



Republika e Kosovës
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***The Technical Dialogue: State of play and Serbia's failure
in fulfilling the EU conditions***

**REPORT SUBMITTED TO THE EUROPEAN UNION /EUROPEAN EXTERNAL ACTION SERVICE
BY THE GOVERNMENT OF THE REPUBLIC OF KOSOVA**

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1. Introduction

The technical dialogue between the Republic of Kosova and Republic of Serbia, under EU facilitation and US support, has marked considerable progress in terms of producing some important agreements in the eleven months of its operation. The six agreements reached - the agreement on free movement, free trade /custom stamps, IBM, cadastral records, civil registry and mutual acceptance of university diplomas - are of significant relevance for the daily life of the citizens and for the advancement of European and Euro-Atlantic integration for both states.

However, the implementation process has been only partial and have remained mostly on paper, given that it is being confronted with the roadblocks, illegal and parallel structures, and an obvious lack of political will from the Serbian side in delivering what has been agreed in Brussels.

The implementation account shows that the agreements on free movement of people and goods are partially implemented and only through four border crossings because the other two border crossings in the northern border between states face the roadblocks that impede the free movement. It looks disappointing that the Civil Registry agreement, which entered into force on December 5, 2011, made possible of handing over to Kosova only one book whereas 14.075 still remain in Serbia. Similarly, no progress is made in the implementation of the agreement on mutual acceptance of University Diplomas, scheduled to start on January 1, 2012, because the Serbian Government fails to issue the Decree on acceptance of the agreement. There is a stall on the returning of the Cadastral Records to Kosova due to the fact that Serbia refuses to continue with the implementation of the agreement by conditioning it with the Kosova government enacting the law on the new property and cadastral agency. However, the Kosova side maintains that both processes should progress simultaneously. In similar line, of promised words on an agreed paper, is the status of the Agreement on Integrated Management of Border (IBM) that despite of being agreed on 2nd of December 2012, the technical protocol is still not finalized and signed by parties.

We believe that true progress of the dialogue rests in full implementation of the agreements and that is why the Republic of Kosova has proved itself constructive and effective in reaching and implementing the agreements. This positive performance of Kosova has also been acknowledged by the EU.

The lack of significant progress in the implementation process deserves due notice by the EU, particularly in the light of the examination of Serbia's EU candidacy by the end of February 2012. It is even paradoxical that Serbia requires EU candidacy while it violates a fundamental EU principles on free movement by using the mindset of roadblocks to prevent the freedom of movement.

The Government of Kosova considers that the EU should accurately assess the significant failures of Serbia in implementing the agreements reached through the dialogue which was a condition of EU Summit on December 9, 2012. We ask the EU to find the means to bring Serbia on the implementation path. These steps are of high importance not only for the perspective of the good neighborly relations between Kosova and Serbia, but also in the light of Serbia request to advance towards EU while failing to respect the EU standards. Serbia not only failed in implementing the agreements, but its downfalls are also apparent in the broader framework of the Copenhagen criteria for good neighborly relations and regional cooperation, because it has not yet given up on policies of obstruction towards Kosova and some other countries in the region

The EU integration process is performance-based, and applies equally to all aspirant countries. Any attempts to overlook any country in this respect would be discouraging for other aspirant countries in undertaking the EU reforms and for regional stability.

This Report provides description on the state of play of implementation process, the issues that still remain unresolved and concludes with comprehensive arguments on how the failures on implementing agreements reflects on Serbia's failure to meet the EU conditions for candidate status.



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2. State of play in implementation of the agreements

1. IBM - finalization and signing of the technical protocol is being delayed

The implementation of this agreement is a condition set out by the European Council Summit of 9 December 2011 in order for Serbia to obtain candidate status, as well as being a recommendation from the European Commission in the 2011 Progress Report for Serbia¹.

