

THE SUBSTANCE AND STATUS OF IMPLEMENTATION **OF KOSOVO-SERBIA DIALOGUE' AGREEMENTS**

October 2019

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BACKGROUND NOTE/ STUDY

ON

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Abbreviations

BCP	Border Crossing Points
CEFTA	Central European Free Trade Agreement
CP	Civil Protection
EEAS	European External Action Service
ENTSO-E	European Network of Transmission System Operators for Electricity
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
EUSR	European Union Special Representatives
GSM	Global System for Mobile Communications
IBM	Integrated Border Management
ICJ	International Court of Justice
INTERPOL	International Criminal Police Organization
ITU	International Telecommunications Union
KOSTT	Kosovar Electricity Transmission System and Market Operator
KP	Kosovo Police
MLA	Mutual Legal Assistance
OSCE	Organization for Security and Co-operation in Europe
RAEPC	Regulatory Authority of Electronic and Postal Communications
SEED	Systematic Exchange of Electronic Data
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNOPS	United Nations Office for Project Services

I. Introduction

This Background Note/Study seeks to offer a picture that is as comprehensively and substantively feasible as sufficiently necessary to articulate the key contents and status of implementation of the agreements concluded thus far in the process of dialogue between Kosovo and Serbia.

The order of agreement to be examined is based on the timing of their conclusion.

There are two stages of the dialogue process: the first stage composed of the so-called “technical dialogue” and, the second, the “political dialogue”. Technical dialogue is then divided into such sub-stages as (1) agreements concluded at the technical level and (2) agreements negotiated by or concluded at the political level (i.e., Prime Ministers).

Next and prior to a detailed discussion of each of the concluded agreements, this study offers a general background to the dialogue process that has resulted in the conclusion of the agreements that form its subject matter.

Each agreement is presented in ways that delimit its key contents, the implementing efforts by both parties in case of the absence of progress or non-implementation, including obstacles and reasons for its potential non-implementation or partial implementation, and a third component that defines briefly the status of implementation (from “completed” to “not implemented” or from “some progress” to “no progress”, etc.).

II. General Background

Kosovo declared its independence on 17 February 2008. Advisory proceedings were initiated afterwards in front of the International Court of Justice on the question of the legality of Kosovo’s declaration of independence. The Court issued its Advisory Opinion on 22 July 2010, finding no violations of international law or special law contained in the UN Security Council Resolution 1244 or even the Constitutional Framework for Self-Government in Kosovo.

Subsequent to the Court's Opinion, the UN General Assembly, the requesting body of the Opinion, adopted by acclamation resolution Nr. 64/298. In this resolution, it acknowledged the content of the Advisory Opinion and welcomed the readiness of the European Union to facilitate a process of dialogue between Kosovo and Serbia. According to operative paragraph 2 of the resolution, 'the process of dialogue in itself would be a factor for peace, security, and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people.'¹

The ensuing result of this process became to be known as the 'technical dialogue' between Kosovo and Serbia. The first meeting of this dialogue process commenced on 8 March 2011. The first agreements were signed on 2 July 2011. These included the freedom of movement, civil registry, and mutual recognition of university diplomas. Indeed, a total of thirteen (13) agreements have been concluded during the first stage of the technical dialogue. In some cases, certain agreements are accompanied by subsequent action or implementation plans such as the plan for the implementation of the agreement on mutual recognition of diplomas (April 2016) or arrangements relating to the finalization of the implementation of the agreement on freedom of movement (September 2016).

As part of the second, political stage of the dialogue, the key agreement is the so-called 'Brussels Agreement,' which is formally titled as the First Agreement of Principles Governing the Normalization of Relations of 19 April 2013. The agreement is aimed at setting the framework for Kosovo to finally consolidate its control over the restive, predominantly Serb northern part of the country. For purposes of this study, this section is expanded, so as to address specific parts of this agreement or more detailed and developed implementation plans that relate to (a) justice/judiciary; (b) security; (c) reciprocity on license plates; (d) Association/Community of Serb Municipalities; and (e) Mitrovica bridge.

¹ United Nations General Assembly (2010), 'Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law'. Available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/ROL%20A%20RES64%20298.pdf> [Accessed on: October 9, 2019].

III. Specific Agreements: Technical Dialogue

A. Agreements Negotiated/Concluded at the Technical Level

1. Agreement on Freedom of Movement (ID card System) (July 2011)²⁻³

a. *Contents*

On 2 July 2011, Kosovo and Serbia agreed that residents of each should be able to travel freely ‘within or through the territory of the other.’ This would be facilitated by an ID-card system for ‘cross border/boundary’ travel of residents from the other party, with the use of entry/exit documents. Each agreed to enable residents of the other party to travel freely within or through the territory of the other. The parties also agreed to interim solutions for purchasing temporary vehicle insurance, while working for a commercial arrangement on mutual vehicle insurance.

b. *Status of Implementation:* Completed/Implemented

2. Agreement on Civil Registry (July 2011)⁴

a. *Contents*

Also on 2 July 2011, both parties agreed that a tripartite committee consisting of civil registry experts from both sides and chaired by the EU’s rule of law mission in Kosovo (EULEX), would identify any gaps in the pre-1999 civil registry books.

