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**THE ANALYSIS OF THE
IMPLEMENTATION OF THE
TECHNICAL AGREEMENTS
BETWEEN KOSOVO AND SERBIA**

Content and views expressed in this publication are those of KIPRED.

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I. INTRODUCTION

This report examines the level of implementation of the agreements reached in “technical dialogue” between Kosovo and Serbia, facilitated by the European Union (EU). The seven “technical” agreements were reached during the period March 2011-February 2012, before the beginning of the political dialogue at the level of Prime Ministers began in October 2012. This paper is focused solely on Kosovo, and it looks at the steps that the national institutions have taken to implement the agreements.

The Kosovo-Serbia dialogue has been a polarizing subject in Kosovo, and has dominated the internal political debate over the last two and half years. Unlike the political dialogue, which has a broader political support, the technical dialogue had pitted the entire opposition, civil society and independent media in the country against the process and thus against the Government. At the same time, the Government, unable to own the process and take leadership in it, saw the dialogue as the only means to show its “pro-europeanness” and gain some credibility in Brussels and EU member states. When the technical dialogue began, Kosovo had just elected a central government, tarnished by the massive abuse of national elections of 2010, and stigmatized by the CoE report on organ trafficking. Against this background, the dialogue with Belgrade and the cooperativeness of Kosovo was the only option for the governing leadership to gain some credibility with the European Union.

The dialogue became the main measuring and conditional tool of the EU to measure the progress of both Kosovo and Serbia towards the EU, and the principal “carrot and stick” policy of the West to see “normalization” of relations between Prishtina and Belgrade, including their behavior in the process and the implementation of the reached agreements.

The period covered for the monitoring of the implementation of the agreements was December 2012 – May 2013.

II. TECHNICAL DIALOGUE CONCLUSIONS (AGREEMENTS) AND IMPLEMENTATION

As of March 2011 until February 2012, nine rounds of meetings were held between the representatives of the Government of Kosovo and of Serbia - Edita Tahiri and Borislav Stefanovic. In total seven conclusions were reached: (1) customs stamps, (2) civil registry, (3) university diplomas, (4) freedom of movement, (5) regional representation of Kosovo, (6) cadastre books and (7) IBM conclusions. While from October 2012 to January 2013 there were eleven rounds of meetings between the two prime ministers in Brussels who have agreed to: 1) implement the IBM; 2) create a multi-ethnic component of the Kosovo police to protect Serb Orthodox Churches and monasteries in Kosovo; 3) exchange their respective Liaison Officers; and 4) create the development fund for four Kosovo Serb majority municipalities of northern Kosovo. All sides report regularly about the state of affairs regarding implementation of the agreements. These reports and KIPRED interviews were used as the main source for evaluation of the process and implementation of agreements in this report.

The last reporting cycle by the Kosovo side submitted to the EU was also made available to KIPRED in November 2012, evaluating the state of affairs in the period between August and

October 2012.¹ Additionally, KIPRED has also checked several times the facts on the ground on implementation with other actors in Kosovo until June 2013.

1) Civil Registry Books

Agreement: This agreement was reached on 2 July 2011, on the fifth round of the technical dialogue establishing a ‘fully reliable civil registry in Kosovo’² requiring Serbia to submit the copies of the originals to EULEX, and EULEX to GoK. EULEX chairs the tripartite ‘joint committee’ consisted also of civil registry experts from Serbia and Kosovo tasked to certify the originality of the copies submitted by Serbia. Serbia agreed to submit only copies of the Civil Registry Books instead of returning original books to Kosovo. The GoK presumes that the full implementation of this agreement will lead to the closure of all Serb parallel structures in this area, namely the closure of illegal offices run by Serbia’s Ministry of Internal Affairs (MIA) responsible for issuing such documents.

Implementation: The agreement had a slow start. The implementation depended on the will of Serbia to start scanning the documents. EU offered to finance a project to buy the equipment and train the staff in Serbia for this purpose. According to the reporting by the Kosovo authorities, “even after Serbia’s promise to speed up the implementation, starting at 20 March 2012, with a capacity of 10 working stations/10 persons”, the process commenced with two months delay (on 10 May 2012) and with half of the capacities (five working stations/five persons).³

Delays were also caused by the Kosovo side. Upon noticing that several transferred documents were incomplete the Kosovo expert team sent a report on deficiencies to the tripartite implementation group. The report was submitted two months later instead of only one week as it was originally promised. Also, delays have occurred in the completion of the lists due to the lack of agreement on the format of the lists and delays on both sides (such as provision of lists but also delays in providing feedback and crosschecking the lists with Kosovo data).⁴ Additionally, some inventory lists initially provided by the Serbian Government included ‘Duplicates’, i.e. civil registry books which were in original in Kosovo (e.g. Gjakova/Đakovica, Dečan/Dečane) and were a duplicate in Serbia.

Further, by mid-2012, the implementation on the *Large scale scanning project* had not started yet. GoK reported that Serbia asked from the EU an amount of 2.5 million Euro for the implementation of the project. However, this statement was not substantiated by the Danish Refugee Council (DRC) that was selected as an implementing partner for the project by the EU.⁵ Additionally, for the

¹ Differently, in an interview with KIPRED, government officials stated that two kinds of reports are prepared by the GoK on monitoring of the implementation of the technical dialogue agreements. Specifically, the reports are of informative and official nature however for internal use only. Interview with GoK Coordinator on Diplomas and Freedom of Movement, 16 of May 2013.

² See Agreed Conclusions 2 July 2011 on Civil Registry Books, paragraph 1.

³ Report on implementation of TD agreements, February – August 2012, Reporting by the Kosovo authorities, 23.08.2012.

⁴ E-mail communication with Danish Refugee Council, 30 January 2013.