This agreement was reached on December 2, 2011 and is in accordance with the Treaty of Lisbon and the EU Acquis. The agreement confirms that both parties are on the EU agenda of Western Balkans. The IBM's implementation process should therefore be the aim of advancing both countries toward the EU. The agreement requires that both countries should install joint posts at all border crossings (six in total) and pursue cooperation as defined by EU law on IBM. These joint IBM posts will be located in the neutral zones and officials of Customs, Police and other agencies will work and perform the necessary controls together. In accordance with its mandate and its duration, EULEX will be present as well. The Agreement contains the signing of a technical protocol by three parties, Kosova, Serbia and EU, which will provide all the technical details of implementation. Kosova's side requested the finalization and signature of this protocol to be completed within February 10, 2011 and the implementation to start immediately, which would enable the EU Council of Ministers to observe the progress in implementation prior to its meeting in the end of February 2012. Also, in order to accelerate this process, and remove ungrounded reasons for the delay the Kosova side presented its draft of protocol during the experts meeting held in Brussels on January 27, 2012, as well as offered to co-finance the building of joint posts, whereas Serbia in order to delay the implementation requests that all financing should come from EU

¹ **European Council:**

- Continuing with a credible commitment to achieve further progress with good faith in implementation of agreements reached in the dialogue, including that of IBM.
- Active cooperation to allow EULEX and KFOR realizing their mandate

European Commission:

- Full respect of comprehensive principles of regional cooperation
- Other steps to normalize relations with Kosova - under conditions specified by the stabilization and association process.
- Active cooperation with EULEX to allow it to realize its duties in all parts of Kosova.

grants. Other delaying tactics of Serbia come through proposals that are incoherent with the reached IBM agreement. Furthermore, Serbia continues its support to illegal and parallel structures in Kosova and to road blocks set up since august 2011. In the beginning of August, there were 15 road blocks, and there are still 15 of them, while some are removed at the same time others are built, but the impact is similar. There is no freedom of movement in the entire region for civilians, EULEX and KFOR.

Conclusion: The immediate implementation of the IBM agreement will show the real willingness and commitment of the parties toward implementing the agreement and the European standards for integration. The prospects for the implementation are at stake due to delays in the finalization and signing of the Technical Protocol as well as due to the existence of the roadblocks/barricades and illegal parallel structures financed and inspired by Serbia. Border crossings 1 and 31 in the northern part of Kosova continue to work with limited capacity due to the damages which incurred as a result of protests in July. Custom officers and Policemen of Kosova must go there by helicopters provided and organized by KFOR.

2. FREEDOM OF MOVEMENT - partially implemented due to roadblocks and limited due to high tariffs on vehicles insurance

The implementation of this agreement is a condition of the European Council Summit of 9 December 2011 for Serbia to obtain candidate status and a recommendation by the European Commission in the 2011 Progress Report for Serbia.

This agreement was reached on July 2, 2011; its implementation started on December 26, 2011. Regarding this agreement, both parties agreed that border crossing reciprocally should be done with ID cards and accompanied by an "entry-exit" paper. The agreement is partially implemented; it is operational only in four border crossings, because the other two border crossings are paralyzed by Serb roadblocks. Based on this agreement, the Government of Kosova will continue the availability of KS plates for a period of five years. The Serbian side has refused to allow free circulation of vehicles containing RKS registration plates and state symbols of Kosova, whereas RKS vehicles with license plates will be replaced temporarily by other plates on the border with payment fee of 30 Euros. Under this agreement, and after consultations with the EU, the Kosova side may set a reciprocity action. Car insurance fees set by Serbia are too high, reaching an amount of over 100 Euros per vehicle. Kosova was in favor of lower fees

having for the benefit of citizens given the low economic standards in both states but this solution was rejected by Serbia. Kosova continuously seeks to find a solution to this through a commercial agreement between the insurance bureaus of both countries. Removing these tariffs provided via an agreement for reciprocal recognition of insurance policyholders. The EU is also in favor of this solution. The EU is committed to organize a meeting between the Bureau of Insurance experts of both countries for commercial agreements. Even though Serbia has expressed willingness for this solution as well, it did not give a positive respond regarding the EU invitation for meetings at an expert level in January 2012. Kosova has shown flexibility by extending the deadline for replacement of illegal license plates with the legal ones (RKS and KS) from two months to eight months, as required by the EU. Kosova seeks to determine the exact deadline for replacement in order to prevent problems created because people are turning to illegal plates to avoid payment of car insurance fees. Also, the possibility that Kosova has to cover Serbian plates is being discussed, according to the agreement, due to pressure for reciprocity in this field.

