



Council of the
European Union

Brussels, 10 May 2016
(OR. en)

8764/16

VISA 137
COWEB 40

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	10 May 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 276 final
Subject:	REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Fourth report on progress by Kosovo* in fulfilling the requirements of the visa liberalisation roadmap

Delegations will find attached document COM(2016) 276 final.

Encl.: COM(2016) 276 final



Brussels, 4.5.2016
COM(2016) 276 final

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

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

{SWD(2016) 160 final}

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

1. INTRODUCTION

The European Commission launched a visa liberalisation dialogue with Kosovo on 19 January 2012. On 14 June 2012, it handed over to Kosovo a roadmap, which identified all the legislation and other measures that Kosovo needed to adopt and implement to advance towards visa liberalisation.

The Commission adopted three previous reports on Kosovo's progress in the visa dialogue—the first one on 8 February 2013;¹ the second one on 24 July 2014;² the third one on 18 December 2015.³ These reports contained an assessment of progress made by Kosovo, recommendations to the Kosovo authorities and statistical data about the potential migratory and security impacts of visa liberalisation.

In its third report, the Commission set out eight recommendations corresponding to eight outstanding requirements of the visa roadmap, including four key priorities. It noted that one of the requirements—Kosovo's ratification of the border/boundary delineation agreement with Montenegro—would need to be completed before Kosovo is transferred to the visa-free list.

Building upon the outcome of a technical assessment mission to Kosovo on 17-18 March 2016, the present report sets out the Commission's assessment of Kosovo's progress in fulfilling the outstanding eight requirements of the visa roadmap.

It draws upon documents submitted by Kosovo, reports drafted by EU Member States' experts participating in the assessment mission of 17-18 March 2016, information provided by EUROPOL, FRONTEX, EASO and EULEX, as well as statistical data compiled by EUROSTAT and supplied by Member States.

The migration and security impact assessment of visa liberalisation for Kosovo, as well as the set of measures that Kosovo has implemented since December 2015 to prevent an irregular migration crisis, are set out in the accompanying staff working document.⁴

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

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

¹ COM(2013) 66 final.

² COM(2014) 488 final.

³ COM(2015) 906 final, accompanied by SWD(2015) 706 final.

⁴ SWD(2016) 160 final.

2. REQUIREMENTS RELATED TO READMISSION AND REINTEGRATION

2.1. Readmission

Kosovo **fulfils all seven requirements** in the area of readmission. The Commission's third report noted no outstanding requirement in this area.

2.2. Reintegration

Kosovo **fulfils all three requirements** in the area of reintegration.

The Commission's third report noted that the reintegration fund should be fully disbursed, with a focus on offering assistance with employment, the establishment of small businesses, vocational training and linguistic training for children.

On 9 March 2016, Kosovo adopted a regulation on reintegration that opened up access to assistance with self-employment and business start-ups for all returnees regardless of their departure date from Kosovo.⁵ Vulnerable returnees have access to the full range of reintegration services regardless of their departure date from Kosovo.

In the first quarter of 2016, 704 returnees benefited from sustainable reintegration services. In 2015 and 2014, respectively, 336 and 628 returnees did so in the whole year (see Figure 1).

Figure 1: Beneficiaries of sustainable reintegration services

Type of sustainable reintegration service	2014	2015	Q1 2016
Self-employment assistance	4	89	180
Business start-ups	191	64	13
Vocational training	122	63	183
Language classes for children	311	120	328
Total	628	336	704

Source: Kosovo, 2016

Since December 2015, a specialist consultancy has been offering assistance to returnees with business start-ups. Municipalities have also considerably increased their local outreach effort.

Kosovo improved the disbursement rate of its reintegration fund in 2016. In the first quarter of 2016, it spent €500 thousand (25%) on sustainable reintegration services and committed €1.1 million (57%) of this €2-million fund to job creation for returnees through two programmes: a UNDP programme offering on-the-job training and wage subsidies and the above consultancy project offering assistance with business start-ups.

