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## **Kosovo's transformation into a market economy**

Novitet Nezaj\*

### **Abstract**

This paper explores the development of Kosovo's transformation into a market economy. The first objective is to explore the transition from a centrally planned to an open market economy in Kosovo and to examine the challenges of this transformation over the years. In addition, the paper provides some insights and some quick snapshots of the legislation regarding competition law under the hybrid system of the UN mission and the national institutions of Kosovo. The second objective is to study institutional capacities and the degree of effectiveness of the institutions. Overall, this paper addresses the transition of legislation from the old approach to the new approach, and the beginnings of the Europeanisation of the market economy in Kosovo.

### **Keywords**

Transition, market economy, competition rules, privatization, constitution, state capacities.

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## I. Introduction

Kosovo used to be part of an economic socialist system. The transformation from this system into an open market economy took a long time. This transformation began as a process of political tension, which later, in 1999, became a source of war. It will take years until Kosovo completes its own cycle of an economic transformation into a market economy. At the present time, Kosovo has put on its own agenda a huge commitment to absorb EU rules and principles. Absorbing the new rules and principles of the EU is not an easy task. From Kosovo's perspective, the EU market economy is an exemplar model for Kosovo in the future. However, besides the commitment that is enshrined in the agenda, some of the principles for enforcement are lacking. Kosovo is aspiring to develop a set of rules and enforcement institutions to comply with the EU rules and principles regarding a free market economy.

This paper has two main objectives, one related to the transitional periods of transformation and the other related to the institutional capacities needed for a market economy. Initially, this paper aims to analyse Kosovo's transformation into a market economy, from different backgrounds. In this regard, it aims to provide an overview of the economic status of Kosovo up to 1998. Then it provides an analytical description of the transformation of the Kosovo economy from 1999 onwards into a market economy. This date marked a new chapter regarding the new rules and principles of a market economy that are enshrined in Kosovo's legal system. In this context, this paper provides a framework analysis of the emerging new rules and principles of the market economy and the role of the UN administration. Furthermore, this paper describes the normative structure of the law and the economic structure in Kosovo. The development of state capacities is of particular importance. This paper offers an overview of the institutional capacities already in place, and describes their role in the market economy. There is optimism that the future will bring additional opportunity in terms of institutional commitment and the establishment of the rules and principles of a market economy. This paper concludes its argument with a general recommendation that the rules and principles of a market economy must be practically implemented. In order to make this approach work, Kosovo must redefine its institutional design and make a political commitment to adjusting its economic policies and removing those rules that hinder a free market economy.

## II. Transition from centrally planned to open market economy

Kosovo, like other countries in the Western Balkans, was part of a socialist system. This system had a deeply negative impact on the economy of Kosovo. Politically, like the other countries, Kosovo had been detached from the EU for around half a century because of the communist bloc. After the collapse of communism, transitions have taken place in the Western Balkans. Because of the break-up of the Yugoslav federation, the economy in Kosovo has evolved with an increasing number of conflicts. According to Ajani, the term "economies in transition" refers to the transition from a planned economy to a market economy.<sup>1</sup> In essence, transition is also defined as the social, political and economic transformation from a command system characterized by state ownership

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<sup>1</sup> Ajani, G. 2006. Law and Economic Reform in Eastern Europe – The Transition from Plan to Market during the Formative Years of 1989-1994. In: Buxbaum R. and Mádl F. (eds). *International Encyclopedia of Comparative Law / Vol. 17. State and Economy, Ch. 3. Law and Economic Reform in Eastern Europe*. Martinus Nijhoff Publishers. p.3.

and central planning to a market system characterized by decentralized decision-making arrangements and private sector transactions.<sup>2</sup> Specifically, Hare and Turley (2013) suggest that transition implies two important things: moving away from communism and adopting democratic principles, and ending central planning and seeking to build well-functioning, competitive and open market economy. Moreover, they argue that the economic dimension of transition entails several elements, such as trade liberalization, the privatization and restructuring of state-owned enterprises, reform of the labour market, and institutional reform.<sup>3</sup> However, no country has been able to jump start its economy rapidly on market-based principles.<sup>4</sup>

In Kosovo, this process of economic transformation took a long time to complete. Yugoslavia was a socialist state with a federal structure, and Kosovo was a part of the Yugoslav federation. The economic system was based on a centrally planned economy. Up to 1990, Yugoslavia remained an economy according to the model laid down in other socialist countries. The collapse of communism led to a process of gradual economic reform. The transformation began after 1991. This process took a particular course, with increasing political tensions and wars between the constituent parts of the Yugoslav federation. Kosovo experienced a difficult transition from centrally planned to open market economy. Kosovo was the poorest part of the federation. While it was in the federation, the federation decided on the economic policies. When the constitutional powers were abrogated in 1989, Kosovo was not able to begin implementing a programme for economic development. From 1989 until 1997, Kosovo experienced very weak economic development.

The conflict from 1998 to 1999 left an economic gap in Kosovo. During this period, Kosovo was an extremely underdeveloped country. Its economic system collapsed due to the war. After 1999, the structure and operation of the economic system in Kosovo changed in fundamental ways. New rules and institutions emerged after the war. After the UN administration was set up, a number of organizations became involved in the effort to establish new rules and institutions. The UN's effort was supported by the EU, the World Bank and the IMF. After independence in 2008, Kosovo undertook a number of economic reforms and institutional developments with the aim of building an open market economy. The following sub-themes aim to offer an overview of the economic transformation in Kosovo from a centrally planned economy to an open market economy.

## **II.1. Kosovo as a centrally planned economy until 1998**

Before 1998, Kosovo was part of a centrally planned economy. During this time, economic outcomes depended on socialist ideology. Kosovo was deeply influenced by this ideology. The general approach to the economy was characterized by a socialist system of government, state ownership, central planning, and rule by the Communist party. Kosovo had different experiences of economic development under the planned economy. It faced many challenges. Kosovo faced enormous social problems, such as political difficulties and increasing economic inequality within Yugoslavia. These challenges included frequent political and economic obstacles set for Kosovo by the Yugoslav federal authorities. Censorship, a prohibition on foreign news sources, state

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<sup>2</sup> Turley, G. and Luke, P. J. 2012. *Transition Economics: Two Decades On*. Routledge.

<sup>3</sup> Hare, P. and Turley, G. 2013. *Handbook of the Economics and Political Economy of Transition*. Routledge. p.3.

<sup>4</sup> Gros D. and Steinherr, A. 2004. *Central and Eastern Europe: Planting the Seeds*. Cambridge University Press. pp.1-2.

control over the media, and the marginalization of the media to constrain political discourse were among the violent measures taken by the Yugoslav federal authorities.<sup>5</sup>

The abrogation of the Constitution in 1989 was one of the major violent measures, and had a direct impact on Kosovo. Immediately after this abrogation, the majority of the Albanian population were dismissed from their jobs in state schools, universities and courts and replaced with Serbs.<sup>6</sup> In the face of this political pressure, the majority of Albanians in Kosovo were organized in parallel structures with the aim of remaining prepared together for a future collapse of Yugoslavia. During this time, Kosovo was an underdeveloped economy and its economy remained catastrophic. The war within Yugoslavia affected the general economic development and thus produced negative side effects in Kosovo. Within a few years, from 1991 until 1995, Yugoslavia was dismantled. Kosovo remained a leftover part of Yugoslavia.

However, continuous political pressure by Yugoslavia over Kosovo brought a quick shift from peaceful resistance to armed conflict. In 1998, the war against Yugoslavia broke out. This war lasted from 1998 until the middle of 1999. Unresolved ethnic and national aspirations led to violent conflict, with devastating effects in Yugoslavia.<sup>7</sup> According to the World Bank, ten lost years left a daunting economic and human legacy, international isolation, poor economic management, disrupted economic activity and trade, and the destruction of productive assets.<sup>8</sup> To sum up, until 1998, Kosovo experienced very weak social development, slow growth and economic stagnation.