Conclusion: One of the prior principles of the EU is free movement of people and goods; however, this agreement is partially implemented because the Serbian side continues to hold roadblocks in northern part of Kosova. Border crossings 1 and 31 in the northern part of Kosova continue to work with limited capacity due to the damages which incurred as a result of protests in July 2011. Custom officers and Policemen of Kosova must go there by helicopters provided and organized by KFOR. Freedom of movement is not possible even for members of KFOR and EULEX and this violates a key condition set for Serbia by the EU summit in December 2011. Even though the Serbian side expressed readiness to reduce the car insurance tariffs, it did not respond positively to the EU invitation for a meeting of expert's level.

1. FREE TRADE/CUSTOM STAMPS - partially implemented due to roadblocks that prevent free flow of goods in two border crossings in the northern border between two states

The implementation of this agreement is a condition of the European Council Summit of December 9, 2011 for Serbia to obtain candidate status and recommendation by the European Commission in the 2011 Progress Report for Serbia.

An agreement was reached on September 2, 2011 and the implementation by the Kosova side started on September 16, 2011, while the Serbian side started the implementation by the end of September and did not inform the third party and CEFTA for the acceptance of Kosova Custom's stamps. With this agreement, both parties will make every effort possible to ensure the free circulation of goods in accordance with the CEFTA agreement. In this case the three years embargo of Serbia for Kosova goods has been removed. The agreement is implemented partially only in four border crossing, the existence of roadblocks prevent the flow of goods in two other border crossing located in the northern border between Kosova and Serbia (gates 1 and 31)

Conclusion: Although by this Agreement the goods from Kosova are allowed to be exported to Serbia and via Serbia, after three years of embargo, the full implementation of this agreement depends on the removal of all barricades in northern part of Kosova. There is no possible the entry of goods through customs points 1 and 31 in the northern part because these points were damaged during the protest of July 2011 when Kosova authorities decided to reciprocate the embargo on goods from Serbia due to the Serbia's failure on reaching the free trade/custom stamp agreement. KFOR and EULEX have predominantly restricted free movement in this part due to roadblocks, where the Serbian side is violating one of the main conditions imposed for Serbia at the December summit which states that KFOR and EULEX should be allowed to fully realize their function in all parts of Kosova. The Kosova authorities and international organizations also have difficulties accessing in this part.

2. DIPLOMA - there are delays on starting the implementation process)

The implementation of this agreement is a condition of the European Council Summit of December 9, 2011 for Serbia to obtain candidate status and a recommendation by the European Commission in the 2011 Progress Report for Serbia.

Agreement on reciprocal acceptance of diplomas was achieved on July 2, 2011, and completed on November 21, 2011. The application should have been put in place from January 1, 2012, but this deadline is being ignored by Serbia, which still has not issued a Government decree on the implementation of this agreement. On February 14, the Kosova side checked with EU mediator if this decree is issued but there is not yet

confirmation. With this agreement, both parties have agreed on reciprocal acceptance of University diplomas through their certification by the Association of European Universities. The Kosova side has made all preparations necessary regarding the implementation of this agreement including the administrative office for EUA/Spark within the Ministry of Education premises. EU has also fulfilled its obligations.

Conclusion: The implementation of this agreement is an easy process; there is just the need for a good-will from the Serbian Government to implement it. All necessary preparations by the Kosova side and the EU have been made.

