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Novitet Nezaj

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# The development of Kosovo and its relationship with the EU

Novitet Nezaj\*

## Abstract

Kosovo used to be part of post-communist Yugoslavia. After the war in 1999, Kosovo has experienced an enormous political and economic transformation. This transformation has been assisted by the European Union. This paper aims to highlight the historical background of Kosovo, specific aspects of the relationship between the EU and Kosovo over the course of history, the EU's financial assistance, and the impact of this assistance on Kosovo's economic development from 1999 onwards. Furthermore, it includes an overview of the framework of cooperation and the recent underlying dynamics up to 2014, as well as the prospects for the future relationship between the EU and Kosovo. This paper has a persuasive argument to make, to defend the need to uphold the system of law and to adapt it to the changing needs brought about by the new realities of European integration.

## Keywords

European integration, pre-accession, UN, reconstruction, SAA, accession, EU law, financial assistance, approximation.

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## I. Introduction

After the Berlin Wall came down in 1989, a new perspective emerged in the countries of the Western Balkans. From this time onwards, Kosovo has experienced many political and economic transformations. The EU's role was very important during these transformations. Kosovo is aspiring to become a member of the EU in the future. At the moment, the EU is assisting Kosovo in its path towards membership. However, the process of European integration in general, and that of agreeing the Stabilization and Association Agreement (SAA) as a step towards EU membership in particular, will not be easy but will be full of challenges. This paper aims to explore the historical transformation of the status of Kosovo from that of an isolated country to that of a future candidate country for membership of the EU.

This paper is divided into two chapters. The first chapter sets out the historical background of Kosovo. It deals with specific aspects of the political and economic relationship between the EU and Kosovo over the course of history. In particular, it deals with the political status of Kosovo as part of the Yugoslav federation before 1989, and the political status of Kosovo during the collapse of Yugoslavia from 1990 until 1999. Furthermore, it explores the EU's role in this transformation from 2000 onwards, and it analyses the EU's financial and political assistance on the path towards EU integration. This chapter covers a series of diverse themes related to some of the main concepts of the framework of cooperation and the recent underlying dynamics up to 2014, as well as future of the relationship between the EU and Kosovo.

Chapter two provides some recommendations and concluding remarks on the development of the relationship between the EU and Kosovo. This chapter addresses an important issue regarding the implementation of Kosovo's obligations with regard to EU law. Specifically, it explores some crucial approaches to the fulfilling of Kosovo's obligations with regard to EU law. Complying with the SAA is a step towards EU integration. This chapter explores some approaches, through interpreting the normative context of the SAA in order to explore the approaches, and considers the way in which the state needs to enact and enforce it. The paper closes with an argument that the integration of Kosovo into the EU must take into account political and practical aspects.

## II. Relations between the EU and Kosovo

The political and economic relationship between the European Union (EU) and Kosovo developed in different historical periods. The embryonic stages of the relationship can be perceived in various political developments. The relationship can be traced from the 1990s following the fall of the Berlin Wall and the democratization of countries in Central and Eastern Europe.<sup>1</sup> It is important to examine some of the periods under which this relationship has evolved.<sup>2</sup> This will help to build a historical narrative of the relationship between the EU and Kosovo.

The relations between the EU and Kosovo emerged as a result of the political situation in Kosovo. Before 1989, the EU was less concerned about the political situation in Kosovo. Until March 1989, Kosovo enjoyed the *de facto* status of a republic within the Yugoslav Federation. The EU was more concerned about Kosovo during the conflict and humanitarian crisis from 1990 until the

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<sup>1</sup> Elsie, 2010, p.95

<sup>2</sup> These are the periods that are within the scope of this paper. A detailed examination of other periods is beyond the scope of this paper.

middle of 1999.<sup>3</sup> The relationship can be seen in the political instruments issued by the EU on the humanitarian crisis in Kosovo.<sup>4</sup> The period from the middle of 1999 until 2007 marked a new level in the relations with the EU. During this period, the EU provided economic assistance for the reconstruction of the post-war economy. It supported Kosovo's economy through a number of instruments, such as European Community assistance (CARDS)<sup>5</sup> and the Instrument of Pre-Accession Assistance (IPA).<sup>6</sup> The beginning of 2008 marked a completely new position for the economic and political relations between the EU and Kosovo. From this time on, the EU has consistently supported Kosovo's economy, through a number of financial instruments, in order to bring it to EU standards.<sup>7</sup> Gradually, the relationship between the EU and Kosovo has intensified. The progress of the relationship has been based on mutual commitment between the EU and Kosovo. The following sub-themes examine the roots of the relations between the EU and Kosovo.

## II.1. The period before 1989: Part of the Yugoslav federation

To understand the political issues in Kosovo before 1989, it is necessary to highlight the basics of Kosovo's constitutional history. Before 1989, under the Yugoslav constitution Kosovo was not a republic within the federation, but was an autonomous part with extensive powers.<sup>8</sup> The political status before 1989 depended on changes to Kosovo's constitutional structure within Yugoslavia. These changes occurred frequently and during every decade of Yugoslavia's political history. This process is often referred as the attempt to resolve Yugoslavia's national question.<sup>9</sup> However, the national question was a struggle between the republics and the autonomous part, Kosovo, that

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<sup>3</sup> Question No H-592/92 by Mr Ephremidis on the serious risk of the conflict in Yugoslavia spreading southwards as a result of the events in Kosovo, date of issue: 10 June 1992. In: European University Institute (Florence) and Institut für Europäische Politik (Bonn) (eds.), *European Political Cooperation Documentation Bulletin*, 1992, Vol. 8, p.194.

<sup>4</sup> See the documents of Hill, C. and Smith, K. E. (eds.) 2003. *European Foreign Policy: Key Documents*. Routledge in Association with the Secretariat of the European Parliament. p. 385-398. This book is the very first to collect together the key official documents tracing the development of European foreign policy from the end of the Second World War to 2000.

<sup>5</sup> See Article 1(3) Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC, *OJ L 306*, 7.12.2000, pp.1–6.

<sup>6</sup> See Article 21(1) of the Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA), *OJ L 210*, 31.7.2006, pp.82–93.

<sup>7</sup> See Kosovo's Donor Conference. The Donor Conference was convened by the European Commission. Pledges were made for a total of over €1.2 billion Euros. Available at: <http://ec.europa.eu/enlargement/archives/seerecon/kdc/index.html> (Accessed: 20.09.2014).

<sup>8</sup> See Constituent Acts of Yugoslavia. The Constitution introduced a requirement for a consensus among republics and provinces in decision-making, including making a decision to amend the Constitution. Social ownership was defined as the main feature of the economic system. Available at: [http://www.arhivju.gov.rs/active/en/home/glavna\\_navigacija/leksikon\\_jugoslavije/konstitutivni\\_akti\\_jugoslavije/ustav\\_sfrj\\_1974.html#](http://www.arhivju.gov.rs/active/en/home/glavna_navigacija/leksikon_jugoslavije/konstitutivni_akti_jugoslavije/ustav_sfrj_1974.html#) (Accessed: 16.06.2014).