² Office of the Prime Minister (2011), ‘Agreed Conclusions 2 July 2011 – Freedom of Movement’. Available at: http://kryeministri-ks.net/wp-content/uploads/docs/agreement_0210_freedom.pdf [Accessed on: October 9, 2019].

³ Office of the Prime Minister (2011), ‘Final operational conclusions, freedom of movement implementation group’. Available at: http://kryeministri-ks.net/wp-content/uploads/docs/Final_operational_conclusions,_freedom_of_movement_implementation_group_29_November_2011.pdf [Accessed on: October 9, 2019].

⁴ Office of the Prime Minister (2011), ‘Agreed Conclusions 2 July 2011 – Civil Registry Books’. Available at: http://kryeministri-ks.net/wp-content/uploads/docs/agreement_0210_civil_books.pdf [Accessed on: October 9, 2019].

Serbia agreed to make copies of the original registers, which, upon certification by EULEX, would be returned to Kosovo.

b. Status of Implementation: Some progress in implementation

3. Agreement on Mutual Acceptance of Diplomas (July and November 2011)⁵

a. Contents

On 21 November 2011, Kosovo and Serbia agreed to ask the European University Association to certify university diplomas for use by the other, either for higher education or employment in the public sector.

The final part of the agreement provides that 'The EU will make every effort to ensure implementation of above conclusions by 1 January 2012.'⁶

On 29 September 2015, again, both parties agreed to commit to recognizing the diplomas of the other country within five months and to each create a list of their accredited universities, for the purpose of transparency.

b. Implementation Efforts

Since 2011 when this agreement was initially reached and later on expanded, it has never been implemented by Serbia. Motives for blockade seem to be of a political nature and supposedly oriented against the Albanians of Presheva Valley who are particularly in need of acceptance of their diplomas, given that they study in Kosovo in the absence of an institution of higher education in the Albanian language in Presheva Valley. Once graduating, they seek to return home and serve in the education sector or get employed in other public institutions.

c. Status of Implementation: Not completed & no progress

⁵ Office of the Prime Minister (2011), 'Agreed Conclusions – Acceptance of University Diplomas'. Available at: http://kryeministri-ks.net/wp-content/uploads/docs/agreement_0210_university_diplomas.pdf [Accessed on: October 9, 2019].

⁶ Ibid., p.2.

4. Agreement on Customs Stamps (September 2011)⁷

a. Contents

On 2 September 2011, both parties agreed with the acceptance of Kosovo Custom's stamps and committed to ensuring the freedom of movement of goods in accordance with the Central European Free Trade Agreement (CEFTA).

Obstacles are occasionally observed, however, in the usage of parallel customs stamps by the Belgrade Customs Authorities. These instances are being reported to the EU.

b. Status of Implementation: Completed/Implemented (occasional obstacles reported)

5. Agreement on Cadaster (September 2011)⁸

a. Contents

On 2 September 2011, the parties agreed to ensure a full cadastral record for Kosovo by a similar process as delineated in the civil registry agreement.

Tripartite teams, chaired by EU representatives from the External Action Service (EEAS), and with cadastral experts from both countries, were to monitor the work of technical agency. The agency was to identify the gaps in the pre-1999 cadastral documents. The documents were to be scanned and verified and turned over to the EUSR.

The returned documents would be compared with the existing Kosovo cadaster by a technical agency to be created in Kosovo. Disparities are to be handled by an adjudication mechanism, which is to be a commission of international experts and experts on property and cadaster in Kosovo.

⁷ Office of the Prime Minister (2011), 'Agreed Conclusions 2 September 2011 – Customs Stamp'. Available at: http://kryeministri-ks.net/wp-content/uploads/docs/agreement_0210_customs.pdf [Accessed on: October 9, 2019].

⁸ Office of the Prime Minister (2016), 'Brussels Agreements Implementation State of Play' p.26. Available at: http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_implementation_of_the_Brussels_Agreements_25_November_2016.pdf [Accessed on: October 9, 2019].

The Kosovo Supreme Court is set to be the final appeal body for decisions on property ownership arising from disparities in the cadasters.

b. Implementation Efforts

Although the agreement is reached in 2011, there have been serious delays in implementation. These delays were first caused by Kosovo in not adopting the Law on the Technical Agency on Comparison and Verification of Cadastral Documents to be returned to Kosovo, which were taken forcefully from Serbia during the war against Kosovo in 1998-1999. However, since Kosovo adopted this law in June 2016, it has been Serbia who has been disrupting the implementation by not yet returning to Kosovo the scanned verified copies of taken cadastral records.

c. Status of Implementation: Some progress in implementation

6. Agreement on Integrated Border Management (IBM) (December 2011)⁹⁻¹⁰

a. Contents

In the EU context, IBM stands for ‘Integrated Border Management.’ It is a key component of membership. Because Serbia does not recognize Kosovo, it prefers the term ‘Integrated Boundary Management’. In the negotiations, only the acronym ‘IBM’, which is considered “status-neutral”, was used.