In contrast, the fund's planned budget of €2.1 million was reduced in mid-2015 to €1.2 million owing to poor disbursement in the first half. By the end of 2015, only €30 thousand (44% of the planned budget) had been spent. In 2014, €1.5 million (72%) of the fund was spent, with the rest returned to the budget.

⁵ Access to housing, which Kosovo considers a push factor, remains the sole category of services that only those who left Kosovo before July 2010 can benefit from.

Overall, Kosovo has **fulfilled** the outstanding requirement of disbursing the reintegration fund, with a focus on offering assistance with employment, the establishment of small businesses, vocational training and linguistic training for children.

3. BLOCK 1: DOCUMENT SECURITY

Kosovo **fulfils all nine requirements** in the area of document security.

The Commission's third report noted that Kosovo should demonstrate that it has implemented its amended secondary legislation on name changes.

Since July 2015, Kosovo has implemented new secondary legislation on name changes.⁶ This body of legislation introduced additional safeguards against fraudulent name changes, including the provision that those under criminal procedure cannot make such requests. Based on current legislation on names,⁷ persons can request name changes once every five years.

Applicants may request name changes on eleven grounds, and they must provide a range of supporting documents to demonstrate the plausibility of their requests. Such supporting documents must include an extract of one's criminal record from the courts of one's current and previous places of residence. A police certificate indicating the absence of a criminal background must also be attached.

The civil registration agency has set up a new committee to vet each application, which issues recommendations to local civil status offices whether requests for name changes should be approved. Such recommendations are non-binding, but failure to comply by local offices may elicit further investigations. So far, each recommendation has been honoured.

Since its establishment, the new vetting committee has issued 180 recommendations—106 positive, 74 negative. Comparing the first quarters of 2015 and 2016, there has been a 72% drop in requests for changing surnames and a 69% drop in requests for changing first names.

Overall, Kosovo has **fulfilled** the outstanding key priority of demonstrating the implementation of amended secondary legislation on name changes.

4. BLOCK 2: BORDER/BOUNDARY AND MIGRATION MANAGEMENT

4.1. Border/boundary management

Kosovo fulfils **fourteen of the fifteen requirements** in the area of border/boundary management.

The Commission's third report noted that the border/boundary delineation agreement with Montenegro, which has been signed by both parties, should be ratified before Kosovo is transferred to the visa-free list.

⁶ This body of secondary legislation consists of an Administrative Instruction, a circular issued by the Civil Registration Agency and Standard Operating Procedures describing the procedures to be applied.

⁷ Law 02/L-118.

On 15 March 2016, Kosovo established an *ad hoc* international commission to review border/boundary delineation with Montenegro, which concluded that, based on legal and technical criteria, the Kosovo process of delineating the border/boundary with Montenegro “clearly satisfied international standards,” albeit without the necessary level of transparency.⁸

Overall, Kosovo **has taken important steps towards fulfilling** the outstanding requirement of ratifying the border/boundary delineation agreement with Montenegro. Kosovo is working towards ratification of this agreement by the day of the adoption of the legislative proposal to transfer Kosovo to the visa-free list by the European Parliament and the Council.

4.2. Migration management

Kosovo **fulfils all ten requirements** in the area of migration management. The Commission’s third report noted no outstanding requirement in this area.

4.3. Asylum

Kosovo **fulfils all seven requirements** in the area of asylum.

The Commission’s third report noted that Kosovo should monitor the reasons for its low recognition rate for asylum-seekers.

The number of asylum-seekers in Kosovo remains very low, as the overwhelming majority of third-country nationals consider it a transit location. 70, 98 and 62 persons sought asylum in Kosovo, respectively, in 2015, 2014 and 2013. There is no indication so far of a fragmentation of the Western Balkan migration route towards Kosovo.

