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Delegations will find attached the partially declassified version of the above-mentioned document.



Brussels, 7 March 2006

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THE EUROPEAN UNION**

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NOTE

from : Secretariat
to : The Political and Security Committee

Subject : Report following the Joint Council-Commission Fact Finding Mission to Kosovo
between 19-27 February 2006

With reference to the meeting of the Political and Security Committee of 21 January 2006, the General Secretariat on behalf of the Council and the Commission hereby forwards the Joint Council-Commission Report following the Fact Finding Mission to Kosovo between 19-27 February regarding possible future ESDP and Community engagement in the broader field of the rule of law.

Joint Council-Commission Report from the Fact Finding Mission
to Kosovo between 19-27 February regarding possible future
ESDP and Community engagement in the broader field of the rule
of law

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1. EXECUTIVE SUMMARY

- **A Joint Council-Commission Fact Finding Mission (FFM) on future EU engagement in broader rule of law in Kosovo was conducted** by officials from the General Secretariat of the Council, the European Commission, and the Austrian Presidency of the EU **between 19 February and 27 February 2006.**
- **The objective of the Fact Finding Mission was to identify areas in the broader field of the Rule of Law**, where the EU would potentially have to assume a greater responsibility after the outcome of the status process. **This would serve as a basis for advancing contingency planning for a possible ESDP mission and future Community assistance programmes.**
- **The Fact Finding Mission was guided by the general policy of progressively normalising relations with Kosovo** within the strategic framework provided by the European Partnership and the SAP Tracking Mechanism.
- **The international community's and the EU's responsibilities, after status is settled, will depend largely on the outcome of the status process.** Preparations should closely follow the work of the UN Special Envoy. **However, preparations to put structures in place to handle post-status requirements must proceed in parallel with the status process.**
- **There is a wide expectation that the European Union will assume a leading role after status settlement and after a subsequent disengagement of UNMIK.** Political leaders in Kosovo **welcome the EU readiness to plan for a substantial engagement** in the area of rule of law.
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- **On the police side, the Kosovo Police Service is generally performing well.** However, Kosovo remains a relatively fragile environment, and requires a functioning democratic police force in order to progress. **NOT DECLASSIFIED**

- **The justice sector in Kosovo remains extremely weak and unable to deliver a proper service**, both in the civil and criminal sectors and needs to be substantially improved. In this context **some international executive functions, strong advisory role and heavy capacity building remain** necessary in Kosovo's judicial system.
- There are substantial relevant Community and bilateral programmes already in place in the areas of police, the judiciary and border management.
- Tentative reflections on a crude division of labour would suggest that an **ESDP operation be primarily focussed on those areas where executive powers, or where a continued international presence, is required** in order to maintain security. The **Community and bilateral instruments would primarily address weaknesses due to capacity constraints**, underdeveloped policy or legal frameworks or governance and accountability issues.
- To take forward planning, **a substantial ESDP Planning Team should be established in Pristina no later than April this year**, with the primary task of conducting technical preparations for such a role, including liaison with UNMIK over its plans to downsize its operations. **The establishment of the Planning Team will not prejudice the outcome of the Final Status process or any subsequent decision by the Council of the EU to launch a civilian ESDP mission** in Kosovo.

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2. INTRODUCTION

A Joint Council-Commission Fact Finding Mission (FFM) on future EU engagement in broader rule of law in Kosovo was conducted by officials from the General Secretariat of the Council, the European Commission, and the Austrian Presidency of the EU between 19 February and 27 February 2006.

The objective of the Fact Finding Mission was to identify areas in the broader field of the rule of law, where the EU would potentially have to assume a greater responsibility after the outcome of the status process. It sought to develop a common understanding of the state of play as a basis for advancing contingency planning for a possible ESDP mission and future Community assistance programmes in this area, with a specific focus on the judicial and police sectors. The FFM took as its starting point the GAERC conclusions of November and December 2005, the joint report from SG/HR Solana and Commissioner Rehn of 6 December 2005 and the PSC conclusions of 21 January 2006.¹

In addressing its mandate, the FFM set itself the following tasks:

- To analyse and present the current state of play in the broader field of rule of law;
- To identify the areas where the EU may be expected to assume specific responsibilities as a result of the final status process;
- To prepare a detailed proposal of the establishment of an ESDP Planning Team including on its mandate, structure, tasks and financial implications;
- To identify structural, legal and capacity constraints that need to be taken into consideration in the SAP Tracking Mechanism and future European Community assistance programmes.
- To encourage consistency and complementarity between first and second pillar instruments of the EU in addressing the issues identified

During the Fact Finding Mission, meetings were held with UNMIK at all levels including with the SRSG, Mr. Søren Jessen-Petersen, the Acting Principle D/SRSG Patricia Waring, and the D/SRSG for Pillar 1, Mr. Jean Dussourd. Separate meetings were held with Prime Minister Kosumi, the leader of the Kosovo Serb SLKM group, Mr. Oliver Ivanovic, and the leader of the Kosovo Albanian opposition party ORA, Mr. Veton Surroi. Meetings were also held with the UNMIK Police Commissioner Kai Vittrup, the head of the UNMIK Department of Justice, Albert Moskovitz, and the two acting Permanent Secretaries of the newly established Ministries for Justice and the Interior.