## II.2. Transformation into a market economy after 1999

Economic transformation is not an overnight proposition. Transformation from a centrally planned to a market economy requires the principles of market liberalism to be incorporated. These principles include freedom and openness in the market, privatization, deregulation, and free competition. Before 1999 it was very hard to see these principles in Yugoslavia's economic system. After the dissolution of Yugoslavia, new states emerged with different urgent agenda, including the creation of state institutions, macro-economic stabilization, and economic transformation from a socialist economy to a market economy.<sup>9</sup> Furthermore, this process went at different speeds in different countries.<sup>10</sup> The process of economic transformation began at different times in the countries with socialist regimes. According to Bruno, the transformation from a

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<sup>5</sup> Nikolin, S. 2004. Pre-Transition Countries – Yugoslavia. In: Dryzek, J. S. and Holmes, L. T. (eds.) *Post-Communist Democratization: Political Discourses across Thirteen Countries*. Cambridge University Press. p.62.

<sup>6</sup> See Devic, A. Transnationalization of Civil Society in Kosovo: International and Local Limits of Peace and Multiculturalism. In: Kostovicova, D. and B-Dzelilovic, V. *Transnationalism in the Balkans*. Routledge. p.43.

<sup>7</sup> European Bank for Reconstruction and Development. 1999. Transition report 1999: *Ten years of transition*. Available at: <http://www.ebrd.com/downloads/research/transition/TR99.pdf> (Accessed: 20.06.2010) p.15-96.

<sup>8</sup> World Bank, Memorandum to the Executive Directors of IBRD and IDA, Transitional Support Strategy for the Federal Republic of Yugoslavia, pp.1-3. available at <http://siteresources.worldbank.org/INTSERBIA/Resources/TSS.pdf> (Accessed: 27.06.2014)

<sup>9</sup> Pleskovic, B. and Sachs, J. D. 1994. Political Independence and Economic Reform in Slovenia. In: Blanchard, O. J., Froot, K. A. and Sachs, J. D. (eds.) *The Transition in Eastern Europe. Volume 1 Country Studies*. University of Chicago, p.191. See also Hasani, E. 1999. *The Dissolution of Yugoslavia and the Case of Kosova: Legal and Political Aspects*. Albanian Institute for International Relations.

<sup>10</sup> See Altman, F.-L. and Ochmann, C. (eds.) 1995. *Central and Eastern Europe and the European Union – Prospects in Integration*. Bertlmann Found. pp.7-27.

centrally planned to a market economy is an unprecedented challenge for policy-makers in these countries as well as for the international community involved in financing and monitoring their economic programmes.<sup>11</sup> In Kosovo, the first steps in the transformation into a market economy were taken after the middle of 1999. Kosovo experienced different forms of transformation of its institutional and legal framework to make them appropriate for a market economy. There are two main important periods in this transformation.

In the first period, from 1999 until 2007, Kosovo took the very first steps towards becoming a market economy. After 1999, the transformation into a market economy started from the ruins. From that time onwards, Kosovo began a transformation and gradually underwent forms of economic development supported by the EU and other international organizations.<sup>12</sup> Kosovo's economy was very dependent on economic and financial assistance from the outside.<sup>13</sup> The international organizations proposed the principles for an open market economy in Kosovo after 1999. Among these institutions were the UN mission, the World Bank, the IMF and the EU.<sup>14</sup> During the war, Kosovo's infrastructure suffered heavy damage, more than half a million houses were destroyed, unemployment was very high, and institutional functioning was very poor. In accordance with the Program for Reconstruction and Recovery in Kosovo (Toward Stability and Prosperity, 1999), Kosovo undertook a number of actions, such as the preparation of a budget to ensure proper funding, the establishment of a payment system, a review of trade policies to prevent distortions of market, and the establishment of a banking framework. An important role in this transformation was played by the EU. Initially acting jointly with the World Bank, it laid out the foundations of an open market structure for Kosovo, on such matters as the establishment of customs and other related services in Kosovo,<sup>15</sup> a central fiscal authority for Kosovo and other related matters,<sup>16</sup> and a banking and payment authority for Kosovo.<sup>17</sup> During this period, from 1999-2007, Kosovo was supervised by the UN mission. Economic development in Kosovo during this period was dependent on

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<sup>11</sup> Bruno, M. 1994. Stabilization and Reform in Eastern Europe: A Preliminary Evaluation. In: Blanchard, O. J., Froot, K. A. and Sachs, J. D. (eds.) *The Transition in Eastern Europe. Volume 1 Country Studies*. University of Chicago. p.19.

<sup>12</sup> Food and Agriculture Organization (FAO), United Nations Development Programme (UNDP), United Nations Children's Fund (UNCF), United Nations Office for Project Services (UNOPS), International Organization for Migration (IOM), International Labour Organization (ILO), World Health Organization (WHO), United Nations Development Fund for Women (UNIFEM).

<sup>13</sup> See Narten, J. 2009. Dilemmas of promoting "local ownership": The case of postwar Kosovo. In: Paris, R. and Sisk, T. D. (eds.) *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*. Routledge. pp. 267-268.

<sup>14</sup> Prepared by the European Commission and the World Bank in Support of the United Nations Mission in Kosovo. November 3, 1999. *Toward Stability and Prosperity*. A program for Reconstruction and Recovery in Kosovo. Available at: [http://ec.europa.eu/enlargement/archives/seerecon/kosovo/documents/kosovo\\_toward\\_stability\\_and\\_prosperity\\_1999.pdf](http://ec.europa.eu/enlargement/archives/seerecon/kosovo/documents/kosovo_toward_stability_and_prosperity_1999.pdf) (Accessed: 17.06.2014).

<sup>15</sup> Administrative Direction No. 1999/1 UNMIK/DIR/1999/1, 31 August 1999, implementing UNMIK Regulation No. 1999/3 of 31 August 1999 on the establishment of the customs and other related services in Kosovo.

<sup>16</sup> Administrative Direction no. 1999/4 UNMIK/DIR/1999/4 - 26 November 1999 implementing UNMIK Regulation No. 1999/16 of 6 November 1999 on the establishment of the central fiscal authority of Kosovo and other related matters.

<sup>17</sup> Regulation No. 1999/20 UNMIK/REG/1999/20 15 November 1999 on the banking and payments authority of Kosovo.

donors' support. While the basic laws of a market economy were in place, the establishment of property rights and legal certainty remained a challenge.<sup>18</sup> The uncertain legal situation regarding property rights hindered property transfers. Additionally, the rules and principles of an open market, such as privatization, deregulation and free competition, were still in the early stage of definition. Until 2007 the economy of Kosovo operated within an emerging framework for the market principles. The uncertainty over the future political status of Kosovo affected the framework for the market principles.<sup>19</sup>

In 2008, Kosovo declared independence. During the period from 2008 onwards, a number of open market principles were put in place. Economic prosperity is one of the objectives of the Constitution of the Republic of Kosovo.<sup>20</sup> The Constitution stipulates that:

A market economy with free competition is the basis of the economic order of the Republic of Kosovo. (Article 10 (Economy))<sup>21</sup>

After independence, Kosovo had an ambitious agenda for developing a market economy. The EU Donor Conference took place in 2008. This conference was part of an economic incentive by the EU to Kosovo. Over the years, the transformation to a market economy has been included in many strategic documents such as: the Action Plan of the Economic Vision of Kosovo 2011-2014<sup>22</sup>, the SME Development Strategy for Kosovo 2012-2016<sup>23</sup>, and the Private Sector Development Strategy 2013-2017.<sup>24</sup> Two important criteria for the functioning of a market economy were met during this period to the present day. First, clarification, assurance and protection of the rights and duties of market participants were regulated by Law No. 03/L-181 on Market Inspectorate and Inspective Supervision,<sup>25</sup> and second, the promotion and protection of transactions concluded between market participants for the exchange of goods, services, and capital were regulated by Law No. 04/L-006 amending and supplementing of Law No. 02/L-123 on Business Organizations.<sup>26</sup>

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<sup>18</sup> Kosovo Progress Report 2005, COM(2005) 561 final, Brussels, 9 November 2005, SEC(2005) 1423 p.32.