On 2 December 2011, the parties agreed to apply the EU concept of IBM, agreeing to gradually set up joint border points ‘as soon as practically possible.’ They agreed to have a balanced presentation of each side’s personnel, and not to show any state symbols. The parties also agreed that EULEX officials would be present at six border crossings.

⁹ Office of the Prime Minister (2012), ‘Technical Protocol for implementation of the IBM Agreed Conclusions of the Dialogue - 2 December 2011’. Available at: http://kryeministri-ks.net/wp-content/uploads/docs/IBM_Technical_Protocol - 23_February_2012.pdf [Accessed on: October 9, 2019].

¹⁰ Office of the Prime Minister (2012), ‘Final Action Plan of the Implementation Group (IG) for the Technical Protocol on IBM’. Available at: [http://kryeministri-ks.net/wp-content/uploads/docs/IBM_Action_Plan_final - 04_December_2012_\(2\).pdf](http://kryeministri-ks.net/wp-content/uploads/docs/IBM_Action_Plan_final - 04_December_2012_(2).pdf) [Accessed on: October 9, 2019].

On 4 September 2014, both parties reached an agreement with the EU to build permanent facilities at the crossing points, which will be financed through 21 million euros granted in the EU Instrument for Pre-accession funds for Kosovo and Serbia (3 Border/Boundary Crossing Points each).

On 21 May 2015, Kosovo and Serbia agreed to open two new IBM crossing points (BCPs), one near Serbia's Albanian-inhabited Presheva/Presevo Valley and Medvedja/Medvegja area, at Kapia/Vrapce, and another in the Serb-inhabited north of Kosovo at Rajetici/Izvor.¹¹ The first is hosted by Kosovo and the second by Serbia. According to the agreement, the BCPs are open 24/7, but customs functions only during the day.

b. Implementation Efforts

The implementation of IBM is at a rather remarkable level, an apparent result of the constructive cooperation between the border authorities of both countries.

The second phase of implementation that includes the building of permanent facilities in all six border crossings is well underway, though not yet fully completed.

Kosovo side will be hosting three BCP's in Merdare, Bernjak, and Mutivode, whereas the Serbian side will host another three BCP's in Jarinje, Dheu i Bardhe, and Mucibaba. The layout of the permanent facilities has been signed by all three parties, Kosovo, Serbia and EU in September 2014. The layouts have been designed by the EU-contracted company SAFEGE in close consultation with each party.

On IBM permanent facilities, Kosovo has made remarkable progress in completing the final project designs in cooperation with the EU and UNOPS as implementing partners. On 14 September 2016, the Government of Kosovo approved the final project designs for border crossings in Merdarë/Merdare, Bërnjak/Tabavije, and Mutivodë/Mutivode, for which Kosovo is the hosting party.

¹¹ Office of the Prime Minister (2016), 'Brussels Agreements Implementation State of Play' p.23. Available at: http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_implementation_of_the_Brussels_Agreements_25_November_2016.pdf [Accessed on: October 9. 2019].

However, the Serbian side has not been moving quickly in implementing the IBM permanent facilities in three border crossings for which they are the hosting partner. In the last IBM meeting, the Serbian side has reported some steps they have undertaken, which however are far from completing the final project designs, although the implementing partner chosen by the EU, namely UNOPS, has shown eagerness to make progress.

Significant progress has been made in the implementation of SEED (Systematic Exchange of Electronic Data's on Customs). On the other side, Mutual Legal Assistance (MLA) implementation has not been satisfactory. Serbia is reportedly delaying the responses to Kosovo.

c. Status of Implementation: Progress in implementation

7. Agreement on Regional Representation and Cooperation (February 2012)¹²

a. Contents

On 24 February 2012, the parties agreed, on an interim basis, that Kosovo could participate in regional bodies, on the condition that its name appeared with an asterisk, with a footnote referencing UN Security Council Resolution 1244 and the International Court of Justice (ICJ) opinion on the Kosovo declaration of independence.

The parties further agreed that any new agreements would feature Kosovo with the asterisk, namely Kosovo*.

