



**SIGMA**

A joint initiative of the OECD and the EU, principally financed by the EU



Creating Change Together

# **SAA for Kosovo\***

## **European Integration and Development**

**KLAUDIJUS MANIOKAS<sup>1</sup>**

This paper sets out policy options and recommendations for the next stage of the EU integration process in Kosovo following the conclusion of the Stabilisation and Association Agreement (SAA). These options are set in the context of the overall experience of the EU enlargement process and lessons learned so far, the specifics of the Western Balkan integration process, and the particular situation of Kosovo. The paper focuses mainly on the ways of implementing the recently negotiated Stabilisation and Association Agreement (SAA) of Kosovo with the EU and of reaching the stage of the start of EU accession negotiations. It deals with the process of building capacities to implement the SAA in a medium-term perspective. It also considers the main actors, structures, human resources and leadership that are necessary for SAA implementation.

**SEPTEMBER 2014**

<sup>1</sup> This paper was commissioned by OECD/SIGMA. The key role of Keit Kasemets in guiding, contributing and discussing the paper is gratefully acknowledged. The author also thanks key officials in the Ministry of European Integration in Kosovo, Demush Shasha and Valon Gashi in particular, as well as representatives of selected line ministries for the useful discussions they provided.

## TABLE OF CONTENTS

INTRODUCTION .....	3
POLICY CONTEXT .....	3
INSTITUTIONAL AND POLICY IMPLICATIONS OF THE SAA FOR KOSOVO .....	4
SAA IMPLEMENTATION: LESSONS LEARNED .....	6
CURRENT INSTITUTIONAL AND POLICY ARRANGEMENTS FOR EUROPEAN INTEGRATION IN KOSOVO .....	8
NEW APPROACH TO SAA IMPLEMENTATION: DEVELOPMENT, CLUSTERS AND FLAGSHIP INITIATIVES .....	9
SUGGESTED STRUCTURE FOR THE SAA IMPLEMENTATION PLAN .....	18
CONCLUSIONS AND RECOMMENDATIONS .....	20

## INTRODUCTION

This paper is guided by the preliminary hypothesis that most of the structures and procedures necessary for planning, monitoring and implementing the SAA in Kosovo are in place and that only minor fine-tuning will be necessary. **The approach suggested is based on the need to better link European integration with development** and thus departs from the standard approach taken by most of the previous candidates. It argues for a **focus on key reform areas or clusters and on key projects or flagship initiatives** that could mobilise resources in the medium term and allow benefits to be gained prior to EU membership. These clusters of actions could then form the backbone of the SAA implementation plan. They would be managed as projects, appointing their leaders, setting appropriate targets, and providing for additional resources to ensure their implementation.

Such clusters can be established on the basis of an action plan targeting a visa-free regime with the EU. Other possible clusters could be linked to the medium-term priorities set out in the EU Feasibility Study, such as the rule of law and the judiciary, protection of minorities, and trade and business development. For this approach, issues related to the promotion of investment and employment and to business development must be added and reinforced.

The new approach therefore concerns linking development with accession, while targeting the main EU conditions related to the next stage of the accession process. This approach also involves linking the *acquis* with development, taking into account the lessons learned from accession experience.

## POLICY CONTEXT

It was high time for academic and policy communities to reassess the lessons learned from previous enlargement processes. Policy reassessment undertaken by the European Commission resulted in a recommended focus on **the fundamentals of structural reforms, related first of all to the rule of law**. This focus was embodied, *inter alia*, in the addition of the two new negotiating chapters 23 and 24. An additional element, particularly emphasised recently, was a focus on economic reforms, the business environment, investment promotion, and economic matters in general. Finally, the role of democratic institutions and civil society has been increasingly recognised and promoted.

The academic reassessment argued that something was wrong with the "carrot" – the prospect of EU membership. It seemed to be too far away and not credible enough. **The success of judicial reforms linked to the prospect of a visa-free regime, which was a clear shorter-term benefit, provided a justification for the search for other concrete, shorter-term gains that could motivate Western Balkan (WB) countries**. Increased financial assistance, trade opportunities and investment promotion have been added to the list of these benefits.

The most important problems of a practical nature affecting the quality of planning and implementation are i) an ever-increasing longevity of the process, and ii) the decoupling of the *acquis* from development. The latter is particularly important in the context of WB countries, as despite the accession process and some progress in fulfilling membership criteria, including the transposition of the *acquis*, most of the WB region is experiencing noted problems of economic and social development. An extremely high rate of unemployment is endemic, and foreign direct investment is scarce. Even Croatia, which recently succeeded in joining the EU, seems to be suffering from similar problems.

Finally, some issues are linked to the specific context of Kosovo. These issues are set out in the form of eight medium-term priorities in the EU Feasibility Study: (i) the rule of law, (ii) the judiciary, (iii) public administration, (iv) electoral reforms and the Assembly, (v) human and fundamental rights, (vi) protection of minorities, (vii) trade and the internal market, and (viii) phytosanitary and veterinary issues.

In terms of methodology, this paper drew on the examination of relevant secondary sources, including academic and policy papers related to accession and to the particular situation in Kosovo. Relevant Kosovo legislation regarding the functioning of the government and its system of institutions for the management of EU affairs was also reviewed. In addition, a series of interviews with government officials and experts helped in setting the targets of the paper. A focus group of officials directly responsible for SAA implementation reviewed the main conclusions and recommendations.