3. CIVIL REGISTRY - only 1 book returned to Kosova in two months, from a total of 14.076 books

The implementation of this agreement is a condition of the European Council Summit of December 9, 2011 for Serbia to obtain candidate status and a recommendation by the European Commission in the 2011 Progress Report for Serbia.

An agreement was reached on July 2, 2011, and its implementation began on December 6, 2011 when the first book was returned from Serbia. Regarding this agreement, Kosova agrees to receive scanned and EU certified copies of records of its civilians that were taken by Serbia during war time in 1999. Kosova is not satisfied with the pace of the implementation, where in two months only one (1) book from the total of 14.076 (fourteen thousand and seventy-six) that has to be returned. The EU also accepted that the process has stagnated and that they will call for an acceleration of return of civil registries. Serbia finds excuses for the delay by asking an exaggerated amount of finance of 2.5 million Euros, whereas EU is ready to grant 1 million which is rational amount for such operation based on Kosova practice from the past. In order to speed up this process, a Kosova expert's team provided to Serbian side its expertise (the sample plan of finance and the software for this operation). Serbia continues to require 2.5 million, which is irrational but tactical for the delays.

Conclusion: The Return of civil registry books should accelerate; it has to be completed in 6 to 9 months as agreed by implementation plan. If the current pace continues, where in two months only one book is returned, then for 14076 books it requires several decades to be returned to Kosova.

4. CADASTRAL RECORDS – No progress

The implementation of this agreement is a condition of the European Council Summit of December 9, 2011 for Serbia to obtain candidate status and a recommendation by the European Commission in the 2011 Progress Report for Serbia

This agreement was reached on September 2, 2011 and the implementation had to start on January 5, 2012. Serbia refuses to begin scanning of the records before the law on a new agency is introduced by Kosova. Kosova insists that both processes should go simultaneously. The Kosova side has progressed in drafting and it expects to adopt it by the end of May 2012 as agreed in the implementation plan. On the other hand, Serbia seeks EU funding for the purchase of scanners.

Conclusion: Serbia should carry out the scanning of cadastral records simultaneously with the introduction of the law for the new agency from the Kosova side.

3. Issues that remains unresolved

REGIONAL COOPERATION - still without agreement

Finding a solution for this issue is a condition for Serbia set by the European Council summit of December 9, 2011 and recommended by the European Commission in the 2011 Progress Report for Serbia.

The issue has been discussed in several rounds of talks. No breakthrough yet due to the conceptual differences in positions of parties. Kosova's position is based on the reality that Kosova is an independent and sovereign state recognized by 87 countries, 23 European Countries and most of the regional countries. Kosova should be represented as an independent and sovereign state, with its authorities and state symbols, and to be a signatory of agreements on its own behalf. Serbia's position is based on denial of this reality. In December talks, the Kosova has accepted the EU proposals for the denomination which says that "This denomination is without prejudice to any party position on the status" And even second proposal of EU which involved adding to the

first proposal the position's of each party. However, The Serbian side has rejected all of these proposals, including the suggestion from the EU that this issue should be determined by arbitration of the High Representative of EU, Catherine Ashton.

In the recent efforts of EU mediator Robert Cooper, Kosova's position continues that solutions must be in harmony with the reality of the independent state of Kosova, which has been recognized by most of the regional countries and a great majority of the EU Member States. Serbia insists on the Resolution 1244. Kosova's side rejects any reference to Resolution 1244 due to the fact that it has lapsed legally and politically, no longer governs anything in Kosova. New realities in the region have been accepted by most of the countries concerned; Serbia is among minority of countries who fails to catch up with new realities in the Balkans following the disintegration of former Yugoslavia. Further, Serbia has no legal rights to refer to the Resolution 1244 because the resolution refers to FRY, the states that does not exist any longer, whereas Serbia is not a successor of former Yugoslavia and of FRY.

Conclusion: One of the key conditions for Serbia, reaching the agreement on regional cooperation and representation, has so far not been reached. Positions of the two parties still remain far from each other.