The Agreement foresees that both parties confirm their commitment to effective, inclusive and representative regional cooperation. Kosovo participates on her own, speaks and signs by itself in regional meetings where Kosovo* is the only denomination to be used.

b. Implementation Efforts

Progress has been evidenced in the implementation of this agreement. Kosovo has been admitted to a number of regional and international institutions. Kosovo became a member

¹² Office of the Prime Minister (2012), 'Agreed Conclusions 24 February 2012 – Arrangements Regarding Regional Representation and Cooperation'. Available at: http://kryeministri-ks.net/wp-content/uploads/docs/agreement_0210_representation.pdf [Accessed on: October 9. 2019].

with full rights of the Permanent Court of Arbitration on 14 June 2016.¹³ It has acceded to The Hague Apostille Convention on 15 July 2016. Additionally, Kosovo State Prosecutor became a member of the International Association of Prosecutors on 29 October 2016, whereas Kosovo officially became part of the Parliamentary Assembly of the Council of Europe on 10 October 2016 where Kosovo Parliamentary Delegation will be able to attend plenary sessions and participate in the meetings of other bodies of this institution. Kosovo Chamber of Commerce became a full member of the European Association of Chambers of Commerce (Euro-chambers) on 18 October 2016.

Kosovo participated in numerous high-level international and regional meetings equally with other states. Here are some of the data: Kosovo delegation participated in the Adriatic Charter A-5 meeting regarding security issues in Zagreb on 12 November 2016; Kosovo delegation from the Commission for Investigation of Aeronautical Accidents and Incidents participated in training in Sofia, Bulgaria on 23 October 2016 organized by the European Union Agency for Railways; Kosovo Chamber of Commerce participated for the first time as an equal member with voting right in the Annual Edition of the European Parliament Entrepreneurs on 14 October 2016; the President of Republic of Kosovo Hashim Thaçi was part of the panel at the International Economic Forum in Toronto on 11 September 2016, where there were present delegates from over 40 countries; Union of Air Traffic Controllers of Europe put Union of Association of Air Traffic Controllers of Kosovo on the map of events in the field of Aviation in Europe on 27 September 2016.¹⁴

Serbia continues with obstacles in the process of Kosovo's membership both in regional bodies and broader international organizations. Evidenced cases such as in Euro Geo Surveys, where the General Assembly of the Organization which was held from 10-15 October 2016 in Ljubljana, under the influence of Serbian Delegation, put in the Agenda the request to remove Kosovo. Serbia continues with campaigns against Kosovo's membership

¹³ Office of the Prime Minister (2016), 'Brussels Agreements Implementation State of Play' p.23. Available at: http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_implementation_of_the_Brussels_Agreements_25_November_2016.pdf [Accessed on: October 9, 2019].

¹⁴ Ibid., p.24

in UNESCO and INTERPOL and poses obstacles within World Volleyball Federation where Kosovo already is a member. On 25 October 2016, Serbia asked the Hague Conference on Private Law to refuse the participation of Kosovo Delegation in a forum of experts known as the Special Committee, under the Apostille Convention, despite the fact that Kosovo has acceded to the Apostille Convention on 15 July 2016.¹⁵

In the meetings of the Western Balkan Fund and Regional Youth Cooperation Office, Serbia sent a Verbal Note, declaring that this does not mean recognition and does not prejudge the status of Kosovo. On 13 October 2016, Serbia sent a letter to the Secretary-General of the Council of Europe protesting the participation of Kosovo Delegation on 11 October 2016 at the Conference for launching the Fourth Thematic Commentary on the implementation of the Framework Convention for the Protection of National Minorities, organized by the Advisory Committee. On September 26, 2016, a Board Member of the Kosovo Competition Authority was detained at Belgrade Airport and was not allowed to participate in a meeting of regional authorities. He was held in Belgrade on the grounds that Kosovo documents are not valid. An additional example includes: The presentation of Kosovo under Resolution 1244 at the Initiative Ministerial Process of Prague, held in Bratislava, Slovakia on September 21, 2016 forced the Minister of Internal Affairs of Kosovo to leave the conference.¹⁶

c. Status of Implementation: Some progress; not fully implemented

8. Agreement on Liaison Officers (October 2011)¹⁷

a. Contents

Both parties have agreed in 2011 to have liaison officers of the respective governments, stationed in each other's capitals.

¹⁵ Ibid., p.24

¹⁶ Ibid., p.25

¹⁷ Office of the Prime Minister (2013), 'Conclusions of the Chair – Liaison Agreements'. Available at: http://kryeministri-ks.net/wp-content/uploads/docs/CONCLUSIONS_OF_THE_CHAIR_Liaison_arrangements_30_May.pdf [Accessed on: October 9, 2019].

The parties agreed further in Brussels on September 2014 that they will both be in charge exclusively of official visits.

A recent agreement allowing each office an extra staff member was also reached but has not been fully implemented due to space constraints.