Meetings were also held with the Head of the European Commission Liaison Office, the Personal Representative of the HR for the CFSP in Pristina, Representatives of EU Member States and of the European Agency for Reconstruction. To ensure close liaison with other international partners the mission met with the Deputy HoM of the OSCE, Mr. Jens Modvig, and with the Head of the US Office in Pristina, Mr. Goldberg.

¹ 'The PSC took note of the update from the Secretariat and the Commission as regards activities in relation to discussions on future arrangements in Kosovo and the steps ahead. The PSC invited the Secretariat to continue taking work forward in order to ensure prudent planning for a possible ESDP mission in Kosovo, including through a Joint Council/Commission Fact Finding Mission, the details of which will be communicated. The PSC invited the Secretariat and the Commission to keep it informed on activities, including to report back from the FFM with recommendations on the next steps necessary in the planning process.'

Visits were conducted to Mitrovica where the mission met with the UNMIK regional representative. Visits were also conducted to Dubrava prison and to the Kosovo Serb area of Priluzje, where the team inspected the KPS police station and met representatives from the village council.

Before returning to Brussels members of the FFM participated in the meeting of the Informal Steering Group in Vienna. In the margins it met with the Head of the OSCE Conflict Prevention Center, Ambassador Zannier.

Attached at Annex II is a detailed overview of the programme for the mission.

Based on extensive consultations with relevant stakeholders at all levels, the Fact Finding mission has agreed the following report which includes recommendations on the way ahead, with some indication on the budgetary implications.

3. BACKGROUND

As status talks progress and intensify, the international community in general and the European Union and its member states in particular have been called upon to prepare for successor arrangements for a post UNSCR 1244 Kosovo.

The Contact Groups guiding principles for a settlement of the status of Kosovo state: *“for some time Kosovo will continue to need an international civilian and military presence to exercise the appropriate supervision of compliance of the provisions of the status settlement, to ensure security and, in particular protection of minorities as well as to monitor and support the authorities in the continued implementation of standards.”*

The joint report by the SG/HR and the Commission of 6 December 2005 on “The Future EU Role and Contribution in Kosovo” suggested an outline for the EU’s future involvement in Kosovo. It stressed the desire to normalise the EU’s relations with Kosovo as much as possible by using all the instruments available within the Stabilisation and Association Process. However, it also highlighted the need to start contingency planning for a future ESDP mission in field of rule of law.

The December 2005 Council “welcomed the joint report by the SG/HR and the Commission on the EU's future role and contribution in Kosovo. It asked the SG/HR and the Commission to continue examination of these issues in coordination with other international actors, particularly in the areas of police and the rule of law (including contingency planning for a possible ESDP mission), economic development and fostering Kosovo's European perspective, and to keep the relevant Council bodies actively engaged in order to ensure continuing timely preparation of an EU role in Kosovo.”

As in the whole Western Balkan region, the European agenda is becoming and will be the lead agenda for Kosovo’s future development, and the European Partnership adopted by the Council on 30 January 2006², its defining base document. The European Partnership reflects Kosovo’s European vocation. It incorporates the UN standards for Kosovo. It provides the political guidance and strategic direction for all Community interventions in Kosovo. Moreover, it establishes an increasingly substantial and extended dialogue, a system of monitoring progress against the

² COUNCIL DECISION of 30 January 2006 on the principles, priorities and conditions contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2004/520/EC

Copenhagen criteria through an annual Progress Report and the SAP Tracking Mechanism (STM). It also brings with it access to the full range of Community pre-accession assistance programmes.

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7. JUSTICE ISSUES

Background

Overall, the justice sector in Kosovo remains extremely weak. The Commission's 2005 progress report found that "Kosovo's judicial institutions remain weak and unable to deliver a proper service, both in the civil and criminal sectors, needing to be substantially improved. This finding has also been highlighted by the Kai Eide report of October 2005 and the latest report of the Secretary General to the Security Council of January 2006.

As the justice field has remained a reserved competence, local capacities are underdeveloped and have not been able to develop properly. There appears to be a clear consensus that some international executive functions and heavy capacity building remain critically necessary in Kosovo's judicial system.

UNMIK activities

In December 2005, UNMIK established the Ministry of Justice, the Ministry of Internal Affairs and the Kosovo Judicial Council. While an acting permanent secretary has been appointed in the Ministry of Justice by the prime minister, a minister has yet to be appointed, but this is expected shortly.

This is the first phase of UNMIK's strategy for the re-organisation of the overall justice system and the gradual transfer of competences in the area of police and justice to Kosovo institutions. Operational competencies will be transferred to the ministries in two waves. The final say on all rule of law related matters, is retained by the SRSB until the end of UNSC 1244. To date the creation of the ministry continues.