ENERGY - Serbia doesn't show interest for an agreement although it is in breach with Energy Community Treaty regarding Kosova

European Council in its Council conclusions on enlargement and stabilization and association process of December 5, 2011 asked Serbia to take steps towards a visible and sustainable improvement of relations with Kosova, inter alia, fully respecting the provisions of the Energy Community Treaty.;

The energy problems involve an illegal interference of Serbia into Kosova energy system; in transmission, supply and energy assets which has been legally defined as Kosova assets by UNMIK Regulations 2002/12. This issue has been raised in the dialogue since the second round on 28 March 2011, but remains unresolved. On June 6, 2011 the EU had prepared a draft / agreement which addressed normalization of energy supply payments to KEK by Serb citizens in north who refuse to pay energy for many years; compensation of transmissions fees to KOSTT by Serbia as well as removing Serbia's illegal operators in Kosova. This draft was accepted by Kosova side

but refused by the Serbian side. Ever since, Kosova permanently insists on finding solution, but Serbia refuses. The Kosova side proposed that the issue of transmission should be resolved as soon as possible, either through technical dialogue or the Council of Energy Ministers of the EU, who can undertake a decision based on the opinion of the Energy Community Secretariat (ECS) issued on 7 October to push Serbia to respect the Energy Community Treaty and recognize Kosova's subjectivity in this field. (The Reasoned Opinion on Case ECS-3/08)

In the last meeting with the Kosova side, Mr. Cooper said that he does not expect an agreement regarding this issue until after the elections in Serbia. But we will seek the opportunity to proceed with the Council of Energy Ministers of the EU regarding this issue.

In the absence of agreement, Kosova continues with energy problems posed by Serbia. Serbia still holds on to the register books of Kosova assets. These are the property of the Government of Kosova managed by the System Operator, Transmission and Market Power in Kosova (KOSTT). Serbia presents these assets as its own assets before regional and international mechanisms. Serbia illegally collects revenues from transit that occurs in the network of KOSTT from July 1, 2004. Also, Serbian operator (EMS) makes illegal cross-border allocation of transmission capacity .Kosova/KOSTT) in August 2008 has submitted a complaint against Serbia on its failure to comply with Energy Community Treaty and as a result, the ECS has issued the Reasoned opinion stating that Serbia has violated the Treaty through the intervention practices and by not making payments to Kosova for transit of electricity. According to this context, the final decision is expected soon by the Council of Ministers of the EU

Conclusion: The energy issue must be resolved urgently either through dialogue or by the EU Council of Energy Ministers. Due to Serbia's violation of Athens Treaty, Kosova is keeping alone the energy stability of the region because it refrains from responding with reciprocal measures on Serbia `s unilateral violation of rules on transmission. Kosova energy company (KEK) also continues to deliver the energy to the Serbs in the northern part of Kosova without being paid.

TELECOM - Serbia is not ready yet for an agreement

European Council in its Council conclusions on enlargement and stabilization and association process of December 5, 2011 asked Serbia to take steps towards a visible and sustainable improvement of relations with Kosova, inter alia, finding solutions for telecommunications.

This issue was raised in the dialogue since the second round on March 28, 2011, but it still without any agreement. Kosova is consistently in favor of reaching an agreement on this issue. However, Serbia has repeatedly refused and continued illegal intervention in this issue. In the last meeting with Kosova side, Mr. Cooper said that he does not expect an agreement regarding this issue until after the elections in Serbia.

Conclusion: Serbia remains uninterested to find a solution for this problem according to the standards and EU directives.

4. Arguments on how the failures on implementing agreements reflects on Serbia's failure to meet the EU conditions for candidate status

The EU Summit on December 9, 2012 set the conditions for granting candidate status to Serbia. These conditions are:

- That Serbia must show credible commitment and has achieved further progress in moving forward with the implementation in good faith of agreements reached in the dialogue, including on IBM
- The agreement on inclusive regional cooperation has to be reached, and
- Serbia must actively cooperate to enable EULEX and KFOR to execute their mandates.