The mission of Liaison Offices is to attend to all issues related to the normalization of relations and address everyday problems that may occur. The offices are provided by the EU Delegations in both countries. The European Union provides facilitation to put these arrangements in place and to assist in their implementation in line with EU best practices.

b. Implementation Efforts

The agreement is considered by the Kosovo government to being implemented correctly, however under the minimum conditions for the Liaison Offices. No progress has been made in the advancement of the role of both Liaison Officers. For instance, the accord for additional staff and premises is not implemented yet. The official symbols of both Liaison Offices are also still undefined. This notwithstanding, numerous official bilateral visits have been administered by both Liaison Officers in respective capitals.¹⁸

c. Status of Implementation: Some progress; not fully implemented

¹⁸ Office of the Prime Minister (2016), 'Brussels Agreements Implementation State of Play' p.20. Available at: http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_implementation_of_the_Brussels_Agreements_25_November_2016.pdf [Accessed on: October 9, 2019].

B. Agreements Negotiated/Concluded at the Political Level (Prime Ministers)

9. Agreement on Customs Collection (January 2013)¹⁹

a. Contents

Kosovo and Serbia's agreement on customs stamps and free trade was signed on 2 September 2011, whereas implementation began by the end of the same month, though it was not implemented at the northern crossing points Jarinje and Brnjak until December 2013. The agreement is grounded on the Central European Free Trade Agreement.

Pursuant to the customs collection agreement, money collected at the two northern BCPs goes into a 'fund for the north,' which has to date collected some 8 million Euros and initiated three projects in north Mitrovica: boosting small and medium-sized enterprises, land expropriation for the new municipality, and creating a centre for the fire brigade.

c. Status of Implementation: Completed

10. Agreement on Telecommunications (September 2013)²⁰

a. Contents

On 8 September 2013, the parties agreed that the EU and the International Telecommunications Union, ITU, would allocate Kosovo its own three-digit dialing code, and migrate the three used by Kosovo (Serbia's and Slovenia's for landlines, and Slovenia's and Monaco's for mobile) by January 2015. Parties also agreed to harmonize the spectrum

¹⁹Office of the Prime Minister (2013), 'Brussels Agreement on Customs Revenue Collection'. Available at: <http://kryeministri-ks.net/wp-content/uploads/docs/Agreement on Customs revenue collection of 17 January 2013.pdf> [Accessed on: October 9. 2019].

²⁰ Office of the Prime Minister (2013), 'Arrangements regarding Telecommunications'. Available at: <http://kryeministri-ks.net/wp-content/uploads/docs/Arrangements regarding Telecommunications September 8 2013.pdf> [Accessed on: October 9. 2019].

for Global System for Mobile Communications (GSM) and television signals, with both parties agreeing not to intentionally infringe the 'border/boundary' of the other.

On 25 August 2015, both parties agreed to an implementation plan for the previous telecom agreement. Kosovo was granted the code +383 by the ITU.²¹

Serbia had sent a letter to ITU agreeing on a dialing code for Kosovo, in accordance with the 2013 Telecom Agreement and subsequent action plan of 2015. Based on this agreement, Austria has applied to ITU and requested for the dialing code to be allocated to Kosovo.

Kosovo will directly cooperate with ITU on the implementation of the country code and will independently administer its code as all other countries. Kosovo Telecom Regulatory Authority (RAEPC) is the implementing authority in accordance with Kosovo Law.

The agreement on telecom stipulates that once the country code 383 is implemented, following the transition period, all other existing codes 381, 377, 386 will cease to exist in Kosovo.

b. Status of Implementation: Implemented

11. Agreement on Energy (September 2013)²²

a. Contents

The parties agreed that their respective energy transmission bodies, KOSTT of Kosovo, and EMS of Serbia, would sign a bilateral agreement within three months, establishing and regulating relations between the two transmission system operators. Both regulators were to issue licenses for trade (import, export, transit) and supply to their country's respective

²¹ Office of the Prime Minister (2016), 'Brussels Agreements Implementation State of Play' p.8. Available at: http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_implementation_of_the_Brussels_Agreements_25_November_2016.pdf [Accessed on: October 9, 2019].

²² Office of the Prime Minister (2013), 'Arrangements regarding Energy'. Available at: <http://kryeministri-ks.net/wp-content/uploads/docs/Arrangements REGARDING ENERGY SEPTEMBER 8 2013.pdf> [Accessed on: October 9, 2019].

distribution companies. The parties also agreed to establish a new company under Kosovo law that would provide distribution services to the northern, Serb-majority municipalities.

Kosovo and Serbia also agreed to, at a future time, find a common method for settling the claims both hold against one another for the use of transmission lines, agreeing to seek international arbitration if no solution came within six months.

On 25 August 2015, the Kosovar Electricity Transmission, System and Market Operator (KOSTT) signed a connection agreement with the European Network of Transmission Systems (ENTSO-E) and its members, which means that eventually Kosovo will control its energy transmission lines and receive the fees incurred from letting other countries' companies use the lines.

