

Isolation Confirmed

**How the EU is undermining
its interests in Kosovo**



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Executive Summary

This report highlights the discriminatory treatment of Kosovars – whether they are Kosovo Albanians, Kosovo Serbs, Kosovo Roma, Kosovo Bosniaks, or Kosovo Ashkali and Egyptians – by the European Union in the context of the EU's visa policy.

The first step in this treatment was the specific solution the EU insisted on for Kosovars holding Serbian passports (as they are allowed to do under the provisions of the Ahtisaari Plan and the Kosovo constitution): Kosovo residents, regardless of their ethnicity, can only receive a Serbian passport from a special directorate of the Serbian Interior Ministry. But passports issued by this directorate are excluded from visa-free travel to the Schengen area. The second step was withholding until today a normal visa roadmap from Kosovo, as it has been given to all other countries. The recent declaration that Kosovo is not ready yet even to have the very basic first step, what the EU calls a “visa dialogue”, because, in the words of Commissioner Malmstrom, it “is not ready” was a huge disappointment for pro-European forces in Pristina. It makes little sense for the EU to have a “visa dialogue” with Russia, Ukraine and Moldova but not also with this small Balkan state.

This discriminatory treatment is not only a problem for citizens of Kosovo but also undermines the interests of the European Union. It undermines the EU's efforts to promote much needed institution building in Pristina. It weakens the position of pro-European reformers in Kosovo. It makes it less likely that the most ambitious rule of law missions in the EU's history, EULEX, will be as successful as it could be. It makes it more difficult to create the conditions in Kosovo which would allow EU member states to repatriate thousands of illegal Kosovo residents without meeting loud criticism from international organisations and NGOs. Current EU policy preserves rather than changes a problematic status quo in which Kosovars are the fifth largest group of nationals requesting asylum across the EU today, despite the existing visa requirement. It also undermines the EU's leverage when it comes to moderating in the upcoming dialogue between Belgrade and Pristina.

Decision-makers in EU member states and in EU institutions are obviously justified not only to ask tough *questions* about Kosovo's institutions but also to demand far-reaching *reforms* before any visa liberalisation can be granted. This is the basic rationale behind the roadmap process: to demand tough reforms in return for access to the EU. Visa liberalisation must also be in the EU's own security interest. This is the reason so many current and former foreign and interior ministers throughout Europe – as well as the vast majority of members of the European Parliament – have come out so strongly in favour of the roadmap process for the Balkans.

The Commission has neither opened a visa dialogue with Kosovo, nor has it presented a roadmap or any document listing what Kosovo needs to do to be granted visa-free travel. Kosovars still have to go through a cumbersome, stressful and often expensive visa application procedure to visit any EU country – and there is no clear prospect that this will change any time soon. There is no reason, however, that the same logic which applies to Macedonians, Montenegrins and Serbians should not apply to Kosovars.

This paper explores what has happened in the last twelve months in detail. It argues that the EU has demanded things from Kosovo to be allowed to start a visa liberalisation process than it had not demanded from all other Western Balkan countries. Importantly, our analysis shows that in fact Kosovo has met even those additional demands. Nevertheless, it is still kept out in the cold.

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I. INTRODCUTION: KOSOVO'S ISOLATION 2009 AND TODAY

In November 2009 ESI published a report on Kosovo and visa-free travel to the EU.¹ We noted that Kosovo was the most isolated place on earth, its citizens able to travel to only five countries without a visa: neighbouring Albania, Macedonia and Montenegro, Turkey and Haiti. Although the European Commission had proposed to start a visa liberalisation process with Kosovo in October 2009, strong doubts remained whether it would apply the same conditions to Kosovo as it had to the other Western Balkan countries. We suggested that the EU follow the recommendation of the European Parliament:

“... The Commission, within the limits of its competence and in the light of UN Security Council Resolution 1244 (1999), should start a visa dialogue with Kosovo with a view to establishing a roadmap for visa facilitation and liberalisation similar to those established with Western Balkan countries.”²

One year has since passed. For the five Western Balkan countries, it was a year of remarkable progress. Serbia, Macedonia and Montenegro obtained visa-free travel to the Schengen countries in December 2009. Albania and Bosnia will follow in December 2010. In 2008 each of these countries was offered a so-called “visa dialogue” followed by a “roadmap” towards visa-free travel. The visa roadmaps all looked more or less the same.³ They set out close to 50 demanding conditions in areas like document security, border control and the fight against illegal migration, organised crime and corruption. Together with experts from the EU member states, the Commission regularly assessed each country’s progress until the conditions were met.⁴

The process proved to be a tremendous success. All the countries involved carried out a large number of reforms. Only two years ago, there was talk of a Western Balkan visa ghetto. Yet by the end of 2010 all the citizens of the Balkans – Bulgarians and Romanians, Serbians and Croatians, Albanians, Macedonians, Bosnians, Montenegrins, some 50 million people in total – will be able to travel to the EU without a visa.

There is one glaring exception to this success story, however: Kosovo and its 2 million inhabitants. While the citizens of Serbia can now travel to 88 countries without a visa, Kosovars are as isolated now as they were twelve months ago.⁵

¹ ESI, *Isolating Kosovo? Kosovo vs. Afghanistan* 5:22, 19 November 2010, http://www.esiweb.org/pdf/esi_document_id_111.pdf.

² European Parliament, *European Parliament legislative resolution of 12 November 2009 on the proposal for a Council regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement* (European Parliament opinion on visa-free travel for Macedonia, Montenegro and Serbia), rapporteur: Tanja Fajon, 12 November 2009, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2009-0062+0+DOC+PDF+V0//EN>.

³ ESI visa website, *The Roadmaps*, at <http://www.esiweb.org/index.php?lang=en&id=352>.

⁴ ESI visa website, *Progress Assessments by the European Commission*, <http://www.esiweb.org/index.php?lang=en&id=353>.

⁵ Please note that *Henley and Partners Visa Restriction Index, Global Ranking 2010* (http://www.henleyglobal.com/fileadmin/pdfs/content/hvri2010_globalRanking.pdf) shows data on Kosovo for the first time and they point out that Kosovo citizens can travel to 37 countries visa free. This is simply a mistake. For more on this please see: ESI, *Isolating Kosovo? Kosovo vs. Afghanistan* 5:22, 19 November 2010, http://www.esiweb.org/pdf/esi_document_id_111.pdf.

II. THE ELUSIVE *VISA DIALOGUE*

The European Commission started a visa dialogue with Serbia on 30 January 2008. Within the next few months, it opened visa dialogues with Albania, Bosnia-Herzegovina, Montenegro and Macedonia. By 5 June 2008, the five countries had also all received visa roadmaps that set out the specific requirements they had to fulfil to be granted visa-free travel.⁶ Prior to the visa dialogues, all five countries had negotiated readmission agreements with the EU. (A readmission agreement makes it possible to deport illegal migrants back to the country from which they came.) These entered into force in January 2008. The EU had repeatedly stressed that this was the first step towards the abolishment of the visa requirement.

The first country with which the European Commission decided to launch a visa dialogue was Russia, back in April 2007. The Commission then launched a visa dialogue with Ukraine in September 2008. Since June 2010, the EU has also had a visa dialogue with Moldavia. In Kosovo's case, there is no visa dialogue in place, however, let alone a visa roadmap. This is hard to justify.

The European Commission and Kosovo have communicated intensively about visa issues since autumn 2009. In October 2009, almost two years after launching the visa liberalisation process with the other five Western Balkan states, the European Commission declared:

“Kosovo citizens need to share further in the benefits of EU approximation, including the possibility to travel visa-free in the EU.”⁷

It also stressed that this required meeting certain conditions, as to address the concerns of EU member states:

“This is only possible if Kosovo can ensure that relevant reforms are implemented and rules and procedures are respected so as to minimise the associated security risks for EU Member States.”⁸

The Commission set out some of these conditions, beginning with the issue of readmission. This was a fair demand: Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia, but also Russia, Ukraine and Moldova, all had readmission agreements with the EU before visa dialogues were opened. In the case of Kosovo, however, the Commission's policy paper also mentioned additional conditions concerning reintegration, border security and civil registries and documents.⁹

“The starting point for these reforms is properly functioning readmission arrangements. Kosovo needs to adapt its legislation, strengthen its administrative capacity to process readmission requests and implement an effective reintegration strategy [of people sent back by EU member states]. It also needs to enhance the security of its borders and secure the management of civil registries and the issuance of documents. The Commission proposes to move forward with a structured approach to bring Kosovo's citizens closer to

⁶ ESI visa website, *Chronology*, at <http://www.esiweb.org/index.php?lang=en&id=350>.