<sup>19</sup> Kosovo Progress Report 2007, COM (2007) 663 final, Brussels, 6.11.2007 SEC (2007) 1433 p.24.

<sup>20</sup> Constitution of the Republic of Kosovo. *Official Gazette*: K-09042008, as amended by amendments on the Constitution of the Republic of Kosovo regarding the ending of International Supervision of Independence of Kosovo, *Official Gazette*: 25/2012 07 September 2012, as amended by amendment of the Constitution of the Republic of Kosovo, *Official Gazette*: 07/2013, 26 March 2013.

<sup>21</sup> Article 10, Constitution.

<sup>22</sup> The Action Plan of the Economic Vision of Kosovo 2011-2014. Available at: [http://www.kryeministri-ks.net/repository/docs/Action\\_Plan\\_of\\_the\\_Economic\\_Vision\\_of\\_Kosovo\\_2011-2014.pdf](http://www.kryeministri-ks.net/repository/docs/Action_Plan_of_the_Economic_Vision_of_Kosovo_2011-2014.pdf)

<sup>23</sup> The SME Development Strategy for Kosovo 2012-2016. Available at: <http://smallbusinessdays.com/images/uploads/SME-Development-Strategy-for-Kosovo.pdf>

<sup>24</sup> The Private Sector Development Strategy 2013-2017. Available at: [http://www.mti-ks.org/repository/docs/2013\\_MTI\\_Strategjia\\_ZHSP\\_Eng\\_115534\\_268412.pdf](http://www.mti-ks.org/repository/docs/2013_MTI_Strategjia_ZHSP_Eng_115534_268412.pdf)

<sup>25</sup> Law No. 03/L-181 on Market Inspectorate and Inspective Supervision, *Official Gazette*: No. 80 / 27 August 2010, as amended by Law No. Law No. 04/L-186 on amending and supplementing the Law No. 03/L-181 on Market Inspectorate and Inspective Supervision, *Official Gazette*: 14/2013, 10 May 2013.

<sup>26</sup> Law No. 04/L-006 amending and supplementing Law No. 02/L-123 on Business Organizations, *Official Gazette*: No. 6/2011, 22 July 2011.



At present, Kosovo enjoys a business-friendly legal environment with practical fiscal management, a modern tax system,<sup>27</sup> low interest rates, and a light regulatory regime for private enterprises. The establishment of independent regulators is a positive signal for domestic and foreign investors in Kosovo. Such regulators include the Energy Regulatory Office (ERO), which operates pursuant to Law No.03/L-185 for Energy Regulator<sup>28</sup>, the Water and Waste Regulatory Office (WWRO),<sup>29</sup> which operates under the Law 03/L-086 of Water and Waste, and the Regulatory Authority of Electronic and Postal Telecommunications (RAEPT)<sup>30</sup> which operates under the Law 04/L-109 on Electronic Communications. In addition, legislation on tax administration and the investment promotion agency is a key component for the structure of the economy. The legal framework for tax administration is regulated under the Law No. 03/L-222 on Tax Administration and Procedures.<sup>31</sup> The area of investment protection is regulated by Law No. 04/L-220 on Foreign Investment.<sup>32</sup> The following sub-themes aim to give an overview of the structure, concepts and legal institutions of the market economy in Kosovo.

### II.2.1. The structure of the economy in Kosovo

Over the years, the structure of the economy has gradually been transformed. Kosovo is experiencing different trends regarding open market principles. At present, the essential legal framework for business and trade is in place and fulfils the standards required for a market economy. Law No. 03/L-048 on Public Finance Management and Responsibilities as amended by Law No. 04/L-194 determines the general rules for managing public finance, including treasury finance rules, and the procedures and time limits for budgetary proposals and allocations, including for independent agencies.<sup>33</sup> Further, the annual Budget Law determines budgetary allocations for all public institutions, and defines further procedures for budgetary expenditure for specific categories, based on the provisions of specific laws that are in force and on constitutional provisions when independent institutions are in question. It also stipulates procedures for the management of the earned revenues of budgetary institutions.

Economic policies are the product of intergovernmental institutions. They are the result of the active involvement of and intensive consultation with the various ministries responsible for developing policies. The institutional responsibility for the development of the policy in any sector

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<sup>27</sup> Law No. 04/L-223 on amending and supplementing Law No. 03/L-222 on Tax Administration and Procedures as amended and supplemented by the Law No. 04/L-102, *Official Gazette*: No. 57 / 30 December 2013. See also Doing Business 2015 Economy Profile 2015 Kosovo. World Bank Group. pp.20-85. Available at: <http://www.doingbusiness.org/data/exploreeconomies/~media/giawb/doing%20business/documents/profiles/country/KSV.pdf?ver=2> (Accessed: 28.10.2014).

<sup>28</sup> Law No.03/L –185 on the Energy Regulator. *Official Gazette*: No. 86/2010, 15 November 2010. See also ERO. Energy Regulatory Office. Available at: <http://www.ero-ks.org/> (Accessed: 28.10.2014).

<sup>29</sup> Water and Waste Regulatory Office. Available at: <http://www.wwro-ks.org/English/index.html> (Accessed: 28.10.2014)

<sup>30</sup> Regulatory Authority of Electronic and Postal Telecommunications. Available at: <http://www.arkep-rks.org/?cid=2.1> (Accessed: 28.10.2014)

<sup>31</sup> Law No. 04/L-223 on amending and supplementing Law No. 03/L-222 on Tax Administration and Procedures, as amended and supplemented by the Law No. 04/L-102, *Official Gazette*: No. 57 /2013, 30 December 2013.

<sup>32</sup> Law No. 04/L-220 on Foreign Investment, *Official Gazette*: No. 1 / 2014, 09 January 2014.

<sup>33</sup> Law No. 04/L-194 amending and supplementing Law No. 03/L-048 on Public Financial Management and Accountability as amended and supplemented by Law Nos. 03/L-221 and No. 04/L-116, *Official Gazette*: No. 28 /2013, 07 August 2013.

is clearly reflected in strategic documents such as the Action Plan of the Economic Vision of Kosovo 2011-2014, the Medium-Term Expenditure Framework 2016-2018 (MTEF)<sup>34</sup> as a medium-term mechanism for strategic planning, and the budget planning every year. The Medium-Term Expenditure Framework is a strategic planning document that links sectoral strategies to the annual budget. In the field of economic development, the priorities outlined in the Action Plan of the Economic Vision of Kosovo 2011-2014 aimed to preserve macro-fiscal sustainability, to increase investment, to improve the investment environment and support to the private sector, to modernize and develop the public infrastructure, and to develop human capital.<sup>35</sup>

Coordination of the formulation of economic policy is carried out at the political level through the ministers' group of governmental departments related to the economic domain. At the technical level, coordination takes place through a group of advisers and civil servants who coordinate the formulation of economic policy. In March 2012, with the aim of enhancing the quality of economic policy-making, the Government of Kosovo took the Decision No. 02/67 to establish the National Council for Economic Development of Kosovo (NCEDK). The NCEDK is a consultative body, with participants from business organizations along with governmental institutions. The NCEDK consists of the Ministry of Finance, the Ministry of Economic Development, the Ministry of Agriculture, Forestry and Rural Development, the Ministry of Trade and Industry, the Ministry of European Integration, the Ministry of Labour and Social Welfare, the Ministry of Infrastructure, the Ministry of Justice, the Ministry of Education, Science and Technology, the Kosovo Chamber of Commerce, the Kosovo Business Alliance and the American Chamber of Commerce in Kosovo.

In addition, pursuant to the Law on Public Financial Management and Responsibilities No. 03/L-048 as amended by Law No. 04/L-194, and the annual Budget Law, the structure of expenditure is classified by function into the following categories: general services, defence, public law enforcement and security, economic issues, environment protection, residential and community issues, health, recreation, culture and religion, education, and social protection. Also, expenditure is structured by its economic nature, including the following categories: wages and salaries, goods and services, municipal expenditure, subsidies and transfers, capital expenditure and other expenditure.