The second part of the paper considers the institutional and policy implications of the SAA for the Kosovo administration. It consists of a short review of the SAA that was recently negotiated between the EU and Kosovo, including a comparison with the SAAs of WB countries as well as a comparison with a new type of association agreement, concluded with the Eastern Partnership countries Ukraine, Moldova and Georgia. The latter comparison provides an example of specific references to the process of approximation to the *acquis*.

The third part of the paper reviews the lessons learned from SAA implementation elsewhere. These lessons concern structures, processes and tools of implementation. Two types of approach are distinguished. One is the NPAA approach based on a wide, extensive effort of structural reforms and a full law harmonisation exercise. This approach was developed by the former candidate countries of Central and Eastern Europe and adopted by the more advanced WB countries, such as the new EU member Croatia, the former Yugoslav Republic of Macedonia, and Montenegro. The NPAA type of programme had some variations, which are also discussed. Another approach could be referred to as the SAA implementation plan approach, which targets a narrower set of direct SAA obligations. Albania, Bosnia and Herzegovina and some other WB countries took this approach at an earlier stage. Finally, the paper touches on efforts to use impact assessment as a way of linking the *acquis* with development.

In its fourth part, the paper deals with the current institutional and policy arrangements in Kosovo for European integration. It looks at the key structures, actors and processes as well as the previous experience acquired. Its aim is to determine which arrangements are working best in Kosovo, with a view to relying on them in the future.

Finally, the paper sets out available options for SAA implementation, including the elements of a new approach as outlined briefly above. It then focuses on possible clusters, actions within them, targets and their indicators. Conclusions and recommendations follow.

## **INSTITUTIONAL AND POLICY IMPLICATIONS OF THE SAA FOR KOSOVO**

This part of the report consists of a short review of the SAA recently negotiated between the EU and Kosovo, including its comparison with the SAAs of Western Balkan countries and with a new type of association agreement, as concluded with the Eastern Partnership countries Ukraine, Moldova and Georgia. The latter comparison provides an example of specific references to the process of approximation to the *acquis*.

The recently concluded SAA for Kosovo follows the SAA path established with the six WB countries<sup>2</sup>. However, it is more explicit with regard to conditionalities related to state-building and to the Copenhagen criteria, such as the rule of law, protection of minorities, creation of markets, basic infrastructure, and other priorities not directly linked to the *acquis*. These provisions can thus be called “*quasi-acquis*”, as the SAA gives them a legal status. The SAA also contains a specific provision of conditionality in relation to Kosovo’s engagement with Serbia (articles 4 and 12).

The detailed provisions related to the rule of law serve as an example of the *quasi-acquis*, specifying that “co-operation shall notably aim at strengthening the independence, impartiality and accountability of the judiciary in Kosovo and improving its efficiency, developing adequate structures for the police, prosecutors and judges and other judicial and law enforcement bodies to adequately prepare them for co-operation in civil, commercial and criminal matters, and to effectively prevent, investigate, prosecute and adjudicate organised crime, corruption and terrorism” (article 81). Issues concerning economic policy, education and research are also covered. In the area of transport (article 111), the main aim is the development of the transport infrastructure rather than harmonisation<sup>3</sup>.

Consequently, in Kosovo’s SAA less emphasis is placed on the *acquis* and on obligations to harmonise legislation. This approach is notable in the context of the new generation of association agreements (AAs) that were signed with the Eastern Partnership countries Ukraine, Moldova and Georgia in June 2014. These agreements were much more explicit about harmonisation. They contain annexes with detailed lists of EU legislation and even specific provisions of legal acts with which national legislation is to be harmonised<sup>4</sup>.

**Box 1. References to the specific EU *acquis* in the new type of Association Agreements (AAs) for Eastern Partnership countries. AA concluded between Georgia and the EU. Taxation.**

*Council Directive 2011/64/EU* of 21 June 2011 on the structure and rates of excise duty applied on manufactured tobacco (Codification)

Timetable: This Directive’s provisions shall be implemented within 5 years of the entry into force of this Agreement with the exception of Articles 7(2), 8, 9, 10, 11, 12, 14(1), 14(2), 14(4), 18 and 19 of this Directive for which a proposal for a decision of the Association Council on a timetable will be submitted within 1 year from the entry into force of this Agreement, taking into account the need of Georgia to fight against smuggling and defend its tax revenue.

*Council Directive 2007/74/EC* of 20 December 2007 on travellers’ allowances

The following section of this Directive shall apply:

- Section 3 on quantitative limits

Timetable: These provisions of this Directive shall be implemented within 3 years of entry into force of this Agreement.

<sup>2</sup> Most of these agreements can be found on the EC website:  
[http://ec.europa.eu/enlargement/news\\_corner/key-documents/index\\_en.htm](http://ec.europa.eu/enlargement/news_corner/key-documents/index_en.htm).

<sup>3</sup> It is less obvious, however, in the articles on energy and environment, which are more focused on the *acquis*.

<sup>4</sup> A good example could be the provision on banking services. In the Kosovo SAA the provision aims to encourage banking and establish a level playing field (Article 94), whereas the AA for Georgia has very specific provisions, with references to particular EU legal acts in the sectors concerned, such as deposit guarantees, and with specific transitional periods for harmonisation.

As in other SAAs, Kosovo's SAA contains a specific article (article 73) that defines the scope of its implementation plan and the priorities of legal approximation. It stipulates that "approximation shall start on the date of signing of this Agreement, and shall gradually extend to all the elements of the EU *acquis* referred to in this Agreement by the end of the transitional period defined in Article 8 of this Agreement". This transitional period is ten years, which is the usual duration for most of the other SAAs as well. The SAA also states that "approximation will, at an early stage, focus on fundamental elements of the Internal Market *acquis*, Justice, Freedom and Security as well as on trade related areas. At a further stage, Kosovo shall focus on the remaining parts of the EU *acquis*". It provides that "approximation shall be carried out on the basis of a programme to be agreed between the European Commission and Kosovo".