⁵ The first figure presented by the Office for Expert and Operational Affairs in the Negotiation Process of the Government of Serbia regarding the required costs amounted to approx. 1,2 mill Euro. The EU is financing the project with 1 million Euro, while the Government of Kosovo provided the software, previously developed for a similar project

purpose of rationalizing costs, Kosovo gave its scanning software to Serbia which resulted in the decrease in costs of €400,000. The implementation started with slight delays in October 2012, after the three months preparatory phase in October with training of the staff.⁶

According to the authorities in Prishtina, Kosovo has been largely effective in fulfilling its implementation obligations. The DRC as the implementing partner of the EU, has also found overall willingness on the Kosovo authorities to implement the agreement.⁷ Further, in October 2012, the Kosovo Ministry of Internal Affairs (MIA) issued a sub-legal act to implement the agreement. Specifically, the Administrative Instruction (AI) on the use of certified copies of original records of civil status of Kosovo was issued defining the procedures on how certified copies in particular cases should be considered as original based on the agreements reached between Kosovo and Serbia in Brussels.⁸ Even though the legality of such an AI is disputable (see section on implementing the agreements through by-laws) it has shown willingness on GoK side to implement the reached agreements through by-laws.

Problems: The October 2012 report on the state of implementation by Brussels has reported on the delays on the Serbian side. It states that “to date Belgrade has not enacted the necessary amendments to the law on Personal Data Protection to enable EULEX to arrange for copies of the original civil registries kept to be made” adding that “to this date Serbia has not provided feedback on its preferred option for the implementation out of three options developed by the Joint Committee.”⁹

Despite these obstacles, a slow progress has been observed on the ground. According to EULEX in January 2013, 972 certified copies of Civil Registry Books were handed over to the Civil Registration Agency of Kosovo. In total by June 2013, EULEX has handed over 3835 certified copies of Civil Registry books, covering the municipalities of Prishtinë/Priština (1013), Lipjan/Lipjan (848), Obiliq/Obilič (264), Fushë Kosovë/ Kosovo Polje (219) and Glllogoc/Glogovac (425) and Podujevë/Podujevo (1066).¹⁰ This is only around 30% of the total of what it needs to be handed over to Kosovo, as it is estimated that Serbia withholds approximately 12,036 registry books from Kosovo.

carried out in Kosovo and proposed by the Kosovo Government for the method of data recording and processing. The Serbian Government co-finances the project with covering the salary of 50 staff working on the data processing (1 IT expert and 49 data processing assistants). Additionally, both delegations assigned coordinators (2 respectively) and data verification officers (5 from Kosovo and 4 from Serbia), who support the project implementation. E-mail communication with DRC, 30 January 2013.

⁶ Ibid.

⁷ Ibid.

⁸ Article 2 of the MIA AI Nr. 37/2012 at http://www.mpb-ks.org/repository/docs/Udhezim_Administrativ_Nr_37_2012_anglisht.pdf

⁹ Implementation, state of play, Reporting by EU, 3 October 2012.

¹⁰ EULEX, Press release, Copies of Podujevë /Podujevo registry books handed over, 3 June 2013

2) Freedom of Movement

Agreement: The agreement was reached on 2 July 2011 and began to be implemented on 26 December, 2011. The aim of the agreement is to enable free travel within and through territory of Kosovo and Serbia. The main points of this agreement are: the mutual use of ID card system and driving licenses for cross border/boundary travel; allowing purchasing of the border insurance until a commercial arrangement on mutual vehicle insurance is facilitated under the EU auspices; authorities of Belgrade would allow vehicles with KS plates to travel freely within their territory of Serbia with temporary vehicle plates allowed; including ending the parallelism in vehicle plates in Kosovo where all car owners of Kosovo would use RKS or KS vehicle license plates. The latter would introduce Kosovo vehicle plates and ID cards in northern Kosovo by November 2011.

Implementation: Overall, the implementation of the agreement is going well. Through this Agreement, free movement of people from Kosovo to Serbia was established and citizens of Kosovo can now enter Serbia using ID cards and passports issued by the Kosovo authorities, excluding northern Kosovo.

According to Kosovo Police, from December 2011 to May 2013 in total there have been 809,686 persons travelling from Kosovo to Serbia and vice versa – 791,748 persons entered Kosovo from Serbia.¹¹ There were 234,416 passenger vehicles, 9,617 buses and 39,202 trucks, entering Kosovo from Serbia. Also, there were 230,014 passenger vehicles, 9,553 buses and 35,149 trucks, entering Serbia from Kosovo¹² with RKS vehicle plates; while, there were 15,230 passenger vehicles, 2,514 buses and 8,205 trucks with KS vehicle plates.

Also, only by the end of April 2013, were the two border crossings, Mutivode and Muqibabe linking Kosovo with Preshevo Valley, made operational. The first travelers from Kosovo with Kosovo ID have started travelling on the 1st of May 2013.¹³ The initial cut-off of these two border crossings was also problematic for ethnic Albanians to travel from Merdare to Prishtina – increasing the time of travel by almost one hour. Ethnic Albanians from Preshevo in order to travel to Gjilan, by being unable to use the previous border crossing, had to use Dheu i Bardhe and travel through Bujanovac, making a 25 minute drive longer (about 1 hour).

Problems: The interim solution for issuance of car insurances at the border in between Kosovo and Serbia remains a challenge. Vehicle insurance payments remain very high as Kosovo is still not member of the Green Card Bureau. Kosovo and Serbia have been reciprocally applying different insurance prices for vehicles at the borders.