Kosovo’s asylum system is functioning, and its legislation incorporates essential elements of the EU’s asylum *acquis*. In cases where applicants stayed in Kosovo following their lodging an asylum application, Kosovo has consistently followed the asylum procedures set out in its legislation.

The recognition rate also remains modest: in 2015, two of 70 asylum-seekers received subsidiary protection; in 2014, one of 98; in 2013, 4 of 62. This represented a recognition rate of 3%, 1% and 6%, respectively, in 2015, 2014 and 2013.

Most applicants would stay in Kosovo for a week before absconding. In 2015, authorities were able to conduct only six interviews of 59 applications, as the other 53 applicants had absconded. Of these six, two persons were granted subsidiary protection, which represents a higher recognition rate for individuals whose asylum interviews took place.

Overall, Kosovo has **fulfilled** the outstanding requirement relating to monitoring the low asylum recognition rate.

⁸ This report can be found at the following link: http://president-ksgov.net/repository/docs/Final_Report.pdf.

5. BLOCK 3: PUBLIC ORDER AND SECURITY

5.1. Preventing and combating organised crime, corruption and terrorism

Kosovo **fulfils fourteen of the fifteen requirements** in the area of combating organised crime, corruption and terrorism, as well as **sufficient elements of the fifteenth key priority**.

The Commission's third report noted three outstanding key priorities in the field of combating organised crime, corruption and terrorism:

- Transferring a sufficient number of judges, with appropriate support staff, to serious crime departments across courts in Kosovo;
- Building up a track record of investigations, final court rulings and confiscations in serious organised crime and corruption cases, notably by endowing the central coordinator for serious organised crime and corruption cases with the mandate and resources to lead multidisciplinary teams of financial investigations and to monitor the judicial follow-up of such cases;
- Ensuring the operational independence of the Public Procurement Review Body and implementing strict integrity plans to protect the independence of this body and the Public Procurement Regulatory Commission.

Transferring judges and support staff to serious crime departments in basic courts

Since July 2015, the Kosovo judicial council (KJC) has transferred 6 judges to the basic court in Prishtinë/Priština, increasing the total number to 18. The KJC has also transferred judges to other basic courts: one to Ferizaj/Uroševac, two to Gjakova/Đakovica and one to Pejë/Peć, bringing the total number of judges in each basic court to at least six. The KJC has increased judges' salaries and launched the recruitment of six professional associates and published in February 2016 vacancies for another 25.

On 24 March, the assembly amended the KJC law⁹ to eliminate the previous six-month cap on transfers, enabling transfers "for a reasonable period of time." As the average case takes about eight months to complete, this amendment was a crucial component of strengthening the judicial follow-up of serious organised crime and corruption cases in Kosovo.¹⁰

Overall, Kosovo has **fulfilled** the outstanding key priority of transferring a sufficient number of judges and support staff to serious crime departments in basic courts.

Building up a track record of investigations, final court rulings and confiscations in serious organised crime and corruption cases

Between September and December 2015, the Kosovo prosecutorial council (KPC) set up an integrated case management system enabling the tracking of a select number of high-profile

⁹ Law 05/L-094. The amendment concerning the duration of transfers entered into force on 6 April 2016.

¹⁰ The March 2016 visa assessment mission also confirmed the personal commitment of the transferred judges interviewed to reach verdicts in cases assigned to them before their transfer expires.

organised crime and corruption cases from investigation, via prosecution, to final conviction. It is based on a sophisticated database that functions as an IT and management tool.

Cases are selected by the central coordinator under the special prosecution and within a multidisciplinary structure extending to the police, the financial intelligence unit, the tax administration, the agency for the administration of confiscated and sequestered assets (AMSCA), the correctional service and the serious crime departments of basic courts. Each body has seconded permanent members to this multidisciplinary structure, who feed the database and exchange information on cases. Each targeted case is handled as top priority. Court presidents must immediately allocate them to judges and report to the KJC, on a monthly basis, about actions taken and judicial developments.