The Feasibility Study prepared for Kosovo by the EU in 2012 and especially its background material, referred to as a staff working paper, provide a very detailed interpretation of the implications and requirements of the SAA for Kosovo. They are very specific and prescriptive, making the elaboration of the SAA implementation plan rather straightforward.

The SAA establishes a period of 10 years for the implementation of the agreement. This time frame is in line with other SAAs concluded with WB countries<sup>5</sup>. The difference is the lack of other transitional periods related to specific provisions of the agreement or to harmonisation obligations, which were common in other SAAs and in the recent AAs in particular. However, the Kosovo SAA contains shorter transitional periods related to other obligations of the two parties. A notable transitional period of five years concerns the national treatment of the acquisition of real estate (article 64).

### SAA IMPLEMENTATION: LESSONS LEARNED

SAA implementation plans had been elaborated in all Western Balkan countries as an initial response to the SAA. They were all rather straightforward, focusing on the implementation of specific provisions of the SAA. However, most of the plans then evolved into more comprehensive programmes based on the example of the National Programmes for the Adoption of the *Acquis Communautaire* (NPAA) that had first been developed by the former candidate countries of Central and Eastern Europe. These programmes were structured differently from the SAA implementation plans, as they were usually based on the Copenhagen criteria and were aimed at the harmonisation of the whole *acquis*.

All current candidate countries except for Albania have NPAA, which serve as a basis for the planning of European integration activities, including Turkey, the former Yugoslav Republic of Macedonia, Serbia and Montenegro. Albania and Bosnia and Herzegovina have SAA implementation plans, but the Albanian plan is quite comprehensive, and it resembles the NPAA. All previous candidate countries in Central and Eastern Europe as well as Croatia had their own NPAA. **The main difference between the NPAA and the SAA implementation plan is the scope of law harmonisation.** The NPAA aims to cover the entire *acquis communautaire*, while the SAA implementation plan usually focuses on particular parts of the *acquis*.

---

<sup>5</sup> The notable exception was Croatia, which had a six-year transitional period.

## Box 2. A short history of EU-related planning tools. Lithuania.

The first systemic efforts in Central and Eastern Europe to plan legal approximation with the *acquis* started in 1996 in response to the “White Paper on Law Approximation” prepared by the European Commission<sup>6</sup>. Lithuania’s National Programme for Law Approximation was an integral part of the first National Programme for the Adoption of the *Acquis* (NPAA) approved at the beginning of 1998. The NPAA was the tool for implementing the EU accession priorities identified in the Accession Partnerships. It provided for the detailed and concrete short-term and long-term work of preparing for membership – internal reform programmes, drafts of legal acts, measures for strengthening institutions, etc. Responsibility for this work was carefully distributed, and supervision of the implementation of the NPAA was centralized in the European Committee. The analytical process of screening the *acquis*, which also started at the beginning of 1998, helped to upgrade the NPAA, in coordination with the European Commission, and make it the main planning tool. Finally, in 2001 separate sectorial programmes were integrated into Lithuania’s EU Accession Programme, which became a part of the programme of the Government of the Republic of Lithuania.

The structures of the various NPAAs vary, but the main elements are the same and follow the structure of the Copenhagen criteria. In some NPAAs specific parts also cover public administration reform (Madrid criterion), preparation of the national version of the *acquis*, communications, etc.

**Typically, every component of the NPAA (except for the introduction and annexes) includes aims; the current situation (legal and institutional framework, current issues and challenges); priorities, which are described in a textual form, usually for short and medium terms (although some programmes provide only tables and measures, such as the current version of the Montenegrin NPAA); and action plans that enumerate implementation activities.**

As in any action plan, every measure has a responsible institution and a deadline for implementation (sometimes there are intermediary deadlines as well). In many cases the resources needed and/or planned for implementation feature as well, in particular budgetary resources, including assistance and staffing needs. Some programmes (Latvia seems to have pioneered this approach) also contain result and outcome indicators.

Most of the NPAAs in Central and Eastern Europe included a single action plan. Some countries had at least two plans. One, for example, was a legal harmonisation plan targeting the transposition of the *acquis*. Another was an *acquis* implementation plan targeting the implementation of the *acquis* and other measures to put into effect political and economic reforms (Lithuania was the first to adopt such a structure).

Association agreements were not the only source of the NPAAs. They usually also included the implementation of EU priority-setting instruments, such as Accession Partnerships, European

---

<sup>6</sup> The full title was *White Paper: Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union* [Brussels, 06.05.1995, COM (95) 163 final]. The White Paper provided a summary of the main EU legislation in the areas related to the EU Internal Market *acquis*. It also included suggestions concerning the sequence of approximation based mainly on the legal hierarchy between acts, such as a suggestion to start from framework legislation and to then move to specific legal acts. The *acquis* has developed since then and has also gone through the process of codification and simplification. Despite a growing demand to base the sequencing of the *acquis* on development objectives, the White Paper remains to this day the most important document on the subject. However, sectorial guides have been developed either by the European Commission, such as the Guide to the Approximation of European Union Environmental Legislation (<http://ec.europa.eu/environment/archives/guide/part1.htm>), or by various consultants.

Partnerships or Association Agendas, recommendations of AA or SAA institutions (council, committee, sub-committees – at a particular stage of implementation), and recommendations contained in the progress reports of the European Commission.