<sup>9</sup> See: Arfi, B. 2005. *International Change and the Stability of Multiethnic States: Yugoslavia, Lebanon, and Crises of Governance*. Indiana University Press. pp.99–109.

demanded independence.<sup>10</sup>

Constitutionally, in 1946 Kosovo was recognized as the Autonomous Region of Kosovo (Article 2) in the constitution of Yugoslavia.<sup>11</sup> Gradually, Kosovo's status was improved, and in the 1963 constitution, Kosovo was made an autonomous province (Article 111). In 1968, Kosovo was renamed as a socialist autonomous province through constitutional amendment. This status, as an autonomous region with extensive powers, was retained in the constitutions of both Yugoslavia (Article 2) and Serbia (Article 1). Later, in the new constitution of 1974, Kosovo enjoyed the *de facto* status of a republic.<sup>12</sup> The constitution of 1974 granted it more substantial autonomy and self-governance. However, it was still unclear whether the autonomous units or republics had the right to self-determination and secession. This generated national concerns associated with political, economic and social rights. Unrest broke out within Kosovo. The underlying cause was the need for more political and economic rights. This gave rise to violent protests over the entire country. During the 1980s, Kosovo was the poorest country in Yugoslavia.<sup>13</sup> The majority of Kosovo's population were Albanians who experienced poor economic conditions. Moreover, there was a substantial disparity in incomes. Kosovo was the least developed region.<sup>14</sup> This contributed to Albanian emigration to Western countries, mainly Germany, Austria and Switzerland. Furthermore, the major repressive factor was a policy of systematic discrimination against Kosovo's Albanians. The increasing unrest marked a great turning point in the political history of Kosovo. As J. Krieger states, "recalling the unrest of the early 1980s it was often noted that the wars of Yugoslavia's collapse began in Kosovo, and they will end in Kosovo."<sup>15</sup> Demands for a better political status for the Albanian population in Kosovo triggered unilateral action by Serbia and Yugoslavia against Kosovo. This generated riots and unrest in 1981. Consequently, the federal Yugoslav and Serbian authorities suppressed the 1981 riots in Kosovo.

The transition in the Western Balkans in 1989 found Kosovo in a very complicated situation.

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<sup>10</sup> The unilateral independence of Kosovo is a *sui generis* case in international law. For more, see: Written Contribution of the Republic of Kosovo to International Court of Justice. Available at: <http://www.mfa-ks.net/?page=1.61> (Accessed: 16.07.2014). Also see: Constituents Acts of Yugoslavia. Available at: [http://www.arhivyu.gov.rs/active/en/home/glavna\\_navigacija/leksikon\\_jugoslavije/konstitutivni\\_akti\\_jugoslavije.html](http://www.arhivyu.gov.rs/active/en/home/glavna_navigacija/leksikon_jugoslavije/konstitutivni_akti_jugoslavije.html) (Accessed: 16.07.2014).

<sup>11</sup> For more detail about the historical developments see: Judah, T. 2002. *Kosovo: War and Revenge*. Yale Nota Bene, p.46; Malcolm, N. 1998. *Kosovo: A Short History*. New York University Press, p.336; Ramet, P. 1985. *Apocalypse Culture and Social Change in Yugoslavia*, in Ramet, P. (ed.), *Yugoslavia in the 1980s*. Westview Press, pp.3–26; Trix, F. 2005. *Kosovar Albanians between a Rock and a Hard Place*, in Sabrina, P. R. and Pavlaković, V. (eds.), *Serbia since 1989: Politics and Society under Milošević and After*. University of Washington Press, p.311; King, I. and Mason, W. 2006. *Peace at Any Price: How the World Failed Kosovo*. Cornell University Press; Eide, K. 2004. *Report on the Situation in Kosovo*, written for the UN Secretary General (S/2004/932, 15 July 2004), p.3; DiLellio, A. Kadare, I. 2006. *The Case for Kosova: Passage to Independence*. Anthem Press; McAllester, M. 2001. *Beyond the Mountains of the Damned: The War inside Kosovo*. New York University Press; Pettifer, J. 2005. *Kosova Express: A Journey in Wartime*. University of Wisconsin Press.

<sup>12</sup> Krieger, H. 2001. *The Kosovo Conflict and International Law: An Analytical Documentation 1974–1999*. Cambridge University Press. p.2.

<sup>13</sup> Todorov, T. 2003. *Hope and Memory: Lessons from the Twentieth Century*. Princeton University Press. p.245.

<sup>14</sup> Uvalic, M. 2009. *Investment and Property Rights in Yugoslavia: The Long Transition to a Market Economy*. Cambridge University Press. p.10.

<sup>15</sup> Krieger, J. 2001. *The Oxford Companion to Politics of the World*. Oxford University Press. p. 478.

During this period, there was a series of events that triggered political tension in Kosovo. The abrogation of the constitution of Kosovo in 1989 led to massive political pressure against the Albanian majority.<sup>16</sup> Kosovo's parliament was suspended and direct rule was imposed.<sup>17</sup> The reintegration of Kosovo into Serbia was achieved by illegal amendments of the constitution in 1989 that effectively revoked the legal basis under which Kosovo enjoyed the *de facto* status of a republic pursuant to the constitution of 1974. This amendment of the constitutional power and systematic discrimination against Kosovo's Albanians had always been a political fixation of the Serbian and Yugoslav socialist authorities. The new rules and regulations over the coming years had a negative effect on political and economic life in Kosovo. As a result of these events, Kosovo suffered a major economic crisis, with serious social and political repercussions. Before 1989, the EU was not directly involved in Kosovo's affairs, and did not condemn the direct rule from Serbia and the segregation policy that was imposed in Kosovo.<sup>18</sup> The EU's foreign policy was fragmented and still to emerge.<sup>19</sup> Therefore, the EU's action towards these events was minimal, because of the questionable future of Yugoslavia.<sup>20</sup> Meanwhile, Kosovo's approach to the EU before 1989 was optimistic. Kosovo's optimistic aspirations are expressed in the self-declared constitution of 1990.<sup>21</sup>

## II.2. The period from 1990 – 1999: The collapse of Yugoslavia

On 9 November 1989, the Berlin Wall came down. This event marked the end of the Cold War and was the defining aspect of the new order in Europe. The collapse of communism in Europe gave rise to many political transformations in every corner of the Western Balkans. According to Hill and Smith, the fall of communism in 1989 and the outbreak of the Balkan crisis of the 1990s affected the political situation in Kosovo.<sup>22</sup> An important feature of this new order was the political transformation of Yugoslavia. The quest for independence within Yugoslavia represented a major challenge for the EU. Quickly, the Yugoslav federation collapsed in a violent transformation. To understand the status of Kosovo in the context of the break-up of Yugoslavia,

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<sup>16</sup> See Huntington, S. 1997. *The Clash of Civilizations and the Remaking of the World Order*. New York: Simon & Schuster. p.125. The actions of the regime against the majority Albanian population in Kosovo were abusive and against the principles of the Charter of the United Nations 1945, the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations on 19 December 1966, the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16 December 1966, and the International Convention on the Suppression and Punishment of the Crime of Apartheid adopted by the General Assembly of the United Nations on 30 November 1973.

<sup>17</sup> Radan, P. 2002. *The Break-up of Yugoslavia and International Law*. Routledge. p.154.

<sup>18</sup> However, individual EU member states (e.g. Germany) did criticize the Yugoslav and Serbian actions in Kosovo.

<sup>19</sup> There had been some disagreement about whether Kosovo should or should not have independence. There were considerable controversies surrounding this question in the international community.

<sup>20</sup> Radeljic, B. 2012. *Europe and the Collapse of Yugoslavia: The Role of Non-State Actors and European Diplomacy*. I.B. Tauris. p.5.