⁷ Communication from the Commission to the European Parliament and the Council, *Kosovo – Fulfilling its European Perspective*, COM (2009)5343, 14 October 2009, http://ec.europa.eu/enlargement/pdf/key_documents/2009/kosovo_study_en.pdf.

⁸ *Ibid.*

⁹ *Ibid.*

the EU through a visa dialogue with the perspective of eventual visa liberalisation when the necessary reforms will have been undertaken.”¹⁰

However, it was not clear at which stage all these conditions would have to be met: before the visa dialogue, or afterwards as part of the visa liberalisation process? In the case of the other Western Balkan countries, these conditions had to be met as part of the roadmap implementation process.

In December 2009, the General Affairs Council of the EU, which brings together the EU’s foreign ministers, agreed in a carefully formulated statement

“that Kosovo should also benefit from the perspective of eventual visa liberalization (without prejudice to Member States’ positions on status) once all conditions are met and invites the Commission to move forward with a structured approach to bring the people of Kosovo closer to the EU.”¹¹

This formulation again did not make it clear either at which stage Kosovo would have to meet “all” the conditions. The only promise was of a “perspective of eventual visa liberalization”. The visa dialogue proposed by the Commission was not even mentioned.

In January 2010, officials of the European Commission and the Kosovo government met within the framework of the Stabilisation and Association Process Dialogue (SAPD) to discuss “justice, freedom and security”.¹² Some 120 specific reforms were tackled and listed in the conclusions. Progress on all the issues “will also be crucial on the path towards the visa liberalisation dialogue,” the Commission declared in its official conclusions. Privately, it recommended to the Kosovars that they concentrate on readmission, reintegration and the reform of its civil registry system.

Kosovars hoped that this intense discussion was the beginning of the visa dialogue. The Commission insisted that it was not. “The SAP Dialogue is not to be mistaken with the process of visa liberalisation dialogue which has not started yet,” it announced in a press release published after the meeting.¹³

Three months later, in April 2010, the European Commission Liaison Office (ECLO) in Kosovo produced a follow up document: a “fact sheet” on visa liberalisation. This was the first time that a written document clearly stated that Kosovo had to meet pre-conditions for the launch of the visa dialogue (while wrongly claiming that reintegration had also been a precondition for the other five countries):

“Like for the five countries of the Western Balkans which started the visa liberalisation dialogue in early 2008, in particular sound readmission and reintegration policies are required before a visa liberalisation dialogue could start. There are many other challenges for Kosovo, including security of documents, border and migration management, protection of personal data and results in the fight against organised crime and corruption.

¹⁰ *Ibid.*

¹¹ Council of the European Union, General Affairs, 7 and 8 December 2010, http://www.consiliium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/112480.pdf.

¹² This is a “status neutral” process for Kosovo that is modelled on the Stabilisation and Association Process (SAP).

¹³ European Commission Liaison Office (ECLO) in Kosovo, *Press Release: First SAP Dialogue meeting on justice, freedom and security*, 28 January 2010, <http://www.delpm.ec.europa.eu/?cid=2,103,729>.

Once the European Commission judges the situation satisfactory, it will decide to launch a visa liberalisation dialogue with Kosovo and develop a strategy.”¹⁴

The Commission still insists that all of this official communication did not amount to a visa dialogue.

So when would a “real” visa dialogue begin? In early July, during another meeting (the first annual SAP Dialogue meeting) with EU Commission officials in Pristina, Balkan Enlargement Director Pierre Mirel announced that he expected the dialogue on liberalisation to start in September. The next day all major Kosovar dailies reported the encouraging news:

“Concrete progress of Kosovo in many of the issues we discussed today will enable the EU to push ahead the proposals we made last year, in particular the start of the visa liberalization dialogue,” Mirel said.”¹⁵

September came and went. The visa dialogue did not start. Finally, on 6 October 2010, Home Affairs Commissioner Cecilia Malmstrom spoke in the European Parliament. Announcing that Bosnia and Albania had met the benchmarks for visa-free travel to the Schengen countries, she also explained:

“Kosovo is not forgotten. Kosovo is of course also a very important partner in this. They have made a lot of progress but still, in order to be credible, the Commission has to watch over all the benchmarks and all the conditions if we want to have a credibility and legitimacy for this process. And *Kosovo is not ready*.”¹⁶

III. WHAT KOSOVO HAS DONE

A. *Readmission*

We have already noted that *all other countries* started their visa dialogue with the EU only after resolving the issue of readmission. For them, this was the sole precondition.

In the case of Kosovo, readmission used to be handled by the United Nations Interim Administration Mission in Kosovo (UNMIK) until November 2008, when the Kosovo government took over. Even before it signed any readmission agreements with EU member states, Kosovo took back thousands of forced returnees per year.¹⁷ In its progress report, the

¹⁴ European Commission Liaison Office in Kosovo, *Fact Sheet: Toward a Visa Liberalisation dialogue with Kosovo*, http://www.delpm.ec.europa.eu/repository/docs/Visa_Liberalisation_Fact_Sheet_-_ENG.pdf.

¹⁵ UNMIK, *Media Monitoring*, 7 July 2010, www.unmikonline.org.

¹⁶ European Parliament, Debate on visa-free travel for Albania and Bosnia-Herzegovina, 6 October 2010, <http://www.europarl.europa.eu/wps-europarl-internet/frd/vod/player?date=20101006&language=en>.

¹⁷ The Kosovo government took back 2,550 forced returnees in 2008 and 2,962 in 2009. In previous years, the numbers were: 3,554 (2005); 3,569 (2006); 3,219 (2007). UNHCR data quoted in OSCE Mission in Kosovo, *Implementation of the Strategy for Reintegration of Repatriated Persons in Kosovo's Municipalities*, November 2009, p. 4, http://www.osce.org/documents/mik/2009/11/41281_en.pdf, and in Amnesty International, *Not welcome anywhere. Stop the forced return of Roma to Kosovo*, 27 September 2010, p. 16, <http://www.amnesty.org/en/library/asset/EUR70/011/2010/en/f4d99ef1-725a-462f-81f3-e413083a4228/eur700112010en.pdf>. Latest figure from UNHCR in Pristina: ESI/UNHCR email communication on 15 November 2010.

Commission commended the Kosovo government for dealing with readmission agreements from European countries “in an efficient way”.¹⁸

From Germany alone, 21,852 persons were forcefully repatriated between 1999 and mid-2009 (in addition to 92,240 voluntary returns).¹⁹ After it took charge, the Kosovo government remained open to readmission, rarely refusing a repatriation request. Of the 1,580 requests made by Germany between 1 January and 31 August 2009, Kosovo accepted 1,553, while rejecting only 27.²⁰ In its progress report, the Commission commended the Kosovo government for dealing with readmission agreements from European countries “in an efficient way.”²¹

In parallel, Kosovo concluded bilateral readmission agreements with all interested countries: Albania (October 2009), Belgium (October 2009), France (December 2009), Macedonia (December 2009), Switzerland (February 2010), Germany (April 2010), Denmark (June 2010), Norway (October 2010) and Austria (September 2010). Agreements with Luxembourg, the Netherlands, the Czech Republic, Hungary and Slovenia are being negotiated at the time of writing. Negotiations with Sweden and Italy are due to start soon.²²

In addition, on 25 June 2010 Kosovo adopted a Law on Readmission, as requested by the Commission, which covers all EU countries that will not sign bilateral readmission agreements with Kosovo. The new law obliges Kosovo to take back citizens found to be residing in an EU country illegally, as well as third-country nationals proven to have entered the EU via Kosovo. In its progress report the Commission noted that the law “broadly meets EU requirements”.²³

However, this turned out not to be enough to receive a visa dialogue. Instead, the Commission decided to insist on additional pre-conditions, which had not been applied to any of the other countries. In a joint letter to the Kosovo Prime Minister in May 2010, Home Affairs Commissioner Cecilia Malmstrom and Enlargement Commissioner Stefan Fule wrote:

“... before a visa dialogue can begin and a visa strategy can be drafted, Kosovo has to adapt its legislation on readmission, strengthen its administrative capacity to process readmission requests and implement an effective reintegration strategy. In addition Kosovo also needs to enhance the security of borders and secure the management of civil registries and the issuance of documents.”²⁴

¹⁸ European Commission, *Kosovo 2010 Progress Report*, SEC (2010)1329, 9 November 2010, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf.

