constitutional reform in 1974, Kosovo was granted increased autonomy, allowing it to have its own administration, assembly, and judiciary. During the 1980s ethnic tensions mounted and in 1989 Kosovo's autonomy was revoked by the nationalistic Serbian government led by Slobodan Milošević.
2. The 1990s witnessed the disintegration of Yugoslavia and in Kosovo increasing repression by the Serbian government resulted in the outbreak of guerilla war led by the Kosovo Liberation Army and a total breakdown in the rule of law. Between 1997 and June 1999 an estimated 10 000 Kosovo Albanians were killed. In response to the rapidly deteriorating situation the North Atlantic Treaty Organisation (NATO) bombed Serbia and Serbian armed forces in Kosovo to drive the latter out of Kosovo.
3. In June 1999, the United Nations (UN) Security Council adopted Resolution 1244/99 which set up a United Nations Interim Administration Mission in Kosovo (UNMIK) in place of the Government of Serbia. It mandated UNMIK to carry out all aspects of civil administration, establish democratic institutions and create the basis for eventually resolving Kosovo's status<sup>4</sup>. The immediate task of UNMIK in conjunction with the NATO-led Kosovo Force

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<sup>3</sup> The other constituent republics of former Yugoslavia were Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, and Slovenia. There was one other autonomous province, Vojvodina, also in the Republic of Serbia.

<sup>4</sup> This designation is without prejudice to positions on status, and is in line with UN Security Council Resolution 1244 and the ICJ opinion on the Kosovo declaration of independence.

(KFOR) was to establish law and order by ending the violence and repression and allowing for a safe return of all refugees.

4. From 2003, under a constitutional framework established by UNMIK, the structures of the so-called 'Provisional Institutions of Self-Government' slowly began evolving. While UNMIK retained ultimate authority, a gradual transfer of power from UNMIK to Kosovo institutions took place.

5. Following negotiations over the period 2005-07, the UN Special Envoy, Martti Ahtisaari, proposed a 'supervised independence' for Kosovo. While this proposal was not endorsed by the UN Security Council, two key parts of the Ahtisaari proposal were nevertheless subsequently implemented:

- (a) The EU Council of Ministers established a Common Security and Defence Policy (CSDP) mission, the 'European Union Rule of Law Mission in Kosovo' (EULEX), to monitor, mentor and advise on all areas related to the rule of law and carry out certain executive functions.
- (b) A group of states supporting Kosovo's independence, the International Steering Group, established an International Civilian Office (ICO) to monitor the implementation of the proposal. The Head of the ICO has the authority to annul decisions or laws adopted by Kosovo authorities and sanction or remove public officials.

6. Kosovo unilaterally declared independence from Serbia in February 2008 but this step was not followed by universal recognition of Kosovo<sup>5</sup>. Five EU Member States have not recognised Kosovo's independence<sup>6</sup> which has led the EU to adopt what is termed a 'status neutral' position<sup>7</sup>. All Member States

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<sup>5</sup> As of 8 June 2012, 91 countries have recognised Kosovo.

<sup>6</sup> Cyprus, Greece, Romania, Slovakia and Spain.

<sup>7</sup> 'Status neutral' means that the European Union neither supports nor opposes Kosovo's independence.

have nevertheless agreed that the European Union should provide substantial funding to Kosovo with a view to ensuring the stability of Kosovo, the wider Western Balkans region and Europe as a whole<sup>8</sup>.

7. Kosovo benefits from financial assistance from the Instrument for Pre-Accession Assistance (IPA) and is treated by the Commission as a potential candidate for the purpose of receiving this assistance<sup>9</sup>. Since 2010 it has taken part in the same 'Stabilisation and Association Process' (SAP) dialogue mechanism with the Commission as candidate countries and other potential candidates in the Western Balkans region.

8. Serbia rejected Kosovo's independence and many ethnic Serbs in the north of Kosovo wish to remain part of Serbia<sup>10</sup>. The EU is facilitating direct dialogue between Kosovo and Serbia to improve relations between them (the so-called 'Pristina-Belgrade Dialogue'). In March 2012 the European Council granted Serbia the status of candidate country for joining the EU and the Commission has subsequently proposed an amendment of the IPA Regulation to transfer Serbia from the list of potential candidate countries to the list of candidate countries.

9. The desire for independence and subsequent international recognition have dominated the overall agenda of the Kosovo authorities. But Kosovo faces other major challenges, notably poverty and crime. Its GDP per capita of

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<sup>8</sup> The Council has stated the EU's willingness 'to assist the economic and political development of Kosovo through a clear European perspective of the region' (2011 Council conclusions on enlargement and stabilisation and association process, 18195/11, 5.12.2011).

<sup>9</sup> Annexes I and II of Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) (OJ L 210, 31.7.2006, p. 82).

<sup>10</sup> According to a 2011 census, an estimated 5 % of Kosovo's population of 1,7 million are Serbs. They live mainly in the north of Kosovo.

just 2 383 euro is the lowest in Europe<sup>11</sup>. The collapse of the rule of law in the 1990s created a vacuum which has been exploited by organised crime both from within and outside Kosovo. At the same time, the clientelism prevalent throughout Kosovo society and the traditional recourse to a clan-based customary law hinder building up the rule of law.

10. Strengthening the rule of law in Kosovo is generally considered a pre-requisite for economic development. Given the international nature of organised crime, the strengthening of the rule of law in Kosovo is also important for the internal security of the EU.

11. In January 2012 the Kosovo authorities announced their desire to end the supervised independence by the end of the year. On 10 September the Kosovo Assembly adopted constitutional amendments to that effect ending the supervisory role exercised by the ICO. At the same time, the Kosovo authorities have renewed their invitation to EULEX to carry out its executive functions until the end of its current mandate in June 2014.

### ***EU financial assistance***

12. Over the last decade the international community has invested major resources in peace-keeping, reconstruction, institution building, economic development and rule of law assistance to Kosovo. During the period 1999-2007 Kosovo received 3,5 billion euro in donor assistance, two thirds of which came from the European Commission and EU Member States. A 2008 Donor Conference pledged an additional 1,2 billion euro for the period 2009-11, including 508 million euro from the Commission. Overall, Kosovo is 'the biggest recipient per capita of EU assistance in the whole world'<sup>12</sup>.

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<sup>11</sup> Kosovo Agency of Statistics, GDP 2010.

<sup>12</sup> Statement by President Barroso following his meeting with Hashim Thaçi, Prime Minister of Kosovo, Pristina, 20 May 2011. According to Commission data, Kosovo has received more assistance from the EU per capita than any other

13. In the period 2007-11 more than half of EU assistance was allocated to the rule of law in Kosovo, principally through the CSDP mission<sup>13</sup> but also through IPA (see **Table 1**).

14. EULEX is the largest crisis management operation ever launched by the EU. Its central aim is to help the Kosovo authorities to strengthen the rule of law, specifically in the police, judiciary and customs areas (see also paragraph 68). It is financed from the EU's Common Foreign and Security Policy (CFSP) budget, with funding being implemented through a contract between the European Commission and the EULEX Head of Mission, who is personally responsible for the EULEX budget. Up to June 2012, the EU had committed 614 million euro from the EU General Budget to support EULEX<sup>14</sup>. At the end of 2011 EULEX had 2 539 staff including 1 087 staff who had been seconded, mainly from Member States. In a strategic review of EULEX the European External Action Service (EEAS) proposed to maintain some executive functions and extend its mandate until June 2014, and this has been agreed by the Council<sup>15</sup>.

15. IPA has funded projects in the areas of police, justice and customs as well as specific anti-corruption projects for a total of 92,47 million euro during the period 2007-11.

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recipient since 1999. See **Annex I** for the amounts of 2011 EU assistance per capita granted for relevant countries in the Western Balkans region.

<sup>13</sup> The Common Security Defence Policy - CSDP (formerly known as European Security and Defence Policy - ESDP) was launched at the Cologne European Council of June 1999 as an integral part of the Union's Common Foreign and Security Policy (CFSP).

<sup>14</sup> See Council Decision 2012/291/CFSP of 5 June 2012 amending and extending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (OJ L 146, 6.6.2012, p. 46).

<sup>15</sup> Council Decision 2012/291/CFSP.

**Table 1 – EU Assistance to the rule of law 2007-11 (commitments in million euro<sup>1</sup>)**

Instrument	2007	2008	2009	2010	2011	Total
EULEX (including Planning Team) (current budget line: 19.03.01.02)	76,50	120,00	121,22	120,75	144,00	582,47
IPA wider rule of law <sup>2</sup> (22.02.02 and 22.02.04.01)	9,30	44,52	12,05	14,20	12,40	92,47
Instrument for Stability (IfS) (19.06.01.01)	0,00	5,00	0,00	0,00	0,00	5,00
<b>Total EU assistance to the wider rule of law</b>	85,80	169,52	133,27	134,95	156,40	679,94
<b>Total EU assistance to Kosovo</b>	231,70	331,10	238,22	198,95	212,70	1 212,67
<b>Total rule of law as % of total EU assistance</b>	37 %	51 %	56 %	68 %	74 %	56 %

<sup>1</sup> The EU general budget only provides detail of the EULEX figures since 2011. The Court has used in this table the figures provided in the 2011 EU budget for the years 2009, 2010 and 2011 and figures obtained from the Commission's internal accounting system (ABAC) for previous years.

<sup>2</sup> IPA 'wider rule of law' projects include in addition to police and judicial projects, projects related to anticorruption, customs and public financial management reform.

*Source:* European Commission (analysed by the European Court of Auditors).

16. The Commission service primarily responsible for dealing with Kosovo is the Directorate General for Enlargement. It is responsible for the management of IPA which is the main source of funding for assistance projects in Kosovo. EULEX is managed by the Civilian Operations commander, who is the Director of the Civilian Planning and Conduct Capability (CPCC), which is based in Brussels and forms part of the EEAS. He is under the political control and strategic direction of the Political and Security Committee of the Council (PSC). The European Union Office (EUO) manages the implementation of IPA

assistance and since February 2012 its Head also serves as the European Union Special Representative (EU SR) in Kosovo (see paragraph 78).

### **AUDIT SCOPE AND APPROACH**

17. The report addresses the overall question:

‘Is EU assistance to Kosovo in the field of rule of law effective?’

The first part of the report focuses on whether EU assistance has achieved its intended results and what has been its impact on overall progress in different areas of the rule of law (police, justice, customs, anti-corruption). The second part of the report identifies areas where improvements in the management of EU assistance could lead to greater effectiveness of assistance, in particular:

- (a) clarity of objectives;
- (b) co-ordination between the EU institutions, and with other donors and the Kosovo authorities;
- (c) the management of EULEX;
- (d) the management of assistance projects;
- (e) policy dialogue and conditionality.

18. The audit involved documentary review, interviews and three on-the-spot audit visits to Kosovo in 2011 and 2012. The Court examined a sample of eight IPA projects selected from the 20 IPA rule of law projects to which the EU committed funding between 2007-10 and which were implemented over the period 2008-11. It also examined one project funded from the Instrument for Stability. The projects audited totalled 21 million euro out of a total of 85 million euro spent on rule of law projects. In addition, the Court examined a sample of eight Monitoring, Mentoring and Advising (MMA) actions carried out by EULEX



out of the 45 initially launched MMA actions<sup>16</sup>. Details of the audit sample are given in **Annex II** and the detailed audit criteria are presented in **Annex III**.

19. In order to assess the impact of EU assistance at sector level, the Court used other audit evidence including documentation from other rule of law Commission-funded projects in Kosovo and EULEX-led MMA actions. It also reviewed reports from the Kosovo authorities and other donors and stakeholders present in Kosovo as well as conducting a literature review (see Bibliography in **Annex V**). In addition, the Court interviewed relevant Kosovo authorities as well as representatives of the international community and civil society in Kosovo.

20. The Court used an advisory panel of international experts to gain background information about the situation in Kosovo and to test the relevance of the audit questions.

## **OBSERVATIONS**

### ***Despite significant EU assistance, progress in improving the rule of law is limited and levels of organised crime and corruption remain high***

21. This section sets out the results of the sample of IPA projects and EULEX MMA actions audited by the Court. It also seeks to assess the impact of EU assistance on overall progress in the rule of law in relation to police, judiciary, customs and anti-corruption, including in the north of Kosovo. In addition, it assesses whether progress is likely to be sustained.

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<sup>16</sup> EULEX originally implemented 36 MMA actions in the Police Component, 5 in the Justice Component and 4 in the Customs Component.

**Kosovo Police: EU interventions audited by the Court had modest success but major challenges remain, in particular in the fight against organised crime**

EU Assistance

22. The Commission and EULEX have assisted the Kosovo Police in many ways since 2007 (16 IPA projects totalling 33 million euro and 36 MMA actions). The Court audited two IPA projects<sup>17</sup> and four MMA actions<sup>18</sup>.