<sup>21</sup> Ahrens, G.-H. 2007. *Diplomacy on the Edge: Containment of Ethnic Conflict and the Minorities Working Group of the Conferences on Yugoslavia*. Woodrow Wilson Center Press. p.325.

<sup>22</sup> Hill, C. and Smith, K. E. (eds.). 2003. *European Foreign Policy: Key Documents*. Routledge. p. 335.



it is indispensable to analyse the essentials of the political transformation of Yugoslavia and the interaction with the EU.

In late 1990, the political tensions unfolded in Yugoslavia. Initially, the EU did not involve itself to any great degree. It was more preoccupied with other major international problems, notably the results of the collapse of communism. The wars within the former Yugoslavia that were waged from 1990 until 1995 resulted in Slovenia, Croatia, Bosnia-Herzegovina and Macedonia succeeding in gaining independence and international recognition. Recognition as independent states and membership of the United Nations was granted to all four former Yugoslav republics.<sup>23</sup>

Initially, the European Union acted in accordance with the EC Guidelines on the Recognition of States issued on 16 December 1991.<sup>24</sup> The EC Guidelines explicitly refer to self-determination in the context of the Helsinki Final Act and the Charter of Paris. Consequently, the recognition of these former republics as independent states was underpinned by rulings made by the Badinter Arbitration Commission.<sup>25</sup>

The EU expressed different views after a new situation appeared in Kosovo. The quest for independence for Kosovo represented a major challenge to the European Union. Kosovo's application for recognition was not even accepted by the Badinter Arbitration Commission. It remained unclear whether or not Kosovo had a right to independence. In contrast, Serbia and Montenegro claimed to be the legal continuation of ex-Yugoslavia. Following the disintegration of the Yugoslav political regime, the status of Kosovo underwent an important change.<sup>26</sup> Kosovo was included by force into Serbia as it had been part of ex-Yugoslavia.<sup>27</sup> This political climate generated a call for EU action.

In this regard, the European Union raised some concerns about the scale of the abuse of fundamental human rights by Yugoslavia.<sup>28</sup> In addition, the EU stated that it had been "seriously preoccupied with a number of issues which required a firm and unequivocal response, notably the civil war in Yugoslavia and its implications as well as the continuing violations of human rights

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<sup>23</sup> The recognition of the four republics was considered as an application of the right of peoples to self-determination.

<sup>24</sup> See International Court of Justice. *Regional Instruments in the Context of the Former Yugoslavia*. Available at: <http://www.icj-cij.org/docket/files/141/15048.pdf> (Accessed: 29.07.2014). See also Rich, R. and Turk, D. 1993. Symposium: Recent Developments in the Practice of State Recognition, *European Journal of International Law*, Vol. 4, No. 1, pp. 36–74. Available at: <http://207.57.19.226/journal/Vol4/No1/index.html> (Accessed: 20.08.2014).

<sup>25</sup> The Arbitration Commission, headed by the French lawyer Robert Badinter (the Badinter Commission), which had been established pursuant to the EC Declaration of 27 August 1991. The Badinter Commission was part of the framework of the Conference on Yugoslavia. The Badinter Commission made recommendations to the EC in time for an EC meeting on 15 January 1992 when decisions on recognition were made. Applications for recognition were received from Slovenia, Croatia, Bosnia-Herzegovina and Macedonia. Serbia and Montenegro did not make applications, on the basis that they regarded themselves as being the continuation of Yugoslavia.

<sup>26</sup> Huntington, S. 1997. *The Clash of Civilizations and the Remaking of the World Order*. New York: Simon & Schuster. p.255.

<sup>27</sup> Muharremi, D. and Mehmeti, S. 2013. Policing in the Republic of Kosovo: Changes Along with Political and Social Developments. In: Mesko, G., Fields, C.B., Lobnikar, B., Sotlar, A. (eds.) *Handbook on Policing in Central and Eastern Europe*. Springer. p.130.

<sup>28</sup> Declaration by the Informal European Political Cooperation Ministerial Meeting on Yugoslavia, Château de Senningen, 26 March 1991, in: Hill, C. and Smith, K. E. (eds.), (2003). *European Foreign Policy: Key Documents*. Routledge. p.362.

in Kosovo” (Statement in the European Parliament, 1992).<sup>29</sup> The EU’s response to the issue of Kosovo was debated in a variety of European institutions. The most important of these were the European Council and the European Parliament. Independence for Kosovo was out of question during this time. The EU’s action was more oriented towards stabilization and a peaceful negotiation between the Albanian majority in Kosovo and the remaining parts of Yugoslav (Serbia and Montenegro). Until 1997, the EU offered various responses to the challenges of Kosovo: a set of instruments known as Statements and Declarations, by the European Council, another set called Communications, by the European Parliament, and Joint Action.<sup>30</sup> The main aim was to achieve a dialogue and to reduce the political pressure of Yugoslavia on Kosovo. Both these sets of instruments failed to achieve their ultimate purpose, because their application and enforcement in practice remained weak. The political tensions and massive human rights violations became a major source of war in 1998.

The war started in 1998, and spread to the whole of Kosovo. In early 1999, both sides (the Albanian resistance<sup>31</sup> and Yugoslavia) were summoned to Paris by the so-called Contact Group<sup>32</sup> to secure an interim agreement. The Albanian delegation agreed to the Rambouillet Accord, but Yugoslavia refused to sign. This refusal led to NATO launching air strikes against Yugoslavia on 24 March 1999. The NATO bombing campaign lasted 78 days and led to the deployment of UN and NATO forces in Kosovo.<sup>33</sup> Formally, this was a *de facto* partitioning of Kosovo from the remaining part of Yugoslavia.

After the war, the EU gradually became involved in Kosovo through the UN mission.<sup>34</sup> The EU aimed to help with the economic reconstruction, rehabilitation, and development of post-war Kosovo.<sup>35</sup> This marked another stage in the relations between the EU and Kosovo. In 1999, the EU established the Stability Pact for South-Eastern Europe.<sup>36</sup> The main aim of this pact was to allow a further strengthening of the relationship between the Western Balkan countries and the EU. The period after 1999 marked a historical change in the political and economic relations between the EU and Kosovo.

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<sup>29</sup> Annual memorandum to the European Parliament on the activities of the European Community and its Member States in the field of human rights. 8 May 1992. Brussels. Statement in the European Parliament. In: *European Political Cooperation Documentation*, 1992, Vol. 8, European University Institute (Florence) and Institut für Europäische Politik (Bonn). p.217.

<sup>30</sup> See the documents of Hill, C. and Smith, K. E. (eds.) 2003. *European Foreign Policy: Key Documents*. Routledge in Association with the Secretariat of the European Parliament. p. 362-384.

<sup>31</sup> Known as the Kosovo Liberation Army.

<sup>32</sup> The USA, France, the United Kingdom, Germany, Russia and Italy.

<sup>33</sup> The establishment of the UN Mission and KFOR was done pursuant to Resolution 1244 of the United Nations Security Council of 10 June 1999.

<sup>34</sup> See Joint Action Adopted by the Council on the Basis of Article J.3 of the Treaty of European Union in Relation to the Nomination of an EU Special Envoy for Kosovo, 30 March 1999 (99/239/CFSP), *OJ L 089 of 01.04.99*.

<sup>35</sup> See Council Joint Action Concerning the Installation of the Structures of the United Nations Mission in Kosovo (UNMIK), 29 July 1999, *OJ L 201, 31.7.1999, p.1*.