Kosovo has targeted 31 organised crime and corruption cases in this database. To date, prosecutors have filed 15 indictments against 54 persons. Investigations were dropped in two cases; 14 cases remain under investigation. One of these cases resulted in convictions at first instance on 6 April 2016: a panel of judges found three defendants guilty on charges of corruption. The chief defendant received a three-year prison sentence and other penalties; the second defendant, 18 months in prison; the third, a fine. The chief defendant had been the prosecutor in a case of suspected murder and was sentenced for having accepted a bribe.

On 27 April 2016, Kosovo arrested six people as part of an investigation into an alleged land scam of buying and selling publicly-owned land, amounting to €30 million. A prominent legislator was the alleged leader of this fraud, which may have involved 40 people. This person surrendered to authorities on 29 April 2016. The investigation concerned a large-scale organised criminal group, active from 2006 to date, involving organised crime, money-laundering, abuse of official position, falsifying documents and giving and receiving bribes.

Kosovo has also made progress in freezing and seizing illicitly obtained assets, but only a limited fraction has been confiscated in the absence of final verdicts. The estimated value of frozen, sequestered and confiscated assets stands at €20.6 million.¹¹ Between 2014 and 2015, the value of confiscated assets increased from EUR 130.000 to EUR 450.000. The number of court orders for freezing, sequestration or confiscation has increased from 204 to 242.

There remains a gap in assets transferred to AMSCA. In 2015, only 18% of newly seized assets were transferred to the agency; 37% was transferred in 2014.

Overall, Kosovo has **fulfilled sufficient elements of the key priority** of building up a track record of investigations, final court rulings and confiscations in high-profile organised crime and corruption cases. It has established a multidisciplinary team of special prosecutors, judges and investigators to pursue a select number of high-profile cases, aided by a database. Asset freezing and seizures have increased, although confiscations in the absence of final verdicts remain low. This system has already yielded results in one case, but the judicial follow-up of the remaining cases, the transfer of seized assets and final confiscation require sustained attention from the authorities. Kosovo is actively working towards strengthening its track record in the fight against organised crime, corruption and terrorism.

¹¹ These statistics concern only new cases generated in 2015.

Ensuring the operational independence of the Public Procurement Review Body and implementing strict integrity plans to protect its independence and that of the Public Procurement Regulatory Commission

Since July 2015, Kosovo has taken considerable steps to strengthen the integrity of public procurement. The former head of the public procurement review body (PPRB), indicted on charges of corruption, has been removed from office, and amendments to the law on public procurement adopted by the assembly on 19 February 2016¹² have enabled the suspension and removal from office, pending a final conviction, of members of this body who have been indicted. Upon the recommendation of a selection body composed of supreme court judges, the assembly appointed on 30 March the new chairperson and remaining two members of the PPRB, rendering it fully operational.

A review of recent cases of procurement appeals also exhibits progress. In 592 appeals filed in 2015, the PPRB took decisions favourable to economic operators in 129 cases. Altogether, the PPRB reassessed 196 cases, re-tendering 129 of them in 2015. This is a considerable improvement compared to July 2015 when the success rate of the PPRB in reviews against economic operators was 100%. In cases where economic operators appealed to the basic court of Prishtinë/Priština, most of the PPRB's decisions were upheld.

A public procurement strategy is also due to be adopted in May 2016, which seeks to improve integrity, accountability and responsibility in public procurement on the basis of a modernised public procurement system.

Electronic procurement was launched on 5 January 2016. The electronic procurement platform became operational for all central tendering procedures on 1 April 2016. All central-level budgetary organisations are mandated to start using the electronic system by 1 September; all Kosovo budgetary organisations by 1 January 2017. The Kosovo electricity operator became the first body to use the electronic procurement platform on 25 March 2016.