## **II.2.2. The concept of the market economy**

The driving force behind the concept of the market economy in Kosovo is the encouragement of economic activity. A market economy refers to economic activity that is organized by private individuals and entrepreneurs.<sup>36</sup> The shape of the market economy in Kosovo has developed over the years. The concept of market economy is supported by international institutions that have provided financial and political assistance in Kosovo. Crucial reforms have taken place, such as the establishment of the basic rules and institutional framework for a business environment.

Gradually, Kosovo is removing obstacles to doing business. Within this framework, improved rules and regulations have led to the simplification and improvement of the legal framework for

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<sup>34</sup> Medium-Term Expenditure Framework 2016-2018. Available at: <https://mf.rks-gov.net/en-us/Reports/Reports-and-Publications/Medium-Term-Expenditure-Framework>

<sup>35</sup> Action Plan of the Economic Vision of Kosovo 2011-2014. Available at: [http://www.kryeministri-ks.net/repository/docs/Action\\_Plan\\_of\\_the\\_Economic\\_Vision\\_of\\_Kosovo\\_2011-2014.pdf](http://www.kryeministri-ks.net/repository/docs/Action_Plan_of_the_Economic_Vision_of_Kosovo_2011-2014.pdf) (Accessed: 28.10.2014).

<sup>36</sup> Kates, S. 2011. *Free Market Economics: An Introduction for the General Reader*. Edward Elgar Publishing. p.1.

business activity. One important aspect of the market economy is having an independent administrative structure with enforcement powers to monitor, inspect and regulate the market, ensuring the functioning of an open market economy and creating a sustainable and competitive environment for the free movement of goods, services and capital.<sup>37</sup> The Market Inspectorate is an executive body of the Ministry of Trade and Industry. Kosovo is currently developing its trade in the framework of three categories of trade arrangements: EU Autonomous Trade Measures (ATMs),<sup>38</sup> the extended Central European Free Trade Area (CEFTA) as a multilateral framework, and bilateral arrangements. Since the EU is Kosovo's biggest trade partner, the reinstatement of autonomous trade measures will encourage trade and will increase Kosovo's exports to the EU. Kosovo has been a member of the Central European Free Trade Agreement (CEFTA) since its establishment in 2007. During 2011, Kosovo chaired the CEFTA, and it has met all the obligations arising from the annual working programme. Kosovo also benefits from the Generalized System of Preferences (GSP)<sup>39</sup> with the USA, which provides for the free export of a considerable number of Kosovo products.

Another important aspect needed for a market economy is the rule of law. The rule of law is the most important component in the creation of a successful market economy. This is related to accountability under the law, institutional capacities that protect fundamental rights, and access to justice. Within the concept of the rule of law property rights are very important. Property rights allocate resources to specific persons (owners) who may then freely determine the use of said resources, as well as dispose of them. This is crucial to the functioning of any market economy. In Kosovo, it is the law that defines what can be owned and the various forms of ownership. This field is progressing gradually. Property law plays a substantial part in privatization and has considerable economic effects. Over the years, the concept of the market economy has been strengthened by the privatization of state-owned enterprises. However, some weaknesses have persisted in the enforcement of the rule of law. Actually, Kosovo is aiming to build effective rules and policies that are vital for a functional market economy.

### **II.2.3. The constitutive legal institutions of a market economy, and the laws of Kosovo**

The development of market principles requires that prices and trade are liberalized and that an enforceable legal system, which also covers property rights, is in place. This will enhance the performance of a market economy. Kosovo is aiming to build a market economy based on the principles of a market economy and free competition.<sup>40</sup> To improve the free market economy,

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<sup>37</sup> Law No. 03/I-181 on Market Inspectorate and Inspective Supervision, *Official Gazette*: year v / No. 80 / 27 August 2010.

<sup>38</sup> Council Regulation (EC) No 1215/2009 of 30 November 2009, *OJ L 328*, 15.12.2009, p.1 as amended by Council Regulation (EU) No 1336/2011 of 13 December 2011, *OJ L 347*, 30.12.2011, p.1. Available at: [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/rules\\_origin/preferential/article\\_784\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/preferential/article_784_en.htm) (Accessed: 28.10.2014).

<sup>39</sup> Office of the United States Trade Representative, GSP in use – country specific information Kosovo. Available at: <http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preferences-gsp/gsp-use-%E2%80%93-coun> (Accessed: 28.10.2014).

<sup>40</sup> The Programme of the Government of the Republic of Kosovo 2011-2014. Available at: [http://www.kryeministri-ks.net/repository/docs/Programi\\_i\\_Qeverise\\_eng\\_.pdf](http://www.kryeministri-ks.net/repository/docs/Programi_i_Qeverise_eng_.pdf) (Accessed: 12.10.2014).

Kosovo undertook a number of measures to develop legal institutions and improve the laws covering engagement in economic activities. These measures were aimed at removing the obstacles for doing business by reducing governmental constraints.

In the context of legal institutions, there are several institutions involved in the development of a market economy. They are the following: the Ministry of Trade and Industry, the Ministry of Finance, the SME Support Agency, the Investment Promotion Agency, the Ministry of Foreign Affairs, the Ministry of European Integration, the Customs Service, the Ministry of Economic Development, the Food and Veterinary Agency, the Tax Administration of Kosovo, the Kosovo Chamber of Commerce, the Business Alliance of Kosovo, the Kosovo Chamber of Advocates, and the Association of Exporters. This institutional capacity is supported by business representatives and other relevant donors such as the United Nation Development Programme (UNDP), the United States Agency for International Development (USAID), the World Bank, the European Union and the International Monetary Fund. Generally, these institutions are working together to enhance the market economy, and, specifically, to reform the environment for doing business and to harmonize the legislation with EU law relating to the system of regulation in the market economy. Regarding engagement in economic activities, the Action Plan of the Economic Vision of Kosovo 2011-2014 and the SME Development Strategy 2012-2016 contained a set of open market based reforms.<sup>41</sup>

One set of reforms includes the simplification and improvement of the legal framework for business activities, to create a clear-cut and stable legal environment for doing business, with minimal interference to businesses, and the implementation of best practice in government procurement, with the purpose of increasing access to business information and increasing efficiency in tendering procedures. Another set of reforms includes the strengthening of the legislative and regulatory framework for developing a market economy. This includes the simplification of existing legislation and the regulatory framework, the reduction of barriers to trade through improving policies, the improvement of access to information and the building of human capacities for the market economy. Additionally, to improve business access to finance, further reforms have taken place, such as increases in the quantity and quality of information available to the loan registry, with the aim of strengthening the credit granting analysis, and reducing risk and the cost of borrowing.

In terms of investments, the Constitution has set investment protection as one of the values of the constitutional order of the Republic of Kosovo (Article 119 (Economic Relations)).<sup>42</sup> This emphasizes that “The Republic of Kosovo shall ensure a favourable legal environment for a market economy, freedom of economic activity and safeguards for private and public property”. It further adds that “the Republic of Kosovo shall ensure equal legal rights for all domestic and foreign investors and enterprises”. The legislative framework that regulates investment protection includes Law No. 04/I-220 on Foreign Investment.<sup>43</sup>

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<sup>41</sup> Action Plan of the Economic Vision of Kosovo 2011-2014. Available at: [http://www.kryeministri-ks.net/repository/docs/Action\\_Plan\\_of\\_the\\_Economic\\_Vision\\_of\\_Kosovo\\_2011-2014.pdf](http://www.kryeministri-ks.net/repository/docs/Action_Plan_of_the_Economic_Vision_of_Kosovo_2011-2014.pdf).

SME Development Strategy 2012-2016. Available at: <http://smallbusinessdays.com/images/uploads/SME-Development-Strategy-for-Kosovo.pdf> (Accessed: 16.10.2014).

<sup>42</sup> Article 119 (Economic Relations), Constitution.