<sup>36</sup> 1999/345/CFSP: Common Position of 17 May 1999 adopted by the Council on the basis of Article 15 of the Treaty on European Union, concerning a Stability Pact for South-Eastern Europe, *OJ L 133, 28.5.1999, pp.1–2*.

### II.3. The period from 2000 – 2008: Under the supervision of the international community

The relations between the EU and Kosovo during this period are of particular importance. Shortly after the war in 1999, the EU supported Kosovo's fragile economy to provide relief and stability.<sup>37</sup> Economic development was left mainly to the EU; it was known as Pillar IV (Reconstruction component) and was managed by the European Union as part of the UN mission. The EU was the only actor in the field of economic development in Kosovo.<sup>38</sup> The European Commission and the World Bank prepared a reconstruction and recovery programme.<sup>39</sup> The programme aimed to develop a "thriving, open, and transparent market economy, to support the restart of public administration and to establish effective and sustainable institutions".<sup>40</sup> Furthermore, the European Commission took a decision on an economic reconstruction programme for Kosovo.<sup>41</sup> The focus of this programme was economic development and improvements in infrastructure and public administration.

Within the framework of regional instruments for the Western Balkans, the EU always included Kosovo as part of the European agenda for further integration and future membership of the EU. In 2000, the European Council confirmed that its objective remained the fullest possible integration of the Western Balkan countries. Furthermore, all the countries of the Western Balkans were potential candidates for the European Union.<sup>42</sup> The European perspective for Kosovo was further strengthened in the Santa Maria da Feira European Council in 2000.<sup>43</sup> During this time, the perspective on Kosovo was rooted in the EU's political commitment to "the fullest possible integration of the countries of the region into the political and economic mainstream of Europe through the Stabilization and Association process, political dialogue, liberalization of trade and cooperation in Justice and Home Affairs".<sup>44</sup> Thus, attempts to draw Kosovo towards the EU were part of the enlargement policy. Consequently, perceptual awareness of the EU integration issues gradually deepened within Kosovo society. Later, the EU took concrete steps to realize the

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<sup>37</sup> UNMIK background, Pillar IV: Reconstruction and Economic Development, managed by the European Union (EU), available at <http://www.un.org/en/peacekeeping/missions/unmik/background.shtml> (Accessed: 27.06.2014).

<sup>38</sup> The European Union at work in Kosovo. 2000: <http://ec.europa.eu/enlargement/archives/seerecon/kosovo/documents/eu-kosovo.pdf> (Accessed: 17.06.14).

<sup>39</sup> Toward Stability and Prosperity. *A Program for Reconstruction and Recovery in Kosovo*. European Commission and World Bank, November 3, 1999. Available at: [http://ec.europa.eu/enlargement/archives/seerecon/kosovo/documents/kosovo\\_toward\\_stability\\_and\\_prosperity\\_1999.pdf](http://ec.europa.eu/enlargement/archives/seerecon/kosovo/documents/kosovo_toward_stability_and_prosperity_1999.pdf) (Accessed: 27.06.2014).

<sup>40</sup> Ibid.

<sup>41</sup> Commission Decision of 15 December 1999 on an economic reconstruction programme for Kosovo, available at <http://ec.europa.eu/enlargement/archives/seerecon/kosovo/documents/ec-dec-erp.pdf> (Accessed: 27.06.2014).

<sup>42</sup> Ibid. See also Conclusions of the Presidency, Santa Maria da Feira European Council, 19 and 20 June 2000. Available at [http://www.europarl.europa.eu/summits/pdf/the\\_en.pdf](http://www.europarl.europa.eu/summits/pdf/the_en.pdf) (Accessed: 24.07.2014).

<sup>43</sup> Conclusions of the Presidency, Santa Maria da Feira European Council, 19 and 20 June 2000. Available at [http://www.europarl.europa.eu/summits/pdf/the\\_en.pdf](http://www.europarl.europa.eu/summits/pdf/the_en.pdf) (Accessed: 24.07.2014).

<sup>44</sup> Para. 66–67 of the Conclusions of the Presidency, Santa Maria da Feira European Council, 19 and 20 June 2000. Available at [http://www.europarl.europa.eu/summits/pdf/the\\_en.pdf](http://www.europarl.europa.eu/summits/pdf/the_en.pdf) (Accessed: 24.07.2014).

European perspective on Kosovo. In addition, the Zagreb Summit in 2000 called for further consolidation of relations through the stabilization and association process as well as enhanced regional cooperation. For Kosovo, this was an additional perspective. Afterwards, in 2003 in Thessaloniki the European Council confirmed its determination to support the perspective of the Western Balkan countries.<sup>45</sup> It is important to mention that the Thessaloniki European Council identified ways and means of intensifying the stabilization and association process, including the drawing-up of European partnerships. The Thessaloniki Summit reinforced the stabilization and association process and underlined the prospects for the integration of Kosovo into the EU.

During the following years, the EU's goal in respect of Kosovo has been economic development, internal stability, and the rule of law. Looking back, since 2000 Kosovo has also benefited from the Community Assistance for Reconstruction, Development and Stabilization (CARDS) instrument.<sup>46</sup> The main purpose of this instrument was the creation of "an institutional and legislative framework to underpin democracy, reconstruction, sustainable economic development and market-economy-oriented reform and development, and fostering regional and cross-border cooperation between recipient countries and the EU".<sup>47</sup> Kosovo has benefited from this instrument.

In the following years, relations between the EU and Kosovo showed sustainable progress in terms of fulfilling solid criteria for future membership based on a European partnership since 2004.<sup>48</sup> This partnership aimed to support the efforts of Kosovo to strengthen democracy and the rule of law, to contribute to political and institutional stability, and to support the efforts of Kosovo to develop its economic and international cooperation and the approximation of its legislation to that of the EU.<sup>49</sup> At the same time, the first European Union Liaison Office was opened in Kosovo. Clearly, the EU presence had a substantial influence in Kosovo. The European Partnership

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<sup>45</sup> Conclusions of the Presidency, Thessaloniki European Council, 19 and 20 June 2003. Bulletin 23.06.2003. pp.19–21. Available at [http://www.europarl.europa.eu/summits/pdf/the\\_en.pdf](http://www.europarl.europa.eu/summits/pdf/the_en.pdf) (Accessed: 24.07.2014).

<sup>46</sup> This was the EU's main instrument of financial assistance to the Western Balkan countries. Council Regulation (EC) No 2666/2000 Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, *OJ L 306, 7.12.2000, p. 1–6*. See Final Evaluation Report. 2009. *Retrospective Evaluation of the CARDS Programmes*. Country: Kosovo. Sectors: *Justice, Energy, Economic development and Rural development*. European Commission, Enlargement Directorate-General Directorate E-Resources – Unit E4 Evaluation. Available at: [http://ec.europa.eu/enlargement/pdf/financial\\_assistance/cards/evaluation-reports/05-fr\\_cards\\_kosovo\\_160709.pdf](http://ec.europa.eu/enlargement/pdf/financial_assistance/cards/evaluation-reports/05-fr_cards_kosovo_160709.pdf) (Accessed: 16.06.2014).

<sup>47</sup> Article 2, Council Regulation (EC) No 2666/2000, L 306/1.

<sup>48</sup> Council Regulation (EC) No 533/2004 of 22 March 2004 on the establishment of European partnerships in the framework of the stabilization and association process, *OJ L 86, 24.3.2004, pp. 1–2*.