## CURRENT INSTITUTIONAL AND POLICY ARRANGEMENTS FOR EUROPEAN INTEGRATION IN KOSOVO

As indicated above, this part of the paper looks at the key structures, actors and processes as well as the previous experience acquired.

For the specific purposes of this paper, there was no need to undertake a separate independent review of Kosovo's institutional and policy arrangements for European integration. The paper relies instead on the policy-making and co-ordination review of Kosovo undertaken by OECD/SIGMA at the end of 2013<sup>7</sup>.

**The conclusion of the review was that the current administrative arrangements in Kosovo were good and that radical changes were not required.** Greater stability and concentration on a limited number of improvements were nevertheless recommended. **The review pointed out the need for more realistic planning and better implementation**, especially in terms of strategies. In 2012 the Kosovo Government adopted only 8% of the strategic documents foreseen. The review was also quite critical concerning the capacities to correctly transpose and implement the *acquis* and the co-ordinating function of the Ministry of European Integration (MEI). It recommended that increased attention be given to three main areas: coherence, capacities of the centre of government and line ministries in general, and transposition of the *acquis*.

The impression given by the general administrative framework of Kosovo is that it was developed as a textbook case of good governance. The processes are based on the principles of strategic planning. The framework covers not only budgetary but also legislative resources. One-year and four-year government action plans have been elaborated as well as a legislative programme. The development of concepts precedes the drafting of legal acts.

However, well-designed structures and processes hardly suffice for a state to function well. In Kosovo they seem to have been shaped by a group of advisors attempting to build a perfect state from scratch. Such a state has to be run by able people, who need time to start working together and to accumulate experience in resolving endogenous problems.

The problems identified in the current processes are similar to the problems identified elsewhere. No country can claim to have very good coherence between the priorities of the government and the priorities of individual institutions, although some countries are clearly doing better than others. The same is true for the issue of co-ordination, including the co-ordination of European integration, which has been clearly over-emphasised since the EU enlargement to Central and Eastern Europe. Part of the problem lies in the fact that the EU itself demands the elaboration of too many strategies from actual and potential candidate countries.

In conclusion, it is more a question of investment in human capital than further improvements in structures and processes. Priority could be given to the employment of more people who are knowledgeable about EU rules and languages, especially in those ministries and other line institutions

---

<sup>7</sup> SIGMA, *Assessment, Kosovo*, (April 2013)  
[http://www.sigmaweb.org/publicationsdocuments/KosovoAssessment\\_2013.pdf](http://www.sigmaweb.org/publicationsdocuments/KosovoAssessment_2013.pdf).



that have higher workloads in relation to SAA implementation (as identified in the SIGMA review). **A part of this process would be the repositioning of current staff and their training.**

As this paper focuses on the ways of implementing the SAA, it is necessary to consider specifically the **EU-related planning process.**

A number of EU-related planning documents have been prepared, including a European Integration Strategy, an SAA Action Plan, and an Action Plan for Implementation of the Visa Liberalisation Roadmap. **In comparison with similar planning documents for Western Balkan countries, these documents concerning Kosovo are of good quality.** They contain textual parts, describing the actual situation, main issues and main lines of action, as well as *de facto* action plans, listing deadlines, responsible institutions, and even indicators and budgets.

In a sense **these plans are too good to be true.** They are the result of the work of a group of dedicated Kosovo officials and EU consultants who excel in the standard technology of writing such action plans. The plans are focused exclusively on EU requirements, without much consideration of local circumstances and specificities. **The actions foreseen are also closely related to EU-favoured paperwork, consisting mostly of strategies, other action plans, laws and by-laws, etc.** They are very specific and very numerous. Moreover, the time horizon of the SAA Implementation Plan (SAA IP) is clearly too short and should be extended to three years.

**The result-oriented cluster approach advocated in this paper is compatible with most of the planning documents that have been produced.** The textual part of the SAA IP and many of the actions foreseen are relevant and well written, and they should be used in the future. However, the preparation of a longer-term SAA IP should aim to review the current plan so as to **i) include fewer but more important actions, ii) consider which actions can best answer particular concerns and requirements, and iii) incorporate more substantial issues into the action plan.**

The visa liberalisation action plan could be easily included in a new SAA IP following some review. All of the plan's actions were targeted for 2013, but it is obvious that much remains to be done. However, again, focusing on fewer, more important actions would help. This action plan is especially relevant, as the European Commission assesses it separately and its result is tangible, involving a visa-free regime with the EU.

## **NEW APPROACH TO SAA IMPLEMENTATION: DEVELOPMENT, CLUSTERS AND FLAGSHIP INITIATIVES**

As the provisions of the SAA are well covered by the Feasibility Study (FS) for Kosovo and its preparatory staff working paper, the content of the SAA IP is quite clear. The SAA and the FS focus on basic state-building actions and development. **Law harmonisation is clearly secondary and could be more specifically addressed at a later stage.**

**The secondary task of law harmonisation rules out an NPAA approach from the outset. The SAA IP must focus on basic reforms and results.**

The main suggestion is to structure the SAA IP around clusters of actions, which could aim at specific targets and have a responsible manager. The IP might contain the list of the most important projects, which could be called flagship initiatives, which is the jargon used in various EU strategies, EU 2020 in particular. **The identification of these initiatives/projects should take up most of the time in developing the SAA IP. The idea of clusters also corresponds to the sector-wide approach advocated by the European Commission in the programming of development aid.**

The clusters of actions could be built around the medium-term priorities specified in the Feasibility Study, using an example of the visa-liberalisation action plan and focusing more on development.