¹⁹ Deutscher Bundestag, *Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Sevim Dagdelen, Kersten Naumann, Jörn Wunderlich und der Fraktion DIE LINKE, Abschiebungen in das Kosovo*, Drucksache 16/14129, 12 October 2009, <http://dip21.bundestag.de/dip21/btd/16/141/1614129.pdf>.

²⁰ *Ibid.*

²¹ European Commission, *Kosovo 2010 Progress Report*, Brussels SEC (2010)1329, 9 November 2010, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf.

²² Government of Kosovo, *Visa Liberalization Report*, October 2010, http://www.mpb-ks.org/repository/docs/Raporti_per_liberalizim_te_vizave%20ENG.pdf.

²³ European Commission, *Kosovo 2010 Progress Report*, SEC (2010)1329, Brussels, 9 November 2010, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf.

²⁴ Letter by Home Affairs Commissioner Cecilia Malmstrom and Enlargement Commissioner Stefan Fule to Kosovo Prime Minister Hashim Thaci, 5 May 2010.

B. Border security

Among the pre-conditions specific to Kosovo, which Commissioners Malmstrom and Fule mentioned in their letter of 5 May 2010, was to “enhance the security of borders”.²⁵ A large EULEX mission, on the ground since 2008, has a specific mandate to help the Kosovo authorities in the field of border security. The EU and Kosovo’s neighbours have an obvious interest in making sure that the country’s borders are well managed. Improving border controls and implementing integrated border management (IBM) is also a key prerequisite for visa liberalisation.

Kosovo has 605 kilometres of borders. Until recently these were entirely controlled by KFOR, an international military force. On 28 April 2010, the Kosovo Border Police took over responsibility from KFOR for the surveillance of the border with Albania. 127 new officers were recruited.²⁶ The Border Police is currently hiring new staff in preparation for the handover of the border with Macedonia.²⁷ The border with Montenegro, still in the process of being demarcated, continues to be patrolled jointly with KFOR. With the new recruits, the Border Police will have around 1,200 staff. As Kosovo takes over responsibility for the control of all of its borders, 400 more border officers are expected to be hired in the near future.

Responsibility for Kosovo’s 15 border *crossing points* has been handed over to the Kosovo border police, except around Mitrovica, the Serb-majority enclave north of the Ibar River where the Kosovo government has only very limited presence and authority. The border on the Kosovar side is controlled by KFOR, while the two border crossings (Gates 1 and D31) are controlled by EULEX. Since Serbia considers Kosovo to be part of its territory, the Serbian side of the border is not controlled by regular Serbian border police, but by Serbian police. This is certainly the most problematic border for both Kosovo and Serbia. However, in the case of Serbia the EU did not consider this an obstacle to grant visa-free travel.

Except for a few regulations, most of the necessary legislation is now in place. The management structures for Integrated Border Management have been established. Cooperation between the different agencies operating at the border – border police, customs, food and veterinary service – has begun.²⁸ A joint operational centre between the police and customs has been opened. Joint risk assessment procedures have been drafted. The border police and the customs service have carried out a number of joint operations. Initiatives to share equipment and infrastructure are in place. Joint border police-customs-veterinary service facilities have been opened at two of Kosovo’s 15 border crossing points.

Communications infrastructure linking the different border crossings with each other and with the centre has also improved. Kosovo’s Border Police have signed memoranda of understanding with all neighbouring countries except Serbia. Kosovo’s customs service has signed cooperation and assistance agreements with Albania, Montenegro,²⁹ France, Turkey

²⁵ European Commission, *Communication from the Commission to the European Parliament and the Council, Kosovo – Fulfilling its European Perspective*, 14 October 2009, http://ec.europa.eu/enlargement/pdf/key_documents/2009/kosovo_study_en.pdf.

²⁶ EULEX, *Programme Report 2010*, p. 8, <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf>.

²⁷ Interview with Ahmet Nuredini, Acting Chief for Liaison with International and Local Agencies, Border Police, Kosovo Ministry of the Interior, Pristina, 24 August 2010.

²⁸ EULEX, *Programme Report 2010*, p. 11.

²⁹ *Ibid.*, p. 60.

and Finland.³⁰ Regular meetings are held with Macedonian, Montenegrin and Albanian counterparts.

Many problems remain. As the Commission notes in its 2010 progress report, “Kosovo is at an early stage of addressing the challenges of integrated border management.”³¹ So far, however, the government has shown visible commitment to improving border control and border management. As the Commission acknowledges, “Kosovo has made some progress” in the field.³²

C. *Civil registries*

The Malmstrom/Fuele letter mentions an additional precondition: the issue of civil registries and documents:

“Kosovo also needs to enhance the security of its borders *and secure the management of civil registries and the issuance of documents.*”³³

When the Serbian administration and army withdrew from Kosovo following the end of the 1999 war, an estimated 70 percent of registry books were either taken to Serbia or destroyed. In 2000, UNMIK started to register the population anew and to reconstruct the birth, death and marriage books. This registration process was fraught with difficulties: many displaced residents had lost their Yugoslav IDs and birth certificates. Registration of minorities proved to be particularly difficult.³⁴ The haste with which the UNMIK-led registration process was conducted produced doubts about its integrity.

In the meantime, a high number of old duplicate/backup books (some 80 percent of the original ones) have been found. These are now used as originals.³⁵ The re-construction of the missing civil status books is also well under way. The process involves the use of supporting documents – old ID backups, birth and marriage certificates and files, social welfare receipts and other documents held by municipal archives or private citizens.³⁶

To date, about 80 percent of the data in registry books has been digitalised. The rest is expected to be digitalised by the end of the year. Over 250 people have been hired to scan all registry books and to double-check the digitalised data. At the central registry, all staff have unique usernames and passwords with a trail documenting their activities on the system. The Commission has acknowledged that “progress has been achieved.”³⁷ The Kosovo government,

³⁰ Government of Kosovo, Office of National Coordinator, *Strategy on IBM: Progress report January-June 2010*, prepared for presentation in Brussels, June 2010.

³¹ European Commission, *Kosovo 2010 Progress Report*, SEC (2010)1329, Brussels, 9 November 2010, p. 50, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf.

³² *Ibid.*

³³ Letter by Home Affairs Commissioner Cecilia Malmstrom and Enlargement Commissioner Stefan Fule to Kosovo Prime Minister Hashim Thaci, 5 May 2010.

³⁴ UNMIK, *UNMIK’s achievement in the area of civil registration: Press Release*, 26 December 2007, [http://www.unmikonline.org/DPI/PressRelease.nsf/0/FCF00EFE616C14D0C12573BD003BDD4B/\\$FILE/pr1717.pdf](http://www.unmikonline.org/DPI/PressRelease.nsf/0/FCF00EFE616C14D0C12573BD003BDD4B/$FILE/pr1717.pdf)

³⁵ Government of Kosovo, Ministry of Internal Affairs, Civil Registration Agency, *Assessment of the Municipal Civil Status Offices MCSC and Municipal Civil Registration Offices MCRC – With conclusions and recommendations*, September 2010, p. 61.

³⁶ *Ibid.*, p. 60.

³⁷ European Commission, *Kosovo 2010 Progress Report*, p. 50.

supported by EULEX, has also taken measures to increase the security of private data and its distribution.

