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**REPLIES OF THE COMMISSION TO THE SPECIAL REPORT OF THE
EUROPEAN COURT OF AUDITORS**

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

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EXECUTIVE SUMMARY

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

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

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

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

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

VI.

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

The use of objective indicators and benchmarking in IPA programming will be part of the sector approach to be adopted under IPA II. Also, within the framework of the Joint Rule of Law Coordination Board, EULEX, the Commission/EU Office and Kosovo authorities are working to

benchmark the progressive phasing out of elements of the EULEX mandate so as to establish the required level of Commission involvement in follow-up and taking-over through IPA.

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

Second indent: [On coordination:]

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

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

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

[On procurement procedures:]

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

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

[EEAS: On exit strategy:]

In terms of exit strategy, the Council has defined the principle of local ownership and the cooperative approach of EULEX with Kosovo authorities. A gradual phasing-out to Kosovo authorities against demonstrated progress of the Mission's executive activities has indeed to be accompanied by an increased assistance by the Commission. As concerns the recommendation for the Commission to take over EULEX's capacity building functions, the mandate of the EU mission

is to mentor, monitor and advise the Kosovo authorities on the rule of law. EULEX also has some executive functions. The Commission will continue to monitor developments in the area of rule of law in Kosovo, and where required support and assist the Kosovo authorities, notably through IPA-financed assistance which can also be used to help further build and consolidate the Kosovo justice system.

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

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

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

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

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

INTRODUCTION

14. At the end of August 2012, the Mission had 2170 staff including 1201 international staff out of a maximum number of deployable international staff of 1250.887 are seconded.

OBSERVATIONS

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

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

23. By the time EULEX (as noted in the 2009 EULEX Programme Report) had drawn evidenced conclusions regarding the fragmented approach to intelligence gathering in Kosovo institutions. The IPA project was already progressing toward implementation. EULEX consequently is seeking to ensure that the intelligence system developed within KP Border is integrated into a single KP system, rather than an independent system isolated from central institutions. After the two projects audited by the Court, the Commission launched a new IPA project on intelligence-led policing in close coordination with and strongly supported by EULEX.

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

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

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

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

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

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

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

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

33. Kosovo currently lacks the capacity to protect key witnesses in high profile cases. Therefore, the EULEX Witness Protection Unit provides witness protection and relocation under the EULEX executive mandate. While challenges remain to find countries willing to accept relocated witnesses, it should be emphasised that several witnesses involved in high profile trials have been successfully relocated abroad. EULEX also provides Monitoring Mentoring Advice. In addition, the IPA

regional project provides complementary support to capacity development and training. A new IPA project will provide specialised technical equipment for the unit.

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

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

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

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

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

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

45. Overall, EU support (through EULEX and the Commission) has contributed to improved compliance with EU-consistent customs procedures and enhanced efficiency and performance of

Kosovo Customs, according to measurable internal data. Public perception has not yet fully recognised the progress made.

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

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

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

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

Many of these cases are still pending before the Courts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

69. The EU Office and the Mission are reviewing, ahead of the finalisation of MMA fiches and IPA projects, the respective strengths of the two types of EU assistance. Factors including timing, length of past involvement, and type of expertise required, security environment and possible linkage with

the EULEX executive mandate will be taken into account to ensure that priorities are addressed through a coordinated approach.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87. Following the Mission's extension in June 2012 until June 2014, and its related re-structuring, the maximum deployable international staff has been reduced to 1250, with now on average 1200 staff deployed. The shortcomings in force generation have been acknowledged and the Council has authorised an increase of the contracted staff ceiling to remedy, in part, the situation.

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

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

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

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

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

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

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

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

96.

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

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

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

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

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

97. In the framework of the SAP dialogue, there is one sectoral (technical) rule of law meeting. Rule of law issues also feature on the agenda of the annual SAPD plenary meeting, which highlights key issues of concern at the top-political level. In addition to the Structured Dialogue on the rule of law, the Commission uses leverage through other rule of law relevant initiatives, such as the visa liberalisation dialogue, which also takes place at senior official level, and the feasibility study, so as to create incentives for Kosovo to focus on strengthening the rule of law. For all these dialogues and initiatives there is a strong cooperation with EULEX, who provide input and are actively involved in the meetings and initiatives

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

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

CONCLUSIONS AND RECOMMENDATIONS

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

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

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

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

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

106. As regards coordination with EULEX, EUSR, and the US, the Court's report reflects the challenges involved in coordinating different entities at the start of their respective mandates. The

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

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

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

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

Recommendation 1: The Commission and the EEAS accept the Court's recommendation and have already acted upon it.

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

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

Recommendation 2: [On coordination:]

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

following Kosovo's declaration of independence marked a period in which third parties, including EU Member States, transformed and strengthened their presence in Kosovo.

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

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

[On procurement procedures:]

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

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

[EEAS On exit strategy:]

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

Recommendation 3: EEAS agrees that this area would benefit from continued cooperation by Member States and has worked to address this issue. Systematic "force sensing exercises" are being launched before deployment or significant restructuring as a tool to measure a mission's predicted need for resources and scope of deployment.

Recommendation 4: The Commission and EEAS agree that future CSDP missions would benefit from having a legal personality.

The Commission has raised this issue in its recent communication on the financial management of the CSDP missions to Council and as a result the concept of legal personality for CFSP missions is

under discussion. A joint Commission/EEAS working group is examining how it could be implemented.

Recommendation 5: The Commission and the EEAS accept the recommendation as it is essential that in an environment of increasing financial and staffing constraints its operational staff is mobilised in an effective and efficient manner so as to adequately reflect its priorities and the workload involved in addressing them. The benchmarking referred to above should help facilitate the Commission's allocation of resources to policy objectives.

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