Most of the provisions of the SAA can be incorporated into the clusters identified below. Where they cannot (such as health and safety at work), a separate cluster of “other issues” could be formed.

**Table 1. Clusters<sup>8</sup>**

No.	Cluster	Target	Indicator	Responsibility/ leadership	Description/ link with the <i>acquis</i> <sup>9</sup>	Comments
1	Rule of law	Anti-corruption	Transparency International Index of Corruption	Ministry(er) of Justice	Three medium-term priorities: rule of law, the judiciary and protection of basic and human rights; almost no link with the <i>acquis</i>	Basic and human rights imply actions related mainly to the judiciary.
2	Justice, freedom and security (JLS) [visa liberalisation]	Visa liberalisation	Decision to grant visa-free status	Ministry(er) of Justice or a specially nominated co-ordinator	Comprehensive law harmonisation in relevant sectors within visa liberalisation action plan	
3	Governance	Functionality of administration	EC Assessment	Ministry(er) of Public Administration	Containing public administration and Assembly priorities; almost no link with the <i>acquis</i>	It could be merged with the rule of law cluster.

<sup>8</sup> The table illustrates the planning concept and does not provide a full structure and a complete list of priorities that shall be developed later by the administration. For example targets and indicators are only some possible examples. The most suitable composition of clusters is also a subject for discussion between national stakeholders.

<sup>9</sup> This link with the *acquis* is developed further in Table 2 below.

<b>4</b>	Protection of minorities	International standards	EC Assessment	Ministry(er) of Justice or a special co-ordinator	No direct link with the <i>acquis</i>	It could be part of governance or rule of law cluster, but recommended as a separate cluster due to its importance and territorial scope.
<b>5</b>	Development, trade and internal market	Investment and export promotion	Investment and export growth	Ministry(er) of Trade and Industry	Specific link with trade and internal market <i>acquis</i>	
<b>6</b>	Rural development, agriculture, veterinary and phytosanitary (SPS) control	Development of agriculture	Agricultural output and export	Ministry(er) of Agriculture	Relevant medium-term priority and SAA provisions on agriculture and rural development; gradualism is key in SPS area	Veterinary and phytosanitary control could be a separate cluster.
<b>7</b>	Infrastructure development	Development of infrastructure	Specific projects/ flagship initiatives	Ministry(er) of Transport and Telecommunications	Containing main sectoral chapters of the SAA, such as transport, energy and environment	Flagship initiatives/concrete projects would be very important.
<b>8</b>	Development of human capital/social infrastructure	Development of skills	Indicators concerning quality of secondary and tertiary education	Ministry(er) of Education	Containing SAA provisions on education, social affairs, health	

The SAA IP has to focus on the basic reforms related to state building and development, as indicated by the SAA and the Feasibility Study (FS). **However, the SAA IP must contain substantial elements of the harmonisation of legislation. These elements would concern in particular the area of the internal market and trade-related matters (including statistics, veterinary and phytosanitary requirements and JLS) and the area of infrastructure (comprising transport, energy and environment). More specific links with the *acquis* are provided below. These links are based on the specific provisions of the SAA and the FS.**

**Table 2. Links of clusters with the SAA and the FS**

Cluster	Links with the <i>acquis</i> set out in the SAA and the FS
<b>Rule of law</b>	Article 81 SAA
<b>Government</b>	Article 118 SAA (public administration)
<b>Justice, freedom and security</b>	Title VI SAA
<b>Protection of minorities</b>	Title I SAA
<b>Development, trade and the internal market</b>	<p>FS: Implement the legal framework on trade, competition and internal market. Enhance the control of the continuing illegal animal trade and slaughtering and strengthen the controls at livestock markets. Improve business statistics.</p> <p>Titles IV-V SAA.</p> <p>Article 78 SAA on the quality infrastructure (metrology, standardisation, accreditation and conformity assessment)<sup>10</sup>.</p> <p>Articles 91-94 SAA on the dialogue on economic and developmental policy and statistics. Arts. 96-99 on other related policies. Arts. 102 (customs), 108 (information society)<sup>11</sup>, 116 (research and technological development) and 117 (regional and local development).</p>
<b>Agriculture, veterinary and phytosanitary control</b>	<p>FS: Enhance the facilities for phytosanitary and veterinary import controls as well as the capacity to transfer samples. Strengthen food safety and phytosanitary controls, including through finalising the transfer of the food safety and veterinary inspectors from municipalities to the Kosovo Food and Veterinary Agency. Systematise data entry into the animal identification, registration and movement database. Accredite the laboratories involved in food controls.</p> <p>Article 100 SAA</p>
<b>Infrastructure development (energy, transport, environment)</b>	Articles 111-113 SAA
<b>Human capital and social infrastructure</b>	Articles. 104 SAA (social co-operation) and 105 (education and training)

<sup>10</sup> A very selective approach based on co-operation with other countries is suggested in this regard.

<sup>11</sup> The information society is closely related to development of any kind.

<b>Horizontal and other matters</b>	Title II-III and IX-X SAA Articles 73 SAA (programme of law approximation), 74 (competition), 75 (public undertakings), 76 (intellectual property), 77 (public procurement), 79 (consumer protection), 80 (working conditions), 95 (public internal financial control), 101 (fisheries), 103 (taxation), 106 (cultural co-operation), 107 (audio-visual co-operation), 109 (electronic communications), 110 (information and communication), 114 (climate change) and 115 (civil protection).
-------------------------------------	--

However, many of the provisions listed above are standard provisions and are not always relevant in the context of Kosovo as a small developing state. In terms of harmonisation with the *acquis*, it seems that specific areas of the *acquis* have been identified as the first targets of approximation. Their relevance is assessed below.