Between June and August 2010, the Kosovo Ministry of the Interior and EULEX scrutinised in a joint effort all stages of the process of document issuance, looking at the 255 offices responsible for distributing documents ranging from birth and marriage certificates to passports. Based on the findings, some steps were immediately taken to improve the security of these processes; further measures will be outlined in an action plan. Almost all offices now have access to electronic databases.

Most of the required laws have been passed, while the important Law on Civil Status is expected soon. The Law on the Classification of Documents and Security Clearance³⁸ (regulating the classification of documents and clearance for public servants who handle them) is now before the parliament.

The Commission recognises in its progress reports that “Kosovo passports, identification cards and civil status documents have high technical security standards.”³⁹ At the same time, it identifies deficiencies in the quality of civil status data, security and control over the collection of civil status data, and issuance of civil status documents. Still, the Kosovo government has shown that it is committed to addressing these deficiencies and is making good progress.

D. Reintegration

Kosovo first adopted a Strategy for the Reintegration of Repatriated Persons in October 2007, followed by an action plan in early 2008. The document foresaw several levels of assistance – from temporary accommodation to medical care – for forced returnees. It divided responsibilities between different ministries and municipalities. The latter were to register the returnees, and provide them with assistance in accessing health care, education, social welfare and employment, as well as the repossession of property.

However, not much of this materialised. In November 2009, the OSCE reported “a general lack of awareness among relevant local authorities of their roles and responsibilities vis-à-vis repatriated persons.” The funds necessary for the implementation of the strategy, it found, had not been made available. It also complained that “concrete measures to facilitate the reintegration of repatriated persons in the key areas of health, education, employment and housing are still lacking.”⁴⁰ Its report concluded:

“The lack of assistance they face in the areas of housing, schooling, and economic opportunities often involves serious reintegration problems for individuals and families, in particular persons belonging to non-majority communities.”⁴¹

³⁸ Draft Law on the Classification of Documents and Security Clearance <http://www.assembly-kosova.org/?cid=2,194,130>.

³⁹ European Commission, *Kosovo 2010 Progress Report*, p. 50.

⁴⁰ OSCE Mission in Kosovo, *Implementation of the Strategy for Reintegration of Repatriated Persons in Kosovo's Municipalities*, November 2009, http://www.osce.org/documents/mik/2009/11/41281_en.pdf.

⁴¹ *Ibid.*

It was only in 2010 that the Kosovo government began to work seriously on reintegration. For Kosovo to obtain a visa dialogue and a visa strategy, Commissioners Malmstrom and Fule demanded that Kosovo “implement an *effective* reintegration strategy”.⁴²

The government first conducted an assessment identifying the exact problems with the implementation of the 2007 reintegration strategy.⁴³ These were found to include insufficient cooperation among Kosovo institutions; the lack of staff to welcome the returnees upon their arrival at border crossing points and help them once they settled down (at the municipal level returned persons were not even registered); and the absence of a coherent plan to enrol repatriated children who did not speak any of the languages used in Kosovo schools. Most strikingly, as the OSCE had pointed out, the government had failed to allocate funds for reintegration.

Based on this study, which the European Commission described as “a thorough assessment of gaps,”⁴⁴ the initial reintegration strategy was revised. A new one was adopted by the government on 25 June 2010. A month later the government also adopted an action plan. Both were approved by the parliament in October 2010. A budget of 500,000 Euro was allocated for the implementation of the strategy for the remainder of 2010. For years 2011 and onwards, 3.5 million Euro per year are earmarked.⁴⁵ In light of Kosovo’s dire economic and fiscal situation, this was a significant amount. In its 2010 progress report, the Commission assessed the action plan as “a good basis for improvement in this area.”⁴⁶

Implementation has already begun. By now every municipality has designated an officer responsible for the reintegration of repatriated persons. The government, in cooperation with the OSCE, trained these officers in June-July 2010.⁴⁷ Special booklets were drawn up explaining the officers’ roles and tasks in the reintegration process. In addition, information brochures for returnees have been drafted in Albanian, Serbian, English, German and French. The government has adopted a bylaw for the management of a Reintegration Fund. A task force is currently drafting the criteria under which returnees will be able to benefit from the fund.⁴⁸

Does all this mean that “an effective reintegration strategy” has been “implemented”, as the European Commission has demanded? In its progress report, the Commission cautions that “reintegration remains a challenge and further efforts by Kosovo authorities are needed.”⁴⁹ This is certainly true. But is this a good enough reason to deny Kosovo the immediate launch of a visa dialogue as well as a roadmap similar to those awarded to its neighbours?

⁴² Letter by Home Affairs Commissioner Cecilia Malmstrom and Enlargement Commissioner Stefan Fule to Kosovo Prime Minister Hashim Thaci, 5 May 2010.

⁴³ Kosovo Government, Ministry of Internal Affairs, *Assessment of the Mechanisms for Reintegration of Repatriated Persons*, April 2010, p. 9, http://www.esiweb.org/pdf/schengen_white_list_project-final_assessment_of_mechanism_for_reintegration_of_repatriated_persons.pdf.

⁴⁴ European Commission, *Kosovo 2010 Progress Report*, Brussels SEC (2010)1329, 9 November 2010, p. 51, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf.

⁴⁵ Government of Kosovo, *Visa Liberalization Report*, October 2010, http://www.mpb-ks.org/repository/docs/Raporti_per_liberalizim_te_vizave%20ENG.pdf.

⁴⁶ European Commission, *Kosovo 2010 Progress Report*.

⁴⁷ Government of Kosovo, *Visa Liberalization Report*, October 2010.

⁴⁸ Government of Kosovo, *Action Plan: Implementing the Strategy for the Reintegration of Repatriated persons*, July 2010.

⁴⁹ European Commission, *Kosovo 2010 Progress Report*.

ESI has closely examined 16 Commission progress assessments of the other five Western Balkan countries. We also looked at more than 50 reports by member state experts (which informed the Commission's assessments). In the assessments, as a rule, the Commission considers a strategy as having been "implemented" when the following has taken place: an action plan has been adopted; all bylaws have been passed; the necessary human and financial resources have been allocated; and implementation of the various activities is progressing well. By this definition, Kosovo has made the grade.

IV. WHY WILL KOSOVO NOT GET A ROADMAP?

The Commission Enlargement Strategy Paper 2010-2010, published on 9 November 2010, suggests that a visa dialogue with Kosovo is imminent.

"The Commission welcomes the recent progress Kosovo made in adopting the legislation on readmission, in devising an Action Plan on reintegration of returnees underpinned with earmarked resources. Subject to its continued implementation, the Commission is committed to launch a visa liberalisation dialogue shortly."⁵⁰

This will obviously be an overdue step forward. But it will not be enough.

In the case of the Western Balkan countries, it had taken roughly three months between the opening of a visa dialogue and the presentation of a roadmap. However, this sequence of events cannot be taken for granted. Russia has had a visa dialogue with the EU since 2007. Three years later, Russia still has no roadmap, nor even a promise thereof.

In its Communication of October 2009, the Commission had announced that instead of a roadmap Kosovo will receive a sui generis "comprehensive strategy":

"The Commission proposes to move forward with a structured approach to bring Kosovo's citizens closer to the EU through a visa dialogue with the perspective of eventual visa liberalisation when the necessary reforms will have been undertaken. Based on a thorough assessment the Commission proposes to draft a comprehensive strategy to guide Kosovo's efforts to meet the EU's requirements for visa liberalisation. This strategy will set benchmarks to measure Kosovo's progress in the context of a visa dialogue and will be presented to the Council for information."⁵¹

Does it matter that the term "roadmap" is not used? Unfortunately (and despite Commission officials' assurances to the contrary) it does. There are reasons for Kosovo politicians to worry. In the EU, such small distinctions matter. To give a concrete example: on 12 May 2010, the European Commission issued a Communication concerning its visa policies towards its eastern neighbours.