23. Both IPA projects audited aimed to develop the capacity of the Kosovo Police to carry out the new task of monitoring Kosovo's borders and boundaries<sup>19</sup>. The Commission's support for a separate Border and Boundary Police intelligence system was in contradiction with EULEX's objective of creating a single intelligence system within the Kosovo Police due to insufficient coordination during the design of this project. The implementation of both projects was significantly delayed, particularly the supply of the equipment which was over a year late.

24. A major part of the project was to replace the existing border management system, funded by the USA<sup>20</sup>, with a new system fully compliant with EU standards. The fact that a non-EU compatible system was originally installed points to a lack of coordination between the Commission and the USA (see

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<sup>17</sup> 'Border and Boundary Police Equipment' (several supply contracts worth 3 million euro) and 'Border and Boundary Police' (a twinning project with Member State experts for 2,6 million euro).

<sup>18</sup> 'Border Police – Enhanced Planning'; 'Intelligence-led Policing'; 'Rationalize Kosovo Police Structure'; 'Team Approach – Criminal Investigations'.

<sup>19</sup> The term 'boundary' refers to where Kosovo adjoins Serbia whereas the term 'border' refers to where Kosovo adjoins Albania, the Former Yugoslavia Republic Of Macedonia, and Montenegro. The references to 'border' in this report are without prejudice to Member States' position on status.

<sup>20</sup> The 'Personal Identification, Secure Comparison, and Evaluation System' or 'PISCES', funded by the US State Department.

also paragraph 86). Implementation of the new system was difficult because of the Kosovo authorities' preference to continue with the existing system.

25. The twinning project, implemented from May 2009 until November 2010, also contributed to developing border and boundary policing in Kosovo through technical advice and training. However, its 18 month duration was not long enough to ensure that new practices introduced by the project were fully taken over by the Kosovo Police.

26. The MMA 'Border Police – Enhanced Planning' was successful in increasing the planning capacity of the Border Police and complemented the IPA-funded projects for this part of the Kosovo Police.

27. The MMA 'Intelligence-led Policing' was seriously hindered by the Kosovo authorities' lack of necessary financial and staffing resources. The EULEX MMA 'Rationalise Kosovo Police Structure' contributed to a new police structure which centralised the previously dispersed intelligence-gathering functions. Despite the contributions of these two MMA actions, the overall capacity of Kosovo Police in strategic planning and intelligence-led policing remains weak.

28. The MMA 'Team Approach – Criminal Investigations' focused on police-prosecutor cooperation, but had to be suspended as prosecutors decided to prioritise the investigation of ongoing cases which limited the resources available for capacity building actions (see paragraph 95).

29. Despite some modest successes, notably in the transfer of responsibilities for border and boundary control from KFOR to Kosovo authorities, EU assistance to the police audited by the Court did not lead to significant improvements.

#### The fight against organised crime

30. Despite assistance from the EU and other donors, Kosovo has made little progress in the fight against organised crime. Indeed, the 2010 Strategic Threat

Assessment 'Organised Crime in Kosovo' by the EU Office for Criminal Intelligence (EUOCI) concluded that 'the situation regarding organised crime in Kosovo has not changed considerably since the arrival of the international community in the summer of 1999'<sup>21</sup>. The investigation of serious crimes is still ineffective due to limited experience and political interference. The Kosovo authorities also lack the capacity to tackle financial and economic crime and money laundering.

31. A major shortcoming affecting the cooperation between police and prosecutors is their lack of a joint database which makes it impossible to track and coordinate their investigation of criminal cases. This has led to situations where prosecutors are unaware of police investigations and vice versa, which seriously hinder the fight against organised crime. The fact that the police and prosecutors have not implemented simple steps, such as common case reference numbers points to insufficient political will to ensure cooperation.

32. Europol is the European law enforcement agency which aims at improving the effectiveness and cooperation of countries in preventing and combating organised crime. The non-recognition of Kosovo by some EU Member States prevents Europol from entering into operational and/or strategic agreements<sup>22</sup> with the Kosovo authorities. Kosovo accordingly does not appear on a Council-approved list of third countries with which Europol is able to enter into such agreements<sup>23</sup>. In addition, Europol is also unable to enter into a direct cooperation agreement with EULEX since it has, like all CSDP missions, no legal personality (see paragraph 93). To circumvent this difficulty, Europol has

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<sup>21</sup> Strategic Threat Assessment- Organised Crime in Kosovo November 2010 by the EU Office for Criminal Intelligence (EUOCI).

<sup>22</sup> Agreements that allow for the exchange of information (strategic), including personal data (operational).

<sup>23</sup> Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information (OJ L 325, 11.12.2009, p. 6).

put in place an ad-hoc specific mechanism to exchange relevant information with EULEX. This mechanism though relies on the readiness of Member States to cooperate. At present, three Member States participate in this mechanism<sup>24</sup>.

33. Limited capacity to protect key witnesses in high profile cases by Kosovo authorities and the difficulties relocating witnesses abroad are important shortcomings as ‘instances of witness intimidation continue to hamper the proper functioning of the justice system’<sup>25</sup>. Although EU assistance is provided through a regional IPA project for the Western Balkans<sup>26</sup>, its impact in Kosovo is likely to be limited due to the weak financial and legal framework of Kosovo’s Witness Protection Unit.

### **Kosovo Judiciary: EU interventions audited helped build capacity but the judicial system continues to suffer from fundamental weaknesses**

#### EU Assistance

34. The Commission and EULEX have financed 15 IPA projects and one Instrument for Stability (IfS) project for a total amount of 58 million euro as well as six MMA actions. The Court audited two projects: ‘Support to the Vetting and Re-appointment Process’ (5,9 million euro funded by the IfS and IPA) and ‘Legal Education System Reform’ (3,6 million euro). It also audited two MMA actions (‘Judges in the Criminal and Civil Fields’ and ‘Prosecutors’).

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<sup>24</sup> The European Pact to combat international drug trafficking also notes that information exchanges between Europol and EULEX should be improved as Kosovo is one of the main traffic routes for drugs to Western Europe.

<sup>25</sup> Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo, 31 January 2012, p. 7.

<sup>26</sup> IPA 2009 project ‘Cooperation in Criminal Justice: Witness Protection in the Fight against Serious Crime and Terrorism (WINPRO)’, 4 million euro.

35. The vetting and re-appointment process aimed to identify and recommend suitable candidates for judicial posts<sup>27</sup>. This process was an important step in building confidence in Kosovo's judiciary. However, at the end of the project, 28 % of the vacant posts remained unfilled (127 out of 461). This was partly because 31 candidates recommended by the international commissioners<sup>28</sup> have not been subsequently appointed by the Kosovo authorities<sup>29</sup>. Only 33 % of the positions reserved for minorities were filled. Overall, the number of judges and prosecutors in Kosovo remains very low<sup>30</sup>.

36. The IPA project 'Legal Education System Reform' suffered from significant delays in its implementation, partly due to problems in obtaining co-financing from the Kosovo authorities. While most project objectives were eventually achieved, the sustainability of results is in doubt. The project could not be implemented in the north of Kosovo (see paragraph 56).

37. EULEX judges and prosecutors perform executive functions as an integral part of Kosovo's judiciary. This has limited the time they can devote to capacity building. While some MMA actions are close to completion, others require further substantial efforts, particularly those involving prosecutors. Both MMA actions audited in detail contributed to developing the capacity of local judges and prosecutors. However, the local judiciary is still not able to deal with certain

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<sup>27</sup> The reappointment process was a one-time, comprehensive review of the suitability of all applicants for permanent appointments as judges and public prosecutors in Kosovo funded by international donors. It was included in the Ahtisaari proposal (Article 3, Annex IV).

<sup>28</sup> The Independent Judicial and Prosecutorial Council.

<sup>29</sup> This is in contrast to a similar exercise in Bosnia and Herzegovina, where the High Judicial and Prosecutorial Council (HJPC), which vetted judges and prosecutors for integrity and professional competence, was also responsible for their appointment to ensure full independence of the re-appointment procedure.

<sup>30</sup> Kosovo has 14 judges per 100 000 citizens, whereas the ratio for other countries is: Montenegro 51, Croatia 41, Hungary 27. The ratio for prosecutors is even lower: 3,7 for Kosovo, compared to 13,4 in Montenegro, 7,3 in Bosnia and Herzegovina and 17,3 in Hungary. See EULEX Programme report 2011, p. 34.

types of serious cases (organised crime, economic crimes and corruption, as well as war crimes) due to insufficient expertise as well as threats and intimidation.

#### The functioning of the judicial system

38. Although overall the EU projects audited have helped to build the capacity of the judiciary, fundamental weaknesses remain. Political interference with the judiciary remains a major problem in Kosovo, notwithstanding the presence of EULEX judges and prosecutors. The Organisation for Security and Co-operation in Europe (OSCE) has reported, quoting a jurist, that 'judges are not fully willing to render their judgements on the basis of the law only, but tend to act in anticipatory obedience to external influences'<sup>31</sup>. In August 2011 the Kosovo authorities initiated legislation to reduce EULEX's executive powers through the reform of the Special Chamber which ends EULEX judges' majority at the First Instance level of the Special Chamber of the Supreme Court<sup>32</sup>.

39. The efficiency of judges and prosecutors remains a key issue. The huge backlog of cases (211 588 as of 31 July 2011) limits confidence in and recourse to justice. A new strategy launched in November 2010 had led to a 46 % reduction in the pre-2008 backlog<sup>33</sup> but the Commission and EULEX are not in a position to indicate whether due process has been always respected in achieving this. The Commission and other donors have also funded

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<sup>31</sup> OSCE: Independence of the Judiciary in Kosovo, Institutional and Functional Dimensions, January 2012, p. 7.

<sup>32</sup> The Secretary General of the United Nations has stated his serious concern that this legislation will not only curtail EULEX involvement in the judicial oversight of privatisation, but also severely weakens the safeguards over the use of proceeds from privatisation (see Paragraph 31 of Report of the Secretary-General on the UNMIK, 31 October 2011).

<sup>33</sup> This strategy addresses the reduction of the 161 273 cases initiated before 31 December 2008 and still pending at year-end 2010. As of April 2012 87 914 of these cases remain pending. Kosovo Judicial Council. Progress on the work achieved by Kosovo Judiciary in implementation of the National Backlog Reduction Strategy, 25 April 2012.

complementary projects aiming to reduce the recourse to courts, such as the Alternative Dispute Resolutions project or the introduction of the notary profession in Kosovo, but it is still too early to assess their impact on the workload of the courts.

40. There is insufficient transparency in the allocation of cases among judges and prosecutors, allocations not always being based on pre-determined objective criteria and procedural safeguards. This is a major shortcoming as it provides opportunities for political interference through the selection of the responsible judge or prosecutor. An EU-funded 'Court Management Information System' project launched in 2004 to address this issue is not yet operational.

41. While there has been some progress in legal reform (see paragraph 62), the actual implementation and enforcement of laws remains a major problem. The Commission estimated in 2011 that only 40 % of Court rulings in Kosovo were enforced<sup>34</sup>.

### **Kosovo Customs: EU interventions have been largely successful in building the capacity of Kosovo Customs**

42. The Commission and EULEX have provided assistance to the Kosovo Customs through two IPA projects for an amount of 2,7 million euro and four MMA actions. The audit reviewed the two IPA projects, 'Preparation of Fiscal and Customs Blueprint' and 'Support to Customs and Taxation Administrations', and two MMA actions, 'Enhanced internal communication and data sharing' and 'Implementation of the Integrated Border Management (IBM) Action Plan'.

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<sup>34</sup> 2nd Plenary of the SAP Dialogue, 1 July 2011.



43. Though there were occasional problems<sup>35</sup>, the assistance provided by the Commission and EULEX has largely achieved its objective of building the capacity of Kosovo Customs.

44. More generally, progress in the area of customs has been made. Kosovo Customs increased revenue collection from 527 million euro in 2007 to 700 million euro in 2010. It has also actively participated in the fight against money laundering even if checks need to be made more systematic. A new customs regulation, broadly compatible with EU legislation, has been introduced although there are still some gaps in the implementation of the existing customs regulation.

45. Despite the overall improvements, coordination between the Kosovo Customs and the Public Prosecutors Office (PPO) remains poor which hinders the effectiveness of the investigation and prosecution of cases of serious crime. In addition, Kosovo Customs itself is still perceived by Kosovo citizens as one of the most corrupt government services<sup>36</sup>, although few corruption cases are brought to court.

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<sup>35</sup> The exception was the MMA on the 'IBM Action Plan', where the objective of reaching EU levels was not realistic in the limited timeframe. While this MMA did contribute to improving cooperation between Kosovo Customs and Kosovo Police, it is not yet of the standard necessary for effective integrated border management.

<sup>36</sup> United Nations Development Programme (UNDP) Public Pulse Poll report: Fast Facts III, 11 December 2011, p. 6.

## **Anti-corruption: EU interventions have had limited results in tackling corruption which remains a major concern**

### EU assistance

46. The Commission funded seven IPA projects related to the fight against corruption. These projects amount to 8,5 million euro. EULEX did not undertake any specific MMA action since it proposed to treat corruption as a cross-cutting issue relevant to all its activities. The Court audited two IPA projects: 'Support to Public Procurement Reform' (2 million euro) and 'Support to the Anti-Corruption Agency' (1 million euro).