**Table 3. Relevance of the specific *acquis***

<b>Area</b>	<b>Relevance</b>
<b>Legislation related to quality infrastructure (standardisation, metrology, accreditation and conformity assessment)</b>	Selective approach to harmonisation is suggested concentrating to areas where non-harmonisation is an obstacle to enterprises. Quality infrastructures of other countries may be used in some cases where national use would be limited. Prioritisation could be linked with the industrial development strategy.
<b>Statistics</b>	Relevant, business statistics in particular. This area could be the focus of a separate flagship initiative supported by EU assistance.
<b>Legislation related to veterinary and phytosanitary requirements</b>	Selective approach to harmonisation is suggested. Relevance of building a whole system in the short term is questionable, as explained below. A lighter and smarter strategy aimed at promotion of agriculture and exports in particular should be a priority.
<b>JLS <i>acquis</i> linked with visa facilitation</b>	Relevant
<b>Energy <i>acquis</i>, also related to the European Energy Community</b>	Selective approach to harmonisation is suggested to the extent foreseen by the SAA. Basic infrastructure development is a priority.
<b>Environment, transport and other <i>acquis</i> related to infrastructure</b>	Selective approach to harmonisation is suggested to the extent foreseen by SAA. Investment in infrastructure is more important in the medium term than legislative approximation.

The relevance of the *acquis* and of specific targets for approximation and institution building could be assessed in the context of the discussions on the concept of the Deep and Comprehensive Free Trade Agreement (DCFTA). This agreement has been concluded with Ukraine, Georgia and Moldova, and it has also been concluded or is being negotiated with some important EU trade partners outside Europe, such as South Korea and Canada.

Conceptual discussions on the DCFTA were the most intense and the most interesting in the case of Georgia. They also attracted academic interest<sup>12</sup>.

One of the arguments of the Georgian Government and CEPS concerned the intensive and largely irrelevant efforts of legislative approximation related to the DCFTA, in particular in the areas of veterinary and phytosanitary requirements, technical regulations, competition, statistics, and protection of intellectual property rights (IPR). The Georgian Government and CEPS advocated a focused approach based on the promotion of foreign direct investment (FDI), ease of doing business and eradication of corruption, all of which could apply to Kosovo as well<sup>13</sup>.

### **Box 3. Discussion on the relevance of the *acquis* during the DCFTA negotiations between the Georgian Government and the European Commission.**

The Georgian Government has consistently refused to regulate competition, arguing that it is not necessary for a small market and could only increase incentives for corruption. The regulation of food safety was regarded as too costly and also unnecessary. Georgia opposed the introduction of technical regulations on the basis of the fact that it recognized the technical regulations of all OECD countries. Even IPR protection, while less important, was contentious, as in the opinion of the Georgian Government it could lead to the reintroduction of inspections, which would create new incentives for corruption. Competition policy had a particularly symbolic importance for both the EU and Georgia, as it reflected the differences in policy substance.

Objections regarding competition and statistics could be overcome rather easily. Well-functioning and independent offices of statistics and competition constitute basic infrastructure that is vital for the functioning of the market and is a precondition of sound government. Veterinary and phytosanitary regulation as well as quality infrastructure merit further consideration. Both areas imply very heavy, costly and – in view of the current circumstances of Kosovo – largely irrelevant regulation. A sensible and gradual approximation and institution-building strategy is therefore necessary in both cases.

**The proposals of the Georgian Government regarding the application of the *food and plant safety legislation* only to large exporting companies and the full use of local market provisions of the food safety *acquis* – as well as all other possibilities for a gradual, development-friendly approximation and institution-building strategy in this area – are relevant to Kosovo's relatively underdeveloped and small agriculture.** A smart plan aimed at the development of agricultural output and export has to be developed prior to undertaking any serious legislative approximation efforts<sup>14</sup>. The Feasibility Study provides a sensible starting point and advocates a better control of animal trade and slaughtering.

**The development of a full-scale *quality infrastructure* based on EU norms is also questionable for Kosovo, with its very limited industrial production, low level of income and consumer concerns.** Simpler, lighter and smarter solutions in this area are needed, in line with those suggested in the CEPS

<sup>12</sup> Centre for European Public Policy (2011), *An Appraisal of the EU's Trade Policy Towards its Eastern Neighbours: The Case of Georgia*.

<sup>13</sup> However, this approach omits the very important aspect of institutional development, which is a key dimension of development.

<sup>14</sup> This planning has already started, as demonstrated by the SAA Implementation Plan for 2013 and 2014.

paper, such as unilateral recognition of technical regulations of EU and OECD countries and arrangements with neighboring countries<sup>15</sup>. For such a small, unindustrialized country there does not seem to be any need to build a full-scale quality infrastructure. The infrastructure of neighboring countries, such as accreditation and testing laboratories, could be used to this effect. The only serious institutional investment might be the creation of a market surveillance agency.

The European Energy Community *acquis* is very comprehensive and includes several provisions that are costly to implement. Gradualism is therefore necessary here. The SAA (article 112) sets out medium-term priorities (framework for regional integration, energy efficiency and unbundling), which could be a relevant starting point.

A general precondition for such an approach is a smart and unconventional attitude towards the *acquis* on the part of the Kosovo authorities and the EU. This approach does seem to be inherent to the SAA, but it has to be extended and promoted by the EU, which should lead the search for the most efficient solutions, for example by using its technical assistance.