Serbia's vehicles pay up to €40 for entrance into Kosovo for up to 40 days, €368 for 6 months, and €603 for one year car insurance. Differently, vehicles from Kosovo with KS and RKS vehicle plates have to pay €100 for a 30 day period, including €40 for temporary vehicle plates for Kosovo vehicles with RKS plates, including a €1 Euro daily fee; and a border tax of €13. Such high fees make the

¹¹ KIPRED e-mail communication with Kosovo Police official, 13 of June 2013.

¹² KIPRED e-mail communication with Kosovo Police official, 13 of June 2013.

¹³ 'Today the IBM started implementation in Mutivode and Mucibabe,' at <http://kosovapress.com/?cid=1,2,164441&app=cms>

travel between the two countries very expensive, especially for citizens of Kosovo travelling to Serbia.

Kosovo insurance companies after some public and GoK pressure lowered the initial vehicle insurance fees, mainly because of the complaints of ethnic Albanians from Preshevo Valley.

The KS vehicle plates and ID cards are still not introduced in northern Kosovo for the ethnic Serbs. They use Serbia's vehicle plates and do not pay vehicle insurance fees. This situation is a violation of the agreement of freedom of movement, which explicitly stated that vehicle plate arrangement would be applied from 11 November, 2011.

3) Customs Stamps

Agreement: The agreement was reached on 2 September, 2011. The conclusions stated that the parties agreed to 'ensure free movement of goods in accordance with CEFTA.'¹⁴ The Kosovo customs stamps were denominated as 'Kosovo Customs' since UNMIK administration, and had not changed after the Declaration of Independence, which Serbia accepted. This meant that GoK waived its right to refer to its constitutional name "Republic of Kosovo" in sanitary and veterinary documents necessary for exporting. This stamp usage was to be reflected in all other documents and communication accompanying the movement of goods.

The agreement on Customs Stamps intended to find a solution acceptable to both sides and to enable goods from Kosovo to enter Serbia. The implementation began in September 2011, initially by Kosovo side. Serbia had started implementation on acceptance of the Kosovo stamps without informing the EU and CEFTA¹⁵ for starting the implementation.

Implementation: According to GoK the "agreement is being implemented to a satisfactory level."¹⁶ Authorities in Prishtina complain of the long waiting-hours (up to 12 hours) for Kosovo exporters at the Serbian border. On the other side there have not been delays reported on the Kosovo side. The EU reported that "after initial difficulties it now appears that trucks from Kosovo with correct documentation are now entering Serbia freely."¹⁷

Problems: Nevertheless, Kosovo side continues to complain that: a) Serbia continues to request collection of Value Added Tax (VAT) on exports from Kosovo. This requires Kosovo exporters to register with offices of the Republic of Serbia illegally operating within the territory of Kosovo; b) It has been reported that Serbia prohibited entering of goods with certificates issued by the Kosovo Food and Veterinary Agency even for transit through territory of Serbia to third countries and EU destinations and vice versa.¹⁸ According to officials of this Agency, Kosovo exporters have not

¹⁴ See Agreed Conclusions 2 September 2011, on 'Customs Stamps.'

¹⁵ The Central European Free Trade Agreement (CEFTA) is a trade agreement between non-EU countries in Southeast Europe. The original CEFTA agreement was signed by Visegrád Group countries. As of 1 May 2007, the parties of the CEFTA agreement are: Albania, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Montenegro, Serbia and Kosovo (UNMIK).

¹⁶ Kosova update on implementation of TD agreements 230812, February – August 2012.

¹⁷ *Implementation, state of play*, EU reporting on implementation of TD agreements, 3 October 2012.

¹⁸ *State of play in implementation of the Technical Dialogue agreements, September 2012 – November 2012*, Reporting by the Kosovo authorities, 16 November 2012.

reported problems of such nature except in one case. Generally, exporters have continued to enter freely in Serbia with the certificates from the Food and Veterinary Agency. Additionally, the Agency has reported that Serbia demands another certificate of phytosanitary control that Kosovo officials view as unnecessary.¹⁹

4) Cadastral Records

Agreement: This agreement was reached on 2 September 2011, and similar to the issue of the Civil Registry Records, it aims to find a solution for the Kosovo Cadastral Records, taken by Serbia in June 1999. The conclusion acknowledged the legitimate right of people to claims of property therefore the parties agreed to establish a fully reliable cadastre in Kosovo. Under the monitoring of the EU, a tripartite implementation group was established. It consisted of a Kosovo, Serb and EU experts who, through a technical agency, will act as an adjudication mechanism. The agency will have to identify all gaps in the pre-1999 cadastral records and finally determine the correctness of the cadastral records. The Kosovo Supreme Court in this case is appointed as the second appeal instance to the decisions of the technical agency.

Implementation: In 2012, there has been limited progress reported in the implementation of this agreement by either side. Kosovo side delayed promulgating the required laws on establishing the Technical agency to implement the Agreement. The Draft law on Agency for Comparison and Verification of Property (AKKVP) was approved by the Government of the Republic of Kosovo in November 2012 and has yet to be adopted by Kosovo Assembly.²⁰ EU, on the other hand, until now has presented initial ideas on how to implement the operational conclusions.²¹

Problems: Meanwhile, Serbian side has not yet started the scanning of cadastral documents, in total 12 million pages. To date, the only step taken by Serbia is the submission of the list of cadastral documents taken from Kosovo to the Implementation Group meeting on 15 April 2012.

5) Acceptance of the University Diplomas

Agreement: Agreement on reciprocal acceptance of diplomas was reached in principle on 2 July, 2011 and finalized on 21 November, 2011. The agreement stipulates the acceptance of the university diplomas by the European University Association (EUA). The association will certify the diplomas issued by both parties by appointing the Committee of European Academic experts. The final effect of the agreement should be that each party will accept the qualifications stated in diplomas.