Overall, Kosovo has **fulfilled** the outstanding key priority of ensuring the operational independence of the public procurement review body and implementing strict integrity plans to protect its independence and that of the public procurement regulatory commission.

5.2. Law enforcement cooperation

Kosovo **fulfils all eleven requirements** in the area of law enforcement cooperation. The Commission's third report noted no outstanding requirement in this area.

5.3. Judicial cooperation in criminal matters

Kosovo **fulfils all seven requirements** in the area of judicial cooperation in criminal matters. The Commission's third report noted no outstanding requirement in this area.

5.4. Data protection

Kosovo **fulfils all three requirements** in the area of data protection. The Commission's third report noted no outstanding requirement in this area.

¹² Law No. 05/L-092.

6. BLOCK 4: FUNDAMENTAL RIGHTS RELATED TO THE FREEDOM OF MOVEMENT

Kosovo **fulfils all eight requirements** in the area of fundamental rights related to the freedom of movement.

The Commission's third report noted that Kosovo should provide appropriate premises for and ensure the full budgetary independence of the ombudsperson.

A memorandum of understanding was signed between the ombudsperson and the ministry of public administration on 12 February 2016. This allocates suitable premises in the capital to the ombudsperson. Refurbishment started in April 2016, with the ombudsperson's move due to be completed by July 2016.

The ministry of finance has allocated an additional EUR 98.000 to the ombudsperson. This will cover the salaries of another nine staff created by the July 2015 human rights package, which increased the ombudsperson's tasks in the field of anti-discrimination and gender equality.

To enhance the ombudsperson's budgetary independence, Kosovo committed on 18 February 2016¹³ to allocate to it a budget of EUR 422.000. This amount corresponds to the ombudsperson's request and will enable it to carry out new tasks flowing from the human rights package. The ombudsperson law¹⁴ provides that this institution's budget can only be reduced with the ombudsperson's approval.

Overall, Kosovo has **fulfilled** the outstanding requirement relating to the provision of appropriate premises and full budgetary independence of the ombudsperson.

7. CONCLUSION

The present report complements the previous three adopted by the Commission on Kosovo's progress in the visa dialogue. These reports contained an assessment of progress by Kosovo in fulfilling the requirements of the visa roadmap, recommendations addressed to Kosovo and an assessment of the potential migratory and security impacts of visa liberalisation.

In its third report, the Commission set out eight recommendations corresponding to eight outstanding requirements of the visa roadmap, including four key priorities. It noted that one of the requirements – Kosovo's ratification of the border/boundary delineation agreement with Montenegro – would need to be completed before Kosovo is transferred to the visa-free list.

The Commission has evaluated Kosovo's recent steps to fulfil these outstanding requirements. Kosovo has provided the necessary legislative and policy documents for this assessment. This report has drawn heavily upon the findings of four Member States' experts who accompanied the Commission on an assessment mission to Kosovo on 17-18 March 2016.

¹³ Decision No. 05/75 commits the ministry of finance "to implement this decision."

¹⁴ Law 05/L-019.

The potential migratory and security impacts of visa liberalisation for Kosovo, as well as the set of measures that Kosovo has implemented since December 2015 to prevent visa-free abuse, are set out in the accompanying Commission Staff Working Document.

The visa dialogue with Kosovo has proved to be an important and particularly effective tool in advancing far-reaching and difficult reforms in the Justice and Home Affairs field and beyond, impacting areas such as the rule of law and criminal justice reform. These issues are also monitored in other frameworks, such as the Justice, Freedom and Security sub-committee of the Stabilisation and Association Process.

The progress achieved by Kosovo in all areas covered by the visa liberalisation roadmap remains steady and effective, demonstrating Kosovo's long-standing commitment to fulfilling the requirements of the visa roadmap as a matter of overwhelming priority. The recommendations set out in the Commission's third report have been addressed to ensure that the legislative and policy framework, the institutional and organisational principles and the implementation of procedures throughout the four blocks, as well as readmission and reintegration, comply with European and international standards. This confirms Kosovo's willingness to continue tackling these issues in the context of visa liberalisation.