47. The implementation of the project 'Support to Public Procurement Reform' was affected by disagreement between the Commission and the Kosovo authorities over whether a recently passed Public Procurement Law was compliant with EU law and procedures. As a result, the Commission focused the project on assisting the drafting of a new Public Procurement Law that was fully compliant. This was the third Public Procurement Law in less than three years. The priority given to this meant that much needed work on secondary legislation and training to implement the new law could not be pursued.

48. The technical assistance project 'Support to the Anti-corruption Agency' reviewed relevant legislative proposals on anti-corruption. It resulted in 35 recommendations. However, the Kosovo authorities accepted only 14 of these recommendations (40 %)<sup>37</sup>. The design of this project included the realisation of an organisational review of the Agency, but this was replaced by a new information exchange mechanism between Kosovo law enforcement bodies which is not yet operational. The project aimed to improve the capacity of the Agency yet the drafting of the new anti-corruption strategy for the period 2012-16 was undertaken entirely by an outside expert. It also aimed to increase

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<sup>37</sup> The Commission and EULEX considered all recommendations pertinent. The Kosovo authorities did not provide an explanation why most were not accepted.

the number of cases sent to the prosecution, but the number of cases sent decreased from 68 in 2009 to 29 in 2010 (see paragraph 55).

49. While EULEX judges and prosecutors have prioritised corruption cases, actual results are below the high expectations of the Kosovo population<sup>38</sup>. This is notably due to the difficulties in closing complex investigations.

50. Overall, the Commission's assistance and EULEX executive activities have not achieved the expected results although they have contributed to some progress in the fight against corruption.

#### The fight against corruption

51. Corruption continues to prevail in many areas and is a major concern of the Kosovo population<sup>39</sup>. Kosovo's Transparency International 2011 Corruption Perception Index (CPI) indicator is 2.9, which is classified as a level of 'rampant' corruption. The Organisation for Economic Co-operation and Development (OECD) has also reported that 'Kosovo remains very permissive to corruption at all levels, meaning that the risk of becoming (or even of actually already being) a "captured state" is high'<sup>40</sup>.

52. In spite of limited financial and human resources, the Kosovo authorities have opted for a complex institutional framework to fight corruption. Three bodies have been set up with weak powers and overlapping responsibilities<sup>41</sup>.

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<sup>38</sup> The Kosovo population expected that the arrival of EULEX would lead to an increased focus on fighting corruption and organised crime. This view was encouraged by some public declarations by EULEX staff.

<sup>39</sup> A survey conducted by the United Nations Office of Drugs and Crime (UNODC) in 2010 states that corruption remains a major concern of ordinary citizens in Kosovo. The survey also noted that 11 % of the population reported having bribed a public official in the previous year. UNODC Report: 'Corruption in the Western Balkans, bribery as experienced by the population', 2010.

<sup>40</sup> SIGMA Assessment Report Kosovo 2011, OECD, 2011, p. 15.

<sup>41</sup> The Kosovo Anticorruption Agency, the Anti-corruption Council and the Office of Good Governance.

Moreover, the Kosovo Anti-Corruption Agency cannot investigate criminal activities and is powerless to prosecute cases of alleged corruption.

53. The supervision of public procurement is similarly complex with three central bodies directly involved<sup>42</sup>. Moreover, there are more than 150 contracting authorities in Kosovo. Given the size of Kosovo (population 1,7 million) this complexity and fragmentation increases the risk of corruption<sup>43</sup>. EU assistance has not addressed this issue nor has the EU policy dialogue focused on it at a political level (see also paragraph 97).

54. The Kosovo Assembly has recently adopted new laws to foster transparency and accountability in public administration<sup>44</sup>. The legislation is, however, marred by shortcomings (see **Annex IV**) and poor implementation<sup>45</sup> while non-compliance is not sanctioned<sup>46</sup>.

55. In general, the Kosovo authorities have given a low priority to anti-corruption activities. The Kosovo authorities have not yet evaluated the results and impact of the two previous anticorruption strategies (2004-07 and 2009-11) despite having already approved a new strategy for 2012-16 (see

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<sup>42</sup> The Public Procurement Agency, the Public Procurement Regulatory Commission and the Procurement Review Body.

<sup>43</sup> During 2011, 158 contracting authorities in Kosovo managed a public procurement market of less than 800 million euro. Excluding one unusual contract of 236 million, the average contracted amount was less than 45 000 euro. See 2011 Annual Report of the Public Procurement Regulatory Commission, p. 31.

<sup>44</sup> These include the law for declaration of assets, the law on preventing conflict of interest in exercising public function and the law on access to public documents.

<sup>45</sup> The OECD has also reported that: 'Kosovo is adopting a remarkable set of laws aimed at preventing and fighting corruption and organised crime. At the same time, the institutional set-up is also being established. However, the absence of clear results in this field raises concerns about the capacity for absorbing the legislation, the real commitment in implementing it, and the capability of institutions and staff.' SIGMA Assessment Report Kosovo 2011, p. 14.

<sup>46</sup> EU anti-corruption requirements: measuring progress in Albania, Kosovo, FYR Macedonia and Turkey, Transparency International, p. 6.

paragraph 48). The European Partnership Action Plan 2012 contains five anti-corruption actions but with a total funding of only 17 000 euro. By way of comparison, the promotion of eco-driving in Kosovo receives funding of 25 000 euro from Kosovo's budget.

**The north of Kosovo: EU interventions have been very limited and there has been almost no progress in establishing the rule of law**

56. EU assistance, implemented through IPA rule of law projects and MMA actions, has not specifically targeted the north of Kosovo. IPA projects and MMA actions which were intended to cover all of Kosovo have generally had a negligible impact in the north. For example, the 'Support to Public Procurement Reform' project contributed to training and certifying procurement officers, but no officer from the Serbian-majority northern municipalities benefited from the project. Similarly, the 'Legal Education System Reform' project contributed to improving the law curriculum at the University of Pristina but its activities did not cover the Serbian-controlled University of Pristina-Kosovska Mitrovica (see paragraph 36).

57. This situation is mainly due to the lack of control over the north by the Pristina-based Kosovo authorities. It has the reputation for being a 'safe haven' for organised crime<sup>47</sup> due to the lack of both a strong police force and a functioning judicial system.

58. EULEX police have made significant efforts to continue their activities in the north. EULEX has advocated the establishment of a multi-ethnic crowd and riot control unit there but with little success to date. Police stations in the north, predominantly staffed with Kosovo Serbs, are in principle integrated in the Kosovo Police chain of command, but in reality their communication with Headquarters in Pristina is limited. Kosovo's specialised crowd and riot police

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<sup>47</sup> Council of the European Union, Regional report on Western Balkans 11791/11, 20 June 2011, p. 29.

units are mostly staffed by Kosovo Albanians, which is a source of tension when they are deployed in the north.

59. Kosovo Customs, a service where minorities are underrepresented, also has difficulties working in the north. For example, its staff cannot reach two crossing points located on the boundary between Serbia and Kosovo<sup>48</sup>, and has to be airlifted in. EULEX Customs and Kosovo Customs officers at these crossing points collect information about commercial transit but do not collect customs duties.

60. Since 2008 no local judges or prosecutors have been able to work in the north. Similarly, road blocks have restricted the mobility of EULEX judges and prosecutors who were not able to administer law in the Mitrovicë/Mitrovica Court from July 2011 until February 2012. Parallel courts apply Serbian law but the legality of their decisions is contested by the Kosovo authorities.

61. Since 2011 EULEX has been aiming to establish a larger 'footprint' in the north and has increased its staff living there to 40. It also set up a special 'Task Force Mitrovica' to develop criminal investigations in cooperation with the EU Office of Criminal Intelligence, drawing on resources from the Kosovo Police, the Kosovo Customs, EULEX Police and EULEX Customs. However, difficulties in the north have resulted in the task force's officers residing in the north having to be relocated south of the river Ibar.

**Questionable local political will, weak financial capacity and the limited influence of civil society impair the prospects for sustainability of EU interventions**

62. Political support from the Kosovo authorities for strengthening the rule of law sector is a key condition for the sustainability of the results of the EU assistance. However, the national authorities' commitment to new laws is open

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<sup>48</sup> The two crossing points at Gate 1 (Jarinje) and Gate 31 (Brnjak).

to question. For example, four fundamental laws<sup>49</sup> were drafted with minimal local participation.

63. The Kosovo authorities' financial capacity to continue project activities after the end of EU funding, and more generally to finance the rule of law sector, is in doubt. Since 2008 increased government expenditure has led to rising deficits. A stand-by arrangement with the International Monetary Fund agreed in July 2010 went off track a few months after signature due to large public sector wage rises.

64. The impact of this weak financial capacity is particularly significant in the judicial sector as implementation of the new laws will require additional funds. For example, the Joint Rule of Law Coordination Board (JRCLB) (see paragraph 76) has expressed concerns over the high budgetary costs of the new Law on Witness protection. The Court's review of individual IPA projects also indicated that the Kosovo government's budget would be insufficient for the operation of the high security prison and juvenile justice reform.

65. The frequent changes in the senior management of the Kosovo Police, partly linked to political interference, risk undermining efforts to build up management capacity on a sustainable basis<sup>50</sup>. It also undermines trust in the rule of law. Political interference in the judiciary equally undermines the rule of law and trust in democratic institutions (see paragraphs 35, 37, 38 and 40). The European Commission has expressed concern about the extensive use of presidential pardons without appropriate justification<sup>51</sup>.

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<sup>49</sup> The four laws were on courts, prosecution and Kosovo Judicial and Prosecutorial Councils. These laws were enacted in 2010.

<sup>50</sup> In 2010 and 2011 there were four different Director Generals.

<sup>51</sup> The Acting President (partially) pardoned 103 prisoners in 2011. Many of them were serving sentences for serious crimes. SEC(2011) 1207 final - Kosovo 2011 Progress Report, p. 13.

66. Civil society, including the media, also has an important role in ensuring that improvements in the rule of law are sustained through its monitoring and lobbying the Kosovo authorities. However, civil society remains fragile and also faces political pressure.

***Despite ongoing improvements, significant scope remains for enhancing the efficiency and effectiveness of EU assistance***

67. As emphasised in the 'Introduction' section, Kosovo has had a very difficult recent history with limited experience of self-administration. In these circumstances, it is clear that strengthening the rule of law to EU standards is a medium to long term process. Nevertheless, the audit identified areas where the efficiency and effectiveness of the management of EU support to the rule of law could be improved. This section highlights these areas.

**Objectives have not been sufficiently clearly defined and coordinated**

Capacity building objectives and roles are not clearly defined

68. EULEX's overall mission is defined as to:

'assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices'<sup>52</sup>.

However, the EULEX Concept of Operations (CONOPS) and Operation Plan (OPLAN)<sup>53</sup>, the basic planning documents for implementing the mission, do not

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<sup>52</sup> Article 2 of Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO) (OJ L 42, 16.2.2008, p. 92).

<sup>53</sup> These documents are classified and therefore not readily available.



contain clear benchmarks and objectively verifiable indicators to assess progress in meeting these objectives.

69. EULEX pursues its mission both through the exercise of certain executive powers, for which UNMIK was previously responsible, and also through capacity building activities based on MMA actions. The relative priority to be given to these two areas is not clearly defined.

70. The European Commission has provided capacity building support to Kosovo in the field of the rule of law since 2000. When the Council gave EULEX tasks in the same field, neither its comparative advantages nor opportunities for synergies with Commission projects were identified (see paragraph 91).

EU internal security objectives are not adequately integrated into the EU's external objectives for Kosovo and the Western Balkans

71. Organised crime and corruption in the Western Balkans is a matter of serious concern for the EU. The Council has accordingly repeatedly called for a coherent and coordinated approach which makes internal security a central priority in EU external objectives and actions. Despite this the EU's programming of assistance to Kosovo has not adequately taken the EU's internal security priorities into account.

72. For example, the rise in the number of victims of trafficking in human beings from the Western Balkans<sup>54</sup> has not prompted policy changes by the Commission or EULEX. Neither the Council Joint Action establishing EULEX, nor the various Commission IPA Multi-annual Indicative Planning Documents

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<sup>54</sup> Council Document 11678/11 of 4 July 2011 'Fourth Implementation Report of the "Strategy for the External Dimension of JHA: Global Freedom, Security and Justice" by the Council Secretariat (JAIEX working party) - Period of Reference: January 2010 - June 2011'.

(MIPD) for Kosovo, explicitly refer to the priorities included in the EU's various strategies for the external dimension of Justice and Home Affairs.

73. EU internal security objectives tend to be broad-ranging and action plans have largely focused on activities and outputs rather than on quantified results and impact. This lack of specific and clear objectives makes it more difficult for EULEX and EUO to design interventions to address priorities identified by the Council (see paragraph 96). For example, Europol's Organised Crime Threat Assessments have repeatedly stated the threat to the EU posed by crime hubs in the Western Balkans region, including Albanian-speaking organised crime groups, and the trafficking of heroin and human beings.