<sup>43</sup> Law No. 04/I-220 on Foreign Investment, *Official Gazette*: No. 1 / 2014, 09 January 2014.

The Law on Foreign Investment, which is the main legislative act regulating foreign investment, aims to “protect, promote and encourage foreign investment in the Republic of Kosovo, to provide foreign investors with a set of fundamental rights and guarantees that will ensure [sic] foreign investors that their investments will be protected and treated with fairness in strict accordance with the accepted international standards and practices”.<sup>44</sup> The term investment is defined in this law as follows:

*...any asset owned or otherwise lawfully held by a Foreign Person in the Republic of Kosovo for the purpose of conducting lawful commercial activities, including but not limited to: movable and immovable property, including rights in and to such property such as a mortgage, lien, pledge, lease or servitude [sic]; intangible and intellectual property, including rights in such property, as well as goodwill, technical processes and knowledge; cash, securities, commercial paper, guarantees, shares of stock or other types of ownership interests in the Republic of Kosovo or foreign business organization; bonds, debentures, other debt instruments; claims or rights to money, goods, services, and performance under contract; concessions or licenses conferred by law, administrative act, or contract; and returns yielded by an investment in the Republic of Kosovo or an investment elsewhere.*<sup>45</sup>

This law has set the principles for the general treatment of foreign investors and for the absence of discrimination against them. It further contains important provisions regarding liquidation, mechanisms for the resolution of investment disputes, registration of investments, and a diverse set of provisions that attract and protect foreign investments in Kosovo. Regarding specific measures implemented to promote foreign direct investment, Kosovo has taken specific measures such as:

- fiscal policies and reduction in corporate tax from 20% to 10%;
- reduction of the personal income tax rate to 10%;
- improvements in the environment for doing business: business registration within only three days;
- reductions in administrative procedures: waiting time for import has been reduced from eight to three, and about numbers of export documents from eight to two documents;
- reduction in the time to obtain a municipal work permit, to allow a quick start of a business.<sup>46</sup>

Regarding the capital markets for credit, financing and banking, over the years most of the credit issued by the banking system in Kosovo has been received by private enterprises. Depending on the size of business and its activity, banking and financial products are structured in different ways. Types of credit currently accessible by companies in Kosovo are the following: commercial loans, refinancing loans, agricultural loans, mortgage loans, leasing loans and other types of loans that fit the business activity. Besides the above-mentioned loans, private companies also have access to financial products made available by the banking sector. Trade finance products issued in Kosovo are: paper guarantees, letters of credit etc. Depending on the type of credit applied for and the capacity of the company, banks issue loans by adjusting the loan amount to the capacity to

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<sup>44</sup> Article 1, Law No. 04/I-220 on Foreign Investment, *Official Gazette*: No. 1 / 2014, 09 January 2014.

<sup>45</sup> Article 2 (Definitions), Law No. 04/I-220 on Foreign Investment, *Official Gazette*: No. 1 / 2014, 09 January 2014.

<sup>46</sup> Doing Business in Kosovo - Measuring Business Regulations. World Bank Group. Available at: <http://www.doingbusiness.org/data/exploreeconomies/kosovo> (Accessed: 16.10.2014).



repay. Credit application criteria vary, but the most important are: business certificate, VAT certificate (if applicable), financial records of company, the company's stock list, the business plan, possession list for mortgage collateral and other documents that depend on the specifics of the credit applicable to the company. The banks themselves determine interest rates. The interest rates in Kosovo are mainly dictated by changes in supply and demand for loans and deposits, bank risk developments, and the bank's overall cost of financing.

## II.2.4. Privatisation and deregulation

Privatization is of paramount importance for the economic development of Kosovo. The concept of privatization has gradually evolved in Kosovo. At the beginning, Kosovo perceived the process of privatization to be undesirable. As a new market economy, Kosovo is still experiencing different curves in the field of privatization and deregulation. Privatization during the transition from a socialist to a market economy differs from country to country.<sup>47</sup> The privatization process requires the proper administration, privatization and deregulation of socially-owned enterprises (SOEs) in a timely manner.

The privatization process in Kosovo started in 2002 after the establishment of the Kosovo Trust Agency (KTA) under the UN administration.<sup>48</sup> When the UNMIK administration was established in 1999, it arranged the commercialization of many SOEs with strategic importance.

During the privatization process in Kosovo, it should be mentioned that enterprises and assets that were in social ownership in or after 1988 were subject to potentially conflicting property claims. Additionally, this process faced difficulties due to the validity of property claims. Through the years, this process has also faced complexity caused by evidentiary issues and questions of the applicable legislative and legal norms. The privatization process was challenged because of persistent legal uncertainty as to the ownership of such enterprises and assets. Kosovo aimed to clear such legal uncertainties, as they seriously and negatively affected the general economic and social situation of Kosovo.

The methods used for the privatization of SOEs and their assets were: ordinary spin off, conditional spin off, and special spin off.<sup>49</sup> In compliance with Law No. 04/L-034 on the Privatization Agency of Kosovo (PAK), the special spin off method that was inherited from the KTA was not used by the PAK since it proved to be extremely complex for the management and board of the PAK; for some of the enterprises privatized using the special spin off method, the fulfilment of their employment and investment commitments was exceedingly prolonged, and complications arose due to the conclusion of contracts based on the partial fulfilment.

The Privatization Agency of Kosovo is a public administrative authority for such enterprises and assets, and its powers include, but are not limited to, the right and authority to sell or otherwise

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<sup>47</sup> Goldberg, I. and Nellis, J. 2008. Methods and Institutions – How do they Matter? Lessons from Privatization and Restructuring in the Post-Socialist Transition. In: Lieberman, I. W. and Kopf, D. J. (eds.) *Privatization in Transition Economies: The Ongoing Story. Contemporary Studies in Economic and Financial Analysis Volume 90*, Elsevier. p.345.

<sup>48</sup> Regulation No. 2002/12 on the Establishment of the Kosovo Trust Agency. Later amended by Law No. 04/L-034 on the Privatization Agency of Kosovo, *Official Gazette*: No. 19 / 21 September 2011.

<sup>49</sup> Work Report August 2008 - August 2009. Privatization Agency of Kosovo. Available at: [http://www.pak-ks.org/repository/docs/090904-English\\_Ver.pdf](http://www.pak-ks.org/repository/docs/090904-English_Ver.pdf) (Accessed: 01.12.2014).

transfer such enterprises and/or their assets to private investors, or to liquidate them, in an open, transparent and competitive process and without delay.<sup>50</sup> Under Law No. 04/L-034 the PAK does not have the mandate to monitor the employment and activities of enterprises that were partially or completely privatized using the ordinary spin off method (with no conditions). The activities and employment of enterprises that were privatized through the special spin off and with conditions are monitored by the PAK for a certain period. The monitoring period varies and depends on the contracts and commitments. Enterprises that were privatized in a special spin off had two (2) years to fulfil their commitments, whereas the monitoring period for enterprises privatized through conditional spin off was from three (3) to five (5) years.

Pursuant to Article 5 of Law 04/L-034, the PAK is an independent public body that carries out its functions and responsibilities with full autonomy. It possesses full legal personality and, in particular, has the capacity to enter into contracts and to acquire, hold and dispose of property, and it has all the powers implied by the Law No. 04/L-034 to discharge fully the tasks and powers conferred upon it by that law; and it can sue and be sued in its own name. At the end of 2013, the Privatisation Agency of Kosovo holds 585 socially-owned enterprises.<sup>51</sup> According to Articles 6 and 19 of Law No. 04/L-034, revenues from privatization and liquidation are kept in trust in the Central Bank of Kosovo. Overall, this process has required a very substantial amount of time and professional effort.

### III. The development of state capacities

In June 1993, the Copenhagen European Council concluded that accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions.<sup>52</sup> In the framework of political conditions, a candidate country preparing for accession to the EU must bring its institutions, management capacity, and administrative and judicial systems up to the EU standards with a view to implementing the policy and legislation effectively before accession. At the general level, this requires a well-functioning and stable state legislature and executive, and an independent and efficient judicial system.<sup>53</sup> The curve of institutional capacity and legal development should be seen as a movement made up of diverse stages of development. At the beginning, Kosovo proceeded far too slowly regarding its institutional capacity, and faced enormous institutional challenges in the first years. This is because Kosovo inherited a post-communist culture. The institutional capacity was critical in 1999.