As part of the agreement brokered in Brussels, two new companies, from a Serbian parent company, one for trading energy and one for supplying and distributing it, will be registered under Kosovo law and serve northern Kosovo.

b. Implementation Efforts

The agreement cannot yet be implemented. Serbia is blocking it by not allowing the new company to be registered in Kosovo in accordance with the Kosovo Law as provided by the energy agreement reached in 2013. In concrete terms, the new company, as a subsidiary of Serbian company, is refusing to mention Kosovo as a country of operation in its statute, despite the fact that the agreement requires respecting the Kosovo Law. These obstacles would appear to be linked to Serbia's unwillingness to implement the agreement for political and economic reasons. It should be noted that KOSTT has legally won the dispute in 2008 when the Energy Community Secretariat ruled that Serbia violated the Athens Treaty in relation to Kosovo.²³

c. Status of Implementation: Limited progress (not yet fully functional)

²³ Office of the Prime Minister (2017), 'Brussels Agreements Pending Implementation' p.2. Available at: <http://www.kryeministri-ks.net/repository/docs/REPORT - Brussels Agreements Pending Implementation 060717.pdf> [Accessed on: October 9. 2019].

IV. Specific Agreements: Political Dialogue

1. First Agreement of Principles that Regulate the Normalization of Relations (“Brussels Agreement”) (April 2013)²⁴

On 19 April 2013, the Prime Ministers of Kosovo and Serbia signed the First Agreement on Principles Governing the Normalization of Relations. It represents a framework agreement, composed of a set of issues, which were later detailed in separate agreements and action plans and which will be addressed in more detail in the following sub-sections.

2. Agreement on Justice & Judiciary (April 2013 and March 2015)²⁵

a. Contents

The parties agreed that existing judicial authorities would be integrated into the Kosovo system. The Appellate Court in Prishtina will establish a panel composed of a majority of Kosovo Serb judges to deal with all Kosovo Serb majority municipalities.

A division of this Appellate Court, composed of administrative staff and judges, will sit permanently in northern Mitrovica. Kosovo Serb judges will comprise a majority of each panel.

On 10 February 2015, both parties met in Brussels and agreed exactly how the structure of the judiciary would look. They agreed that the president of the court will be a Kosovo Serb from northern Kosovo. The court in North Mitrovica will have an appeals division with five Kosovo Serb judges and 2 Kosovo Albanian judges, while a Kosovo Serb will be appointed the vice president of the court of appeals in Prishtina. This court building will also house the serious crimes division for the entire region, which will be composed of four Kosovo

²⁴ Office of the Prime Minister (2013), ‘First Agreement of principles governing the normalization of relations’. Available at: <http://www.kryeministri-ks.net/repository/docs/FIRST AGREEMENT OF PRINCIPLES GOVERNING THE NORMALIZATION OF RELATIONS, APRIL 19, 2013 BRUSSELS en.pdf> [Accessed on: October 9, 2019].

²⁵ Office of the Prime Minister (2015), ‘Justice’. Available at: http://kryeministri-ks.net/wp-content/uploads/docs/Agreement on Justice - 9 Feb 2015_1.pdf [Accessed on: October 9, 2019].

Serb judges and four Kosovo Albanian judges. There is also a specific number of employees of both Serb and Albanian nationality prescribed for each court and its branches.

b. Status of Implementation: Completed/Implemented

3. Agreement on Security (“Civil Protection” - Dismantlement and integration of personnel in the Kosovo institutions) (March 2015)²⁶

a. Contents

The Kosovo Police (KP) will be the only police operating in the territory of Kosovo. All police working in northern Kosovo will be integrated into the KP and all salaries will be paid by that body. Members of other Serbian security structures will be offered a place in equivalent Kosovo structures.

One regional police commander will oversee the four northern Serb-majority municipalities (Northern Mitrovica, Zvecan, Zubin Potok and Leposavic). The commander will be a Serb, nominated by Kosovo’s Ministry of Internal Affairs “from a list provided by the four mayors on behalf of the Community/Association”. The ethnic composition of the regional police unit will reflect the ethnic composition of the four municipalities. A separate regional commander for Mitrovica South, Skenderaj, and Vushtrri will be created, but the regional commander of the unit covering the four northern municipalities will cooperate with other regional commanders.

Paragraph 8 of the 19 April 2013 agreement says that ‘members of other security structures will be offered a place in equivalent Kosovo structures.’ On 26 March 2015, the parties agreed on a mechanism to integrate former members of the so-called Civil Protection, a Serbian civil defense body represented in north Kosovo, and to give up their property to the Kosovo government for use.