"The Commission ... intends to propose the following measures: *roadmaps to a visa-free regime* for short stays with Ukraine, with which the EU already carries out a visa

⁵⁰ European Commission, *Enlargement Strategy and Main Challenges 2010-2011*, 9 November 2010, p. 23, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/strategy_paper_2010_en.pdf.

⁵¹ *Communication from the Commission to the European Parliament and the Council, Kosovo – Fulfilling its European Perspective*, COM (2009)5343, 14 October 2009, p. 6, http://ec.europa.eu/enlargement/pdf/key_documents/2009/kosovo_study_en.pdf.

dialogue, and Moldova, with which such a dialogue is set to start soon. Progress will depend on fulfilment of all the necessary conditions.”⁵²

The explicit mention of “roadmaps” for visa-free travel was welcomed by leaders in Ukraine and Moldova. It also triggered immediate intense debate within the EU. A number of important member states, led by Germany, responded with dismay. As a Polish think tank explains, Germany was in no hurry to move towards visa-free travel with the EU’s eastern neighbours:

“In the EU dialogue with the partner countries, German diplomacy tries to prevent the use of any statements that could suggest that this goal is feasible in the near future. Instead, Germany prefers to use terms like ‘long term’ and ‘gradual’. It also opposes the introduction of any ‘road maps’, which they perceive as the EU’s legal commitment to introduce a visa free regime, once the given country fulfils the criteria laid down by the EU.”⁵³

These pressures produced a result. The Commission dropped all references to “roadmaps” for Ukraine and Moldova. The 9 June 2010 conclusions of an EU/Ukraine ministerial meeting introduced a new term. Instead of a “roadmap”, they referred to an “action plan”.

“The Parties endorsed the Senior Officials’ recommendations to enter into a fully operational phase of the *visa dialogue* on the basis of an *Action Plan* setting out all technical conditions to be met by Ukraine before the possible establishment of a visa-free travel regime.”⁵⁴

The fact that member states fought to remove the word “roadmap” makes it clear that there is something at stake. Terminology matters. As far as those who ultimately count most – EU member states and EU officials – are concerned, an “action plan” or a “comprehensive strategy” does not entail the same commitment as a “roadmap”.

History also matters. Until 2007 the EU had not been serious about visa liberalisation in the rest of the Balkans. In 2003, during a summit with Balkan leaders, the EU promised the Western Balkan countries talks with the European Commission on the necessary reforms. Nothing came of this. In November 2007, however, the EU changed its approach and introduced the “roadmap” concept for the first time:

“The Commission considers that it is now time to gradually move towards visa liberalisation with the Western Balkan countries through further concrete steps. To that end the Commission proposes to open a dialogue with each of the countries concerned with a view to establishing a road-map on the conditions to be met.”⁵⁵

It also explained what this meant:

⁵² Commission Communication, *Taking stock of the European Neighbourhood Policy*, 12 May 2010, COM (2010) 207, http://ec.europa.eu/world/enp/pdf/progress2010/com10_207_en.pdf.

⁵³ Justyna Gotkowska, *Germany and the Eastern Partnership*, Centre for Eastern Study (OSW), 18 June 2010, <http://www.osw.waw.pl/en/publikacje/osw-commentary/2010-06-18/germany-and-eastern-partnership>.

⁵⁴ Ministerial Meeting on Justice, Freedom, Security between Ukraine and the EU, Conclusions, Brussels, 9 June 2010.

⁵⁵ Commission Communication, *Enlargement Strategy and Main Challenges 2007-2008*, 6 November 2007, http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/strategy_paper_en.pdf.

“Such road-maps will allow the countries concerned to better focus their reform efforts, while also reinforcing the visibility of the EU’s commitment to the peoples of the region.”⁵⁶

This has clear implications for Kosovo – and for the EU’s credibility. There are now two positive scenarios and one negative scenario. One positive scenario is that Kosovo will receive a “normal” roadmap. A second one is that the Commission will clearly state that even if Kosovo will receive a “comprehensive strategy” it will be treated the same way as its Balkan neighbours, i.e. that it will be granted visa-free travel when it fulfils all the conditions.

The negative scenario is that the EU will pretend that there is no issue to be resolved, storing up frustration and disappointment for the near future as expectations continue to diverge.

Clearly there are already divergent expectations. One striking example is the translation of the Council Conclusions from December 2009, which for the first time mentioned visa liberalisation for Kosovo and implied that status was not an issue. The English version reads:

“The Council stresses that Kosovo should also benefit from the perspective of eventual *visa liberalisation* once all conditions are met and invites the Commission to move forward with a structured approach to bring the people of Kosovo closer to the EU.”⁵⁷

The French conclusions say something different:

“Le Conseil souligne que le Kosovo devrait également se voir offrir la perspective d’un *assouplissement du régime en matière de visas* une fois que toutes les conditions seront remplies et invite la Commission à poursuivre une approche structurée afin de rendre l’UE plus proche des citoyens kosovars.”⁵⁸

“Assouplissement du régime en matière de visas” means a “softening” of the visa regime, as opposed to abolishing the visa requirement altogether, which visa liberalisation entails.

This difference is worrying. Are the French aware of it? Was this just a mistake? Most importantly, is there now a commitment from all 27 EU member states to allow visa liberalisation for the Kosovars?

V. IS KOSOVO’S STATUS THE PROBLEM?

In a speech announcing that Bosnia and Albania had met the benchmarks for visa-free travel to the Schengen countries, Commissioner Malmstrom told the European Parliament:

“I can reassure you that (concerning Bosnia and Albania) the benchmarks have been met. We have been monitoring very closely and will of course remain in contact and monitor

⁵⁶ *Ibid.*

⁵⁷ Council of the European Union, General Affairs Council, 7 and 8 December 2010, http://www.consiliium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/112480.pdf.

⁵⁸ Council of the European Union, General Affairs Council, 7 and 8 December 2010, French version, http://www.consiliium.europa.eu/uedocs/cms_data/docs/pressdata/FR/genaff/111868.pdf.

this, but they have been fulfilled. *All countries must be treated equally.* The benchmarks are clear; they are very transparent; the process has been as transparent as possible.”⁵⁹

Why, then, is the EU treating Kosovo differently from the other Western Balkan countries?

There is one possible answer to this question that seems obvious: it is all a result of continuing European disagreements concerning Kosovo’s status: 22 of 27 EU member states have recognised Kosovo’s independence. Five have not done so. The lack of unanimity on the issue means that the EU as a whole does not treat Kosovo as an independent state. This complicates many aspects of Kosovo’s relations with the EU, including the visa process.

However, there are three very good reasons why this explanation is not convincing.

First, there is the already widely quoted case of Taiwan. At this moment, the EU is in the process of lifting the visa requirement for Taiwan.⁶⁰ The European Commission presented its legislative proposal last July and the European Parliament adopted it on 11 November 2010. All that now remains is a vote in the Council (which is expected to be positive). Yet Taiwan has not been recognised by a single EU member state. So as to reconcile this with the current rules on visa free travel, a draft amendment adds a new category to the Schengen “white list” regulation on visa-free travel to the EU: “entities and territorial authorities that are not recognised as states by at least one Member State.”⁶¹ This category already exists in the “black list”, where Kosovo finds itself next to Taiwan and the Palestinian Authority.⁶² If Taiwan can be moved to the white list and a new special category can be created for countries whose statehood is contested, then this is obviously possible for Kosovo, too.

Second, European institutions have themselves issued statements confirming that Kosovo’s status is irrelevant for its visa regime. In December 2009 the Council concluded that the visa requirement for Kosovo can be abolished “without prejudice to Member States’ positions on status.”⁶³

Finally, even if all five EU countries that do not recognise Kosovo were to oppose lifting the visa requirement in the Council, they cannot veto it. For a proposal to pass, a “qualified majority” is required, which has been set at 228 out of 309 votes.⁶⁴ A blocking minority requires at least 82 votes. Cyprus (4), Greece (12), Romania (14), Slovakia (7) and Spain (27) have a total of 64.

⁵⁹ European Parliament, Debate on *Third countries whose nationals must be in possession of visas when crossing the external borders of Member States*, 6 October 2010, <http://www.europarl.europa.eu/wps-europarl-internet/frd/vod/player?date=20101006&language=en>.