<sup>49</sup> This policy resulted in a series of so-called European partnerships that were established by virtue of the scope of the Council Regulation (EC) No 533/2004 of 22 March 2004 on the establishment of European partnerships in the framework of the stabilization and association process, *OJ L 86, 24.3.2004, pp. 1–2*, Council Decision 2004/520/EC of 14 June 2004 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, *OJ L 227, 26.6.2004, p. 21–34*, and Council Decision 2008/213/EC on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC, *OJ L 80, 19.3.2008, pp. 46–70*.

provided the framework for the future support of the efforts of Kosovo to enable the transition into a functioning market economy. This partnership set out principles, short-term priorities, and conditions for the European partnership with Kosovo. In addition, it included short- and medium-term priorities, including political criteria, economic criteria, and European standards.<sup>50</sup> This was dependent upon Kosovo's capacity to implement the partnership priorities. However, Kosovo was aware that not all priorities could be achieved to an appropriate degree of approximation with the EU *acquis*. Kosovo's improvements were reflected in the First Action Plan for the Implementation of the European partnership in 2005.<sup>51</sup> New outcomes have emerged naturally from this partnership. The government of Kosovo adopted the Second Action Plan for the Implementation of the European Partnership in 2006. Both action plans highlighted institutional improvements. Clear commitment on establishing an even closer cooperation with the EU resulted with another partnership agreement.<sup>52</sup> This partnership specified new priorities that were to be continually adapted to Kosovo's specific needs. It also provided guidance about financial assistance.

Gradually, by 2007 the Instrument of Pre-Accession Assistance (IPA)<sup>53</sup> had replaced the previous financial instruments (CARDS) of the European Union. The IPA consists of assistance for transition and institution building, cross-border cooperation, and regional development, including transport, environment, and rural development.<sup>54</sup> Kosovo is included in the IPA programme as a beneficiary country.<sup>55</sup> Each year, using the assistance provided by the EU, significant progress is being made in improving different sectors such as justice, energy, economic development, and rural development. Another new European partnership was under discussion during late 2007. In 2008, the EU adopted another partnership with Kosovo, with the aim of further strengthening relations between Kosovo and the EU.<sup>56</sup> The significance is emphasized in Article 1.1 of the

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<sup>50</sup> See Council Regulation (EC) No 533/2004 of 22 March 2004 on the establishment of European partnerships in the framework of the stabilization and association process, *OJ L 86, 24.3.2004, pp. 1–2*. Council Decision 2004/520/EC of 14 June 2004 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, *OJ L 227, 26.6.2004, p. 21–34*. Council Decision 2008/213/EC of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Council Decision 2006/56/EC 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, *OJ L 80, 19.3.2008, p. 46–70*.

<sup>51</sup> First Action Plan for the Implementation of the European partnership in 2005. Available at: <http://www.mei-ks.net/?page=2,73> (Last accessed: 16.08.2014)

<sup>52</sup> Council Decision 2006/56/EC 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, *OJ L 35, 7.2.2006, p.32*.

<sup>53</sup> Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA), *OJ L 210, 31.7.2006, pp. 82–93*.

<sup>54</sup> Article 3, Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA), *OJ L 210, 31.7.2006, pp. 82–93*.

<sup>55</sup> Article 1, Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA), *OJ L 210, 31.7.2006, pp. 82–93*.

<sup>56</sup> Council Decision 2008/213/EC of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC, *OJ L 80, 19.3.2008, pp.46–70*.

Council Regulation regarding partnerships: “the European Partnerships shall provide a framework covering the priorities resulting from the analysis of the partners’ different situations, on which preparations for further integration into the European Union must concentrate in the light of the criteria defined by the European Council, and the progress made in implementing the stabilization and association process including stabilization and association agreements, where appropriate, and in particular regional cooperation”.<sup>57</sup> This partnership has laid down the requirements for the implementation of political and legal criteria. The implementation of these criteria is of paramount importance for Kosovo in the process of European integration. To sum up, relations between the EU and Kosovo during the period from 2000 to 2008 were generally more intense because Kosovo was transitioning from a supervised administration under the UN to an independent country. Throughout this period, Kosovo demonstrated its commitment to future integration into the EU.

#### **II.4. From 2008 onwards: An independent country**

Since 2008, relations with the EU have developed under a completely new agenda. At the beginning of 2008, Kosovo was declared to be an independent country. The engagement with European integration is enshrined in a number of national documents, such as the Declaration of Independence of Kosovo and the Constitution of the Republic of Kosovo. The Declaration of Independence of Kosovo states that:

*For reasons of culture, geography and history, we believe our future lies with the European family. We therefore declare our intention to take all steps necessary to facilitate full membership in the European Union as soon as feasible and implement the reforms required for European and Euro-Atlantic integration.*<sup>58</sup>

Furthermore, the Preamble to the Constitution of Kosovo clearly provides a strong commitment to “contribute to the stability of the region and entire Europe” and to “the intention of having the state of Kosovo fully participating in the processes of Euro-Atlantic integration”.<sup>59</sup> In the meantime, the Constitution states that “the State of Kosovo will contribute to the stability of the region and entire Europe by creating relations of good neighborliness and cooperation with all neighboring countries”.<sup>60</sup>

As Kosovo proclaimed its independence, a new relationship between the EU and Kosovo emerged. From 2008 onwards, several important actions were taken.

First, in relation to the importance of the rule of law, the EU established the Rule of Law Mission in Kosovo (EULEX) in 2008. This mission aims to support the establishment and consolidation of a stable legal order in Kosovo based on the rule of law.<sup>61</sup> As a new-born country, Kosovo had

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<sup>57</sup> Article 1.1, Council Regulation (EC) No 229/2008 of 10 March 2008 amending Regulation (EC) No 533/2004 on the establishment of partnerships in the framework of the stabilization and association process, *OJ L 73*, 15.3.2008, pp.1–2.

<sup>58</sup> Declaration of Independence, para. 6. 2008. Assembly of the Republic of Kosovo.

<sup>59</sup> Preamble of the Constitution of the Republic of Kosovo, 2008, *Official Gazette*: K-09042008.

<sup>60</sup> *Ibid.*

<sup>61</sup> Council Decision 2014/349/CFSP of 12 June 2014 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, *OJ L 174*, 13.6.2014, pp. 42–44. 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, *OJ L 146*, 6.6.2012, p. 46–47. Council Decision 2010/322/CFSP of 8 June 2010 amending and extending

its deficiencies in this regard, and the EU's support was crucial in this sector.<sup>62</sup> The EULEX was mandated to assist and support the Kosovo authorities in the rule of law, specifically with regard to the police, judiciary, and customs.<sup>63</sup>

Secondly, an important financial meeting that triggered economic development took place in Brussels on 11 July 2008. This was a crucial moment for Kosovo. A donor conference in support of Kosovo's socio-economic development was convened by the European Commission to present Kosovo's economic strategy and investment priorities. In this regard, financial assistance through the IPA project played the main role in the development of the rule of law, the reform of public administration, the development of human resources, local development, education, and infrastructure. The figure below describes the amount of financial assistance that was given.