²⁶ Office of the Prime Minister (2016), ‘Brussels Agreements Implementation State of Play’ p.16. Available at: http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_implementation_of_the_Brussels_Agreements_25_November_2016.pdf [Accessed on: October 9, 2019].

b. Implementation Efforts

The implementation of this agreement is almost completed. The so-called Civil Protection (CP) structure was closed, whereas its former members (483) were integrated/employed in the Kosovo civil institutions. There are 22 ministries and agencies that have employed these people through the recruitment and selection process based on Kosovo Law. All of them have received job descriptions and all of them had signed employment contracts with the Government of Kosovo as civil servants. Kosovo has also completed the seminars for institutional reintegration in cooperation with OSCE and Kosovo Institute for Public Administration. Contracts for 433 workers were signed in January 2016, whereas 50 contracts were signed in August 2016.

The handover of premises used by former 'CP' to the Kosovo institutions has not yet happened. After the handover, the Government of Kosovo will make them available to the northern municipalities with the purpose of better accommodating their needs.

c. Status of Implementation: Partially implemented

4. Agreement on Reciprocity on License Plates (September 2016)²⁷

a. Contents

The agreement known as 'Arrangements for completing the implementation of the Agreement for the Free Movement of 2011' establishes reciprocity in license plates between the two states beginning on 15 November 2016. It foresees the ending of illegal license plates in 12 months, starting from 17 January 2017, and extends the KS plates for five (5) years. The deadline is extended due to the delays of administrative nature from the Kosovo side.

²⁷ Office of the Prime Minister (2016), 'Reciprocity agreement on vehicles license plates and removal of illegal license plates is concluded today in Brussels'. Available at: <http://kryeministri-ks.net/en/reciprocity-agreement-on-vehicles-license-plates-and-removal-of-illegal-license-plates-is-concluded-today-in-brussels/> [Accessed on: October 9. 2019].

b. Implementation Efforts

This agreement was reached on September 2016 and was planned to commence on 15 November 2016. Kosovo has delayed the implementation of because of delays in adopting the necessary decisions related to implementation. On 16 February 2017, the Kosovo Government approved this agreement and subsequent decisions were taken by the Ministry of Internal Affairs.

However, the dynamics of elections in Serbia, then suspension of dialogue by Kosovo Parliament and elections in Kosovo has prevented resuming the implementation.

Kosovo has informed the EU about its readiness for implementation and insisted on a renewed deadline to be agreed between the parties through online communication.

c. Status of Implementation: Progress in implementation (not yet functional)

5. Association/Community of Serb Municipalities – General Principles/Main Elements (August 2015)²⁸

a. Contents

The parties have agreed that an Association/Community of the 10 Serb-majority municipalities in Kosovo would be established, which will have 'full overview of the areas of economic development, education, health, urban and rural planning,'²⁹ and other competencies as delegated by central authorities. Its membership is open to any other municipality as long as all members agree.

It will be created by statute, on the same basis as the existing statute of the Association of Kosovo Municipalities. Participating municipalities 'shall be entitled to cooperate in exercising their powers through the Association/Community collectively,' in accordance

²⁸ Office of the Prime Minister (2016), 'Association/Community of Serb majority municipalities in Kosovo – general principles/main elements'. Available at: http://eeas.europa.eu/archives/docs/statements-eeas/docs/150825_02_association-community-of-serb-majority-municipalities-in-kosovo-general-principles-main-elements_en.pdf [Accessed on: October 9. 2019].

²⁹ Ibid., p.1

with the European Charter of Local Self-Government and Kosovo law. The body will have a representative role to the central authorities and will have a seat in the communities' consultative council for this purpose.

On 25 August 2015, the parties agreed to a set of 'general principles/main elements' of the future Association/Community of Serbian-majority municipalities. The document outlines the legal framework, objectives, organizational structure, and relations with central authorities, legal capacity, budget, and support.

b. Implementation Efforts

The General Principles/Main Elements have been reviewed by Kosovo's Constitutional Court. On 26 December 2016, the Constitutional Court rendered its decision, finding that it did not entirely comply with Kosovo's Constitution. The delay has thus been essentially caused by the Kosovo side.³⁰ While it is certain that the remainder of the process, which includes the Statute of the Association, ought to be in compliance with the Constitutional Court's findings, the fate of the Association/Community will largely depend on the content and outcome of the final stage of political dialogue between Kosovo and Serbia on a final, comprehensive and legally-binding agreement.

c. Status of Implementation: Some progress/not completed

6. Agreement on Mitrovica Bridge (The EU's Plan for Implementation)³¹

a. Contents

On 25 August 2015, both sides agreed that the EU would sponsor a project to close off the 'Peace Park,' and 'revitalize' the current structure by the end of June 2016. According to the wording of the agreement, it is to be "open to all traffic."

³⁰ Office of the Prime Minister (2016), 'Brussels Agreements Implementation State of Play' p.15. Available at: http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_implementation_of_the_Brussels_Agreements_25_November_2016.pdf [Accessed on: October 9, 2019].

³¹ Office of the Prime Minister (2016), 'EU-facilitated Dialogue: Implementation of the Agreement on the Mitrovica Bridge'. Available at: <http://kryeministri-ks.net/en/eu-facilitated-dialogue-implementation-of-the-agreement-on-the-mitrovica-bridge/> [Accessed on: October 9, 2019].