At the same time accession perspective and requirements of the SAA should be taken into account. It means that harmonisation could go beyond the current functional needs. If decided during the prioritisation and if resources and capacity of institutions enable it, the legislative gap assessment (screening) of legislation could be undertaken in some priority areas. Gap assessment can serve as a basis for setting harmonisation priorities.

At least three possible ways of structuring the SAA implementation plan can be identified. One way is to base the SAA IP on the Copenhagen criteria (structure that is typical of the NPAA, which then sets out the 3<sup>rd</sup> Copenhagen criterion according to the chapters of the *acquis*). As the SAA of Kosovo and the reality of the situation on the ground imply an emphasis on basic reforms rather than on the *acquis*, such a structure is hardly relevant. The second possibility is to base the IP on the SAA structure. This option would facilitate the monitoring of implementation, but it lacks any substantial logic. The third recommendation is to structure the SAA IP by clusters that would be close to the SAA structure.

The whole structure of implementation of the SAA has to follow the current framework in order to co-ordinate the work of the Kosovo Government as a whole, using also the institutions created for the management of EU affairs<sup>16</sup>. The clusters suggested very closely match the scope of the seven executive committees established to co-ordinate work in matters concerning European integration.

---

<sup>15</sup> This suggestion is also relevant to other small countries in the region, such as Montenegro and even Albania, which do not have a considerable industrial base.

<sup>16</sup> The author supports the integrated structure of EU affairs management, which implies that EU business is part of the regular process of managing government affairs and no specific co-ordination network is necessary for this purpose. However, as this network of institutions, including EU units in line institutions, the Ministry of European Affairs, and specific co-ordination committees, has already been created, it would be wise to use it.



**Table 4. Relationship between the current executive committees and the suggested clusters.**

Sectoral executive committees ( <i>EPAP<sup>17</sup> structure</i> )	Clusters
<b>Governance</b> ( <i>Chair: Secretary-General for Ministry of Justice</i> ): Institutions; Public administration; Anti-corruption policies and judiciary; Regional co-operation; Justice, freedom and safety.	Governance and rule of law
<b>Internal market</b> ( <i>Chair: Secretary-General of Ministry of Trade and Industry - MTI</i> ): Free movement of goods; Free movement of workers; Free movement of capital; Right to establishment and freedom to provide services; Intellectual and industrial rights; Competition policies; Financial services; Consumer and health protection; Public procurement.	Development, trade, and internal market
<b>Agriculture and fisheries</b> ( <i>Chair: Secretary-General of Ministry of Agriculture, Forestry and Rural Development</i> ): Agriculture, forestry and rural development; Fishery; Food safety, veterinary and phytosanitary policies.	Rural development, agriculture, and veterinary and phytosanitary control
<b>Infrastructure</b> ( <i>Chair: Secretary-General of Ministry of Infrastructure</i> ): Transportation policies; Environment; Energy and mines; Trans-European networks; Regional development.	Infrastructure development
<b>Economy, financial control and statistics</b> ( <i>Chair: Secretary-General of Ministry of Finance</i> ): Economic and monetary policies; Financial and budgetary provisions; Statistics; Regional policies and co-ordination of structural instruments; Financial control.	Development, trade, and internal market  A separate cluster on macroeconomic policy, statistics and financial control could also be envisaged.
<b>Trade, industry, customs and taxes</b> ( <i>Chair: Secretary-General of MTI</i> ): Foreign trade; Industry and policies of small and medium-sized enterprises (SMEs); Tax; Customs Union.	Development, trade, and internal market
<b>Innovation and social cohesion</b> ( <i>Chair: Secretary-General of Ministry of Labour and Social Welfare</i> ): Social policies, employment and social welfare; Science and research; Education and culture; Electronic communication, informative society and audio-visual policies.	Development of human capital/social infrastructure
???	Justice, freedom, and security (visa liberalisation)
???	Protection of minorities

The suggested structure of clusters and the focus on development imply a result-oriented approach and responsibilities. It is therefore recommended to nominate a cluster co-ordinator. This co-ordinator could be either a minister, as suggested in the table above, or in some cases, special co-ordinators at the level

<sup>17</sup> European Partnership Action Plan

of ministers without portfolio or deputy ministers. Ministers might be a good option as they could be entrusted with political responsibility for certain targets. One sectorial ministry could then ensure the co-ordination of other institutions within the cluster. Finally, the Ministry of European Integration (MEI) would be responsible for the overall co-ordination of implementation and methodological support, and it would provide a single contact point for the European Commission.

The management of clusters could also follow the current three-layer structure, combining the political leadership of a minister and the co-ordinating role of a secretary-general, with the role of secretariat played by the European integration units.

A functioning example for the SAA IP is the visa-liberalisation action plan. This plan could be provided to the co-ordinators of other clusters as a model. A slightly improved way of structuring the SAA implementation plan is provided below.

A new method for developing the SAA IP will be necessary. A focus on the quality of the actions foreseen and the identification of the most important projects imply (i) the use of working sessions with governmental institutions and outside experts (including international experts), and (ii) multiple iterations focusing on the content of actions.

## SUGGESTED STRUCTURE FOR THE SAA IMPLEMENTATION PLAN

**Cluster No...**<sup>18</sup>

### Objectives and priorities

- Current situation
- Objectives/targets and their indicators
- Medium-term priorities (on the basis of key EU documents setting the priorities and the SAA)
- Main activities (list of key activities)

The description of the current situation should aim to identify the main issues. It must be concise.

Between one and three objectives/targets linked with indicators could also be established. Suggestions for objectives and indicators are provided in Table 1 above.

For example, the overall objective of the cluster concerning the rule of law could be the reduction of corruption, measured by a relevant indicator.