The development of state capacities has evolved gradually. This development could be classified into two main periods: the first period under the supervised UN mission (1999 until 2007), and the

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<sup>50</sup> Law No. 04/L-034 on the Privatization Agency of Kosovo, *Official Gazette*: No. 19 /2011, 21 September 2011.

<sup>51</sup> Data available through Annual Report. 2013. Privatization Agency of Kosovo. p.9. Available at: [http://www.pak-ks.org/repository/docs/Raporti\\_2013\\_komplet\\_ENG.pdf](http://www.pak-ks.org/repository/docs/Raporti_2013_komplet_ENG.pdf) (Accessed: 03.12.2014)

<sup>52</sup> European Council in Copenhagen 21-22 June 1993, Conclusions of the Presidency, at item 7 (Relations with the Countries of Central and Eastern Europe). Available at: [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/72921.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf) (Accessed: 12.10.2014) pp.12-16.

<sup>53</sup> A systematic assessment of the candidate countries' administrative capacity takes place in the framework of the EU Commission's regular progress reports. The EU assessed the state capacities for the first time in its Progress Report in 2005. Kosovo Progress Report 2005, COM (2005) 561 final, Brussels, 9 November 2005, SEC(2005) 1423. pp.9-15. (Accessed: 06.10.2014).

second period after the independence of Kosovo (from 2008 to date). The EU has been the cornerstone of the development of state capacities in both periods.

Regarding the first period, under the UN (1999-2007), different forms of state capacities and mixed competencies were developed. After its establishment in the second part of 1999, the UN mission designed a macro-programme for the economic recovery and restructuring of Kosovo, and an institutional framework.<sup>54</sup> This institutional framework had different components: customs, a central fiscal authority of Kosovo, a banking and payments authority, a housing and property directorate and housing and property claims commission, an administrative department of transport and infrastructure, and an administrative department of justice.<sup>55</sup> In parallel with the UN supervision in Kosovo, another set of institutions later emerged. In 2001, after the adoption of the Constitutional Framework for Provisional Self-Government Institution (PSGI) (“the Constitutional Framework”)<sup>56</sup>, another set of state capacities emerged, with the establishment of the administrative institutions known as the Provisional Self-Government Institution. In order to set out a legal framework for the government to exercise executive authority under the Constitutional Framework, new institutions were set up, such as ministries and executive agencies.<sup>57</sup> The new institutions were empowered with light responsibilities. However, these provisional institutions were under the close supervision of the UN mission in Kosovo. The division of responsibilities between the PSGI and the UN was quite complex.<sup>58</sup> Meanwhile, these institutions were crucially important in the stabilization and association process. One of the key aspects during this period was the need to create the legal and administrative basis of “an internal coordination structure in order to ensure the efficient preparation of future meetings and full and adequate follow-up monitoring tool”.<sup>59</sup> This mechanism was an important step and was aimed at streamlining the relationship and dialogue between the EU and Kosovo from 2000 until 2007. Within this timeframe, institutional capacities with regard to the development of state policies and legislation were satisfactory.

The second period in the development of state capacities began with the adoption of the Constitution in 2008. After the adoption of the Constitution in 2008, the Constitutional Framework was abolished. The institutional setting of the state administration was empowered and

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<sup>54</sup> Prepared by the European Commission and the World Bank in Support of the United Nations Mission in Kosovo. November 3, 1999. *Toward Stability and Prosperity*. A program for Reconstruction and Recovery in Kosovo. pp.14-18. Available at:

[http://ec.europa.eu/enlargement/archives/seerecon/kosovo/documents/kosovo\\_toward\\_stability\\_and\\_prosperity\\_1999.pdf](http://ec.europa.eu/enlargement/archives/seerecon/kosovo/documents/kosovo_toward_stability_and_prosperity_1999.pdf) (Accessed: 17.06.2014).

<sup>55</sup> See UN mission background. Available at:

<http://www.un.org/en/peacekeeping/missions/unmik/background.shtml> (Accessed: 09.10.2014)

<sup>56</sup> The Constitutional Framework for Provisional Self-Government Institution. Available at:

[http://www.assembly-kosova.org/common/docs/FrameworkPocket\\_ENG\\_Dec2002.pdf](http://www.assembly-kosova.org/common/docs/FrameworkPocket_ENG_Dec2002.pdf)

<sup>57</sup> See Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo. This Regulation was repealed by the Government Regulation No. 01/2007 on the work of the Government. Since 2011, Regulation No. 09/2011 on the Rules and Procedure of the Government of the Republic of Kosovo, *Official Gazette*: N No. 15 (Published: 12 September 2011) has been in force.

<sup>58</sup> Ante, A. 2010. *State Building and Development: Two Sides of the Same Coin? Exploring the Case of Kosovo*. Hamburg, diserta Verlag. p.309.

<sup>59</sup> First meeting of the Kosovo Stabilization and Association Tracking Mechanism. 13 March 2003. Prishtina. Available at: [http://europa.eu/rapid/press-release\\_IP-03-920\\_en.htm](http://europa.eu/rapid/press-release_IP-03-920_en.htm) (Last accessed: 09.10.2014).



restructured. More ministries and independent state agencies have been established under the Constitution of 2008. After 2008, Kosovo had a new picture for its state capacities according to the EU's requirements. In 2012, the European Commission, as part of the enlargement package, carried out a feasibility study.<sup>60</sup> The Commission confirmed that Kosovo had put in place the stable institutional and legal framework necessary to start negotiating a stabilization and association agreement. Regarding the present development, the following sub-themes provide an analytical overview of the state capacities with regard to the legislature, the administration and the judiciary.

### III.1. Legislature

The Assembly of the Republic of Kosovo is the legislative institution of the Republic of Kosovo, and is elected directly by the people.<sup>61</sup> The Assembly exercises its competencies according to Article 65 of the Constitution. Generally, among many responsibilities, the Assembly adopts laws, resolutions and other legal acts, announces referenda in accordance with the law, ratifies international treaties, approves the budget, elects the President and the government, oversees the work of the government, elects members of the Kosovo Judicial Council and the Kosovo Prosecutorial Council, proposes judges for the Constitutional Court, oversees foreign and security policies, and decides on matters of general interest as set forth by law.<sup>62</sup>

According to the rules and procedures of the Assembly, the Assembly must appoint standing committees, functional committees and ad hoc committees.<sup>63</sup> The committees must reflect the political composition of the Assembly. Each committee, within the scope of its responsibilities, is authorized to supervise the implementation of the law by the government, the ministries and the agencies.<sup>64</sup> The law-making procedure is developed through a number of mechanisms.<sup>65</sup> The procedure follows a number of stages, as provided in Articles 53 to 61.<sup>66</sup> The law-making procedure includes the proposal of draft laws, the conditions for presenting a draft law, the initiative for drafting a draft law, the first reading of a draft law, the review of a draft law by a committee of the Assembly, the second reading of a draft law, the third reading of a draft law, the

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<sup>60</sup> Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilization and Association Agreement between the European Union and Kosovo. Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/ks\\_feasibility\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf) (Accessed: 12.11.2014).

<sup>61</sup> Article 63, Constitution.

<sup>62</sup> Article 65, Constitution.

<sup>63</sup> See Rules of Procedure of the Assembly of the Republic of Kosovo. Available at: [http://www.kuvendikosoves.org/common/docs/T-\\_Rregullorja\\_Kosoves-29%20prill%202010-anglisht.pdf](http://www.kuvendikosoves.org/common/docs/T-_Rregullorja_Kosoves-29%20prill%202010-anglisht.pdf) (Accessed: 24.10.2014).