Implementation: The implementation of this Agreement began on 1 March, 2012 by Kosovo authorities, with the opening of an implementation office in the Ministry of Education, Science and Technology (MEST) and in cooperation with SPARK, while the Association of European Universities (AEU) has started to certify Kosovo's diplomas. On 26 July 2012, 73 diplomas were certified, while by January 2013 another batch of 100 diplomas were certified, totaling 173. Up to date the total number of the diplomas certified is 186. The Office of the Head of Technical dialogue

¹⁹ KIPRED phone communication with Kosovo Food and Veterinary Agency official, 12 of June 2013.

²⁰ *State of play in implementation of the Technical Dialogue agreements, September 2012 – November 2012*, Reporting by the Kosovo authorities, 16 November 2012.

²¹ Implementation, State of Play, EU reporting on implementation of TD agreements, 3 October 2012.

of the Government of Kosovo monitors the implementation of this agreement in cooperation with ethnic Albanian municipal authority from Preshevo Valley.

In principle the group, composed of 5-7 members, meets every three months and decides on the certification of diplomas, which is a student demand-driven process.

Problems: It's not certain whether the diplomas certified will be accepted in Serbia, as Serbian universities and employers are not obliged to accept them as valid. In cases when the Serbian side accepts the diplomas, officials of GoK have stated that in few cases, the denomination "Kosovo and Metohija" is added to the diploma.²²

6) Regional Representation and Cooperation

Agreement: This agreement was reached on 24 February, 2012 after the issue had been discussed in several rounds of talks. Ultimately, it was agreed that Kosovo would be represented in the *regional* organizations with a footnote and an asterisk next to the name of Kosovo. The footnote to be used with the asterisk would read 'This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ opinion on the Kosovo Declaration of independence'. The agreement does not clearly specify the use of the footnote and has allowed for different interpretation by Kosovo and Serbia but also different interpretation by organizers of meetings in regional organizations and forums. Furthermore, conclusions also foresee that the EU, as a facilitator, should also inform relevant regional organizations for the agreed denomination on representation and signature, by also monitoring the implementation of the conclusions.

Implementation: Until mid 2012, Serbia was conditioning Kosovo's participation in different regional organizations with printing of the footnote in a specific location in the relevant documents.

As of 31 May, 2013, Kosovo has applied for membership in thirty-four regional organizations with thirteen of them responding positively and two of them negatively. Out of thirty-four applications by Kosovo, by spring 2013, five of them offered a preliminary positive answer. But so far positive answers are awaiting, with one of the regional organizations conditioning their acceptance with the approval of Kosovo's membership in other organizations and two others are under UNMIK's mandate, in other words only UNMIK can negotiate Kosovo's membership in them.²³

Outside of Cooper's list, Kosovo Ministry of Foreign Affairs has applied in eight more organizations. They have received positive response from five of them, negative response from one of them, and with two of them the Ministry is in the consultation process.²⁴

From the beginning of 2013, the Ministry of Foreign Affairs has been focused for Kosovo to be a member of SEECP (South-East European Cooperation Process). The meeting scheduled for Foreign Ministers of the SEECP was held on 31 May 2013 in Ohrid-FYROM under the chairmanship of FYROM, whilst the Presidential meeting was scheduled to be held on 1 of June 2013. As Kosovo President was not invited, the organizer was forced to cancel the meeting, given

²² Interview with GoK Coordinator on Diplomas and Freedom of Movement, 16 of May 2013.

²³ Interview with GoK Coordinator on Regional Representation and Cooperation, 8 of May 2013.

²⁴ Interview with GoK Coordinator on Regional Representation and Cooperation, 8 of May 2013.

that the Croatian, Albanian, and Bulgarian presidents refused to participate citing the omission of the Kosovo President as a cause.²⁵

From the day this agreement was reached there have been one hundred and thirty three (133) regional meetings and events. Both Kosovo and Serbia have participated in sixty five (65) of these events. In twenty one (21) of them Serbia has refused to participate due to Kosovo presence, in sixteen (16) of them Kosovo hasn't participated due to the footnote placed at the table tags, but also in three or four events due to delays in visa issuance for Kosovo delegations and lack of budget.²⁶

The Kosovo government reported that in a meeting organised by the Ministry of Internal Affairs of Macedonia, supported by DCAF, on 16-18 October 2012 'Drug criminal organizations, the situation in the EU with special focus on the Balkan area,' only the Kosovo delegation was represented without a flag. Also in the "Initial meeting of Heads of Parliamentary Committees on East European Foreign Policy", organized by the Parliament of the Republic of Croatia on 18 and 19 October, in Zagreb, Kosovo was not invited to attend.²⁷

In general terms, regional organizations have positively responded to the Agreement.²⁸ By June 2013, no major changes in implementation were reported.

Problems: In few cases Serbia has lobbied against Kosovo membership in some organizations by using as a justification that Kosovo is applying to more regional organizations beyond the Cooper's list. However the agreement doesn't state that Kosovo is limited to the list generated by the EU facilitator of the Technical Dialogue Mr. Robert Cooper. As stated by GoK official, Serbia constantly undermines this process²⁹ but they will, eventually, compromise.³⁰

Additionally, the GoK coordinator on Regional Representation and Cooperation has observed improvement in the implementation of this agreement in general.³¹

Finally, the implementation and problems related to the agreement remain as most controversial for the Kosovo delegation. Opposition parties, civil society and media in Kosovo accused the Government of Kosovo that it is accepting to distinguish Kosovo from the other representing countries (by accepting to use an asterix – and the Kosovo contested footnote - next to the name of

²⁵ Press Release of the FYROM President Dr. Gjorge Ivanov, 29 May 2013 at <http://www.president.gov.mk/en/media-centre/press-releases/2142.html>

²⁶ Interview with GoK Coordinator on Regional Representation and Cooperation, 8 of May 2013.