In parallel, the central street of north Mitrovica, Kralja Petra (King Peter) is to be pedestrianized by the same deadline.

b. Implementation Efforts

The structure of the bridge has been revitalized by the EU. However, it is not yet open and fully functional.

The implementation of this agreement commenced only after the new implementation agreement was reached in Brussels on 5 August 2016, because only then, one year after the agreement on the issue was reached (25 August 2015), Serbia showed readiness for implementation.

The Agreement of 25 August 2016 foresaw the implementation to be finalized by June 2016, however it failed due to lack of readiness by Serbia. Also, the agreement reached in July 2014 failed for the same reasons.

In the meantime, the other two remaining barricades in Mitrovica North have also been removed on 29 and 30 October 2016, thanks to the initiatives of citizens from the Serbian and Albanian communities.³²

Based on the Brussels agreement of 25 August 2015, the barricade removal and revitalization of the Mitrovica Bridge should have been completed no later than the end of June 2016. However, the Serbian side has declined to cooperate on implementation.

c. Status of Implementation: Partially completed (not yet functional)

³² Office of the Prime Minister (2016), 'Brussels Agreements Implementation State of Play' p.11. Available at: http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_implementation_of_the_Brussels_Agreements_25_November_2016.pdf [Accessed on: October 9, 2019].

V. Concluding Remarks and Recommendations

This Background Note/Study has offered a documented picture of the host of agreements concluded in the process of dialogue between Kosovo and Serbia, both at the technical and political levels. One could observe from the discussion here that at least a number of agreements have produced concrete results and are actually implemented such as the freedom of movement (ID card system) agreement, the integration of the justice system or dismantlement and integration of former ‘Civil Protection’ structure within the ordinary legal and institutional order of Kosovo.

It could further be observed that there are still a significant number of agreements that are either partially implemented or not implemented at all, albeit with relative progress in the implementation process. In each case, however, the Background Note/Study has sought to identify the specific contracting party and reveal the factors that have conditioned and/or influenced the non-implementation or delays in the implementation of individualized agreements.

Against this background, a number of recommendations naturally emerge:

- (1) The key concluding point and fundamental recommendation is that, beyond the existing status of implementation of each of the agreement, as a matter of universal legal principle—unless the parties agree otherwise or mutually modify the existing accords—they are bound to comply with the agreements reached. Thus, both parties are obliged to comply with the agreements that they have concluded and take all measures necessary to give effect to them.
- (2) Each of the parties could propose or initiate the modification of any of the existing agreements. However, the consent of the other is demanded in for the discussion to commence and change to be materialized.
- (3) One of the important agreements, which has neither been implemented nor is progress achieved, is the Agreement on Mutual Acceptance of Diplomas. What makes the absence of progress more troubling is the fact that this is one of the first

agreements and, in principle, it is more of a technical and professional character rather than charged or surrounded with deep political feelings and beliefs. It would appear to be clear that the faulty party is the Serbian side. Kosovo should demand action, also through the EU.

(4) Same as with the Agreement on Mutual Acceptance of Diplomas, Kosovo should insist that Serbia returns to Kosovo the scanned verified copies of taken cadastral records.

(5) Kosovo should continue to actively participate in regional forums and organizations and resist any potential obstruction from Serbia's officials on the basis of the Agreement on Regional Representation and Cooperation. Related, Kosovo should insist on the implementation of the remaining parts of the Agreement on Liaison Officers such as the accord for additional staff and premises, as well as the definition of official symbols of both Liaison Offices.

(6) Kosovo has legally won the energy-related dispute in 2008 when the Energy Community Secretariat ruled that Serbia violated the Athens Treaty in relation to Kosovo. It should, therefore, demand action both from the Energy Community and the EU as a party to the Treaty that would enable full implementation of the 2013 Agreement on Energy.

(7) Kosovo has delayed the implementation of the Agreement on Reciprocity on License Plates. However, it has by now adopted all decisions necessary to effectuate implementation and there is therefore no valid reason to postpone further the implementation of this agreement.

(8) The delay on the implementation of the accord on association/community of Serb municipalities is caused by Kosovo side, although certain steps have been taken; among others, both the Brussels Agreement providing for the Association/Community and the document entitled 'general principles/main elements' have been reviewed by Kosovo's Constitutional Court. The Court has rendered its decision, finding a number of instances of non-compliance with

Kosovo's Constitution. The agreement between the parties foresees this reviewing competence by the Court, thus acknowledging the possibility that it might find constitutional deficiencies in specific parts or aspects of it, which out to be addressed and reflected in the process of drafting the Statute of the Association/Community.

(9) Both as a contractual obligation and a show of commitment to European values, the Serbian side ought to cooperate in removing the final obstacles that are preventing the revitalization of the Mitrovica Bridge.



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