<sup>64</sup> See Annex 2 of the Rules of Procedure of the Assembly of the Republic of Kosovo. Available at: [http://www.kuvendikosoves.org/common/docs/T-\\_Rregullorja\\_Kosoves-29%20prill%202010-anglisht.pdf](http://www.kuvendikosoves.org/common/docs/T-_Rregullorja_Kosoves-29%20prill%202010-anglisht.pdf) (Accessed: 24.10.2014).

<sup>65</sup> See Chapter XIII (Lawmaking Procedure) of the Rules of Procedure of the Assembly of the Republic of Kosovo. Available at: [http://www.kuvendikosoves.org/common/docs/T-\\_Rregullorja\\_Kosoves-29%20prill%202010-anglisht.pdf](http://www.kuvendikosoves.org/common/docs/T-_Rregullorja_Kosoves-29%20prill%202010-anglisht.pdf) (Accessed: 24.10.2014).

<sup>66</sup> Articles 53 to 61, Rules of Procedure of the Assembly of the Republic of Kosovo. Available at: [http://www.kuvendikosoves.org/common/docs/T-\\_Rregullorja\\_Kosoves-29%20prill%202010-anglisht.pdf](http://www.kuvendikosoves.org/common/docs/T-_Rregullorja_Kosoves-29%20prill%202010-anglisht.pdf) (Accessed: 24.10.2014).

ratification of international agreements by law pursuant to Article 18 of the Constitution, and the signature and promulgation of laws.<sup>67</sup>

The Assembly exercises the legislative function by reviewing the draft laws in the Assembly committees, drafting amendments and adopting the laws. Assembly committees have the jurisdiction to review legislation. Permanent committees review all draft laws that are in the process of review and approval by the Assembly. Functional committees are obliged to consider legislation that covers their specific field. Once a draft law is received by the Assembly, the first reading must take place no earlier than two working weeks and no later than four working weeks from the date of delivery of the draft law. From the first to the second examination and approval of the draft law, the committees have two months to review and prepare amendments to the law so that they can send the draft law for approval.

The EU approach to the Assembly has recently been more oriented towards strengthening its supervisory capacity. In particular, the EU has emphasized that “the Assembly and its committees need to strengthen their supervision of the executive and the security sector, through improved scrutiny of legislation and monitoring of implementation of policies and laws.”<sup>68</sup> Further recommendations regarding the Assembly refer to the need to focus on the implementation of legislation and policies, and the role of the Assembly in supervising independent institutions; the regulatory authorities also need to be strengthened.<sup>69</sup> Most of the tasks awaiting the Assembly regarding the implementation of the Stabilization and Association Agreement<sup>70</sup> concern the harmonization of the Kosovo legal order with the EU *acquis*. In the future, the interaction of the Assembly with the stabilization and association process is linked to the political dialogue that should take place in the future at parliamentary level within the framework of the Stabilization and Association Parliamentary Committee.

### III.2. Administration

The Government of the Republic of Kosovo exercises its executive power on the basis of the Constitution.<sup>71</sup> The Constitution defines the general principles of the organization, functions and competencies of the government. Article 92 of the Constitution provides that the government is

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<sup>67</sup> Articles 53 to 61, Rules of Procedure of the Assembly of the Republic of Kosovo. Available at: [http://www.kuvendikosoves.org/common/docs/T- Rregullorja\\_Kosoves-29%20prill%202010-anglisht.pdf](http://www.kuvendikosoves.org/common/docs/T- Rregullorja_Kosoves-29%20prill%202010-anglisht.pdf) (Accessed: 24.10.2014).

<sup>68</sup> Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilization and Association Agreement between the European Union and Kosovo. Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/ks\\_feasibility\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf) (Accessed: 12.11.2014). p.7.

<sup>69</sup> EU Progress Report, 2014. Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-kosovo-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf) (Accessed: 15.10.2014)

<sup>70</sup> Stabilization and Association Agreement. Negotiations successfully completed on 02.05.2014. Available at: [http://eeas.europa.eu/delegations/kosovo/press\\_corner/all\\_news/news/2014/20140502\\_03\\_en.htm](http://eeas.europa.eu/delegations/kosovo/press_corner/all_news/news/2014/20140502_03_en.htm)

<sup>71</sup> The Constitution of the Republic of Kosovo, *Official Gazette*: K-09042008 09 April 2008; Law No 03/L-189 on the State Administration of the Republic of Kosovo, *Official Gazette*: 03/L-189 21 October 2010; Regulation No. 09/2011 on the Rules of Procedure of the Government of the Republic of Kosovo *Official Gazette*: QRK-09/2011 September 2011; Regulation No. 07/2011 on the Amendment of Regulation 02/2011 on the Scope of Administrative Responsibilities of Prime Minister’s Office and Ministries, *Official Gazette*: QRK-07/ 29 June 2011.

the holder of executive power, and consists of the Prime Minister, the Deputy Prime Ministers and the Ministers. Article 96 of the Constitution provides that the ministries and other executive bodies are established as necessary, within the powers of the government, while the number of members of the government is determined through an internal act. Pursuant to Article 93 of the Constitution, the government is responsible for: a) proposing and implementing the internal and foreign policy of the country; b) promoting economic development; c) proposing legislation; d) providing secondary legislation; e) guiding the work of public administration; and f) proposing nominations for diplomatic missions.

Moreover, the Rules of Procedure of the Government of Republic of Kosovo<sup>72</sup>, adopted in 2011, outline the functioning and decision-making procedures of the government, the rules and procedures for proposing legislation and policies and the organization of government sessions. In addition, they establish that all government functionaries and bodies are to comply with the provisions of these Rules of Procedure.<sup>73</sup>

There are a number of strategic documents and mechanisms that guide the government of Kosovo and underpin its political orientation. Government priorities are anchored to a number of strategic documents. These strategic documents include the Action Plan of the Economic Vision of Kosovo 2011-2014,<sup>74</sup> the Medium-Term Expenditure Framework (MTEF),<sup>75</sup> and the Government Annual Work Plan (GAWP). The GAWP is the central government mechanism for establishing the government's goals and tasks at a central level on annual basis, and is based on the government programme developed after each national election. One important mechanism in the context of European integration is the Action Plan for the Implementation of the Stabilization and Association Agreement (APISAA). This is the basic document when it comes to the European integration agenda in Kosovo. This plan is revised annually, upon publication of the EC's Enlargement Report and Strategy, in order to address the challenges identified in the Progress Report and the conclusions of the stabilization and association process dialogue. The implementation of the plan is monitored regularly, with the government receiving quarterly input from the institutions concerned. Another important mechanism is the Legislative Programme, which is prepared and monitored by the government. This programme derives from the GAWP. The Legislative Programme, listing the proposed legislation for the following year, defines the time-line for drafting the legislation and the institutions responsible. The monitoring of the implementation of the Legislative Programme is carried out through reporting on the implementation of the GAWP and the APISAA.

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<sup>72</sup> The Rules of Procedure of the Government of Republic of Kosovo. *Official Gazette*: QRK-09/2011 September 2011.

<sup>73</sup> Regulation No. 07/2011 on the Amendment of Regulation 02/2011 on the Scope of Administrative Responsibilities of Prime Minister's Office and Ministries, *Official Gazette*: QRK-07/ 29 June 2011.

<sup>74</sup> Action Plan of the Economic Vision of Kosovo 2011-2014. Available at: [http://www.kryeministriks.net/repository/docs/Action\\_Plan\\_of\\_the\\_Economic\\_Vision\\_of\\_Kosovo\\_2011-2014.pdf](http://www.kryeministriks.net/repository/docs/Action_Plan_of_the_Economic_Vision_of_Kosovo_2011-2014.pdf) (Accessed: 16.10.2014).

<sup>75</sup> Medium-Term Expenditure Framework (MTEF) 2014-2016.

The Law on State Administration<sup>76</sup> and the Rules of Procedure of the Government<sup>77</sup> serve as a solid basis for inter-institutional coordination, by defining precisely the rules on consultation-based decision-making within the government as well as the rules on legislation and policy development. Public administration in the Republic of Kosovo is organized through central and local administration. This division is in full compliance with the principle of separation of the legislative, executive and judicial powers specified by the Constitution.