As a result of a set of important measures that Kosovo has implemented since December 2015, the Commission considers that Kosovo has achieved the following:

1. Fulfilled the key priority of transferring a sufficient number of judges and support staff to serious crime departments in basic courts;
2. Fulfilled sufficient elements of the key priority of building up a track record of investigations, final court rulings and confiscations in high-profile organised crime and corruption cases. It has established a multidisciplinary team of special prosecutors, judges and investigators to pursue a select number of high-profile cases, aided by a database. Asset freezing and seizures have increased, although confiscations in the absence of final verdicts remain low. This system has already yielded results in one case, but the judicial follow-up of the remaining cases, the transfer of seized assets and final confiscation require sustained attention from the authorities. Kosovo is actively working towards strengthening its track record in the fight against organised crime, corruption and terrorism;
3. Fulfilled the key priority of ensuring the operational independence of the public procurement review body and implementing strict integrity plans to protect its independence and that of the public procurement regulatory commission;
4. Fulfilled the key priority of demonstrating the implementation of amended secondary legislation on name changes;
5. Taken important steps towards fulfilling the requirement of ratifying the border/boundary delineation agreement with Montenegro. Kosovo is working towards ratification of this agreement by the day of the adoption of the legislative proposal to transfer Kosovo to the visa-free list by the European Parliament and the Council;

6. Fulfilled the requirement of disbursing the reintegration fund, with a focus on offering assistance with employment, the establishment of small businesses, vocational training and linguistic training for children;
7. Fulfilled the requirement relating to monitoring the low asylum recognition rate;
8. Fulfilled the requirement relating to the provision of appropriate premises and full budgetary independence of the ombudsperson.

Based on this assessment and given the outcome of the continuous monitoring and reporting that had been carried out since the launch of the visa liberalisation dialogue with Kosovo, the Commission confirms that Kosovo **has met the requirements of its visa liberalisation roadmap** on the understanding that by the day of the adoption of this proposal by the European Parliament and the Council, Kosovo will have ratified the border/boundary agreement with Montenegro and strengthened its track record in the fight against organised crime and corruption.

Taking account of all the criteria which should be considered when determining on a case-by-case basis the third countries whose nationals are subject to, or exempt from, the visa requirement as laid down in Article -1 of Regulation (EC) No 539/2001 (as introduced by Regulation (EU) No 509/2014), the Commission has decided to present a legislative proposal to amend Regulation (EC) No 539/2001, transferring Kosovo from Annex I, Part 2 to Annex II, Part 4 of this Regulation. As indicated in the roadmap, this amendment only covers individuals who are holders of biometric passports issued in compliance with International Civil Aviation Organisation (ICAO) standards and EU standards for security features and biometrics in travel documents.¹⁵

Following the presentation of this legislative proposal, the Commission will continue to actively monitor Kosovo's ratification of its border/boundary agreement with Montenegro and the further development of its track record in the fight against organised crime and corruption.

The ongoing implementation by Kosovo of all requirements set out in the four blocks of the visa roadmap, as well as reintegration and readmission, will be monitored in the post-visa liberalisation monitoring mechanism,¹⁶ the Stabilisation and Association Process and, if necessary, through ad hoc follow-up mechanisms. Kosovo should ensure that effective measures remain in place to prevent abuse of the visa-free scheme. Among others, Kosovo should organise targeted information campaigns aiming to clarify the rights and obligations of visa-free travel to the Schengen area and the rules regulating access to the EU labour market. The Commission will continue to monitor and do its utmost to support Kosovo in the continuous implementation of the requirements of the visa roadmap.

¹⁵ In particular Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L 385, 29.12.2004, p. 1.

¹⁶ Commission Statement on a Monitoring Mechanism of 8 November-2010, 2010/0137 (COD).