Here are the main failures of Serbia to fulfill the EU conditions:

1. Serbia failed to show credible commitment and has achieved further progress in moving forward with the implementation in good faith of agreements reached in the dialogue, including on IBM, this because:

First, Serbia only partially implements the agreement on free movement of people and free trade. It did not remove the barricades/roadblocks in northern part of Kosova that prevent free movement of goods and people in the northern border between two states (gates 1 and 31). According to official sources most of the barricades are in place and

moreover Serbia moved on in building new barricades in its own border crossing to disable any free movement.

Second, there is no progress in implementation of other agreements, such as IBM, cadastre, civil registry and university diplomas. All these agreements are merely in paper. The only one civil registry book returned to Kosova within two months since the implementation started cannot be count for progress because yet 140745 remains in Serbia.

2. Serbia failed in actively cooperating to enable EULEX and KFOR to execute their mandates.

The European Council emphasized clearly that it attaches great importance to Eulex and KFOR being unhindered in the execution of their mandates. In spite of this condition, most of the barricades are not removed and the roads in northern part of Mitrovica are completely blocked. The Kosova authorities, EULEX and KFOR are impeded to execute their mandates in providing rule of law and border control services. Further, dozens of KFOR peacekeepers were injured in violence at the roadblocks in past period.

3. Serbia failed in fulfilling the EU standards of good neighborly relations, regional cooperation and regional stability

Serbia cannot escape from the responsibility of violating the EU standards, because it has failed to dismantle the Serb illegal parallel structures thus meddling into Kosova's domestic affairs since the end of war in 1999.

Serbia has so far ignored the calls of EU, US, ISG, most of the European countries and particularly Germany which made clear that in order for Serbia to progress towards EU it has to normalize the relations with Kosova, which presumes good neighborly relations and non-interference into the affairs of other country. On contrary, Serbia continues to finance and inspire the Serb illegal parallel structures and deepen the mistrust between the Kosova Government and local Serbs in northern part of Kosova.

With its anti-European policies, Serbia impedes the Kosova government efforts to integrate the Serbs of northern part conducive to Ahtisaari Plan and commitments for socio-economic investments. Kosova was successful in integrating the important part of Serb community, which today is part of the institution of Kosova. This is a proof that it

can be successful in integrating other part of Serbs if Serbia is conditioned with non-interference into Kosova.

4. The agreement on inclusive regional cooperation has not yet been reached

The agreement on regional cooperation has not yet been reached because the positions of both parties are still far. Kosova's position is that Republic of Kosova as a sovereign and independent state is a reality that is recognized by 87 states, 23 EU countries and most of the regional countries. Serbia's position is based on denial of this reality.

5. Serbia is in breach with the Energy Community Treaty with regard to Kosova.

The Energy Community Secretariat (ECS) issued a Reasoned Opinion on Case ECS-3/08 that finds the Serbia's in breach of Athens Treaty.² The Reasoned Opinion was issued in relation to non-compensation of KOSTT by EMS for electricity transits the usage by EMS of the revenues from allocating transmission capacity on electricity interconnectors between the network operated by KOSTT and adjacent systems. The Secretariat stated that EMS' conduct, attributable to the Republic of Serbia, fails to comply with Articles 3 and 6 of Regulation (EC) 1228/2003 on conditions for access to the network for cross-border exchanges in electricity, namely EMS is illegally collecting revenues, that are attributable to KOSTT, from so called ITC mechanism that relates to compensation of energy transits hosted by KOSTT and losses thereof, and also collects revenues from congestion management that refers to allocation of interconnectors capacity, that are attributable to KOSTT. The Reasoned Opinion requested from Serbia to rectify the identified issues of non-compliance within a time-limit of (2) two months.

² (see http://www.energycommunity.org/portal/page/portal/ENC_HOME/ENERGY_COMMUNITY/Dispute_Settlement/03_08)