74. The Council and the Commission have recognised the need to better integrate external and internal objectives. Two relevant recent initiatives which may address the issue are the establishment of an 'EU Policy Cycle'<sup>55</sup> and the development of a roadmap for strengthening ties between CSDP and Freedom, Security and Justice (FSJ)<sup>56</sup>. However, it is too early to assess their impact.

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<sup>55</sup> The recently established 'EU Policy Cycle' may lead to greater coherence between internal and external security policies through its cascading system of threat assessments (by Europol), priorities, strategic goals, Operational Action Plans (OAPs) and performance indicators (3043rd Justice and Home Affairs Council meeting, Brussels, 8 and 9 November 2010).

<sup>56</sup> Council Document 18173/11 of 5 December 2011 'Strengthening Ties between CSDP and FSJ – Draft Road Map'.

**Coordination between EU institutions and their coordination with the Kosovo authorities and the international community is still insufficient in some areas**

Coordination between EU Institutions has steadily improved but some issues remain, notably in making Commission procedures more responsive to CSDP mission needs

*Coordination Mechanisms*

75. The existence of both a large Commission-managed financial assistance programme in Kosovo and the largest ever CSDP mission requires effective coordination mechanisms. The Council Decision establishing EULEX stipulated that ‘the necessary coordination arrangements shall be put in place in the EULEX Kosovo area, as appropriate, as well as in Brussels’<sup>57</sup>.

76. In 2008 EULEX established a Joint Rule of Law Coordination Board (JRCLB) with the Kosovo authorities, co-chaired by the EULEX Head of Mission and the Deputy Prime Minister of Kosovo<sup>58</sup>. EUO was also represented but by technical staff and its inputs were relatively limited. However, EUO has been able to play a more influential role since the Head of EUO became a third co-chair from the beginning of 2011. This has led to the JRCLB being more focused on making progress in the broader Stabilisation and Association Process.

77. The Council established the position of EU SR in Kosovo in order to try to ensure intra-EU political coordination and guidance<sup>59</sup>. Yet, until recently, the EU SR has not made a substantial contribution to strengthening coordination between EUO and EULEX and did not participate in the JRCLB meetings

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<sup>57</sup> See Article 17 of Council Joint Action 2008/124/CFSP.

<sup>58</sup> In addition, the Ministers of Justice, Interior, and Finance and Economy attend these meetings.

<sup>59</sup> Council Joint Action 2008/123/CFSP of 4 February 2008 appointing a European Union Special Representative in Kosovo (OJ L 42, 16.2.2008, p. 88).

although they took place at a high political level and he had a mandate to provide political advice to EULEX. Similarly, he was not represented in the monthly meetings organised by EUO with Member States and other donors (known as 'Member States Plus meetings') despite the need to ensure links between political priorities and financial assistance.

78. The combining in 2012 of the roles of EU SR and Head of EUO is likely to significantly improve coordination. Nevertheless scope remains for better integrating the EU SR's role with EULEX<sup>60</sup>.

#### *Coordination of Project Programming and Implementation*

79. IPA projects can be used to support EULEX MMA activities by financing equipment and infrastructure. However, the lead time required for an IPA project to be approved and then for procurement to be completed is often too long to meet EULEX's operational needs. This is because IPA project proposals generally have to be finalised well before the year in which they will be funded.

80. Although EULEX may itself procure equipment for its operations, it has to follow the procurement procedures laid down in the Financial Regulation. These are not designed for CSDP missions such as EULEX where fast and flexible responses are sometimes necessary.

81. EULEX's CONOPS and OPLAN do not include an exit strategy although EULEX's mandates are limited to only two years at a time, albeit with the possibility of extensions. The Commission's involvement in contrast is open-ended. Although the Council has recognised in principle that after the end of a CSDP mission its objectives can continue to be pursued through Commission-

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<sup>60</sup> The European Union Planning Team (EUPT), established to prepare the EULEX mission, proposed in its assessment report of September 2006 a 'Tentative Structure' in which the CSDP (EULEX) Head of Mission would report to the EU SR. The Council approved a CONOPS and OPLAN which did not follow this proposal.

led projects<sup>61</sup>, the Commission and the EEAS have not yet agreed when and how to do this in the specific case of Kosovo.

The Kosovo authorities have limited capacity to ensure coordination and challenges remain in coordinating with other international donors

82. By the end of 2011 the Kosovo authorities had still not established effective coordination mechanisms in the field of rule of law despite the Commission and other donors emphasising the importance of this<sup>62</sup>. By this time only one Rule of Law Sector Working Group meeting had taken place and the three planned sub-sector working groups (Judiciary; Anti-Corruption and Organised Crime; Visa, Asylum, Border Management, Customs and Police) had not yet become operational.

83. EULEX and the Kosovo authorities have restricted participation in the JRCB meetings (see paragraph 76) to a few key stakeholders which prevents the potential use of this forum for coordinating rule of law assistance<sup>63</sup>. In addition, the JRCB focuses on high level policy issues rather than technical matters. While the Board has discussed setting up working groups to improve coordination at a technical level, these have not yet been established.

84. EUO has used regular monthly 'Member States Plus' meetings (see paragraph 77) to share information on the programming of its IPA assistance. In contrast, Member States shared relatively limited information on their

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<sup>61</sup> Council's 'Concept paper on procedures for the termination, extension and refocusing of an EU civilian crisis management operation' of 9 January 2006.

<sup>62</sup> Following Kosovo's declaration of independence in February 2008, the Commission organised a donor conference for Kosovo in July 2008. The follow up to the donor conference confirmed that, in line with the principles of the 2005 Paris Declaration on Aid Effectiveness, Kosovo should take the leading role in developing its policies and coordinating donor assistance.

<sup>63</sup> The JRCB meetings were attended by the USA but not by other stakeholders such as EU Member States or international organisations involved in supporting the Rule of Law.

programmes although detailed information exchange could be a first step towards joint programming of assistance.

85. A key partner for EULEX is the NATO-led KFOR<sup>64</sup>. EULEX and KFOR generally work closely together at an operational and tactical level, despite the absence of a formal agreement between the EU and NATO. However, EULEX faces difficulties fulfilling its obligations vis-à-vis KFOR following a unilateral 50 % reduction in crowd control police assigned to EULEX by Member States (see paragraph 90). As a result EULEX was unable to play its role effectively during the major disturbances in the north of Kosovo in summer 2011 and had to rely instead on KFOR. This situation and events on the ground have prevented KFOR from going ahead with its next phase of troop reductions and have required it to deploy its Operational Reserve Force over the past year.

86. The EU Institutions have made significant efforts to coordinate with the USA which is the largest bilateral donor in Kosovo. Nonetheless it remains difficult to achieve full co-ordination given the wide range of US actors involved in Kosovo in the rule of law field<sup>65</sup>. Co-ordination is particularly challenging in the drafting of legislation, where the USA is very active despite Kosovo's interest in adopting the EU *acquis communautaire* and the fact that Kosovo's legal framework is based on European Continental law. For example, the new law on courts required around 50 drafts starting from 2004 and was only adopted by the Assembly in August 2010, the government blaming the significant delay on disagreement between EUO and USAID.

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<sup>64</sup> KFOR is mandated under UN SCR to permit freedom of movement and provide a safe and secure environment in Kosovo.

<sup>65</sup> These include the US Embassy, US Agency for International Development (USAID), the International Criminal Investigative Training Assistance Programme (ICITAP) and the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT). Existing coordination *fora* are not effective to coordinate with the USA as they generally accept only one representative per donor.

### **EULEX's efficiency and effectiveness have suffered from resource constraints**

87. At the time of the audit EULEX was only able to operate at approximately 75 % of its authorised strength due to difficulties recruiting staff, in particular seconded staff from Member States<sup>66</sup> which is the Council's preferred way of recruitment. Member States pledged fewer staff than was authorised and subsequently seconded fewer than originally pledged<sup>67</sup> (see **Table 2**). In six Calls for Contributions held in 2010 and 2011 Member States submitted fewer applicants for seconded positions than there were vacancies. As a result only 47 % of the vacancies were filled with new seconded staff<sup>68</sup>. It was particularly difficult to recruit for specialised positions such as magistrates.

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<sup>66</sup> At the end of 2011, approximately 78 % of EULEX's international staff were seconded, mainly from Member States (94 %). Canada, Croatia, Norway, Switzerland, Turkey and the United States have also seconded staff to EULEX.

<sup>67</sup> Member States notify the CPCC through so-called 'pledges' of how many staff they will second to the mission. If there are insufficient seconded applicants, posts may be filled with contracted staff but this is more expensive because then EULEX pays their salaries.

<sup>68</sup> The Calls contained 2 396 vacancies for seconded staff. 47 % were filled with new seconded staff and 5 % with new contracted staff. 13 % were filled by existing EULEX staff which meant their previous post became vacant.

**Table 2 – EULEX international staffing versus indicative pledges**

Origin of staff	International Positions according to OPLAN <sup>1</sup>	Initial pledges	Average staffing (2010)	Modified pledges (2011)	Average staffing (2011)	31.12.2011
Seconded by Member States	<b>Total: 2 042</b>	1 405	1 203	1 145	1 137	939
Seconded by other contributors		142	166	183	184	148
<b>Subtotal seconded</b>		<b>1 547</b>	<b>1 369</b>	<b>1 328</b>	<b>1 321</b>	<b>1 087</b>
International Contracted staff		310	330	360	327	302
<b>Total International staff</b>		<b>1 857</b>	<b>1 699</b>	<b>1 688</b>	<b>1 648</b>	<b>1 389</b>

<sup>1</sup> EULEX's authorised strength was 2,042 international staff until October 2010 when it was reduced to 1,950 international staff.

Source: CPCC and EULEX Operation Plan (OPLAN).

88. A further handicap for EULEX operations is the short duration of secondments. The typical timeframe of one year is insufficient for key positions such as senior advisers, magistrates or organised crime investigators. In some cases staff can only become fully operational after 12 months. This frequent turnover of key advisers is not conducive to the effective transfer of knowledge to the Kosovo authorities and undermines the effectiveness of the MMA actions.

89. The quality of staff deployed to EULEX is also a concern. The Court found that eleven Member States submitted unqualified candidates to at least one of the ten selections procedures it reviewed. In addition, whilst EULEX staff needs project management expertise and soft-skills<sup>69</sup> to carry out their MMA

<sup>69</sup> Examples of relevant soft skills for MMA advisers include communication, negotiation, facilitation, influence, teamwork, mentoring and resilience skills.



responsibilities, Member States generally neither assess candidates in these areas during the screening nor provide sufficient training in them prior to deployment.

90. EULEX's Head of Mission cannot reallocate the staff according to changing needs. Instead this requires prior approval by the PSC or even by Member States<sup>70</sup>. As a consequence, there have been significant imbalances in staff resources both between and within components. While EULEX lacks staff in the Justice component, it currently has more than necessary in the Customs component and, overall, in the Police component. On the other hand, parts of the Police component have suffered from significant understaffing, notably the crowd and riot control police units following unilateral withdrawals by some Member States (see paragraph 85).

91. EULEX does not have an adequate system to monitor and analyse the amount of time staff spend on individual MMA actions and on executive functions. In addition, the EEAS does not collect information about the payments made by Member States' administrations to EULEX's seconded staff and therefore cannot establish the total cost of EULEX to the EU including Member States. It is therefore not possible to assess how cost-effective EULEX is compared with other forms of EU capacity building assistance.

92. EULEX, like all CSDP missions, does not have a legal personality. This has been a significant handicap since it means the running of the whole organisation, consisting of 2 500 personnel, therefore depends on the mandate received by a single person. This means that the Head of Mission himself is exposed to judicial actions as EULEX has no standing before jurisdictions.

93. In addition, EULEX cannot sign agreements committing the mission as any agreement signed by the Head of Mission only commits himself and not

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<sup>70</sup> Changes in job descriptions are approved by the PSC. Member States need to agree to a reallocation of seconded staff.

EULEX as an entity. This constraint has, for example, hindered the implementation of a permanent data exchange agreement with Europol<sup>71</sup> (see paragraph 32).

94. In June 2012 the Commission issued a communication on the financial management of the CSDP missions. This included a request to the Council to grant them legal personality, to clearly establish their status as entities created by a Council act, and for them to be responsible to the Commission for the funds entrusted to them<sup>72</sup>.

### **Despite limited staff in the EUO in Kosovo IPA projects were generally adequately managed**

95. The strategic importance to the EU of the rule of law in Kosovo is not reflected in the staff allocated to managing financial assistance for this area in the EUO. Thus the operations team consists of only five staff. This prevents the specialisation of task managers in different areas such as police or justice matters. It also means there is limited capacity in key areas such as information technology applications relating to the field of rule of law. Staffing constraints have also led the EUO to make considerable use of external consultants in order to monitor projects.