⁶⁰ The decision-making process and all documents related to the Taiwan visa proposal can be found on Pre-Lex: http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=199481.

⁶¹ Annex II of *Council Regulation (EC) No 539/2001* listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&mode=guicheti&numdoc=32001R0539.

⁶² Annex I of *Council Regulation (EC) No 539/2001*, *ibid*.

⁶³ Council of the European Union, General Affairs, 7 and 8 December 2010, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/112480.pdf.

⁶⁴ Ireland and the UK are not voting on EU visa policy issues since they are not full members of Schengen. That leaves 309 total votes in the Council.

The Commission and the Council should remove all ambiguity on this issue. They should make clear that visa-free travel is a status-neutral issue. The best way of doing so practically, of course, would be to give Kosovo a roadmap as soon as possible.

VI. FRUSTRATION IN PRISTINA

Despite repeated unofficial announcements by Commission officials that the start of the visa process was imminent, Commissioner Malmstrom claimed that Kosovo has not met the EU's preconditions. Her spokesman even claimed that no promise had ever been made to Kosovo officials as to when the visa dialogue would start.⁶⁵

This has led to a growing sense of disappointment, frustration and even anger in Pristina. Besim Beqaj, the outgoing minister of European Integration, spoke of double standards. He also complained that the EU was setting conditions for Kosovo that other countries did not have to deal with. His demand was simple: "We want to be treated equally as other states in the region."⁶⁶

Other Kosovo politicians have not hidden their disappointment either. At a November 2010 event in Berlin, Bajram Rexhepi, the outgoing Kosovar Minister of Internal Affairs, said:

"The EU should tell us why we are not getting a roadmap. The European Commission is a house with different rooms, which are not well connected. It seems they don't speak with each other, they don't communicate ... Pierre Mirel [the responsible director at DG Enlargement] encouraged us, promised us the strategy for September 2010. Now the office of [Home Affairs Commissioner] Ms. Malmstrom says that we are not ready."⁶⁷

How long will Kosovo politicians be ready to wait, work on issues that are normally part of a visa liberalisation process and hope for the start of this process, before they will turn their backs on the EU and its vague promise?

VII. WHY THE EU SHOULD WANT A ROADMAP

A. *Reintegration*

In 2009, Germany announced its intention to deport 14,400 Kosovars in smaller groups over the next few years. Of these 2,400 are Kosovo Albanians; the remaining 12,000 include 9,842 Roma, 1,755 Ashkali, 221 Kosovo Serbs and 173 Egyptians (Ashkali and Egyptians are Albanian-speaking Romani, while Kosovo Roma often speak Serbian).⁶⁸ Kosovo's minority

⁶⁵ Balkan Insight, *Kosovo's Visa Liberalisation On Hold*, 9 November 2010, <http://www.balkaninsight.com/en/article/kosovo-s-visa-liberalisation-on-hold>.

⁶⁶ The Associated Press in Metronews, *Kosovo official slams EU for double standards*, 9 November 2010, <http://www.metronews.ca/edmonton/world/article/687048--kosovo-official-slams-eu-for-double-standards>.

⁶⁷ Minister Rexhepi at a policy briefing, *Visa-free travel for the Western Balkans: What about Kosovo*, at Deutsche Gesellschaft für auswärtige Politik, Berlin, 11 November 2010.

⁶⁸ This group included 9,842 Roma, 2,408 Kosovo Albanians, 1,755 Ashkali, 221 Kosovo Serbs and 173 Egyptians. Deutscher Bundestag, *Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Sevim Dagdelen, Kersten Naumann, Jörn Wunderlich und der Fraktion DIE LINKE, Abschiebungen in das Kosovo*, Drucksache 16/14129, 12 October 2009, <http://dip21.bundestag.de/dip21/btd/16/141/1614129.pdf>.

communities had been allowed to stay longest in EU countries, so they are the last to be sent back.

Currently Germany plans to request the readmission of a maximum of 2,500 persons per year. However, even this is problematic. In Germany, the government was heavily criticised by human rights NGOs when it signed the readmission agreement with Kosovo in April 2010.

“The readmission agreement signed yesterday by Germany and Kosovo has legalized what has been irresponsible practice – the deportation to Kosovo of members of minorities (Roma, Ashkali and others) who will have to deal with massive discrimination in Kosovo and a life at the sidelines of dumping grounds. ProAsyl considers the deportations of Roma people irresponsible [...]”⁶⁹

In November 2009, the OSCE found that the lack of assistance by the Kosovo government causes “serious reintegration problems,” in particular for persons belonging to minority communities.⁷⁰ Human rights organisations such as Human Rights Watch complain that the government, “rather than insist that returns be linked to adequate conditions, is facilitating them in an unregulated manner and without taking key steps necessary for reintegration”.⁷¹

“RAE [Roma, Ashkali, Egyptians] who are deported to Kosovo face numerous obstacles to their basic human rights, including lack of access to personal documents; statelessness; problems repossessing their property or obtaining housing; difficulties accessing education, health, employment and social welfare; and separation from family members. [...] Such problems are not unique to RAE sent back to Kosovo against their will. All Kosovo citizens are affected by limited access to health, employment and social welfare. [...] But the persistent discrimination, social exclusion, and lack of familiarity with the health and education system to which they are returning means that RAE deported fare worst of all.”⁷²

In November 2009, the UN High Commissioner for Refugees (UNHCR) had issued guidelines declaring that Serbs, Albanians in minority situations and Roma “face a particular risk of persecution or serious harm in Kosovo, including through cumulative discriminatory acts”.⁷³

“Kosovo Serbs and Kosovo Albanians inhabiting areas where they are in the minority, and Kosovo Roma inhabiting any part of Kosovo, continue to face serious restrictions to their freedom of movement and the exercise of fundamental human rights, including serious societal and sometimes administrative discrimination that would limit in particular their ability to exercise their political, social and economic rights. Furthermore, there are reports of threats and physical violence perpetrated against these communities”.⁷⁴

⁶⁹ Proasyl, *Press Release: Rückübernahmeabkommen Deutschland – Kosovo unterzeichnet, Fortsetzung der unverantwortlichen Abschiebungen*, 15 April 2010, http://www.proasyl.de/de/presse/detail/news/rueckuebernahmeabkommen_deutschland_kosovo_unterzeichnet/.

⁷⁰ OSCE Mission in Kosovo, *Implementation of the Strategy for Reintegration of Repatriated Persons in Kosovo's Municipalities*, November 2009, http://www.osce.org/documents/mik/2009/11/41281_en.pdf.

⁷¹ Human Rights Watch, *Rights Displaced, Forced Returns of Roma, Ashkali and Egyptians from Western Europe to Kosovo*, October 2010, p. 15, at <http://www.hrw.org/en/node/93831/section/1>.

⁷² *Ibid.*, pp. 7-10.

⁷³ UN High Commissioner for Refugees, *UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Individuals from Kosovo*, 9 November 2009, HCR/EG/09/01, p. 17, <http://www.unhcr.org/refworld/docid/4af842462.html>.

⁷⁴ *Ibid.*, pp. 17-18.

UNHCR demanded:

“Asylum applications of members from these communities should be assessed carefully in order to evaluate whether there is a need for international protection, based on a risk of persecution grounded on actual or perceived race or nationality”.⁷⁵

Just this year, Human Rights Watch,⁷⁶ Amnesty International,⁷⁷ UNICEF,⁷⁸ the Parliamentary Assembly of the Council of Europe (PACE),⁷⁹ and the Council of Europe’s Human Rights Commissioner Thomas Hammarberg,⁸⁰ have all advised against the forceful return of Kosovo’s minorities. PACE urged the member states of the Council to Europe,

“[...] to avoid returning Roma to Kosovo until the Office of the United Nations High Commissioner for Refugees (UNHCR) has confirmed that the situation there has sufficiently improved in terms of security and access to social rights.”⁸¹

The Council of Europe’s Human Rights Commissioner voiced the same opinion in his report on Kosovo:

“The Commissioner appeals to governments in Europe to avoid forced returns of minorities to Kosovo and to regulate the status of those in their host country until conditions in Kosovo permit their safe return. In the Commissioner’s assessment there is currently no adequate capacity on the part of the authorities to receive and integrate mass returns in Kosovo. The economic and social situation is a major obstacle to a sustainable return process. While security issues have improved, in the Commissioner’s opinion the situation remains tense with inter-ethnic violence occurring sporadically.”⁸²

The roadmap process offers the only promising way out of this predicament – it could upend a state of affairs that serves nobody’s interest. Effective implementation of the Reintegration Strategy is already a precondition for Kosovo and will remain at the fore when Kosovo receives a roadmap; it is part of Block 2 of the roadmap, which deals with border control, asylum procedures, migration and readmission.