Country/Component	2007	2008	2009	2010	2011	2012	2013
<b>KOSOVO</b>							
Transition Assistance and Institution Building	68,300,000	184,700,000	106,100,000	66,100,000	66,900,000	67,000,144	68,477,942
Cross-border Co-operation	0	0	0	1,200,000	1,800,000	1,800,000	2,987,731
<b>TOTAL</b>	68,300,000	184,700,000	106,100,000	67,300,000	68,700,000	68,800,144	71,465,673

Figure 1. Source: *EU Revised Multi-Annual Indicative Financial Framework for 2013*<sup>64</sup>

As indicated in this table, an enormous amount of financial assistance from the EU has been invested in Kosovo through the IPA instrument. With the aim of making gradual progress in terms of strengthening the institutional and economic development, Kosovo was also included in the EU's IPA II instrument.<sup>65</sup> In the years to come, this instrument will aim to support Kosovo in

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Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, *OJ L 145*, 11.6.2010, p. 13–14. Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, *OJ L 42*, 16.2.2008, p. 92. Council Joint Action 2009/445/CFSP of 9 June 2009 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, *OJ L 148*, 11.6.2009, p. 33–33.

<sup>62</sup> European Court of Auditors. 2012. European Union Assistance to Kosovo related to the Rule of Law. Special report no 18. Available at:

[http://www.eca.europa.eu/Lists/ECADocuments/SR12\\_18/SR12\\_18\\_EN.PDF](http://www.eca.europa.eu/Lists/ECADocuments/SR12_18/SR12_18_EN.PDF) (Accessed: 16.06.2014).

<sup>63</sup> The European Union Rule of Law Mission in Kosovo (EULEX) is the largest civilian mission ever launched under the European Security and Defence Policy. The legal basis for the EULEX mission is the Council Joint Action 2008/124/CFSP of 4 February 2008, which was amended by: Council Decision 2014/349/CFSP of 12 June 2014 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, *OJ L 174*, 13.6.2014, pp.42–44.

<sup>64</sup> Communication from the Commission to the European Parliament and the Council – Instrument for Pre-Accession Assistance (IPA), Revised Multi-Annual Indicative Financial Framework for 2013. Brussels, 10.10.2012 COM (2012) 581 final. p.9.

<sup>65</sup> In December 2011, the Commission made its proposal for a new IPA II regulation for the 2014–2020 period of the multi-annual financial framework. IPA II aims to ensure a closer link with the priorities of the enlargement strategy, including strengthening democratic institutions and the rule of law, and to have more focus on socioeconomic development. It provides for reinforced support to sector strategies, with increased flexibility and simplified procedures. Regulation (EU) No. 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action, *OJ L 77*, 15.3.2014, pp.95–108.

adopting and implementing the political, social and economic reforms needed for it to comply with the EU's values.<sup>66</sup>

Thirdly, the EU proposed the initiation of a visa liberalization process<sup>67</sup> for Kosovo and the opening of negotiations of the SAA,<sup>68</sup> which will have a direct effect on Kosovo's legal system. Developments in terms of meeting benchmarks for further integration have led to the next chapter of Kosovo's integration – the negotiation of the SAA. The European Union has acknowledged that Kosovo fulfils the requirements for entry into an association agreement with the European Union. During this period of relations, negotiations for the SAA are being conducted between the EU and Kosovo. In addition, this stage of integration is in large part related to the fact that Kosovo, as an independent country, has satisfactorily met the benchmarks for further integration. Progress towards meeting the benchmarks is measured annually through different mechanisms such as the EU's enlargement strategies, the Conclusions of the Council of the EU on the Western Balkans, the EU's progress reports, and finally in a feasibility study for an SAA between the European Union and Kosovo (2012).<sup>69</sup>

In the coming years, this agreement (the SAA) will require additional resources such as the legal, political and human capacities necessary to fulfil the provisions on approximation of laws, law enforcement and competition rules. The definition and implementation of the principles of the SAA are still a work in progress. The SAA remains the framework for bilateral cooperation with the EU. This will strengthen Kosovo's position in the EU, along the way to its future accession to the EU. This will enhance the view of Kosovo and its rapprochement with the European Union.

### III. Recommendations for the implementation of the SAA

In general, candidate countries for membership into the EU must enact and enforce the common rules of the EU in their entirety.<sup>70</sup> These rules are traditionally known as the EU *acquis*. Some of these rules are enshrined within the SAA. The willingness of Kosovo to become a member state of the EU is dependent on its capacity to implement EU law. This implementation is linked to economic and political benefits for Kosovo. The progress of Kosovo's European position is subject

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<sup>66</sup> Articles 1 – 2, Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action, *OJ L 77, 15.3.2014, pp.95–108*.

<sup>67</sup> European Commission, DG Home Affairs/Visa policy. Council Regulation (EC) No 539/2001, *OJ L 81, 21.3.2001, pp.1–7*, later amended by: Council Regulation (EC) No 2414/2001 of 7 December 2001, *OJ L 327, 12.12.2001, pp.1–2*, Council Regulation (EC) No 453/2003 of 6 March 2003, *OJ L 69, 13.3.2003, pp.10–11*, Council Regulation (EC) No 851/2005 of 2 June 2005, *OJ L 141, 4.6.2005, pp.3–5*, Council Regulation (EC) No 1791/2006 of 20 November 2006, *OJ L 363, 20.12.2006, pp.1–80*, Council Regulation (EC) No 1932/2006 of 21 December 2006, *OJ L 29, 3.2.2007, pp.10–13*, Council Regulation (EC) No 1244/2009 of 30 November 2009 L 336, *OJ L 336, 18.12.2009, pp.1–3*, Regulation (EU) No 1091/2010 of the European Parliament and of the Council of 24 November 2010 L 329, *OJ L 329, 14.12.2010, pp.1–2*, and Regulation (EU) No 1211/2010 of the European Parliament and of the Council of 15 December 2010 L 339, *OJ L 339, 22.12.2010, pp.6–7*.

<sup>68</sup> Recommendation for a Council Decision authorizing the opening of negotiations on a Stabilization and Association Agreement between the European Union and Kosovo, COM (2013) 200 final.

<sup>69</sup> Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilization and Association Agreement between the European Union and Kosovo, SWD (2012) 339.

<sup>70</sup> Schneider, C. J. 2009. *Conflict, Negotiation and European Union Enlargement*. Cambridge University Press. p.20.



to the successful implementation of the SAA. The SAA creates economic and political links between the EU and Kosovo. The establishment of free trade is the cornerstone of the SAA. This process gradually involves the free movement of goods, services, persons and capital. In the following years, the implementation of this agreement will enable Kosovo to strengthen and extend its relations with the European Union. The successful implementation of the SAA is one of the first important tests for Kosovo.

The SAA contains obligations for Kosovo to approximate its legislation to the EU *acquis*. The objectives of the SAA will be achieved when Kosovo has the appropriate institutional and administrative capacities to implement provisions in determining common policies, competition rules and economic development. Along with many other objectives, the approximation of legislation is one of the important objectives of the SAA. Kosovo must carry over an enormous part of the EU *acquis* into its national legal system. It is not only required to approximate national law to that of the EU. Enforcement is another part of the coin. To achieve this enforcement, the national legal system must be reformed. This reform is important to achieve the objectives of the SAA and to ensure that the rules on common policies, competition rules and economic development are enforced.

Additionally, the objectives of the SAA are to be achieved through strengthening institutional coordination and administrative capacities, including the human and budgetary resources to apply and enforce the law. Kosovo must also ensure, on the one hand, that citizens and businesses are informed of the new rules, and, on the other hand, that the national judiciary (public prosecutors and courts) are informed and trained to ensure the enforcement of the approximated laws. In the years to come, the process of the implementation of the SAA will be twofold. First, if Kosovo does not comply with the proper implementation of the SAA, the consequences will be enormous. They will include political pressure within and outside Kosovo. If this is the case, the bad international reputation of Kosovo will persist. This will dramatically reduce the potential for investments, and economic development will lag. Also, free trade and the likelihood of accession will be delayed for Kosovo. Second, if Kosovo complies with the SAA, the advantages include modernized legislation in line with EU standards, and, in turn, this will provide legal certainty for foreign investors, free trade, and economic development. In general, this will lead to economic and social development. The following sub-themes aim to explore the challenges and opportunities of the implementation of the SAA's provisions, which are part of EU law. Lastly, the paper offers a comprehensive recommendation for the future implementation of the SAA in the Kosovo legal system.