96. Despite the staffing constraints faced, IPA rule of law projects were generally adequately managed by the Commission using well established procedures. The main shortcomings noted during the audit were:

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<sup>71</sup> The Council has been informed that the lack of legal personality of CSDP missions hinders information exchange (Council document 5620/11 of 25 January 2011 'Tightening links between the external and internal aspects of EU security').

<sup>72</sup> C(2012) 4052 final of 26 June 2012.

- (a) Projects audited focused on further reforms and new primary legislation rather than on ensuring secondary legislation was put in place and enforced and new systems made to work (see paragraph 47).
- (b) Projects were not targeted effectively to address the EU's internal security objectives (see paragraph 73).
- (c) Most projects did not include SMART objectives<sup>73</sup>, baseline data and objectively verifiable indicators to assess the progress made.
- (d) IPA project preparation documents did not include an adequate risk assessment, including the formulation of risk mitigation strategies<sup>74</sup>. In particular the risks of corruption and political interference in the areas of police, judiciary and customs were not sufficiently addressed.

**The Commission and EEAS have not made sufficient use of policy dialogue and conditionality to strengthen the rule of law**

97. The formal framework for policy dialogue between the EU and Kosovo is the Stabilisation and Association Process (SAP). However, there is only one meeting per year at technical level<sup>75</sup>. The Commission has recently recognised this problem with the launch of a so-called 'Structured Rule of Law Dialogue' in May 2012 which is at a political level. It involves two additional EU-Kosovo rule of law meetings a year, focused on corruption, organised crime and the judiciary.

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<sup>73</sup> SMART is an acronym of: Specific, Measurable, Achievable, Realistic and. Time-bound.

<sup>74</sup> Termed project fiches' by the Commission.

<sup>75</sup> The meeting is co-chaired by the EUO and attended by representatives of Enlargement DG, Justice DG, Home Affairs DG, EULEX, EU SR and EUO. In 2010 and 2011 the meetings were co-chaired by a Commission's desk officer.

98. The incentives and conditionality used by the Commission and EEAS have so far also proven of limited use in promoting progress on rule of law issues in Kosovo.

99. In contrast to the rest of the Western Balkans, in the case of Kosovo the incentive of potential EU accession is jeopardised by the absence of a common EU position on its independence (see paragraph 6). In the shorter term the possibility of visa liberalisation may act as an incentive as the visa liberalisation roadmap includes conditions linked to the rule of law. However, there are 95 requirements to be met for visa liberalisation, which risks undermining the incentive effect<sup>76</sup>.

100. The EU assistance to Kosovo is in principle conditional on progress in meeting priorities set out in the European Partnership<sup>77</sup>. However, the Partnership contains as many as 79 priorities on the rule of law alone. Moreover, the Partnership has not been updated since 2008. While specific conditions are included in the IPA annual programmes, they are generally of a technical nature and not linked to broader policy concerns.

101. The only condition formally established by EULEX in its OPLAN is that its presence in Kosovo 'will be based on continued cooperation and support from the Kosovo authorities'. However, the Kosovo authorities are increasingly looking to end 'supervised independence' (see paragraphs 5 and 11). EULEX does not use conditionality for individual MMAs.

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<sup>76</sup> In June 2012 the Commission provided the Kosovo authorities with the 'Roadmap' of reforms Kosovo needed to complete to obtain visa liberalisation including rule of law reforms (Reference: Meeting doc 012-12 Rev 3 Origin CION).

<sup>77</sup> Annex 1 Article 5 of the European Partnership states that: 'Assistance to the Western Balkan countries is conditional on progress on satisfying the Copenhagen criteria and on meeting the specific priorities of this European Partnership. Failure to respect these conditions could lead the Council to take appropriate measure'.

## **CONCLUSIONS AND RECOMMENDATIONS**

### ***Conclusions***

102. The audit found that EU assistance to Kosovo in the field of the rule of law has not been sufficiently effective. Assistance has made only a modest contribution to building the capacity of the Kosovo police and little progress has been made in the fight against organised crime. In the judicial sector assistance has been useful but the judiciary continues to suffer from political interference, inefficiency and a lack of transparency and enforcement. EU interventions have had only limited results in tackling corruption which continues to prevail in many areas. Most progress was made in the area of customs. There has been almost no progress in establishing the rule of law in the north of Kosovo. Overall, the sustainability of results which have been achieved by the assistance is threatened by a lack of political will, weak financial capacity and the limited influence of civil society.

103. In the first place, the limited effectiveness of EU assistance can be explained by the specific circumstances of Kosovo: the low starting point at independence for building up the rule of law and the insufficient priority accorded by the new Kosovo authorities to the rule of law agenda. In addition, the absence of a common EU position over the recognition of Kosovo has jeopardised the incentive of EU accession.

104. Nevertheless, the audit found there were significant areas where better management by the EEAS and Commission could have made EU assistance more effective. This is notwithstanding the improvements which they have introduced during the period audited.

105. The respective objectives and roles of Commission and EULEX capacity building activities were not adequately assessed and benchmarked during the planning stage of the EULEX mission. EU internal security objectives relating to Kosovo have not been sufficiently coordinated with EU external policy objectives for Kosovo.

106. Coordination between the Commission and CSDP operations has been a major challenge. Programming and procurement procedures remain an obstacle to effective cooperation. The EU has not established an exit strategy which would entail the Commission taking over EULEX's capacity building functions. Since 2012 the EU SR is playing a greater role in ensuring coordination but could still be better integrated into the management of the CSDP operations. Overall donor coordination in Kosovo has been hindered by the limited capacity of the Kosovo authorities to assume leadership. EU and US bodies in Kosovo should strengthen their coordination where possible.

107. Although EULEX is by far the largest CSDP mission ever, its effectiveness in strengthening the rule of law has been reduced by human resource constraints. Member States have not seconded sufficient staff to EULEX. Moreover, staff are often seconded for too short periods and without the necessary capacity building skills. EULEX has also been handicapped by not having a legal personality.

108. The number of EUO staff allocated to supervising Commission support to the rule of law does not reflect the importance of this area. Despite this, IPA projects were generally adequately managed.

109. The EEAS and Commission have made insufficient use of policy dialogue and conditions, alongside the assistance provided, to help achieve EU rule of law objectives in Kosovo. The recent introduction of a political level 'Structured Rule of Law Dialogue' and a visa liberalisation roadmap could be significant steps forward in this respect.

**Recommendations**

**Recommendation 1:** The Council and Commission should ensure rule of law objectives for Kosovo are linked to concrete benchmarks against which progress can be assessed and take into account EU internal security objectives.

**Recommendation 2:** The EEAS and Commission to improve their coordination should review Commission programming and procurement procedures to ensure they are responsive to EULEX's operational needs, and prepare an exit strategy for EULEX which would entail the Commission taking over EULEX's capacity building functions.

**Recommendation 3:** The EEAS should work with the Member States to ensure that future CSDP missions operate with the full authorised number of staff and that they are deployed for the necessary time period and have the appropriate skills to be effective.

**Recommendation 4:** The Council and Commission should ensure that future CSDP missions have a legal personality.

**Recommendation 5:** The EEAS and Commission should ensure that the allocation of staff in the EU Office in Pristina to managing rule of law support reflects the high priority given by the EU to this area.

**Recommendation 6:** The Council, the EEAS and the Commission should ensure that their policy dialogues with Kosovo focus particularly on strengthening the rule of law and are linked to incentives and priority conditions.

This Report was adopted by Chamber III, headed by Mr Karel PINXTEN, Member of the Court of Auditors, in Luxembourg at its meeting of 16 October 2012.

*For the Court of Auditors*

Vitor Manuel da SILVA CALDEIRA  
*President*

**ANNEX I**

**EU FINANCIAL ASSISTANCE PER CAPITA (WESTERN BALKANS)**

<b>Recipient</b>	<b>2011 Assistance granted IPA (euro)</b>	<b>2011 Assistance granted CSDP<sup>1</sup> (euro)</b>	<b>Population<sup>2</sup></b>	<b>EU assistance per capita (euro)</b>
Albania	94 428 286		3 069 275	31
Bosnia and Herzegovina	107 428 286	17 600 000	3 843 998	33
Croatia	156 528 286		4 290 612	36
Former Yugoslav Republic of Macedonia	98 028 286		2 048 619	48
<b>Kosovo</b>	<b>68 700 000</b>	<b>132 566 667</b>	<b>1 733 872</b>	<b>116</b>
Montenegro	34 153 943		625 266	55
Serbia	201 879 600		7 120 666	28

Source: Court's analysis of Commission's data.

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<sup>1</sup> The CSDP expenditure for Kosovo (EULEX) and Bosnia and Herzegovina (EUPM) has been calculated based on the expenditure approved by Council Joint Actions distributed on a pro-rata basis (for EULEX 165 million euro to cover expenditure from 15 October 2010 until 14 December 2011, and 72,8 million euro from 15 December 2011 until 14 June 2012).

<sup>2</sup> Population data obtained from the Census 2011 results, except for Bosnia and Herzegovina and FYROM for which 2009 estimates provided by Enlargement DG.



**AUDIT SAMPLE****Instrument for Pre-accession Assistance (IPA) Projects**

<b>Contract (CRIS Ref).</b>	<b>Title of the project</b>	<b>Budget (euro)</b>
2009/209-712	Border and Boundary Police, Twinning	2 000 000
2008/172-158	Border and Boundary Police Equipment	412 506
2008/172-282		635 210
2010/250-987		480 238
2010/248-943		1 967 353
2010/253-575		372 948
2009/215-030	Legal Education System Reform	3 600 000
2010/241-467	Completion of re-appointment of Judges and Prosecutors (IPA/IfS)	876 460
2008/169-890	Support to Public Procurement Reform	1 912 373
2008/169-230	Support to Anti-Corruption Institutions in Kosovo	997 260
2009/202-640	Preparation of Fiscal and Customs Blueprint exercise in Tax and Customs Administrations of Kosovo (UNSCR 1244)	102 876
2009/211-402	Support to Customs and Taxation Administrations	2 639 500

**Instrument for Stability Projects**

<b>Contract (CRIS Ref)</b>	<b>Title of the project</b>	<b>Value (euro)</b>
2008/154-134	Re-appointment of Judges and Prosecutors in Kosovo	5 000 000

**Monitoring, Mentoring and Advising (MMA) actions**

<b>Component</b>	<b>EULEX Ref</b>	<b>MMA Title</b>
Police	PSD05/2009	Team Approach - Criminal Investigations
Police	PSD10/2009	Intelligence-led policing
Police	PSD19/2009	Border Police: Enhanced Planning
Police	PSD24/2009	Rationalize Kosovo Police Structure
Justice	-	Judges in the criminal and civil field
Justice	-	Prosecutors
Customs	CC/06/2009	Enhanced internal communications and data sharing, specifically intelligence communication and dissemination
Customs	CC/09/2009	Implementation of the IBM Action Plan, specifically including upgrading of infrastructure and equipment

### **ANNEX III**

#### **DETAILED AUDIT QUESTIONS AND AUDIT CRITERIA**

The Court has answered the audit question by splitting it into sub questions addressing the effectiveness and impact of the interventions as well as management issues. Each topic was reviewed by answering the detailed question which is presented in this annex together with the related audit criteria used by the Court.

**Has the EU assistance been effective? Has overall EU assistance to the rule of law sector achieved the intended results?**

In assessing this question the following criteria were taken into account:

- (a) EU Progress Reports have reported satisfactory progress.
- (b) Priorities set out in the European Partnership have been met.
- (c) Objectives set out in the Multiannual Indicative Programming Documents and Council Joint Action for EULEX have been met.
- (d) The project activities are implemented in a timely manner in accordance with plans and beneficiaries take ownership and are involved in projects/actions implementation.
- (e) Objectives set out in project/MMA Action fiches have been met.

**Are the Kosovo authorities able to manage the rule of law sector in a sustainable way without donor intervention?**

In assessing this question the following criteria were taken into account:

- (a) The Commission and the EEAS/EULEX assess the prospects for the Kosovo authorities to be able to manage the rule of law sector without donor intervention.
- (b) The Kosovo authorities have ownership of the reform process in the rule of law sector and have technical and financial capacity to manage the rule of law sector in a sustainable way.

**Is there a well-defined overall EU strategy for the rule of law in Kosovo and are the specific objectives of the different bodies clearly set out?**

In assessing this question the following criteria were taken into account:

- (a) The EU strategy for rule of law in Kosovo is set within a clear overall strategy for Kosovo.
- (b) The EU strategy for rule of law in Kosovo is integrated with related EU rule of law policies.
- (c) EU bodies responsible for implementing the strategy have clear mandates and their objectives do not overlap.
- (d) Objectives are reasonably limited in number, prioritised and SMART (“Specific, Measurable, Achievable, Realistic and Time-bound”).

**Is EU Assistance to Kosovo related to the rule of law well-coordinated between the EU bodies?**

In assessing this question the following criteria were used:

- (a) General coordination through communication and reporting between EU bodies is timely and coherent.
- (b) Programming and Implementation by different EU bodies is co-ordinated.
- (c) Specific communication and reporting between EU bodies is timely and coherent.