There is also Block 4 of the roadmap for the Western Balkan countries. This deals with fundamental rights, including anti-discrimination legislation, freedom of movement, access to

⁷⁵ *Ibid.*, p. 18.

⁷⁶ Human Rights Watch, *Rights Displaced, Forced Returns of Roma, Ashkali and Egyptians from Western Europe to Kosovo*, October 2010, <http://www.hrw.org/en/node/93831/section/1>.

⁷⁷ Amnesty International, *Not welcome anywhere. Stop the forced return of Roma to Kosovo*, 27 September 2010, <http://www.amnesty.org/en/library/asset/EUR70/011/2010/en/f4d99ef1-725a-462f-81f3-e413083a4228/eur700112010en.pdf>.

⁷⁸ UNICEF Germany, *Integration unter Vorbehalt. Zur Situation von Kindern kosovarischer Roma, Ashkali und Ägypter in Deutschland und nach ihrer Rückführung in den Kosovo*, 8 July 2010, http://www.unicef.de/fileadmin/content_media/presse/Roma-Studie_2010/UNICEF-Studie_Roma_2010neu.pdf.

⁷⁹ Parliamentary Assembly of the Council of Europe, *Resolution 1740 (2010), The situation of Roma in Europe and relevant activities of the Council of Europe*, 22 June 2010, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1740.htm>.

⁸⁰ Council of Europe, *Report of the Council of Europe Commissioner for Human Rights’ Special Mission to Kosovo*, 23–27 March 2009, Strasbourg, 2 July 2009, https://wcd.coe.int/ViewDoc.jsp?id=1466279&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P468_89578.

⁸¹ Parliamentary Assembly of the Council of Europe, *Resolution 1740 (2010)*.

⁸² Council of Europe, *Report of the Council of Europe Commissioner for Human Rights’ Special Mission to Kosovo*, paragraph 163.

identity and travel documents, investigation and prosecution of ethnically-motivated incidents, protection of minorities, and policies on Roma. In Kosovo's case, it should also include full implementation of the 2009-2015 Strategy for the Integration of Roma, Ashkali and Egyptian Communities⁸³ and the related 2009 action plan.⁸⁴ The Strategy was drafted with the support of the OSCE mission in Kosovo and the Kosovo Foundation for Open Society (KFOS).

The Kosovo government should vigorously address all the problems mentioned in the Reintegration Strategy and all issues under Block 4, and implement the Integration Strategy. This will improve the lives of Kosovo's minority communities and, in turn, make it easier for EU governments to send Kosovars, including members of the minority communities, back to Kosovo.

B. Asylum requests

Kosovo not only has a problem with integrating and re-integrating its minorities. In the field of asylum, the status quo is also arguably the worst of all possible worlds.

Kosovars are currently the fifth-largest group of asylum seekers in the EU, with more than 14,000 requests in 2009 (see table 1). Amazingly, adjusted for its population, it is the current world leader in terms of the number of asylum requests.

Table 1: 10 top countries of origin of asylum seekers in the EU-27 in 2009⁸⁵

Rank	Country	Asylum requests 2009	Population (millions)	Requests per 100,000 people
1	Afghanistan	20,455	29	71
2	Russia	20,095	142	14
3	Somalia	19,000	9	211
4	Iraq	18,940	31	61
5	Kosovo	14,275	2	713
6	Georgia	10,470	4.5	233
7	Nigeria	10,270	158	7
8	Pakistan	9,935	170	6
9	Iran	8,520	75	11
10	Zimbabwe	8,045	12	69

⁸³ Government of Kosovo, *Strategy for the Integration of Roma, Ashkali and Egyptian Communities 2009-2015*, <http://www.kfosweb.info/pdf/Strategy%20for%20the%20Integration%20of%20Roma,%20Ashkali%20and%20Egyptian%20Communities%20in%20the%20Republic%20of%20Kosovo%202009-2015.pdf>.

⁸⁴ Government of Kosovo, *Action Plan on the Implementation of the Strategy for the Integration of Roma, Ashkali and Egyptian Communities, 2009-2015*, at http://www.kfosweb.info/pdf/Kosovo%20Action%20Plan%20on%20the%20Implementation%20of%20the%20Strategy%20for%20the%20Integration%20of%20RAE_ENG.pdf.

⁸⁵ Around 261,000 asylum applicants from 151 different countries were registered in the EU-27 in 2009. In Eurostat, *Statistics in Focus*, 27/10, http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-10-027/EN/KS-SF-10-027-EN.PDF, and also Eurostat, *Asylum and new asylum applicants by citizenship, age and sex, Annual aggregated data*, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en.

This situation is neither in the interest of EU governments nor in Kosovo's. It is also obvious that EU governments will not agree to abolish the visa requirement (even if Kosovo meets all other roadmap conditions) as long as so many asylum seekers originate from Kosovo. The key question is: how can this situation best be addressed?

Table 2: Asylum requests from Western Balkan countries in the EU-27 in 2009⁸⁶

Country	Total Population (in million)	Asylum requests in 2009	Asylum requests per 100,000 inhabitants
Albania	3.2	2,060	64
Bosnia	3.5	1,320	38
Macedonia	2.1	940	45
Montenegro	0.7	250	36
Serbia	7.4	5,290	72
Kosovo	2.0	14,240	713

Table 3: Positive decisions to asylum requests from Western Balkan countries in the EU-27 in 2009⁸⁷

Country	Positive decisions in 2009 ⁸⁸	Refugee status + subsidiary protection	Humanitarian grounds	Refugee status + subsidiary protection granted per 100,000 inhabitants
Albania	275	230	45	7.2
Bosnia	100	50	50	1.4
Macedonia	45	15	30	0.7
Montenegro	10	10	0	1.5
Serbia	675	485	190	9.1
Kosovo	965	675	290	33.8

It is useful to put the Kosovo situation in a regional perspective (see Table 2). Kosovo obviously leads the Balkans in terms of the numbers of asylum requests. The countries generating the least number of requests are Bosnia, Macedonia and Montenegro. Kosovo also leads, most importantly, when it comes to the number of positive decisions – in the first and second instance – issued in response to asylum requests.

⁸⁶ Eurostat, Asylum and new asylum applicants by citizenship, age and sex, Annual aggregated data, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en; Eurostat, First instance decisions on applications by citizenship, age and sex, Annual aggregated data, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asydcfsta&lang=en; Final decisions on applications by citizenship, age and sex, Annual aggregated data, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asydcfina&lang=en.

⁸⁷ *Ibid.*

⁸⁸ Decisions at first instance as well as decisions at the appeals' stage. In Kosovo's case, 7,520 decisions were taken at the first instance, with 545 positive decisions, and another 2,360 appeals cases were decided, resulting in 320 positive decisions.

So what are the obvious ways to address this problem? The strategy should be clear.

First, Kosovo needs to remove the root causes that lead so many of its citizens to receive asylum in the EU. As an immediate and quantifiable aim, it should bring the number of asylum requests granted to below 10 per 100,000 inhabitants (i.e. a total of less than 200 positive decisions in a year). This would place it in the same league with the other five Western Balkan countries.

