

“MAKING OR BREAKING THE EUROPEAN FUTURE OF KOSOVO”

Policy Recommendations for the EU and Kosovo authorities

Paper prepared by a group of Kosovar experts and representatives of Kosovo civil society

Vienna/Brussels, 31 May and 1 June 2010

During the next few days, the leaders of the European Union and the Western Balkan states will meet in Sarajevo to reiterate the ‘European perspective’ on the region. Given the slow and stagnant European integration of the Western Balkan countries and the alarming situation in Kosovo, we foresee a ‘make or break’ moment for the Lisbon-reformed EU to renew its commitment to the region.

The EU needs to have a clear and common stance, especially on Kosovo. Disunity inside the EU has been hampering the work of EULEX, its largest Common Security and Defence Policy (CSDP) mission, responsible for ‘rule of law’ assistance and support to the Kosovo authorities. Coherence in the implementation of the EULEX mandate together with much stronger commitment from the Kosovo authorities is needed in order to overcome severe political and socioeconomic challenges as well as the remaining inter-ethnic tensions and divisions inside Kosovo society.

Below we have set out a specific and detailed list of policy recommendations for EU leaders and Kosovo authorities. We consider these to be crucial for overcoming the current deadlock in the country and to restore Europe’s credibility in the region:

Executive summary and main recommendations

- 1. Abolish the visa regime – Put an end to the ‘ghettoisation’ of Kosovo*
- 2. Start the ‘screening exercise’ in 2011 and bring the government to deliver*
- 3. Support recent EULEX activities and continue investigations by sending a clear message that nobody is above the law*
- 4. Make EULEX more accountable and transparent – Introduce a new monitoring mechanism including tangible benchmarks*
- 5. Reorganize EULEX priorities and focus more on the North*
- 6. The US and EU must find a common stance towards Kosovo*
- 7. Use the window of opportunity after the ICJ ruling to convince the five non-recognisers of Kosovo*
- 8. Make clear that independence and the present borders are irreversible – Stress the need for a modus vivendi between Kosovo and Serbia*

Introduction: Kosovo at a crossroads

Kosovo, again, finds itself at a crossroads. It has achieved independence; it has set up state structures, adopted a new constitution, it has become a member of key international financial institutions and been recognized by 69 countries. However, the very real risk of Kosovo derailing will not only put at risk the lives of the 2 million people living there, but may also jeopardize the entire European project in the region.

One out of two Kosovars is without a job. Half of the population lives in poverty, on less than 1.40 Euro a day. Two-thirds of the population is younger than 35. In a place as poor, young and isolated as Kosovo, a clear vision for the future is the only guarantee for social and political stability.

Many promises have been made by politicians in Kosovo and abroad. Kosovo's citizens had high expectations that independence would herald a positive cycle of development, of transformation leading towards integration into the EU. This has yet to happen. Many people in Kosovo are now disillusioned, with a sense of having been abandoned. As UNDP Early Warning Reports show, there is great disappointment with the government in Prishtina and the Kosovar local political class as well as with the international presence in Kosovo, including ICR/EUSR, EULEX, OSCE and UNMIK.

In the face of increasing frustration, economic crisis and potential for social unrest, it is time for the EU to take a clear stance on Kosovo, at least the 22 countries that have recognized Kosovo's independence and have since supported Europe's youngest state.

The alarming situation in Kosovo

Thus far we have not seen sufficient clarity of purpose and determination on the part of either the EU or the Kosovar authorities to change the uncertain situation in Kosovo.

Firstly, the EU accession perspective has been little more than an empty promise. Kosovo is the only country in the region that has not yet signed or even begun to negotiate an SAA agreement, and there are no immediate plans to help Kosovo catch up with its immediate neighbours. As things stand today, Kosovars cannot realistically expect of joining the European Union by the end of the decade. The EU's talk about a 'European future for Kosovo' lacks credibility, Kosovo citizens do not only have a 'European dream'; they also seek a European life. The vast majority of Kosovars continue to believe in the idea of Europe, even if they feel disillusioned and abandoned by the EU and what they see as its 'Schengen wall of exclusion'. Therefore, the EU needs to urgently address the growing disappointment with the international presence in Kosovo and its governance – ICR/EUSR, EULEX, and the OSCE.