**Has EU Assistance been well-coordinated with other stakeholders?**

In assessing this question the following criteria were used:

- (a) There is a comprehensive assessment of Kosovo needs in the field of rule of law and an analysis of the required resources.
- (b) There is an in-country division of labour with lead donor arrangements in the field of rule of law.
- (c) EU Assistance has been programmed in coordination with other donors and mechanisms exist and have ensured the coordinated implementation of assistance.

**Has the EU appropriately assessed and mitigated the risks to which the funding is exposed?**

In assessing this question the following criteria were taken into account

- (a) Risks to spending EU funds have been identified and assessed.
- (b) Adequate risk mitigation and risk management strategies are developed and implemented.

**Have the EU financial and human resources committed to the rule of law in Kosovo been allocated according to the priorities for EU assistance in the field and within a clear implementation time frame?**

In assessing this question the following criteria were taken into account:

- (a) There are clear milestones for the implementation of the EU Strategy (from inception to exit) and there is an assessment of the resources needed at each stage.
- (b) Financial resources committed to the interventions are allocated in accordance with EU priorities.
- (c) The staff working on the interventions have the necessary expertise and are available on a timely basis.

**Has effective use been made of other inputs (dialogue, conditionality and monitoring) to help achieve the objectives of its assistance?**

In assessing this question the following criteria were taken into account:

- (a) The EU policy dialogue addresses the main weaknesses /reform needs of the rule of law sector and makes appropriate proposals.
- (b) The EU supported the achievement of its rule of law sector objectives by the use of appropriate conditionality.
- (c) The EU has an adequate system for monitoring its rule of law assistance.

**ANALYSIS OF IMPLEMENTATION GAPS IN RELEVANT LAWS IN THE  
FIGHT AGAINST CORRUPTION**

<b>Legal text</b>	<b>Assessment and shortcoming</b>	<b>Impact</b>
Law on anticorruption and existing provisions of the Criminal Code (CCK) on corruption.	Kosovo Anti-Corruption Agency's mandate is limited to investigate non-criminal activities and it cannot initiate the prosecution. The anticorruption law and the provisional penal code define corruption differently.	The Agency's mandate excludes the investigation and the prosecution of any kind of criminal corruption.
Existing provisions of the Criminal Code (CCK) and the Criminal Procedure Code (CPCK) on the confiscation of material benefits acquired through criminal activities.	Very few assets have been confiscated, and there seems to be a lack of will to use the applicable law provisions in cases involving highly complex corruption behaviours involving senior officials.	Convicted criminals maintain the property of the benefits of their illegal activities.
Law on declaration of the origin of the property and gifts of senior public officials (Law for declaration of assets).	Weak sanctioning framework including that false declarations are not considered as criminal offenses.	Declarations of assets continue to show discrepancies between the assets declared and actual revenue.
Law on preventing Conflict of interest in Exercising Public Function.	The Law on conflicts of interest lacks relevant reporting obligations and it only foresees that the Kosovo Anti-Corruption Agency should urge the official to avoid the conflict.	Conflicts of interest persist.
The Law on access to public documents.	This law foresees penalties for infringement but it remains unclear whether they should be paid by the institution or the responsible civil servant.	Insufficient transparency leads to less oversight of public activities and more opportunities for corruption.
The law on financing of political parties.	The law neither prohibits nor strictly regulates donations from legal entities which provide goods or services to public administration.	Political parties' financing practices are not transparent.

Source: European Court of Auditors.

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## **REPLIES OF THE COMMISSION / EEAS TO THE SPECIAL REPORT OF THE EUROPEAN COURT OF AUDITORS**

### **"EUROPEAN UNION ASSISTANCE TO KOSOVO RELATED TO THE RULE OF LAW"**

#### **EXECUTIVE SUMMARY**

I. Please note that these are the joint replies to the ECA Special Report on Kosovo from the Commission and the EEAS.

III. EEAS and the Commission concur with the assessment and find it positive that the Court's findings confirm progress in some areas. However, it is important to highlight the considerable achievements of EULEX considering the inherently difficult situation it inherited in Kosovo. Structural and institutional weaknesses have indeed, in some instances, hampered the conduct of executive activities, but the over 300 verdicts in criminal and civil cases and 23 000 solved conflict-related property claims attest to the Mission's impact. Meanwhile, over 300 human remains of missing persons have been returned to their families. In both concluded and on-going cases, EULEX outputs have challenged a culture of impunity by investigating and prosecuting ministers, politicians and senior officials, former wartime commanders, prominent businessmen and intelligence services.

Beyond statistically measurable results, it bears noting that EULEX, in many instances, has acted as a deterrent and preventative actor, defusing situations which would have otherwise erupted into conflicts. Considering the fragile state of Kosovo rule of law institutions at the time of the Mission's establishment, the current relative stability is worth taking into account in assessing the effectiveness of the EU's investment.

IV. It is positive that the Court acknowledges the challenges the Commission and the EU face in Kosovo. The same goes for the Court's explicit recognition that achieving results in Rule of Law in Kosovo is a long-term process. The Court also recognises that differences on status complicate the Commission's work, including the delivery in the area of Rule of Law.

V. Kosovo is at an early stage in the integration process. Although not intended to be instruments to apply 'conditionality' as referred to by the Court, the Commission encourages Kosovo to enact the necessary reforms in the context of the visa dialogue and the feasibility study for a Stabilization and Association Agreement (SAA) between the EU and Kosovo. Moreover, as the Court mentions, the high-level Rule of Law Structured Dialogue was established in 2012.

#### **VI. First indent**

The Commission and the EEAS accept the Court's recommendation and have already acted upon it.

The use of objective indicators and benchmarking in IPA programming will be part of the sector approach to be adopted under IPA II. Also, within the framework of the Joint Rule of Law Coordination Board, EULEX, the Commission/EU Office and Kosovo authorities are working to benchmark the progressive phasing out of elements of the EULEX mandate so as to establish the required level of Commission involvement in follow-up and taking-over through IPA.

The Commission will incorporate the Court's recommendation to reflect EU internal security objectives in its programming of assistance in its preparation of the Common Strategic Framework for all enlargement countries and the Country Strategy Paper for Kosovo under IPA II.

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## **VI. Second indent: (On coordination)**

The EEAS and the Commission agree that coordination can be further improved. As regards coordination between the Commission/EU Office, EULEX, EUSR, and the US, the Court's report reflects the challenges involved in coordinating different entities at the start of their respective mandates. The EULEX Joint Action was adopted in February 2008, EULEX deployment started in April and EULEX only became fully operational in December 2008. In parallel, the European Agency for Reconstruction was being phased out and the European Commission Liaison Office (now EU Office) became fully responsible for IPA assistance in Kosovo. The time immediately following Kosovo's declaration of independence marked a period in which third parties, including EU Member States, transformed and strengthened their presence in Kosovo.

Coordination is currently being strengthened, especially between EULEX and the EUO. An example is the Joint Rule of Law Coordination Board, where assistance and MMA are planned to feature more highly on the agenda. The double-hatting of EUSR and Head of EU Office (the EUSR also giving political guidance to EULEX) supports this development. The Commission will continue to aim for adequate consultation and cooperation with the US on draft legislation and implementation of acquis-related initiatives.

As concerns programming, the use of objective indicators and benchmarking in IPA II programming and the sector approach will also facilitate coordination with EULEX

### **(On procurement procedures)**

The Commission and the EEAS agree to re-assess the concrete application of procurement procedures, in particular how these procedures can be effectively implemented with a view to ensuring that CDSF mission's operational requirements are actually met.

As concerns the recommendation for the Commission to take over EULEX's capacity building functions, the mandate of the EU mission is to mentor, monitor and advise the Kosovo authorities on the rule of law. EULEX also has some executive functions. It is expected that at the phasing out of EULEX the relevant Kosovo institutions will be sufficiently mature to assume responsibility for operating the Kosovo Justice system. However, the Commission will continue to monitor developments in the area of rule of law in Kosovo, and where required support and assist the Kosovo authorities, notably through IPA-financed assistance which can also be used to help further build and consolidate the Kosovo justice system.

### **(EEAS: On exit strategy)**

In terms of exit strategy, the Council has defined the principle of local ownership and the cooperative approach of EULEX with Kosovo authorities. A gradual phasing-out to Kosovo authorities against demonstrated progress of the Mission's executive activities has indeed to be accompanied by an increased assistance by the Commission. As concerns the recommendation for the Commission to take over EULEX's capacity building functions, the mandate of the EU mission is to mentor, monitor and advise the Kosovo authorities on the rule of law. EULEX also has some executive functions. The Commission will continue to monitor developments in the area of rule of law in Kosovo, and where required support and assist the Kosovo authorities, notably through IPA-financed assistance which can also be used to help further build and consolidate the Kosovo justice system.

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## **VI. Third indent**

EEAS agrees that this area would benefit from continued cooperation by Member States and has worked to address this issue. Systematic "force sensing exercises" are being launched before deployment or significant restructuring as a tool to measure a mission's predicted need for resources and scope of deployment.

## **VI. Fourth indent**

The Commission and EEAS agree that future CSDP missions would benefit from having a legal personality.

The Commission has raised this issue in its recent communication on the financial management of the CSDP missions to Council and as a result the concept of legal personality for CFSP missions is under discussion. A joint Commission/EEAS working group is examining how it could be implemented.

## **VI. Fifth indent**

The Commission and the EEAS accept the recommendation as it is essential that in an environment of increasing financial and staffing constraints its operational staff is mobilised in an effective and efficient manner so as to adequately reflect its priorities and the workload involved in addressing them. The benchmarking referred to above should help facilitate the Commission's allocation of resources to policy objectives.

## **VI. Sixth indent**

The Commission has already implemented recommendation 6. This is reflected in the launch of the Structured Dialogue on the Rule of Law, which took place on 30 May 2012. Kosovo is at an early stage in the integration process. Although not intended to be instruments to apply 'conditionality' as referred to by the Court, the Commission does use 'tools' such as the visa dialogue and the feasibility study to encourage Kosovo to enact the necessary reforms.

## **INTRODUCTION**

14. At the end of August 2012, the Mission had 2 170 staff including 1 201 international staff out of a maximum number of deployable international staff of 1 250 887 are seconded.

## **OBSERVATIONS**

### **Kosovo Police: EU interventions audited by the Court had modest success but major challenges remain, in particular in the fight against organised crime**

As reported by the Commission Progress Report, Kosovo Police has improved its performance in spite of special circumstances prevalent in the local setting, including political interference and the challenging working environment.

23. By the time EULEX (as noted in the 2009 EULEX Programme Report) had drawn evidenced conclusions regarding the fragmented approach to intelligence gathering in Kosovo institutions. The IPA project was already progressing toward implementation. EULEX consequently is seeking to ensure that the intelligence system developed within KP Border is integrated into a single KP system, rather than an independent system isolated from central institutions. After the two projects

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audited by the Court, the Commission launched a new IPA project on intelligence-led policing in close coordination with and strongly supported by EULEX.

**24.** The Commission makes all possible efforts to coordinate with the US, the largest bilateral donor in Kosovo. The Kosovo authorities withdrew the US funded system in mid-2011 and the EU-funded border management system has since then been fully operational and now is the only one in place.

**25.** The implementation of a follow-up twinning project under the IPA Annual Programme of 2011 is starting in autumn of 2012. The project will focus on fighting drug trafficking and support the cutting of drug trafficking routes also through strengthening cooperation with neighbouring countries. With regard to information exchange, the project should build on the outputs of the Intelligence Led Policing project.

**27.** In 2009 Kosovo Police (KP) had several competing intelligence-gathering hubs and no clearly structured and uniform system of gathering intelligence data (see EULEX Programme Report, June 2009); whereas, by 2012 KP had achieved a single, centralised system of gathering, collating, analysing and disseminating intelligence data (see EULEX Programme Report, June 2012), signalling good KP progress in its path toward becoming an 'intelligence-led' police organisation. Substantial consolidation is still required, but the acquired capability is sustainable.

**28.** As noted in paragraph 37, the suspension of some MMA actions does not necessarily entail that capacity building does not continue in other forms (such as mixed teams of prosecutors working within EULEX executive capacity.)

**29.** While it is acknowledged that the assistance interventions audited by the Court only partially achieved their objectives, nevertheless, a total of 18 MMA Projects were fully completed and brought about improved performance in areas such as an improved organisational structure, an intelligence gathering and dissemination system, a proactive counter-narcotic strategy, improved planning capability in border police, transfer of much of the green border from KFOR, and enhanced patrol management.

**30.** The Commission and the EEAS agree that Kosovo has made little progress in the fight against organised crime. Kosovo lacks the relevant capacity as reflected in the 2011 Progress Report. Collaboration between Kosovo Police and prosecutors is not pro-active or effective. Nevertheless efforts are being made to tackle organised crime. The volume of narcotics seized by the Kosovo Police increased by almost 300% between 2009 and 2011 (276 kg of heroin and marijuana versus 96 kg in 2009) as did the number of intelligence-led investigations (EULEX, Programme Report 2012, pages 12-13). The responsibilities of the EULEX-led Financial Intelligence Centre were transferred to the Kosovo Police in June 2012.