In order to do this, the Kosovo government should determine the reasons that the responsible EU authorities in charge of asylum seekers and EU courts take into account when they grant international protection to Kosovars, and remove these. It should work with, and seek the advice of, international human rights bodies concerned with the discrimination faced by Kosovo's minority communities (see previous chapter). Their complaints – that Kosovo's minorities face harassment, intimidation and sporadic violence, that they do not enjoy complete freedom of movement, that they are often terribly poor, that they are frequently not registered and sometimes stateless, and that they have difficulties in accessing health care, employment, schooling, social welfare and justice – should serve as a yardstick for the Kosovo government.

The government cannot change everything, of course. Kosovo Albanians are also poor. They too have problems in accessing health care and obtaining (very limited) social welfare. However, the government can make an effort to register members of the minority communities, to resolve the status of stateless persons, and to assist minorities in accessing public services. It can prosecute all acts of intimidation and violence. It can encourage school attendance by offering language classes and catch-up classes, providing free school materials and free transport for students. In fact, many measures to that effect are outlined in the government's 2009-2015 Strategy for the Integration of Roma, Ashkali and Egyptian Communities⁸⁹ and its 2009 action plan.⁹⁰ If it is implemented, the situation of minorities will improve dramatically.

Many asylum seekers are abusing the system to legalise their stay in the EU for the entire duration of the asylum procedure. However, too many Kosovars still have reason to apply. Their chances of receiving asylum remain quite high. In 2009 EU member states granted protection to 965 out of 9,880 Kosovar asylum seekers, a rate of 10 percent. It is much less than for Somalis (67 percent of all decisions were positive) or Afghans (39 percent), but it is not insignificant.

In 2009:

- 480 Kosovars received full protection under the 1951 UN Refugee Convention and its 1957 Protocol⁹¹ and the Directive implementing it in the EU:

“Refugee means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a

⁸⁹ Government of Kosovo, *Strategy for the Integration of Roma, Ashkali and Egyptian Communities 2009-2015*.

⁹⁰ Government of Kosovo, *Action Plan on the Implementation of the Strategy for the Integration of Roma, Ashkali and Egyptian Communities, 2009-2015*.

⁹¹ UNHCR, Convention and Protocol Relating to the Status of Refugees, Basic Documents, 1 September 2007, <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>.

particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country.”⁹²

- 195 Kosovars received subsidiary protection; this is accorded to people who face “risks of serious harm” at home, but who do not meet the UN definition of refugee. The relevant EU Directive defines “serious harm” as:

“(a) death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.”⁹³

- 290 Kosovars received protection on humanitarian grounds. Protection on humanitarian grounds, also defined as “compassionate grounds”, can cover a wide range of situations. It is at the discretion of EU member states to grant it. The authorities can decide, for example, not to send back a person suffering from a serious disease that cannot be treated in his or her home country, a single mother, or a family with children that attend school in the EU and do not speak the language of their parents.

The fact that medical care and living standards are generally better in the EU than in Kosovo – leading to applications for asylum on humanitarian grounds – is something that the Kosovo government cannot change in the short term. However, it can and must do something about the first two categories of asylum seekers.

Once the number of positively decided asylum cases drops sizeably, the Kosovo government will find it easier to take further measures to discourage its citizens from requesting asylum. It can run public information campaigns informing citizens that their chances of being granted protection in the EU are minimal and that a high rate of asylum requests harms Kosovo’s chances of visa-free travel; it can order border guards to pass the same message; and it can investigate cases where large numbers of Kosovars have requested asylum in a specific EU country (in order to see whether this was organised and to respond to the reasons behind it).

C. EU soft power

Visa liberalisation is in the EU’s own interest. The EU’s current approach deprives the EU of the opportunity to turn its rule of law mission, EULEX, in Kosovo into an obvious success. This mission is the largest civilian Common Security and Defence Policy (CSDP) mission the EU ever deployed. Its aim is to help the Kosovo authorities establish the rule of law by assisting and supporting the government in the fields of police, judiciary and customs. In November 2009 EULEX fielded no less than 2,643 staff, of which 1,622 were international staff. The mission has over 40 prosecutors and 20 judges. Its annual budget exceeds 200 million Euro.

⁹² Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*, Article 2c, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:NOT>.

⁹³ *Ibid.*, Article 15.

A visa roadmap would provide an obvious and clear common agenda for cooperation between EULEX and the Kosovo Government. It would greatly enhance the incentives for the Kosovo government to implement even difficult reforms in all the areas in which EULEX operates, such as the fight against organised crime and corruption, border control and customs.

The visa liberalisation process is also a test for EU soft power in the Balkans at a crucial moment in regional politics. The EU has made a successful Serbia-Kosovo dialogue one of the most important objectives of its emerging common foreign policy. Currently, both Kosovo's and Serbia's EU accession paths are blocked. With five EU member states refusing to recognise its independence, Kosovo currently lacks a credible perspective. Serbia – although the Commission has started to prepare an opinion on its readiness to become an official candidate for EU membership – risks being held back until it normalises its relations with Kosovo. Catherine Ashton, the EU's High Representative for Foreign Affairs and Security Policy, sees the Kosovo-Serbia dialogue as a means of unblocking the two countries' EU perspective.

There is an imbalance, however. EU accession is a credible incentive that gives the EU influence over Serbia (as became clear during the last Serbian elections and over the UN resolution on Kosovo last summer). Yet the EU has still not offered Kosovo a similar perspective. Due to the non-recognition issue, it has so far failed to clear the path for a Stabilisation and Association agreement, let alone for a serious accession process.

A visa roadmap could be a first step towards a more creative approach to designing a status-neutral EU accession process. The visa liberalisation process is one of few areas where the EU can immediately show that it is serious about treating Kosovo like the rest of the Western Balkans. This would also make it considerably easier for the Kosovar political leadership to participate in the talks with Serbia (and to justify them to an electorate that remains sceptical about the idea).

VIII. OPTIONS TO CHANGE THE STATUS QUO

During the last twelve months the EU has demanded more from Kosovo than from any other Western Balkan country. Kosovo has met most of these additional demands. There is no good reason as why it should still be kept out in the cold.

The European Parliament, which has been co-decision maker on an equal footing with the Council since the entry into force of the Lisbon Treaty in December 2009, has been supportive of Kosovo. This summer, it passed a Kosovo resolution stating that the Parliament “would welcome the recognition by all Member states of the independence of Kosovo”, with 455 against 155 votes.⁹⁴ As far as the visa issue is concerned, it called on the Commission

“to include Kosovo in the screening process starting in early 2011 with a view to preparing the country for the launch of negotiations on the Stabilisation and Association Agreement and to communicate to the Kosovo authorities which steps need to be taken

⁹⁴ 28 MEPs abstained. See: European Parliament Press Release, *EU membership prospects of Albania and Kosovo*, 8 July 2010, <http://www.europarl.europa.eu/en/pressroom/content/20100707IPR78046>.

before the Commission prepares the road map for visa liberalisation and to define the road map immediately after these steps are taken.”⁹⁵

Despite such backing Kosovo has fewer friends among EU member states than its Balkan neighbours had back in 2003 when all states of the region were stuck in their attempts to make progress on the visa issue.

So what can Kosovo politicians do? They can do one thing above all: to highlight that the status quo is not in the interest of the EU itself.

The EU itself should reassess its current approach. How can it be possible to start a visa dialogue with Ukraine, but not with Kosovo? How can a small country with the highest concentration of EU-seconded law enforcement experts not be model of institutional reform? And how is it, as far as the visa liberalisation process is concerned, that Kosovo can be held to a different standard than its neighbours? This analysis highlights what can only be described as discriminatory treatment of Kosovars – whether they are Kosovo Albanians, Kosovo Serbs, Kosovo Roma, Kosovo Bosniaks, or Kosovo Ashkali and Egyptians – by the European Union.

There are both positive and inconvenient facts. Kosovo has done much more than the EU has given it credit for. At the same time – as its asylum figures show – it still has a steep hill to climb. This will take time and effort, and it will only work in a climate of trust between the EU and Kosovo institutions. The moment to start the climb is now.

⁹⁵ European Parliament, *Resolution of 8 July 2010 on the European integration process of Kosovo*, Strasbourg, 8 July 2010, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0281&language=EN&ring=B7-2010-0409>.