### **III.1. Implementation of Kosovo's obligations in respect of EU law**

In 1993, the Copenhagen European Council laid down the criteria to be met by prospective candidates for EU membership. In addition, this gave the EU itself a responsibility for ensuring that it had the capacity to absorb new members while maintaining the momentum of integration.<sup>71</sup> Furthermore, the Copenhagen criteria require the maintenance of political and economic stability. This requires a guarantee of democracy and the rule of law, and the implementation of the EU

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<sup>71</sup> Edwards, G. 2004. Reforming the Union's Institutional Framework: A New EU obligation? In: Hillion, C. (ed.) *EU Enlargement: A Legal Approach*. Hart Publishing. p.23.

*acquis*.<sup>72</sup> In simple terms, this involves an incorporation of the EU law into the national law of Kosovo. Since 2003, Kosovo has been recognized as a potential candidate for membership of the European Union.<sup>73</sup> This European perspective is expressed in every strategic document regarding the enlargement of the EU in the Western Balkans.<sup>74</sup>

There are two important approaches to be considered in order to understand the implementation of Kosovo's obligations with respect to EU law. The first is related to the normative context of the SAA provisions, and the second is related to administrative capacity (Assembly, government and judiciary).

First, regarding the normative context, the relevant provisions from the SAA in the following will serve as a point of reference for the analysis that follows. Their implementation into national law is a defining feature of EU membership. The EU law is enshrined within the body of the SAA in a number of provisions covering the different areas regulated by EU law. This is an important feature of the SAA because it stipulates that Kosovo should gradually carry over the obligations once the SAA has entered into force. The SAA establishes an adequate legal environment for the further widening of the relationship between Kosovo and the EU. In fact, the SAA is a "contractual act"<sup>75</sup> and it further aims to provide the establishment of the bilateral free-trade area with the Union and further include a chapter on political dialogue and provisions on the protection of free competition, the protection of intellectual property rights and the right of establishment. The ultimate aim is preparation for accession to the European Union. The enactment and enforcement of these rules, which are enshrined within the body of the SAA, is the subject of a basic analysis below. In general, the SAA has a set of aims. The aims of the SAA are enshrined in Article 1 of the SAA<sup>76</sup> as follows:

- (a) *to support the efforts of Kosovo to strengthen democracy and the rule of law;*
- (b) *to contribute to political, economic and institutional stability in Kosovo, as well as to the stabilisation of the region;*
- (c) *to provide an appropriate framework for political dialogue, allowing the development of close political relations between the Parties;*
- (d) *to support the efforts of Kosovo to develop its economic and international cooperation, should objective circumstances so permit, including through the approximation of its legislation to that of the EU;*
- (e) *to support the efforts of Kosovo to complete the transition into a functioning market economy;*
- (f) *to promote harmonious economic relations and gradually develop a free trade area between the EU*

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<sup>72</sup> See European Council in Copenhagen 21–22 June 1993, Conclusions of the Presidency. Para. 7A (i, ii, iii, iv) pp.12–15. Available at: <http://www.consilium.europa.eu> (Accessed: 06.08.2014).

<sup>73</sup> Para. 67 of the Conclusions of the Presidency, Santa Maria da Feira European Council, 19 and 20 June 2000. Available at [http://www.europarl.europa.eu/summits/pdf/the\\_en.pdf](http://www.europarl.europa.eu/summits/pdf/the_en.pdf) (Accessed: 24.07.2014).

<sup>74</sup> The Thessaloniki Summit in 2003 granted all countries of the Western Balkans a clear prospect of EU membership, subject to the fulfilment of the necessary conditions, including those of the stabilization and association process. Conclusions of the Presidency, Thessaloniki European Council, 19 and 20 June 2003. Bulletin 23.06.2003. pp.19–21. Available at [http://www.europarl.europa.eu/summits/pdf/the\\_en.pdf](http://www.europarl.europa.eu/summits/pdf/the_en.pdf) (Accessed: 24.07.2014).

<sup>75</sup> Lenaerts, K. and Van Nuffel, P. 2011. *European Union Law*. 3<sup>rd</sup> ed. Sweet & Maxwell. p.951.

<sup>76</sup> Article 1, SAA.

- and Kosovo;*
- (g) *to foster regional cooperation in all the fields covered by this Agreement.*

The purpose of this Article is to highlight the importance of strengthening democracy and the rule of law, economic and institutional stability, a functioning market economy, developing free trade between the EU and Kosovo and an approximation of Kosovo's legislation to that of the EU.

Regarding the approximation of Kosovo's legislation to that of the EU, the core provisions within the SAA are stated in Article 74. Understanding the wording of these provisions is very important for the future. Article 74<sup>77</sup> reads as follows:

1. *The Parties recognise the importance of the approximation of the existing legislation in Kosovo to that of the EU and of its effective implementation. Kosovo shall endeavour to ensure that its existing law and future legislation will gradually be made compatible with the EU acquis. Kosovo shall ensure that existing law and future legislation will be properly implemented and enforced.*
2. *This approximation shall start on the date of signature of this Agreement, and shall gradually extend to all the elements of the EU acquis referred to in this Agreement by the end of the transitional period defined in Article 9.*
3. *Approximation will, at an early stage, focus on fundamental elements of the EU acquis in the field of the Internal Market, and in the field of Freedom, Security and Justice, as well as on trade-related areas. At a further stage, Kosovo shall focus on the remaining parts of the EU acquis. Approximation shall be carried out on the basis of a programme to be agreed between the European Commission and Kosovo.*
4. *Kosovo shall also define, in agreement with the European Commission, the modalities for the monitoring of the implementation of approximation of legislation and law enforcement actions to be taken, including efforts by Kosovo to reform its judiciary to implement its overall legal framework.*

A literal reading of this Article leads to two approaches. First, these provisions relate to the beginning of the approximation of the laws with the EU *acquis* on the internal market, justice, freedom and security as well as on trade-related areas. Second, the approximation process is to be carried out on the basis of a national programme. This national programme means a national programme for the adoption of the EU *acquis* within Kosovo. Furthermore, the EU Commission and Kosovo are to monitor this programme.

Within the SAA, there are also provisions with a specific focus on cooperation policies in different sectors, such as:

- regarding reinforcement of institutions and rule of law, as provided in Article 83, it stipulates that:

*In their cooperation in the field of freedom, security and justice, the Parties shall attach particular importance to the consolidation of the rule of law, and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation shall notably aim at strengthening the independence, impartiality and accountability of the judiciary in Kosovo and improving its efficiency, developing adequate structures for the police, prosecutors and judges and other judicial and law enforcement bodies to adequately prepare them for cooperation in civil, commercial and criminal matters, and to enable them to effectively prevent, investigate, prosecute and*

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<sup>77</sup> Article 74, Title VI (Approximation of Kosovo's Laws to the EU *acquis*, Law Enforcement and Competition Rules), SAA.