**31.** EEAS and the Commission concur with the assessment that the lack of a joint database affects the cooperation between police and prosecutors. Programming and planning for a dedicated assistance for a common database between police and prosecutors is ongoing.

**32.** EUROPOL, together with the Civilian Planning and Conduct Capability (CPCC), has developed the mechanism for exchange of criminal intelligence between EUROPOL and EULEX. Volunteering Member States' 'Europol National Units' are catalysts for transmissions in accordance with recommendations in Council Conclusions 15771/08.

**33.** Kosovo currently lacks the capacity to protect key witnesses in high profile cases. Therefore, the EULEX Witness Protection Unit provides witness protection and relocation under the EULEX

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executive mandate. While challenges remain to find countries willing to accept relocated witnesses, it should be emphasised that several witnesses involved in high profile trials have been successfully relocated abroad. EULEX also provides Monitoring Mentoring Advice. In addition, the IPA regional project provides complementary support to capacity development and training. A new IPA project will provide specialised technical equipment for the unit.

**35.** Despite the fact that not all positions could be filled immediately, the vetting and re-appointment process, supported by the Commission and EULEX, has been a cornerstone of establishing the rule of law in Kosovo. Meanwhile, the Kosovo Judicial Council has assumed full responsibility for recruiting, vetting and selecting candidates for judicial positions and established an office for judicial and prosecutorial assessment and vetting for supporting the selection process. There is a general lack of minority community applications for positions in the judiciary. The vetting and re-appointment process in Kosovo was similar but not identical to the one in Bosnia and Herzegovina.

**36.** Budget constraints often make it difficult for Kosovo's institutions to provide adequate financial and human resources for IPA projects. In the case of the project 'Legal Education System Reform', one component in particular suffered a 12 month delay in obtaining the co-financing. The Commission shares the Court's concern regarding the sustainability of the activities and has confirmed its concerns in Steering Committee meetings in 2012. The Commission regrets that despite repeated efforts to involve the Law Faculty in northern Mitrovice/Mitrovica, it has not been able to formalise cooperation.

**37.** EULEX prosecutors and judges work in mixed teams or panels in the majority of cases when exercising their executive functions. Such joint work therefore contributes to capacity building of local prosecutors and judges.

**38.** Despite the fact that the reform of the Special Chamber ended EULEX judges' majority at the First Instance level, nevertheless the adopted legislation eventually preserves a majority of EULEX Judges at the appellate level, thereby preserving the integrity of the privatisation process.

**39.** The mandate of EULEX Kosovo focuses mainly on cases of serious crime as well as some conflict-related property disputes. Most of the cases within the described backlog fall outside the mandate of EULEX Kosovo. The strategy launched in November 2010, though fully supported by the EU, was chiefly authored by the Kosovo Judicial Council. The EU, nonetheless, supports the government of Kosovo in improving the efficiency of judges, prosecutors and the administration of justice, through MMA and executive activities by EULEX Kosovo, as well as through the IPA 2010 project that supports the Kosovo Judicial and Prosecutorial Councils. Within the scope of these efforts to reduce backlog, continuous international participation ensured that the process took into account principles of fair trial and due process.

**40.** The Mission acknowledges weaknesses in the allocation of cases among judges and prosecutors in Kosovo. The activity 'Introduction of a transparent Case Allocation System' under the MMA Action for Judges audited by the Court, addresses this issue directly. In the past year (2011) a Case Allocation System (CAS) was adopted in Kosovo District Courts, Municipal Courts and the Supreme Court. EULEX also supported the establishment of public information offices (PIOs) in Kosovo municipal courts, though this effort of the Kosovo judiciary is not yet complete. Improving transparency remains a challenge nonetheless, and the Mission continues to pursue the matter. As regards the EU-funded 'Court Management Information System', the Kosovo authorities are currently planning to carry out an upgrade/modification which is expected to make the system fully functional.

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**45.** Overall, EU support (through EULEX and the Commission) has contributed to improved compliance with EU-consistent customs procedures and enhanced efficiency and performance of Kosovo Customs, according to measurable internal data. Public perception has not yet fully recognised the progress made.

**47.** There was a strong political commitment from the government of Kosovo to reform the Public Procurement law in 2010. Since the need for improvements was also highlighted in the Progress Report, the project put more emphasis on the drafting of primary legislation. The Commission considered this the main priority also in the context of the fight against corruption. The new law entered into force in October 2011.

**49.** Structural shortcomings and inherent difficulties have indeed, in some instances, hampered the conduct of executive activities. The public perception of EULEX's achievements however remains conditioned to the media coverage of a handful of cases and does not take into account the objective outputs of the Mission, including 31 verdicts in corruption related cases with further investigations on-going.

In many instances EULEX acts a deterrent actor, generating incentives for Kosovo authorities in charge of procurement to comply with the procedures. These outputs are, however, difficult to record and, a fortiori, mediatized.

**50.** While the backlog of conflict-related cases has been steadily reduced as per above figures, sustainable executive results will only be measured based upon the Kosovo prosecutors and judges' willingness and ability to carry on the handling of sensitive cases. EULEX outputs have challenged a culture of impunity by investigating and prosecuting senior ministers, politicians and senior officials, former wartime commanders, prominent businessmen and intelligence services.

Many of these cases are still pending before the Courts.

**51.** The Commission agrees that corruption continues to prevail in many areas. This is reflected in the 2011 Progress Report which confirms that citizens regularly encounter corruption in police, customs and court services as well as in education and health care. Kosovo continues to face serious challenges in its fight against corruption. In addition to the completion of the legislative framework, there is a need for Kosovo judicial and law enforcement authorities to be more proactive and improve their cooperation.

**53.** The Commission has repeatedly raised the need to decrease the number of bodies supervising public procurement with the Kosovo authorities at the highest level, including the Stabilisation and Association Process Dialogue sectoral and plenary meetings.

**56.** While it is true that individual programmatic MMA actions could not specifically target the north, nevertheless numerous rule of law initiatives, taking the form of operational Monitoring, Mentoring and Advising, along with Executive rule of law activities were carried out in the north. Their success largely remains hampered by the lack of freedom of operations since July 2011 and, more generally, by the impossibility of imposing policing and rule of law upon the local population.

**58.** EEAS concurs that Kosovo police units ought to reflect the ethnic makeup of the areas in which they carry out their duties. The Mission has promoted this view since its inception and continues to do so.

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**59.** EULEX provides assistance in this respect by performing Customs checks at those Gates. Commercial lorries are being invited to present themselves to the Mitrovicë/Mitrovica Customs Terminal for customs clearance.

Data collected at the Gates and at the Terminal are being crosschecked for further investigation into evasion of customs duties.

**60.** EULEX Judges and Prosecutors have resumed their work at Mitrovicë/Mitrovica Court since February 2012, following the disruptions which began in July 2011. EULEX managed to maintain a presence in the courthouse until November 2011, when safety concerns no longer made this possible

**61.** The relocated staff continue to perform their duties in the north.

**62.** EULEX was not the initiator of the laws mentioned. Where EULEX is directly involved, it works together with local counterparts throughout the drafting of rule of law legislation, most notably through joint working groups allowing input and participation. In this particular case, the Kosovo Ministry of Justice is an integral part of this effort.

**63.** Indeed, overall budget constraints often make it difficult for Kosovo's institutions to provide adequate financial and human resources for IPA projects.

After the failure to implement an IMF Stand-By Arrangement (SBA) in 2010, economic policies have recently been complemented by a Staff-monitored programme and a new SBA which was approved in April 2012.

**65.** EU Office and EULEX have closely followed the use of presidential pardons. In 2012 the number of pardoned convicts decreased drastically to 15 compared to last year 103 pardoned convicts. No convict for criminal offences under Chapter XIII (terrorism, inciting national or racial hatred, etc.) or Chapter XIV (War crimes, Trafficking of Human Beings, etc.) of the Criminal Code was pardoned.

**66.** The EEAS and the Commission are committed to liaise with civil society; both the EU Office and EULEX have regular dialogues and exchanges of information with civil society. The annual meeting between civil society organisations and the Commission feeds directly into the SAPD Plenary meeting, which takes place the following day. Strengthening of civil society is supported through financial assistance.

**68.** A benchmarking concept was adopted by Member States in 2011. The new 2012 EULEX CONOPS and OPLAN, endorsed by Member States, subsequently identified operational objectives and objectively verifiable indicators through the EULEX Mission Implementation Plan, which structures them into performance-based benchmarking projects. Each objective will be achieved through the rollout of 38 total MIP Actions containing a rationale/background, an overall objective, a list of activities and of measurable results, a timeframe and indication of available resources, as well as links to external assistance.

This approach is built on earlier explicit references to the needs to establish a "benchmarking and review process" as already noted in the 2008 CONOPS, further defined at mission level in a programme, management and benchmarking system, carried out through MMA Action Fiches and an accompanying Tracking Mechanism to measure progress against baseline indicators.

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69. The EU Office and the Mission are reviewing, ahead of the finalisation of MMA fiches and IPA projects, the respective strengths of the two types of EU assistance. Factors including timing, length of past involvement, and type of expertise required, security environment and possible linkage with the EULEX executive mandate will be taken into account to ensure that priorities are addressed through a coordinated approach.

70. The EEAS and the Commission acknowledge that there is room for improvement and improved synergy between these actors, while noting that natural constraints (including timelines for deployment, divergent roles and assignments, and the differing roles of these institutions vis-à-vis the Kosovo authorities) have frequently hindered these efforts on the ground. Comparative advantages and opportunities for synergies are factored in, as noted above. The complementary support to the development of a Kosovo witness security capacity is a case in point.

71. The deployment of EULEX in 2008 and its activities since then reflect the importance the EU places on the impact of Kosovo rule of law issues on the EU's internal security.

More recent initiatives, including the visa liberalisation dialogue and bilateral readmission agreements between EU Member States and Kosovo, further prioritise EU internal security objectives.

72. The fight against human trafficking is an integral part of the Mission's priorities.

The priority handling and the verdict in the Tisza River case in which the Court, principally composed of EULEX Judges, sentenced 7 defendants to 66 years of imprisonment and imposed fines over 450,000 euro following the deaths of 15 people, including women and children, who drowned in the River Tisza between Serbia and Hungary demonstrates the efforts of the Mission in this respect.

74. In the context of biannual meetings of the Political and Security Committee and the Standing Committee on Operational Cooperation and Internal Security, the EU is aiming to develop an integrated approach to EU security.

**Coordination between EU institutions and their coordination with the Kosovo authorities and the international community is still insufficient in some areas.**

The Joint Rule of Law Coordination Board (JRCB) continues to bring together the representatives of EU institutions with Kosovo authorities, with EULEX and the EUO/EUSR acting as co-chairs. The JRCB has continuously evolved to set benchmarks for, and improve coordination with, Kosovo authorities at the highest level.

77. Cooperation and coordination within the EU family in Kosovo and the US are indeed of critical importance.

78. The latest JRCB Terms of Reference explicitly refers to EUSR as one of the three JRCB chairpersons.

The set-up is identical for all CSDP Missions. Dedicated arrangements in theatre such as the JRCB in Kosovo allow for each Mission to devise the necessary coordination mechanisms.

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With regard to footnote 59, the EUPT proposal was not followed up, as the Council had subsequently to EUPT initial planning adopted crisis management procedures setting up the current structure and its related chain of command.

**79.** Generally, IPA projects are programmed in year N-1, approved in year N and have to be contracted by year N+3. IPA procurement takes time given the need to ensure the process is thorough, fair and transparent.

**80.** The Commission and the EEAS agree to re-assess the concrete application of procurement procedures, in particular how these procedures can be effectively implemented with a view to ensuring that CDSP mission's operational requirements are actually met.

**81.** The EULEX 2012 CONOPS and 2012 OPLAN refer to a phasing out strategy, where coordination with the Commission on phasing in of IPA programming is a key element. Moreover, initial references and guidelines for an exit strategy have been present in every OPLAN since the mission's inception in 2008, and have evolved along with the Mission's benchmarking and evaluation processes. Ultimately, the decision on an exit strategy for EULEX can only be agreed upon by the Council.

**85.** The close coordination in theatre is complemented by NATO-EU staff to staff meetings at Headquarters level to ensure concurrent and consistent planning.

The destruction of Gate 1, one of the crossing points in the north of Kosovo, during summer 2011, despite KFOR presence, demonstrates a level of violence beyond EULEX crowd and riot control capabilities, even at full strength.

**87.** Following the Mission's extension in June 2012 until June 2014, and its related re-structuring, the maximum deployable international staff has been reduced to 1 250, with now on average 1 200 staff deployed. The shortcomings in force generation have been acknowledged and the Council has authorised an increase of the contracted staff ceiling to remedy, in part, the situation.

**88.** Efforts are being made to request minimum duration of deployment to key positions and to obtain extensions in specific cases.