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Other international actors

The OSCE will step up its presence, particularly in the field where municipal teams will monitor the work of local assemblies, local courts and also local police. It has also started deploying a senior human rights adviser in the ministry of justice and a capacity building expert to the Kosovo Judicial Council.

The current role played by OSCE and other donors must be assessed and taken into account when planning any ESDP or Community intervention. There will be a need to closely liaise with them in the field of training and monitoring. In particular, it will be needed to complement the case monitoring currently carried out by OSCE with monitoring activities focused on efficiency of courts structures, backlogs, case management, etc.

Other actors, in particular DFID and USAID run important assistance programmes in the justice field.

Possible core functions for the future international presence

In certain areas international executive substitution functions may remain necessary for some time:

- War crimes
- Organised Crime
- Terrorism
- Ethnically Motivated Crimes

- High Level Corruption
- Prison Administration in relation to category A prisoners
- Property Rights
- Judicial Reappointment Process

In certain areas, some international corrective functions may remain necessary for some time:

- Kosovo Judicial and Prosecutorial Council
- Comprehensive Monitoring of Courts and Prosecution
- Review of Court Reform

International Judges and Prosecutors (war crimes, organized crime, terrorism, ethnically motivated crimes, and corruption)

Local structures are still unable to deal with a number of cases in an appropriate manner. This is due to pressures and threats to judges and prosecutors from various directions (clan structure, political, organised crime).

International prosecutors and judges currently have exclusive competence in five different categories of crimes (war crimes, organized crime, terrorism, ethnically motivated crimes, and corruption). Even outside these categories, local prosecutors and judges continue to request international judges and prosecutors to deal with some cases.

Until now there has been a separation between internationals and locals with scarce opportunities for interaction or cooperation. In the future, mixed chambers would greatly enhance interaction between local and international judges. They would provide the added benefit of knowledge sharing and providing a 'cover' for the local judge when it comes to taking decisions.

On the other hand, there is no monitoring system that might allow internationals to effectively monitor the performance of locals in those cases that are kept in their sphere of competence.

There appears to be a need for the future international presence in the judiciary, at least in the already established exclusive sectors and with the current numbers of staff, as well as to promote legislative changes that allow a higher degree of interaction between the locals and the internationals.

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8. OTHER ISSUES

Linkages between EU action and a future International Presence

The FFM wants to draw attention to the linkages that will need to be put into place between any ESDP mission and the future international presence exercising powers under a future UNSC Resolution. In this regard it is essential that adequate expertise is available in the field to analyse the operational consequences of decisions taken in the final status talks. In particular, it may be necessary to consider how any future responsibilities falling upon the EU in ensuring the accountability of a Kosovo civilian administration might be exercised. **DELETED**

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9. CONCLUSIONS

- In common with neighbouring countries in the western Balkans there are significant capacity constraints throughout the judicial and police sector and related government departments. There are also weaknesses in the mechanisms for democratic control. Such capacity constraints are not, in themselves, an argument for a continued international presence to compensate for those weaknesses by exercising executive or in monitoring functions. Indeed, in the context of a general policy aimed at transferring responsibility to the PISG and normalising relations between the EU and Kosovo, there are good arguments for limiting recourse to an intrusive international presence.
- The UN standards process and EU SAP Tracking Mechanism process provide well-trying methods of monitoring progress in these areas and in exercising pressure on the PISG to put in place the necessary governance structures, administrative capacity, legal and economic reforms.
- The Contact Group has spelled out that a continued international presence will be required after a status settlement. The primary focus of such a presence will be to ensure the implementation of the settlement.

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- Significant Community programmes of support to the new ministries of justice and interior will be coming on stream from April this year. Their flexible design will be an asset in ensuring that rapid assistance can be delivered in areas of structural reform identified in the final status process and in the process of UNMIK withdrawal. This would have to be coordinated with the OSCE, which is also planning activities in this area.
- Future EU work in the sectors will need to be consistent with the EU's overall strategy for the western Balkans and existing best practise guidelines.³ Both Community programmes and ESDP actions have an important and complementary contribution to make in the sector. A crude division of labour would suggest that ESDP operation be primarily focussed on those areas where reserved powers are to be retained, or where a continued international presence is required in order to maintain security. The Community would primarily address weaknesses due to capacity constraints, underdeveloped policy or legal frameworks or governance and accountability issues, unless there are overarching reasons for addressing this under the same chain of command as reserved and monitoring/mentoring activities. It would have to be planned in a strategic way in order to link into EU priorities set in relation to the implementation of a future status agreement in full coordination with executive and monitoring/mentoring activities.
- Support to economic and social development, human rights and democratisation and building the institutions of government will be critical elements of the EU's exit strategy from any transitional monitoring responsibilities or reserve powers it might assume as a result of a final status agreement.

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³ The European Commission has developed best practice guidelines for integrated border management approach as well as a detailed conceptual framework for strengthening the rule of law in the Western Balkans. Work will also need to be informed by core Council of Europe and OSCE standards (on human rights, local governance and on policing in multi-ethnic societies) and relevant UN guidelines, in particular UNSCR 1325 on women peace and security.