Secondly, Kosovo is the most isolated country in Europe today. There are only 5 countries to which Kosovars can travel without a visa. Whereas Serbia, Montenegro and Macedonia have recently been granted the right to visa-free travel, and Bosnia and Albania are expected to be able to travel without visas by the end of 2010, Kosovo still has not been formally included in the visa liberalization process. There have been promises, but they have yet to materialize.

Thirdly, almost two years have passed since the deployments of the EU's largest ever 'rule of law' mission. There were high hopes and expectations that EULEX would help strengthen Kosovo's judiciary and police service institutions and structures. Kosovo accepted limitations to its sovereignty by inviting EULEX and granting it executive powers in key areas in return for assistance in rebuilding the judicial system across the entire territory, particularly the North. The results thus far have been minimal. There is no rule of law in the North. The court in Northern Mitrovica is only partially functional. The border crossings with Serbia are only monitored and no customs revenues are collected. Most importantly, the 'culture of impunity' as far as high-level corruption is concerned, especially within the government, still shapes the politics of the EU in Kosovo. There has not been a single indictment of a public official. This confirms that the EULEX has not realized and achieved the most important goals and functions of its mandate.

Fourthly, there has been great fear among the general population that there will be a new round of status negotiations – even if these are called 'purely technical talks' – following the ICJ court case. There have

been many discussions behind closed doors on how to react to the ICJ ruling. There have been rumors about renewed negotiations (in particular from Belgrade and Kosovo Serbs), the finding of ‘face-saving solutions’, special measures for Kosovo’s North and technical talks. Even though the Contact Group Principles clearly rule out partition, there has been renewed talk and fear that partition or territory swaps are back on the table. This only fuels nationalist agendas in both Kosovo and Serbia, and provides the perfect excuse for politicians to not deliver on actual reforms required for European integration. This also creates great instability and distracts the government from doing its real job: focusing on building functional institutions, creating jobs and delivering better services to citizens. There is a high cost attached to the continued illusion that Kosovo’s status is still ‘up for grabs’.

There is generally too much at stake: the credibility of the EU; the credibility of those 22 countries that have recognized Kosovo and invested in its future – politically and financially; the credibility of the largest-ever EU rule of law ESDP mission, and the credibility of the EUSR; finally, the credibility of the government and the local political class in Kosovo.

Policy recommendations

There is an urgent need to bring the following demands to the attention of the EU, the international community and the Kosovar authorities:

1. Put an end to the ‘ghettoisation’ of Kosovo in Europe – abolish the visa regime

In order to overcome Kosovo’s isolation and to send a clear, tangible signal of intent, Kosovo needs to be urgently given a ‘roadmap’ and to formally launch the visa dialogue. It seems absurd that the EU would risk foregoing such an opportunity for reforms and exclude Kosovo citizens from visiting Europe as tourists. Further, ‘ghettoizing’ Kosovo is not commensurate with the idea that Kosovars are part of Europe. Singling out Kosovo as the only country with ‘rule of law’ problems and a potential for illegal migration sends the wrong message. A clear and measurable form of visa dialogue, spelling out technical criteria which need to be met, would mobilize pressure by the public and civil society to meet those criteria – as everyone is aware that visa comes at a cost.

2. Start the screening process in 2011 and getting the government to deliver

Kosovo should be formally included in the screening process starting in early 2011. This would create a win-win situation for the EU, the government in Prishtina and the public at large. Including Kosovo in the ‘screening exercise’ would make it clear where Kosovo really stands in terms of meeting EU membership requirements. This would empower the public and civil society to hold the government more accountable for delivering concrete reforms. It would also strengthen the EU’s credibility in Kosovo and clearly define who is ultimately responsible for delivering on reforms. Including Kosovo in the screening process is not tantamount to putting Kosovo on a fast track to EU integration. It will be up to the institutions in Prishtina to deliver, but expectations should be made clear up front. Following that, a formal process to begin negotiating an SAA should be launched in 2011. Again, it will take time for Kosovo to meet the necessary requirements and internal market regulations. That is why, the earlier we start, the better.

3. Make or break point for EULEX – Support EULEX and continue investigations to combat corruption

EULEX’s most recent actions have raised high hopes among the population that the culture of impunity finally will be challenged and that EULEX will finally deliver on its promises. The recent raids have sent a clear message to the public that nobody is above the law.

Yet, now there is a risk that EULEX will back down in the face of political pressure and an unwarranted fear of instability. It is crucial that individual member states and the United States unconditionally support the ongoing investigations. Above all, it is the responsibility of the Kosovo government to support EULEX in fulfilling its mission. The message that nobody is above the law should be not merely a rhetorical mantra, but reality.