²⁷ State of play in implementation of the Technical Dialogue agreements, September 2012 – November 2012, Reporting by the Kosovo authorities, 16 November 2012.

²⁸ State of play in implementation of the Technical Dialogue agreements, February 2012 – August 2012, Reporting by the Kosovo authorities, 23 August 2012.

²⁹ Kosovo has been also applying to become member of the MARRI (Migration, Asylum, Refugees Regional Initiative). The Ministry of Internal Affairs is coordinating the process by sending the request to the Bosnia and Hercegovina Ministry of Foreign Affairs. A meeting on this issue was held in May 2013. Serbia is also objecting with the same justification that this regional organisation isn't listed in the Coopers list. Also, Serbia gave similar justification for Kosovo's possible membership in RESPA (an international organization which has been entrusted with the mission of boosting regional cooperation in the field of public administration in the Western Balkans). KIPRED interview with GoK Coordinator on Regional Representation and Cooperation, 8 of May 2013

³⁰ Ibid.

³¹ Interview with GoK Coordinator on Regional Representation and Cooperation, 8 of May 2013.

Kosovo) therefore questioning the statehood of Kosovo. Government of Kosovo itself was reluctant to accept the agreement initially. However, Kosovo accepted the agreement only after it was convinced by the USA to do so. Generally, the agreement has been seen as a step back since it accepted that Kosovo's political status is still unresolved. The ambiguity of the details of the agreement put Serbia in a rather strange position, where at times they would refuse to attend or were made to storm out of the meetings due to the fact that Kosovo was being represented with an asterisk only, and not the entire text of the footnote. Nonetheless, compared to Kosovo, the implementation of this agreement was less controversial in Serbia.

7) Integrated Border/Boundary Management (IBM)

Agreement: In principle this agreement was reached during the last two rounds of the technical dialogue held in December 2011 but its implementation commenced only a year later, in December 2012 after the political dialogue between the two prime-ministers of Kosovo and Serbia kicked-off. The agreement stipulates that both countries should install joint, integrated, single and secure posts at all border crossings (six in total), that are jointly delineated in order to pursue cooperation as defined by EU law. None of the parties will display any symbols of their respective jurisdiction to the common IBM areas.

Implementation and problems: The Agreement contains the signing of a technical protocol by both Kosovo and Serbia with the EU that would provide technical details for implementation. The Technical Protocol was signed by the Kosovo side on 29 February 2012. However, the presidential and parliamentary elections in Serbia during May 2012 stalled the implementation of this agreement. By 24 September 2012, the Serbian government sent a letter to the EU, on 'mutual control of the administrative crossings with Kosovo' affirming that the new government will be implementing the IBM agreement.

a. IBM and the political dialogue

The new nationalist government in Serbia pledged to implement all previously reached agreements in the dialogue with Kosovo. However, the implementation of IBM still continued to lag behind because the implementation would seal off Belgrade's influence in the north and it would create the terrain for the integration of the northern part of Kosovo in accordance with the Ahtisaari Plan. Besides the fact that Serbia was postponing the implementation of this agreement, the guarantors (EU and US) used a soft approach when they asked Serbia to implement it. This delay enabled Serbia to re-negotiate the implementation of this agreement reached during the "technical" dialogue. The agreement was re-negotiated between the two Prime Ministers, which included the agreements on the collection of customs at border crossing in the north.

In a meeting between Prime Minister Thaçi and Dacic, held on 4 December 2012, an agreement was reached that the first three temporary crossings were to be established in Merdarë on the Kosovo side and Rudnica and Konculj on the Serbian side. The temporary walkway of IBM in Bernjak

(territory of Kosovo) was operationalized three weeks later (31 December, 2012) due “to the need for consultations with the local community.”³²

From the EU’s perspective, implementation of the agreement was going better than expected. In reality, while implementation had gone smoothly in the crossings in Merdarë/Merdare and Konçul/Konçul, there are still difficulties with implementation in two crossings in the northern part of Kosovo. This agreement was one of the most difficult ones to implement for Serbia. While the Kosovo side represented this agreement as recognition by Serbia of the border between Kosovo and Serbia, Serbia had to convince its public opinion that the agreement does not recognize the border between Kosovo and Serbia. Serbia claims that the agreement does not mention the word “Border” but instead it uses the word “Boundary” and the dispute between Kosovo and Serbia continues. This is helped by the fact that the agreement itself uses only the acronym IBM, allowing for different interpretation by each side.

The agreement was also difficult to implement due to resistance by the Kosovo Serb citizens living in the northern part of Kosovo who refuse to recognize Prishtina’s authority and only recognise Belgrade as their authority. Establishment of IBM posts requires that all the goods entering Kosovo in this part are subject to custom duties as required by the Kosovo laws, which the Kosovo Serb citizens refuse to accept and pay duties that go to the Kosovo budget. A solution for this dispute is said to have been found in the last meeting between Prime-Minister of Kosovo and Serbia, held on 17 January 2013, though details of the agreement are not known yet. Both sides, Kosovo and Serbia, gave contradictory accounts of what has been agreed.

8) Other results of the political dialogue

The technical dialogue process effectively ended at the end of February 2012 with the agreement on Kosovo’s regional cooperation and representation. The strained process had to be upgraded to a political one, given the sensitivity of the issues and the popular lack of support for it in both countries. The EU and the US recognized the limits of the technical dialogue, and decided to wait for the results of the presidential and parliamentary May 2012 elections in Serbia. The unresolved issues, such as energy and telecommunication, including the implementation of the IBM were postponed to be implemented as a result of a new process – the political dialogue.