**89.** In terms of preparation, the Mission has worked to establish common pre-deployment training packages to prepare new staff for the work they will be doing in the Mission and the terms of reference which guide the Mission's goals. For non-selected applicants, EULEX has developed extensive feedback to Member States to explain why an applicant was not chosen.

**90.** Under the restructured Mission, the overall staffing has improved, largely by preserving a high ceiling of contracted staff. The failure to deploy an additional crowd and riot control capacity (in the form of Formed Police Units) has become a persistent shortcoming.

**91.** EULEX uses various internal reporting mechanisms to collect data on the carrying out of individual MMA actions. These are nevertheless, as the Court observes, difficult to measure and quantify. As mentioned earlier in the report, some support to local institutions comes through structured MMA activities while some come as part of cooperative actions that fall under the EULEX executive mandate. It is therefore difficult to estimate use of resources consumed per MMA activity. In regard to information on seconded staff, such a measure would require financial/human resource data from all contributing states.

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**92.** The Commission has raised this issue in its recent communication on the financial management of the CSDP missions to Council and as a result the concept of legal personality for CFSP missions is under discussion. A joint Commission/EEAS working group is examining how it could be implemented.

**93.** The fact that EULEX is unable to sign legally binding agreements could be settled by the implementation of the recent communication on the financial management of the CSDP missions. The signature of technical arrangements is however a common practice, which partially overcomes the absence of binding agreements.

**94.** EEAS welcomes these developments as they offer an opportunity to improve the deployment and conduct of operations for CSDP Missions.

**95.** The Commission allocates its staff on the basis of a thorough assessment of the work load involved in all areas of activity, which includes more than just the rule of law. The last workload assessment carried out in March 2012 confirmed that the workload did not necessitate additional staffing for the EUO at that moment in time. The Commission employs its resources in an environment where these are increasingly limited and does so with the aim to have them used as efficiently and effectively as possible. The use of objective indicators and benchmarking in IPA II programming should help facilitate the Commission's allocation of resources to policy objectives.

**96. (a)**

The Commission has been stressing the need for Kosovo to match the adoption of legislation with adequate implementation and enforcement for many years (for example in its 2009 Communication). At the same time, in cases where no adequate legislation exists, establishing primary legislation is of course the first measure to be supported.

**96. (b)**

The Commission will incorporate the Court's recommendation to further reflect EU internal security objectives in its programming of assistance in its preparation of the Common Strategic Framework for all enlargement countries and the Country Strategy Paper for Kosovo under IPA II.

**96. (c)**

The Commission agrees that indicators accompanying the overall project objective and project purpose could have been formulated differently in order to be more specific. Usually, specific and measurable targets were formulated at the level of activities.

**96. (d)**

The risks identified by the Court (corruption and political interference) apply to all operations in all sectors in Kosovo. These risks have not been neglected, but considered of such a general and obvious nature that they are not explicitly mentioned in the Assurance Strategy and project fiches. Corruption in Kosovo is not a special risk to the Commission since IPA implementation in Kosovo is the exclusive responsibility of the Commission; Kosovo institutions are not involved in any tender, contract or disbursement operation. The same applies to political interference.

A significant portion of EUO's project portfolio is annually assessed by external monitors in the scope of the Result Oriented Monitoring (ROM)-exercise. If additional risks are identified, corrective measures are taken.

**97.** In the framework of the SAP dialogue, there is one sectoral (technical) rule of law meeting. Rule of law issues also feature on the agenda of the annual SAPD plenary meeting, which highlights key issues of concern at the top-political level. In addition to the Structured Dialogue on

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the rule of law, the Commission uses leverage through other rule of law relevant initiatives, such as the visa liberalisation dialogue, which also takes place at senior official level, and the feasibility study, so as to create incentives for Kosovo to focus on strengthening the rule of law. For all these dialogues and initiatives there is a strong cooperation with EULEX, who provide input and are actively involved in the meetings and initiatives

**98.** EULEX is not mandated to use ‘conditionality’ instruments to promote progress in rule of law in Kosovo; however, the aforementioned Visa Road Map and the Feasibility Study, to which EULEX fully contributes, are excellent tools to encourage the necessary reforms.

**99.** Despite the lack of a unified position on Kosovo status the Council Conclusions of December 2011 and February/March 2012 contain references to a Trade agreement, access to EU programs, EBRD membership, visa liberalisation and feasibility study for an SAA. Work is underway in all of these areas and progress is visible as in the case of visa liberalisation. Although the roadmap includes a high number of requirements, as is the case in other western Balkan roadmaps, the visa liberalisation dialogue will act as a credible incentive for strengthening the rule of law. This visa dialogue will also address EU security concerns.

## **CONCLUSIONS AND RECOMMENDATIONS**

102. As the audit notes, considerable challenges to the field of rule of law in Kosovo remain, including the pervasiveness of corruption and organised crime. Nevertheless EU assistance, through both IPA and EULEX, has provided crucial support to the consolidation of rule of law institutions still in their infancy. Local ownership of institutions has increased. This is a key development in transitioning them from internationally led entities into locally accountable structures able to improve under their own power. Meanwhile, the vetting of judges and prosecutors has been completed. No international crowd and riot control capacity has had to be used south of the river Iber/Ibar, speaking to the increased ability of Kosovo Police to responsibly enforce the law as a sole responder.

Such consolidation, notably south of the River Iber/Ibar, has taken place against the specific circumstances of Kosovo and the challenges remaining in the establishment of effective and sustainable rule of law Kosovo-wide. As noted by the Court, political will and financial capacity are major challenges, but the EU continues to consult closely with Kosovo authorities at the highest level to prioritise their tasks, better focus their EU-related efforts and ensure greater efficiency and effectiveness in the allocation of resources, including financial resources. IPA projects provide support to the strengthening of civil society and civil society groups are consulted during the preparation of the annual Progress Report/Feasibility Study and Stabilisation and Association Process Dialogue.

Considering the fragile state of Kosovo rule of law institutions at the time the EU established its presence, these achievements, though difficult to quantify statistically, have provided stability and support essential to their continued development.

**103.** It is positive that the Court acknowledges the challenges the Commission and the EU face in Kosovo. The same goes for the Court's explicit recognition that achieving results in Rule of Law in Kosovo is a long-term process. The Court also recognises that differences on status complicate the Commission's and EEAS's work, including the delivery in the area of Rule of Law.

**105.** The use of objective indicators and benchmarking in IPA programming will be part of the sector approach to be adopted under IPA II. Also, within the framework of the Joint Rule of Law

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Coordination Board, EULEX, the Commission/EU Office and Kosovo authorities are implementing the benchmark for the progressive phasing out of elements of the EULEX mandate so as to establish the required level of Commission involvement in follow-up and taking-over through IPA.

**106.** As regards coordination with EULEX, EUSR, and the US, the Court's report reflects the challenges involved in coordinating different entities at the start of their respective mandates. The EULEX Joint Action was adopted in February 2008, EULEX deployment started in April and EULEX only became fully operational in December 2008. In parallel, the European Agency for Reconstruction was being phased out and the European Commission Liaison Office (now EU Office) became fully responsible for IPA assistance in Kosovo. The time immediately following Kosovo's declaration of independence marked a period in which third parties, including EU Member States, transformed and strengthened their presence in Kosovo.

Coordination is currently being strengthened, especially between EULEX and the EC/EUO. An example is the Joint Rule of Law Coordination Board, where assistance and MMA are planned to feature more highly on the agenda. The double-hatting of EUSR and Head of EU Office (the EUSR also giving political guidance to EULEX) supports this development. The Commission will continue to aim for adequate consultation and cooperation with the US on draft legislation and implementation of acquis-related initiatives.

**108.** As regards staffing of the EUO Rule of Law team, the Commission aims to have its operational staff mobilised in an effective and efficient manner so as to adequately reflect its priorities and the workload involved in addressing them. The Commission is working in an environment of increasing financial constraints; it can only increase its staffing levels with great difficulty, if at all. The benchmarking referred to above should help facilitate the Commission's allocation of resources to policy objectives.

**109.** The Commission would like to emphasise that it has already acted on some of the Court's recommendations. The Court's recommendation regarding the use of policy dialogue is reflected in the launch of the Structured Dialogue on the Rule of Law, which took place on 30 May. Kosovo is at an early stage in the accession process. Although not intended to be instruments to apply 'conditionality', the Commission does use 'tools' such as the visa dialogue and the feasibility study to encourage Kosovo to enact the necessary reforms.

### **Recommendation 1**

The Commission and the EEAS accept the Court's recommendation and have already acted upon it.

The use of objective indicators and benchmarking in IPA programming will be part of the sector approach to be adopted under IPA II. Also, within the framework of the Joint Rule of Law Coordination Board, EULEX, the Commission/EU Office and Kosovo authorities are working to benchmark the progressive phasing out of elements of the EULEX mandate so as to establish the required level of Commission involvement in follow-up and taking-over through IPA.

The Commission will incorporate the Court's recommendation to reflect EU internal security objectives in its programming of assistance in its preparation of the Common Strategic Framework for all enlargement countries and the Country Strategy Paper for Kosovo under IPA II.

### **Recommendation 2 (On coordination)**

The EEAS and the Commission agree that coordination can be further improved. As regards coordination between the Commission/EU Office, EULEX, EUSR, and the US, the Court's report

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reflects the challenges involved in coordinating different entities at the start of their respective mandates. The EULEX Joint Action was adopted in February 2008, EULEX deployment started in April and EULEX only became fully operational in December 2008. In parallel, the European Agency for Reconstruction was being phased out and the European Commission Liaison Office (now EU Office) became fully responsible for IPA assistance in Kosovo. The time immediately following Kosovo's declaration of independence marked a period in which third parties, including EU Member States, transformed and strengthened their presence in Kosovo.

Coordination is currently being strengthened, especially between EULEX and the EUO. An example is the Joint Rule of Law Coordination Board, where assistance and MMA are planned to feature more highly on the agenda. The double-hatting of EUSR and Head of EU Office (the EUSR also giving political guidance to EULEX) supports this development. The Commission will continue to aim for adequate consultation and cooperation with the US on draft legislation and implementation of acquis-related initiatives.

As concerns programming, the use of objective indicators and benchmarking in IPA II programming and the sector approach will also facilitate coordination with EULEX.

#### **(On procurement procedures)**

The Commission and the EEAS agree to re-assess the concrete application of procurement procedures, in particular how these procedures can be effectively implemented with a view to ensuring that CDSP mission's operational requirements are actually met.

As concerns the recommendation for the Commission to take over EULEX's capacity building functions, the mandate of the EU mission is to mentor, monitor and advise the Kosovo authorities on the rule of law. EULEX also has some executive functions. It is expected that at the phasing out of EULEX the relevant Kosovo institutions will be sufficiently mature to assume responsibility for operating the Kosovo Justice system. However, the Commission will continue to monitor developments in the area of rule of law in Kosovo, and where required support and assist the Kosovo authorities, notably through IPA-financed assistance which can also be used to help further build and consolidate the Kosovo justice system.

#### **(EEAS On exit strategy)**

In terms of exit strategy, the Council has defined the principle of local ownership and the cooperative approach of EULEX with Kosovo authorities. A gradual phasing-out to Kosovo authorities against demonstrated progress of the Mission's executive activities has indeed to be accompanied by an increased assistance by the Commission. As concerns the recommendation for the Commission to take over EULEX's capacity building functions, the mandate of the EU mission is to mentor, monitor and advise the Kosovo authorities on the rule of law. EULEX also has some executive functions. The Commission will continue to monitor developments in the area of rule of law in Kosovo, and where required support and assist the Kosovo authorities, notably through IPA-financed assistance which can also be used to help further build and consolidate the Kosovo justice system.

#### **Recommendation 3**

EEAS agrees that this area would benefit from continued cooperation by Member States and has worked to address this issue. Systematic "force sensing exercises" are being launched before deployment or significant restructuring as a tool to measure a mission's predicted need for resources and scope of deployment.

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**Recommendation 4**

The Commission and EEAS agree that future CSDP missions would benefit from having a legal personality.

The Commission has raised this issue in its recent communication on the financial management of the CSDP missions to Council and as a result the concept of legal personality for CFSP missions is under discussion. A joint Commission/EEAS working group is examining how it could be implemented.

**Recommendation 5**

The Commission and the EEAS accept the recommendation as it is essential that in an environment of increasing financial and staffing constraints its operational staff is mobilised in an effective and efficient manner so as to adequately reflect its priorities and the workload involved in addressing them. The benchmarking referred to above should help facilitate the Commission's allocation of resources to policy objectives.

**Recommendation 6**

The Commission has already implemented recommendation 6. This is reflected in the launch of the Structured Dialogue on the Rule of Law, which took place on 30 May 2012. Kosovo is at an early stage in the integration process. Although not intended to be instruments to apply 'conditionality' as referred to by the Court, the Commission does use 'tools' such as the visa dialogue and the feasibility study to encourage Kosovo to enact the necessary reforms.

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