*adjudicate organised crime, corruption and terrorism.*

The implementation of this Article requires a number of specific obligations. Kosovo must have in place appropriate institutions, management systems and administrative arrangements so as to ensure practical implementation of the *acquis* in the fields of justice, freedom and security. Such practical implementation refers to measures with respect to external border controls, asylum and immigration as well as measures to prevent and combat organized crime, terrorism and illicit drug trafficking.

- regarding cooperation policies as provided in Article 93, it stipulates that:

*The EU and Kosovo shall establish close cooperation aimed at contributing to the development and growth potential of Kosovo. Such cooperation shall strengthen existing economic links on the widest possible foundation, to the benefit of both Parties.*

To implement this Article, Kosovo must be able to implement a consistent set of reforms and policies, in accordance with that of the EU<sup>78</sup>.

From the normative aspect, Kosovo must be able to implement a consistent set of reforms and bring its institutions, management capacity, administrative and judicial system up to the EU standards with a view of implementing the *acquis* effectively.

Second, in relation to the administrative capacity (Assembly, government and judiciary) for the implementation of Kosovo's obligations in relation to EU law in the next decade, an advanced understanding of implementation is required. Fundamental legal concepts in this practice of law-making, such as direct effect, direct applicability, the supremacy of EU law, and case law, will be part of the common responsibilities of the legislature, the executive and the courts in Kosovo. These institutions will be bound to their everyday application.

Regarding the status of EU law in the national legal order in Kosovo, the Constitution is very clear. It stipulates, in Article 19(1), that, "International agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo. They are directly applied except for cases when they are not self-applicable and the application requires the promulgation of a law". It further adds, "Ratified international agreements and legally binding norms of international law have superiority over the laws of the Republic of Kosovo" (Article 19(2)). In addition to the membership of the EU, the Constitution provides that:

*The Republic of Kosovo may on the basis of ratified international agreements delegate state powers for specific matters to international organizations (Article 20(1))*

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<sup>78</sup> The cooperation policies include the following: economic and trade policy, statistical cooperation, banking, insurance and other financial services, public internal financial control and external audit, investment promotion and protection, industrial cooperation, small and medium-sized enterprises, tourism, agriculture and the agro-industrial sector, fisheries, customs, taxation, social cooperation, education and training, cultural cooperation, cooperation in the audio-visual field, information society, electronic communication networks and services, information and communication, transport, energy, environment, climate change, civil protection, research and technological development, regional and local development, public administration, financial cooperation. A thorough analysis of these cooperation policies is beyond the scope of this paper.

and

*If a membership agreement ratified by the Republic of Kosovo for its participation in an international organization explicitly contemplates the direct applicability of the norms of that organization, then the law ratifying the international agreement must be adopted by two thirds (2/3) vote of all deputies of the Assembly, and those norms have superiority over the laws of the Republic of Kosovo (Article 20 (2)).*

Legally speaking, the Constitution of Kosovo has no provisions contrary to the implementation of EU law. In addition, these provisions of the Constitution are characterized as having an “international friendly character”.<sup>79</sup> In the process of the implementation of EU law, three institutional settings, the Assembly, the executive and the judiciary, are of paramount importance. They are essential for the implementation of Kosovo’s obligations towards the EU. Preparedness for legal approximation and the role of the Assembly is crucial for the implementation of EU law. However, the heaviest burden in the approximation of the laws will be on the government (e.g. the ministries (*Alb. Ministritë*)). The Assembly could play a crucial role during the process, by harmonizing legislation through the Committee for European Integration. The Committee for European Integration is a permanent committee in the Assembly. The Committee has supervisory role of the European integration process and harmonization of legislation with the EU law. The Committee for European Integration should primarily have the following tasks:

- To discuss, in depth, general affairs concerning European integration;
- To provide opinions, recommendations and strategic papers to the working bodies during the pre-accession negotiations and after accession;
- To monitor the implementation and the harmonization of legislation with the EU *acquis*; and
- To compile information related to the EU, including monitoring the use of EU funds properly.

In performing its tasks, the Committee should succeed in performing other tasks related to European perspective of Kosovo. A failure in performance would create huge shortcomings in the implementation of Kosovo’s obligations in respect of EU law. The implementation of EU law in this way emerges from the normative rules relating to the four freedoms in the EU. The executive (the government, (*Alb. Qeveria*)) will retain additional responsibilities for preparing for the implementation of EU law, such as the extent of application of the provisions laid down in the SAA and the coordination mechanism for the national state administration. As Blockmans states, “the fulfilment of all obligations stemming from EU membership...or the SAA, forms the starting point for serious reforms of the public administration of (pre) accession and associate countries so as to facilitate adjustment to the political, economic and legal standards of the European Union”.<sup>80</sup>

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<sup>79</sup> Albi, A. 2006. Impact of European Integration on National Constitutions and Parliaments. In: Kellermann, A. E., Czuczai, J., Blockmans, S., Albi, A. and Douma, W. T. (eds.) *The Impact of EU Accession on the Legal Orders of New EU Member States and (pre-) Candidate Countries’ Hopes and Fears*. T.M.C. Asser Press. p.248.

<sup>80</sup> Blockmans, S. 2006. The Role of (Potential) Candidate Countries’ Executives. In: Kellermann, A. E., Czuczai, J., Blockmans, S., Albi, A. and Douma, W. T. (eds.) *The Impact of EU Accession on the Legal Orders of New EU Member States and (pre-)Candidate Countries’ Hopes and Fears*. T.M.C. Asser Press. p.297.

In order to streamline the mechanism of the implementation of EU law, Kosovo needs to change, to reorganize its coordination mechanism, and to remove institutions that duplicate their efforts towards foreign affairs and European integration.<sup>81</sup> The SAA would affect the judicial system in Kosovo. This is because the judiciary creates opportunities for implementation, either through establishing new rights or by changing rules and procedures because of the impact of the implementation of EU law, thereby creating a new set of rules that may become the basis for future jurisprudence in Kosovo. The new provisions will require unwavering enforcement. The term enforcement refers to the practical implementation of EU law. To sum up, within the next decade, the successful implementation of Kosovo's obligations in respect of EU law will increase the chances of accession to the EU. Kosovo must strengthen the enforcement of legislation so that the EU can accept it as a full member with absolute confidence.

#### IV. Conclusions

This paper has given a general outlook on the transformation of Kosovo from a post-communist country into a prospective candidate for membership of the EU. Kosovo is already embarking on a huge agenda for European integration. The process of European integration in Kosovo consists of stabilization, association, and accession. The SAA will be the guiding document for the future accession of Kosovo to the EU. The absorbing of the SAA in general, and the rules and principles of implementation of Kosovo's obligation in respect of EU law in particular, will be of paramount importance. The rules and principles that govern policy-making in Kosovo must gradually be transformed. In the coming years, the contributions of institutions and actors of various kinds to the development, promotion and implementation of EU law in Kosovo will be very important. The institutions that promote policy-making and European integration must be reconfigured in order to remove simultaneous approaches. Kosovo must seek to demonstrate that it has the capability for the implementation and enforcement of the provisions of the SAA, especially the rules and principles on competition law. This, in particular, implies that the Assembly, the government and the judiciary must play a part in the process of the implementation of Kosovo's obligations in respect of EU law.

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<sup>81</sup> e.g. Fusing the competencies of the Ministry of Integration within a department of the Ministry of Foreign Affairs of Kosovo and redesigning other administrative structures required for implementing the EU *acquis*. However, this topic is not covered by this paper.

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