As stated, the implementation of the IBM conclusion came as a result of the upgrade of the dialogue from technical to a political level. During the four meetings of the two prime ministers in Brussels from October 2012 to January 2013 several results were reached. Most significantly on 4 December 2012, the prime ministers agreed on the following³³:

- a) To each appoint a liaison officer in respective capitals, initially hosted by the EU Delegation in Belgrade and the EU Office in Prishtina, where the EU premises will provide the liaison office for the liaison officers;
- b) The establishment of the multiethnic special police unit within the Kosovo Police that will be tasked with the protection of Religious and Cultural Heritage;

³² *State of play in implementation of the Technical Dialogue agreements, September 2012 – November 2012*, Reporting by the Kosovo authorities, 16 November 2012.

³³ http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/134038.pdf

- c) Initial agreement to find ways to ensure a transparent flow of money in support of the Serb community in Kosovo;
- d) Transfer the continuation of work on energy and telecoms at the level of technical experts;
- e) To intensify cooperation between the respective commissions for missing persons.

In addition, in January 2013 the two prime ministers agreed to:

- f) a provisional understanding on the collection of customs duties, levies and VAT³⁴ at the gates 1 and 31 in northern Kosovo.

Through this agreement, the EU maintained Kosovo as a single customs zone, while the Kosovo Serbs in the north will begin paying customs duties, levies and VAT in return for a joint GoK-EU-northern Kosovo Serbs Fund for economic and infrastructural development of northern Kosovo.

On 10 April, 2013, the two prime ministers reached:

- g) the “First Agreement on Principles of Normalization of Relations”. In 15 points, the Agreement creates the “Association/Community of Serb municipalities”; extends Kosovo Police and judiciary in the north within Kosovo’s single legal framework; and the two sides commit not to block each other in their respective EU paths.

Overall, the political dialogue results so far are even less clear than the technical conclusions, as they are followed by tripartite contradictory statements, and there are no written agreements available to the public. To date the agreement of the 19 April 2013 agreed between the two Prime Ministers of Kosovo and Serbia, is not available on the GoK website.³⁵ The reached agreements are understood by the public by vague public statements of Lady Ashton’s press office, with the two prime ministers giving opposing statements with nothing in common. This does not help in changing the status quo in the north. In fact, it further antagonizes the Serbs in the north, as they publicly see different statements; from Belgrade – as they are not being integrated, and Prishtina – as they are being integrated.

III. LEGALITY OF THE AGREEMENTS

A. THE ROLE OF THE ASSEMBLY

In order to legalize Kosovo’s government political decision to enter into dialogue with Serbia, Kosovo Assembly voted on two different resolutions. The role of the Assembly of Kosovo on and during the dialogue process has been minimal. The Assembly of Kosovo voted two Resolutions on the dialogue and three contradictory motions on the same. On 10 March, 2011 the Assembly adopted a Resolution on the dialogue between Republic of Kosovo and Republic of Serbia³⁶, supporting the dialogue on “practical” issues and confining the dialogue only to “technical” issues, although the first round of talks was held on 8 and 9 March, 2011. This Resolution was opposed by

³⁴ http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/134784.pdf

Provisional understanding on the collection of customs duties, levies and VAT

³⁵ Only the agreement on the ‘Arrangement in relation to representation and regional cooperation,’ of 23.02.2012 is officially available online at <http://www.kryeministri-ks.net/?page=1,191>

³⁶ http://www.assembly-kosova.org/common/docs/Rezoluta_per_dialogun_midis_R.Kosoves_dhe_R.Serbise_2.pdf

LDK, Vetevendosje and AAK. The second Resolution on normalization of relations between Republic of Kosovo and Republic of Serbia³⁷ was adopted on 18 October, 2012, supported by all political parties, except Vetevendosje, effectively giving the green light for the meeting between Prime Minister Thaci with his Serbian counterpart in Brussels the next day. However, the Assembly also voted contradictory motions on the dialogue. On 7 December, 2011 the opposition LDK, Vetevendosje and AAK voted on the motion on full political, economic and trade reciprocity with Serbia³⁸ throughout Kosovo; which, if effectively enforced, would end the dialogue. This motion was superseded on 20 January 2012 by a new motion³⁹ supported by the governing parties which resumed the dialogue. On 10 May 2012 the Assembly voted four recommendations on the missing persons demanding that GoK conditions further talks with Serbia with resolving the fate of the missing persons.⁴⁰ If it were to be respected by the GoK, the dialogue could not have produced any further results. Therefore, the oversight role of the Assembly further diminished.

Although both Resolutions request regular briefings by the GoK on the process, the information of the Assembly and the public has been confined in patriotic statements, in essence defensive ones, thus, further increasing criticisms on the transparency of the process. Unlike during the “technical” dialogue when there were written conclusions available to the public – although they were late – during the political dialogue vague and not detailed statements were issues by EU and GoK.

The Assembly, in accordance with both resolutions should have had a proactive role in exercising its constitutional right to ratify the agreements reached. So far the Assembly has not had the opportunity on ratifying any of the agreements reached as the government has not delivered any of those for voting.

Legally the ratification of the agreements and how will they be implemented by Kosovo’s side remains unclear. Kosovo has not ratified any of the agreements, which the GoK is bound by the Constitution to put such agreements before the Parliament and ratify them. Kosovo is not a member of the EU and the five non-recognizers of Kosovo’s sovereignty make bilateral and multilateral agreements with Kosovo unfeasible.⁴¹ The recent interpretation of the European Commission in analyzing the possibility of the Commission to enter into a stabilization and association agreement with Kosovo states that the EU is not limited to conclude international agreements as long as the other contracting party will accept to enter in such agreement if governed by public international law.⁴² However, the legal nature of the agreements with Kosovo will have to be determined at the end of the negotiations process and by analyzing accordingly the legal context of Kosovo.