A relevant objective of the cluster focused on development and trade could be an increase in investment, both domestic and foreign, and in exports.

### Flagship initiatives and their short descriptions:

Examples of flagship initiatives:

- Development of business statistics and statistics in general

<sup>18</sup> As indicated above, an overall structure based on chapters is recommended.

- Development of a land registry and registration of property rights (relevant to the cluster focused on agriculture and veterinary and phytosanitary control and to the cluster on trade, the internal market and development)
- Development of the milk sector<sup>19</sup>

### Action Plan (for the medium term 2015-2017)<sup>20</sup>

The elaboration of a slightly modified template of the SAA IP for 2014 is suggested. There will be no need for the implementation plan to start from the issue identified by the European Commission. It can start from the action itself. An additional column indicating the relevant provision of the SAA and, if applicable, the relevant *acquis* is suggested. Law harmonisation activities (legislative initiatives needed for the transposition of relevant *acquis*) could be added under actions linking it with specific articles of the *acquis* in SAA/*acquis* column. Alternative is to have a separate law harmonisation plan/sheet under each cluster. The best approach should be decided during the planning exercise.

It is not clear whether the details of funding required by the current SAA IP for 2014 could be provided and whether these details are necessary. In the current IP most of the relevant columns are empty.

The suggested template is therefore the following:

No./ Code	Action	SAA/ <i>acquis</i>	Deadline <sup>21</sup>	Responsible institution	Supporting institutions	Est. cost	Source of financing
1	Amendments to the Law on Courts	Article 81	K3 – 2015	Ministry of Justice			

<sup>19</sup> A flagship initiative on the development of the private sector would be too wide, but reference could be made to the recently adopted Private Sector Development Strategy, which could feature as one of the main activities. Some concrete initiatives mentioned in this strategy could be selected as flagship initiatives. The development of quality infrastructure is mentioned as a priority in this strategy, and this priority might be reviewed in line with the suggestions made in this paper. The fact that neighbouring countries also do not have a developed quality infrastructure is hardly a reason for Kosovo to develop it on its own. Kosovo could make use of the infrastructures of EU Member States, such as Croatia, Slovenia or Austria.

<sup>20</sup> The Action Plan could use the current template of the SAA IP for 2014.

<sup>21</sup> As indicated above in the text, a planning period of three years (2015-2017) is suggested as a norm. However, in some cases, where the transitional period is longer, some actions could target a longer-term perspective. Quarters are recommended for the forthcoming year only (2015).

## CONCLUSIONS AND RECOMMENDATIONS

1. The SAA implementation plan (IP) must be focused on basic reforms related to state building and development, as suggested by the SAA and the Feasibility Study.
2. This focus rules out an NPAA approach from the beginning. The SAA IP has to be focused on basic reforms and on selected *acquis* aiming to prepare country for a candidate status, meet the Feasibility Study medium-term priorities and implement the SAA
3. The key SAA provisions are well covered in the IP within identified chapters. It is recommended to deal with the remaining provisions of the SAA in the section of the IP entitled “*Other Provisions*”.
4. The time horizon of the SAA IP could be three years.
5. The main recommendation is to structure the SAA IP according to clusters of actions, which could aim at specific targets and have a responsible manager.
6. The SAA IP might contain a list of the most important projects, which could be referred to as flagship initiatives. The identification of these initiatives/projects should be given priority in the development of the new SAA IP.
7. The clusters of actions could be built around the medium-term priorities specified in the Feasibility Study, using as a model the visa-liberalisation action plan and focusing on European integration aspects related to development.
8. The clusters identified in accordance with this logic largely correspond to the current executive committees in the EU co-ordination structure.
9. The relevance of the *acquis* and specific targets for approximation and institution building could be assessed in the context of discussions on the concept of the Deep and Comprehensive Free Trade Agreement (DCFTA) and Kosovo SAA requirements.
10. The current planning documents related to European integration are focused exclusively on EU requirements, without much consideration being given to local circumstances and specificities and to the relevance of the *acquis*.
11. A focused and selective approach to legal harmonisation is suggested. General preconditions are EU support for this approach and the building of smart regulatory capacities in the country.
12. The creation of a domestic centre of excellence to study the economic implications of the *acquis* is suggested, with a view to concentrating knowledge and resources. Specific technical assistance in the areas of veterinary and phytosanitary control, quality infrastructure, and other priorities for short-term harmonisation could be refocused to provide an economic rationale and sequencing of harmonisation.
13. The whole structure of implementation of the SAA has to follow the current framework in order to co-ordinate the work of the Kosovo Government as a whole, using also the institutions created for the management of EU affairs.
14. A good example of the content of specific actions within a cluster is the current visa-liberalisation action plan.
15. The result-oriented approach of clusters is compatible with most of the planning documents that have been produced. The textual part of the current SAA IP and many of the actions foreseen are relevant.
16. However, in the preparation of a longer-term SAA IP (three years), the current plan should be reviewed so as to i) arrange it around clusters; (ii) include fewer, more important and more

relevant actions; (iii) consider which actions can best answer the particular concerns and requirements of Kosovo; (iv) incorporate more substantial issues and flagship initiatives into the action plan, and (v) and (e) adding law harmonisation component.

17. Further challenges of SAA implementation are more concerned with investment in human capital than with further improvements in structures and processes. Priority could be given to the employment of more people who are knowledgeable about EU rules and languages, especially in those ministries and other line institutions that have higher workloads in relation to SAA implementation (as identified in the SIGMA review). The repositioning of current staff and their training should be part of this process.