Furthermore, independent institutions within the public administration of the Republic of Kosovo are organized and function in accordance with Chapter XII of the Constitution.<sup>78</sup> Article 145 of the Constitution emphasizes that independent agencies are established by the Assembly in accordance with the respective laws that regulate their establishment, operation and competencies, and that they exercise their functions independently. It further provides that independent agencies have their own budget that is administered independently in accordance with the law. Every institution or other entity exercising legal authority in the Republic of Kosovo is bound to cooperate with and respond to requests by the independent agencies during the exercise of their legal competencies as provided by law. The government is responsible for driving forward the reform process.<sup>79</sup> Accordingly, the EU always has guided the government in improving strategic planning and coordination among the ministries, as well as in better reflecting the available financial resources in the government's agenda.<sup>80</sup>

### III.3. Judiciary

The judicial system of Kosovo is governed by the Constitution,<sup>81</sup> and by other relevant laws such as Law No. 03/L-199 on Courts and Law No. 03/L-233 on Kosovo Judicial Council.<sup>82</sup> The Constitution and the Law on Courts stipulate that judicial power is vested in the courts, while the Constitution mandates the Supreme Court as the highest judicial authority with territorial jurisdiction over the entire territory of the Republic of Kosovo. The Supreme Court includes the Appeals Panel of the Kosovo Property Agency and the Special Chamber of the Supreme Court on Privatization Agency of Kosovo related matters, the judges of which are part of the Supreme Court.

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<sup>76</sup> Law No. 03/L-189 on the State Administration of the Republic of Kosovo, *Official Gazette*: No. 82 / 21 October 2010.

<sup>77</sup> Regulation No. 09/2011 on the Rules and Procedure of the Government of the Republic of Kosovo, *Official Gazette*: No. 15 /2011, 12 September 2011.

<sup>78</sup> Articles 132 to 142 of the Constitution of the Republic of Kosovo, *Official Gazette*: Constitution of the Republic of Kosovo. *Official Gazette*: K-09042008, as amended by amendments on the Constitution of the Republic of Kosovo regarding the ending of International Supervision of Independence of Kosovo, *Official Gazette*: 25/2012 07 September 2012, as amended by amendment of the Constitution of the Republic of Kosovo, *Official Gazette*: 07/2013, 26 March 2013.

<sup>79</sup> Ibid Article 93.

<sup>80</sup> EU Progress Report, 2014. Available at:

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-kosovo-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf) (Accessed: 15.10.2014).

<sup>81</sup> Chapter 7 of the Constitution.

<sup>82</sup> Law No. 03/L-199 on Courts, *Official Gazette*: year v / No. 79 / 24 August 2010, as amended by Law No. 04/L-171 amending and supplementing Law No. 03/L-199 on Courts, *Official Gazette*: No. 37 / 28 December 2012. Law No. 03/L-233 on Kosovo Judicial Council, *Official Gazette*: No. 84/L-10, 03 November 2010.

The Constitutional Court, according to the Constitution, is the main authority for the interpretation of the Constitution and for ensuring the compliance of laws with the Constitution.<sup>83</sup> The Constitution sets up the Kosovo Judicial Council (KJC) as the responsible body for ensuring the independence and impartiality of the judicial system, and ensuring that it fully reflects the multi-ethnic nature of Kosovo and follows the principles of gender equality. In accordance with the Constitution, upon receiving a proposal from the KJC, the President has the right to appoint, reappoint and dismiss judges. The KJC proposes its budget directly to the government as provided by law.

The current judicial system of Kosovo is comprised of the Basic Courts, the Court of Appeals and the Supreme Court. The Basic Courts are the courts of first instance. The Basic Courts are established in the main centres of Kosovo, with branches covering the entire territory of Kosovo. According to Article 12 of the Law on Courts<sup>84</sup>, within the Basic Courts, departments are established for the purpose of allocating cases according to their subject matter (e.g. competition cases). There are five departments: the Department for Commercial Matters operating in the Basic Court of Prishtina for the entire territory of the Republic of Kosovo; the Department for Administrative Cases operating in the Basic Court of Prishtina for the entire territory of Kosovo; the Department for Serious Crimes operating at the principal seat of each branch of the Basic Court; a General Department operating in each Basic Court and in each branch of the Basic Court; and the Department for Minors, operating within the Basic Courts. The Court of Appeals<sup>85</sup> serves as the second instance court, with territorial jurisdiction throughout the Republic of Kosovo, and has a General Department, a Serious Crimes Department, a Commercial Matters Department, an Administrative Matters Department and a Department for Minors.<sup>86</sup> The Supreme Court is the highest judicial authority in Kosovo, and has territorial jurisdiction over the entirety of the Republic of Kosovo (Article 21 of the Law on Courts).<sup>87</sup>

The composition of the Supreme Court reflects the ethnic composition of Kosovo. At least fifteen per cent (15%) of the judges of the Supreme Court, but in no case fewer than three (3) judges, are to be from communities that are not in the majority in Kosovo (Article 21 of the Law on Courts).<sup>88</sup> Furthermore, the Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.<sup>89</sup> The Constitution ensures the division of powers between the legislature, the executive and the judiciary. Chapter 7 of the Constitution requires the judiciary to be politically independent and to act in a fair and impartial manner.

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<sup>83</sup> Item 1 of Article 112, Constitution.

<sup>84</sup> Law No. 03/L-199 on Courts, *Official Gazette*: year v / No. 79 / 24 August 2010, as amended by Law No. 04/L-171 amending and supplementing Law No. 03/L-199 on Courts, *Official Gazette*: No. 37 / 28 December 2012.

<sup>85</sup> Article 17 (The Court of Appeals), Law No. 03/L-199 on Courts, *Official Gazette*: year v / No. 79 / 24 August 2010.

<sup>86</sup> Article 20 (Internal organization of the court of appeals), Law No. 03/L-199 on Courts, *Official Gazette*: year v / No. 79 / 24 August 2010.

<sup>87</sup> Article 21 (The Supreme Court), Law No. 03/L-199 on Courts, *Official Gazette*: year v / No. 79 / 24 August 2010. Also see Article 103 of the Constitution.

<sup>88</sup> Article 21 (The Supreme Court), Law No. 03/L-199 on Courts, *Official Gazette*: year v / No. 79 / 24 August 2010.

<sup>89</sup> Article 112 of the Constitution.

In the future, an independent, fair, apolitical and impartial judiciary is of high importance with regard to the implementation of the Stabilization and Association Agreement (SAA). In this regard, the judiciary is required to ensure that natural and legal persons have access, free from discrimination, to the competent courts for the defence of their rights, and to ensure that there is no discrimination in the application of measures under the SAA. Therefore this is of paramount importance to enable compliance of Kosovo legal order with the SAA legal provisions on reinforcement of institutions and rule of law.<sup>90</sup>

#### **IV. Conclusion**

After the collapse of communism, there has been a transition in the Western Balkans. Kosovo was part of this transition. This paper has highlighted the fact that Kosovo has evolved through a number of conflicts. The transformation has included the adoption of the economic principles of a market economy. The crucial rules and principles of the market economy are well-defined in the EU. Their functionality is guaranteed. Kosovo is aiming to become a member of the EU in the future. At the moment, Kosovo is seeking to build a well-functioning, competitive and open market economy. However, this process of economic transformation will take a long time to complete. Kosovo has an appropriate institutional structure and normative provisions in place regarding a free market economy. An assessment of this present situation could grade the position as satisfactory. However, there are practices that hinder economic development and may certainly hamper the fragile market economy in Kosovo. In the future, Kosovo must undertake a number of economic reforms and institutional developments with the aim of building an open market economy. This approach entails several elements, such as trade liberalization, the privatization and restructuring of state-owned enterprises, the reform of the labour market, and institutional reform. The future of the economic system in Kosovo must be based on the general principles governing the EU internal market.

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<sup>90</sup> Article 83 of the SAA.

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