In another case, the Kosovo Assembly ratified an exchange of instruments/notes between the Kosovo President Atifete Jahjaga and Vice President of the European Commission Catherine

³⁷ http://www.assembly-kosova.org/common/docs/Rezolute_Marredheneve_Kosova_Serbia.pdf

³⁸ <http://www.assembly-kosova.org/?cid=1,128,4276>

³⁹ <http://www.assembly-kosova.org/?cid=1,128,4375>

⁴⁰ http://www.assembly-kosova.org/common/docs/proc/trans_s_2012_05_10_10_4210_al.pdf

⁴¹ In the past UNMIK was a signatory for Kosovo of bilateral and multilateral agreements.

⁴² See pg.3 of the European Commission “Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo,” (October 2012) at

http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf

Ashton. The ratification of the international agreement by Kosovo Assembly stated to have been concluded in between the Republic of Kosovo and the European Union regarding the European Union Rule of Law Mission in Kosovo. This model has not been followed by the Kosovo Assembly for ratifying the agreements reached with Serbia, and whether this model will be followed in the future remains to be seen.

Complications of such nature might have been expected by EU mediators when choosing to use the term joint conclusions from the dialogue process rather than agreements. This was done in line with the EU's status neutral stance towards Kosovo. From the EU's perspective, the respective governments in Serbia and Kosovo need to decide on the correct forms of implementation in their respective countries.⁴³ In the case of Kosovo, the assembly expressed the willingness of the people to ratify such agreements through a resolution.⁴⁴

The hesitation to ratify such agreements in the Assembly, from the GoK's perspective, may come from the fact that if such agreements were to be put for ratification, the process itself may last longer because the GoK would have to convince MPs other than those of the coalition government to ratify them.⁴⁵ As a result of the political dialogue the GoK has chosen to firstly vote the resolution in supporting the First Agreement on Normalization of Relations in between Kosovo and Serbia, by proposing the agreement to the Kosovo Assembly in late May 2013, to be ratified as an international agreement in order to supersede Kosovo's Constitution and its laws.⁴⁶

B. IMPLEMENTATION THROUGH BY-LAWS

Neither the GoK nor the Assembly followed the predicted implementation of enacting laws on specific issues covered by the agreements. As stated by Robert Cooper, EU facilitator for the technical dialogue, in some cases 'legislation is needed for the implementation of what the parties have agreed upon, such as with the cadastres issue. Therefore, the Assembly will naturally be included in this respect. In other cases, such as with customs stamps, they can be implemented through 'administrative decisions'.⁴⁷ Robert Cooper's views on the implementation of the agreements provide an approximate reflection on how the EU expects Kosovo to view itself. It is evident that Robert Cooper went on to either interpret Kosovo's Constitution or to suggest that it should be disregarded. There are no Constitutional provisions that allow for legislation to be in place for or the Assembly to be involved in only "some" cases (in this case defined by Cooper), nor does it provide anything like having "administrative decisions" for "some" other cases. Kosovo's Constitution is clear on this regard, and does not provide space for such interpretation.⁴⁸ In the case

⁴³ See 'The Kosovo-Serbia dialogue: Close to the EU, Far from the citizens,' FES publication by Development Group, May 2012.

⁴⁴ See Kosovo Resolution on the normalization of the relations in between Kosovo and Serbia (2012)

⁴⁵ 2/3 are needed to ratify an agreement on territorial issues according to Kosovo's Constitution.

⁴⁶ See Article 19, paragraph 2 of the Kosovo Constitution stating that international agreements ratified by the Republic of Kosovo supersede Kosovo's laws.

⁴⁷ Report 'The Kosovo-Serbia dialogue: Close to the EU, Far from the citizens,' FES publication by Development Group, May 2012

⁴⁸ Const. of Rep. of Kosovo, Article 18, paragraph 1: (For issues like: (1) territory, peace, alliances, political and military; (2) fundamental rights and freedoms; (3) membership of the Republic of Kosovo in international organizations; (4) the undertaking of financial obligations by the Republic of Kosovo, international agreements are ratified by two thirds (2/3) vote of all deputies of the Assembly) and Const. of Rep. of Kosovo, Article 18, paragraph 5: (The principles and procedures for ratifying and contesting international agreements are set forth by law).

of cadastre records, Kosovo still needs to enact the law on the Kosovo Agency on Comparing and Verification of Property in Kosovo, whilst Serbia has been refusing, to date, to submit the cadastre records to the EU representatives in Belgrade.

The practice so far has been to enact by-laws that constitutionally and legally may be disputable. Recently the Ministry of Internal Affairs issued the Administrative Instruction No.37/2012 on the “Use of Certified Copies of Original Civil Status Registers of Kosovo”, resulting from the agreements on civil registry books in the technical dialogue. The administrative decision approves the certified copies of the original ones as original, and basis its decision on the ‘...agreements signed in between Kosovo and Serbia on 2 of July 2012 in Brussels.’⁴⁹ As stated, these agreements have neither been signed by Kosovo and Serbia nor have they been ratified by the respective Assemblies. Therefore, such AIs could easily be disputable in Kosovo’s Constitutional Court. Another worrisome fact is the lack of dispute settlement provisions in the agreements.

Even though the EU acts as a facilitator of the process, and both the EU and the US have indicated to be the guarantors, there is no explicit provision in the agreements on how the EU and the US will guarantee the implementation of the agreements, and there is no dispute settlement clause that stipulates on how should the disputes between parties be settled, should they arise. Accordingly no provisions of agreements have so far specified the responsible party in the case of disputes. This leaves the potential to argue positions differently by concerned parties and delay tactically the process of implementation. As the case with cadastre books shows, Serbia has been delaying the submission of the books as of September 2011, due to their request that Kosovo should enact a law on cadastre verification. The agreement never mentioned such an arrangement but such gaps are tactical delay on the Serbian side, leaving Kosovo without cadastre records before 1999.