The risks are high. If EULEX were to stop pursuing its mission now and return to its passive ‘status-quo preservation’ approach, there is no future for it in Kosovo and little hope that civil society and the public alone will be able to gather enough strength to improve the rule of law. For EULEX to achieve its mission, it now requires full support from all EU member states supporting and funding the mission. Its activities need to be fully backed by the European Parliament and all international actors in Kosovo. This is a make or break moment.

4. Make EULEX more accountable and transparent – The need for a new monitoring mechanism

There is another crucial issue concerning EULEX’s long-term future. To make best use of the available resources in the form of European police, justice personnel and intelligence experts, there is a greater need for EULEX to be accountable to the Kosovo public and the European Parliament. EULEX must be transparent and open to oversight by the Kosovo and European public. This can be achieved by setting up a formal monitoring mechanism similar to the accession Progress Report involving EU member states, the European Parliament and civil society in Europe and in Kosovo. EULEX needs to have clear benchmarks to measure progress and success. EULEX and the Kosovo government should be held accountable for meeting these benchmarks.

Since the role of women is crucial for the future of Kosovo there is a need for EULEX to strengthen promotion of gender equality. The EU and EULEX must strengthen the cooperation with civil society and independent media.

5. Reorganizing EULEX priorities – Focusing on the North

There is a need to revise general EULEX policies in Kosovo by identifying diplomatic taboos and reorganizing EULEX’s priorities. The judiciary and prosecutors component should be strengthened, while the number of EULEX policemen, given the well-functioning Kosovo Police Service, could be reduced. EULEX still has to deliver in the North – it must show stronger commitment there, strengthen the courts, make the customs control efficient and investigate criminal networks operating in the North.

6. United States and EU must find a common stance on Kosovo

Since the US are an important part of ICO and EULEX structures this obliges Washington to find a common position with the EU and to support Kosovo’s way into the EU. There is no reason for the Kosovo government to assume that they can alternate between Brussels and Washington as they choose.

7. Use the window of opportunity after the ICJ ruling

The ICJ court ruling presents a crucial window of opportunity for the European Union to intensify its pressure on the five non-recogniser states – Spain, Greece, Romania, Slovakia and Cyprus – to change their position in the interest of a common EU foreign policy and perspective for Kosovo. The EU should formulate and enact a unified policy on Kosovo. It is impossible, both legally and politically, to combine pro-independence and status-neutral functions in the duties of the EU’s Special Representative to Kosovo. The costs of European disunity are too high.

8. Make clear that independence is irreversible – Stress the need for a *modus vivendi* between Kosovo and Serbia

It has been made clear by both the EU and the US that Serbia will never be able to join the European Union until it finds an acceptable *modus vivendi* with Kosovo. Serbia’s European accession is in the interest of Europe, Kosovo and the entire region. However, the accession of Serbia should not come at the expense of its neighboring countries, and there should be no granting of ‘political discounts’ to Belgrade in this regard. We have all learned the hard way the risk of ‘importing’ unresolved bilateral problems and border disputes – as is the case with Cyprus and Turkey. This should not be repeated.

The message needs to be repeated and clearly emphasized: independence is irreversible. There will be no reopening of the status negotiations following the ICJ advisory opinion, and there will be no territory swaps, partition, etc. Too much valuable time has been lost on finding ‘face-saving’ solutions. Of course, Prishtina and Belgrade will have to engage in the usual bilateral contacts among neighbors. Here, a kind of ‘smart conditionality’ could be implemented by linking the response on candidate status for Serbia to the fulfillment of a ‘catalogue’ of concrete requests for strategies on regional cooperation and unlocking the existing regional cooperation mechanism. At the end, both the Serbian and Kosovar governments will have to be held equally accountable for demonstrating their political maturity in acting responsibly.

Concluding remarks

The group of Kosovo experts and representatives of civil society who prepared this paper in the context of a seminar in Vienna on 14 and 15 May 2010, supported by the Austrian Ministry of Defence and Sports and the Austrian Federal Chancellery, will be addressing the European Parliament. We are grateful for the high sense of responsibility shown by members of this important political institution. It is in our common European interest that the peace processes in the Western Balkans be successfully consolidated in the near future. Giving full support to Kosovo in this very critical phase would represent an important contribution to this endeavor.

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