IV. CONCLUSION

The format of the agreements followed by unclear instruments of implementation has made the observation of the process very difficult to follow. Majority of the information is reported by media. In cases of government or EU reports, the statements are limited and often contrasting from both prime ministers. In case of EU reports, they are usually in the format of EU HR notes. These statements reach the public days after the meetings were concluded.

Such a secrecy veil after the 4-th meeting held on 17 January 2013 between the two prime-ministers has been observed. Only after a week from the meeting, did the Kosovo Prime Minister informed the public on the issues agreed in the meeting with the Quint group. Almost for a week speculations in the media were made that the agreed development fund for the north which will be accumulated through the collection of customs duties at the border crossings in the north, would lead to the financial decentralization. This may slowly lead to different territorial settlements for the north as customs collections will not go to Kosovo’s budget, but rather in a commercial bank in Prishtina, overseen by a tri-partite board of Serbia, Kosovo and EU representatives. The issue still remains unclear as Kosovo side claims different conclusions from what the Serbian side claims.

Agreements: substantiality vs. transparency: The legal uncertainty on how the technical agreements have been implemented affects also the level of accountability and transparency. Kosovo opposition

⁴⁹ See Article 2 of the AI Nr.37/2012 of Ministry of Internal Affairs at http://www.mpb-ks.org/repository/docs/Udhezim_Administrativ_Nr_37_2012_anglisht.pdf

and civil society continue to be skeptic not only on the format of the dialogue but also on the lack of transparency followed by a secrecy veil of the talks. The EU has explained that during negotiations it is common tactics not to reveal the details of the talks as it might jeopardize the process. However, even for the agreements reached in Kosovo there is still minimal information. The Government of Kosovo has so far shared on its official website only one of the agreements reached during the technical dialogue.⁵⁰ In comparison, the majority of the agreements reached during the dialogue process are available on the official Serbian government⁵¹ website, in order to inform its citizens of the dialogue results. The more substantial the topics and the higher the profile of those involved in the dialogue got, the less transparent the process became. The “technical” phase of the dialogue which was led by Edita Tahiri and Branko Stefanovic was criticised for the lack of transparency in the process. The agreements, at least on the Kosovo side, have not been discussed in the Parliament beforehand, nor were the citizens informed of their conclusions. The agreements were presented verbally in the Parliament and only in general, leaving a lot of room for interpretation and speculation. The agreements would be released only some time later in the media, and not in the GoK website.

Now that the dialogue process has increased in profile where the prime ministers of the two states have taken the leadership in this process, in which more substantial (political) topics are being discussed, the transparency has decreased. The EU HR’s short statements are the only reliable source of information regarding the agreements reached between the Prime Ministers, which are vague and ambiguous enough to interpret them upon the wishes of the parties.

Guarantors: Besides that the EU and the US have claimed the guarantor’s role of the agreements reached between the two parties, the implementation lags behind. One lesson that can be learned in this regard is that unless there is a “dispute settlement” clause in the agreements, parties will not be encouraged to implement the agreements in full and will view the process only from the “zero-sum” perspective, where both Serbia and Kosovo communicate solely based on their own interest for progressing towards EU accession, and not on the idea of genuinely “normalizing the relations.”

Deadlines: The lack of specific or tentative deadlines leaves the implementation of the agreements on the will of the parties. In fact, the role for evaluating the implementation of the agreements is left as part of the EU’s evaluation process on whether or not the agreements have been implemented. This, as a result, has left a lot of room for the EU to assess the implementation of the agreements more on the wish on what the EU wants from its potential candidate and candidate countries, rather than on the strict implementation of the agreements reached. While this was good for the EU to manage its political relations with each of the parties, it has also negatively impacted the process, whereby the agreements, as simple as they may be, are not being fully implemented, and are thus being tactically delayed. Furthermore, the risk to reaching provisional agreements without deadlines is high, and may on the contrary to what’s expected further strengthen the “provisional” status quos.

⁵⁰ See Kosovo government website at <http://www.kryeministri-ks.net/?page=1,191>.

⁵¹ See Serbian government website at <http://www.srbija.gov.rs/kosovo-metohija/index.php?id=82315>.

Leverage and conviction: Besides that the EU has less leverage on Kosovo, compared to Serbia, because of the five non-recognizers, Kosovo's leadership has acted swiftly on EU's requirements and expectations in the dialogue. Nonetheless, there is a bigger problem with EU's "status neutral" stance towards Kosovo. The EU's "status neutral" stance towards Kosovo makes its position and leverage even more questionable when it comes to the results it wants to achieve in the northern part of Kosovo, and its eventual integration with Kosovo's institutions. It is problematic for the EU to convince the Serbs in the northern part of Kosovo to integrate with Kosovo's governing institutions and recognize them as their official institutions, a state towards which the EU itself holds a neutral status.

The need for a general framework and a roadmap (comprehensive agreement): The political dialogue has produced seven new "agreements" that lack a concise implementation plan. However, there are many other issues that Kosovo and Serbia need to discuss (energy, telecommunications, missing persons, aviation, border demarcation, police cooperation on cross-border crime, finance [double taxation], labour movement, etc) which make the period of the process itself quite murky. Furthermore, the EU and the US do not have a "plan B" if the current dialogue does not produce the desired results. Also, Brussels does not have a clear end-of-process agenda, which would result in a comprehensive closure of most open issues between Kosovo and Serbia, including the recognition of five non-recognizers and Kosovo's UN membership. Therefore, there needs to be a *general framework* in place which details the end result of these negotiations to which the parties have to work on, and a *roadmap* with clear deadlines and benchmarks that both, the parties and the EU can use to track the progress.