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Environmental laws in Kosovo: Implementation of the SAA

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Abstract

Kosovo is in its early stages of meeting the required standards of the European Union (EU) acquis, in order to meet the integration process. The constant and rapid need of environmental laws in Europe has made the integration process even more demanding and challenging for Kosovo. This paper aims to present an analysis of the implementation of environmental legislation in Kosovo, based on EU standards. Through a comparative approach of some of the EU Commission reports of the recent years, as well as national reports on the implementation of environmental provisions, such as the National Implementation Program of the Stabilization and Association Agreement, as well as reports of the Kosovo Environmental Protection Agency, this paper analyzes the progress that has been made. However, at the same time these reports show the absence of implementation of EU standards in Kosovo, in order to fulfill the requirements of the last few years. Emphasizing the progress that has been made throughout the years, the findings of these reports show that the adaption of the environmental provisions based on EU standards has gradually made significant improvements in Kosovo’s journey to EU association. In spite of this, the partial implementation of EU standards into national environmental legislation, at the same time highlights the necessary issues which need to be addressed, in order to meet the necessary requirements based on the acquis, within the given timeframes. This indicates that a lot remains far from being completed in regard to the approximation of Kosovo’s legislation with the EU acquis, and reaching its implementation.

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Introduction to the Stabilization and Association Agreement

Since the declaration of its independence, the Republic of Kosovo has made significant progress in several areas. It continuously harmonizes its democratic institutions and makes significant improvement in strengthening its institutional structures and legal framework. On 27th October 2015, the Republic of Kosovo signed the Stabilization and Association Agreement (SAA) with the European Union in Strasburg. This agreement represents a new chapter of its relations with the EU, as it is the first bilateral contractual agreement between the two parties. Therefore, the Government of the Republic of Kosovo ratified it on 2nd November 2015 by the adoption of the Law No. 05/L-069 on Ratification of the Stabilization and Association Agreement. The SAA is now considered a milestone on Kosovo's path towards the European future. The aim of this agreement is to establish some official mechanisms and time frames in regard to the implementation of progressive reforms, which will assist Kosovo in the fulfillment of EU standards.¹

Regarding the mechanisms that are used for the implementation of this Agreement by the Government of Kosovo, the legal document of the SAA itself obliges the signing state, in this regard Kosovo, to implement EU laws and regulations in various fields. In addition to this, the Kosovo Government has prepared two other planning documents for the implementation of the SAA: The National Program for the Implementation of SAA (NPISAA), and the European Reform Agenda (ERA). The difference between the two is in the way that they address certain provisions and obligations of the SAA. While NPISAA is a more comprehensive document and outlines its general obligations of the institutions of the Government of Kosovo towards the SAA, the ERA on the other hand, serves as a more specific document that focuses in more detail on the realization of reforms that Kosovo needs to implement and present them in the medium-term priorities and short-term measures.²

Keeping in mind that the Western Balkans region is one which has plenty to protect and conserve, since it is a unique part of Europe for wildlife and plants, they all face a common set of

¹ Ministry of European Integration <https://www.mei-ks.net/sq/procesi-i-stabilizim-asociimit-78>

² Ministry of Trade and Industry, "Efektet e Marrëveshjes së Stabilizim Asociimit Kosovë - BE: Ndikimi në Tregti" June 2017, <https://mti.rks-gov.net/desk/inc/media/6A8CE0E5-202D-4C98-92B1-153E4353C9A7.pdf>

environmental challenges, each to a lesser or greater degree, particularly Kosovo which has a strong demand for natural resources. For this reason, there is a major impact on the environment of Kosovo, which is still at the early stage of adapting and implementing environmental standards, as well as bringing them into line with those of the EU. The European Commission progress report shows that until 2016, 66% of the acquis had been transferred into national legislation of environmental laws and provisions.³

As for the Stabilization and Association Agreement, it foresees an environmental provision in article 115. The article reads as follows:

“Article 115 - Environment: The Parties shall develop and strengthen their cooperation in the environmental field with the vital task of halting further degradation and start improving the environmental situation with the aim of Sustainable development in Kosovo. The Parties shall, in particular, establish cooperation with the aim of strengthening Kosovo’s administrative structures and procedures to ensure strategic planning of environment issues and coordination between relevant actors and shall focus on gradual approximation of Kosovo’s legislation to the EU acquis and where appropriate EURATOM acquis and adapted to EURATOM acquis.”

Considering that ERA currently does not include any specific environmental policies, but mostly foresees political-level priorities and concrete reforms for their fulfilment, this study will focus on NPISAA, more specifically on its chapters regarding the implementation of environmental laws in Kosovo based on EU standards, as well as reports of the European Commission and the Kosovo Environmental Protection Agency.

European Commission’s reports on Kosovo: Environmental chapter

Based on the conclusions of the Stabilization Association Progress Dialogue meeting in 2016, Kosovo still needed to work on the improvement of environmental laws.

The European Commission’s 2016 report showed that Kosovo had made some progress regarding the environmental area, however it was evident that yet a lot of effort needed to be put

³ European Environment Agency, “Western Balkan Countries- 20 years of cooperation with the EEA Key developments, achievements and the way ahead”, Copenhagen, 2019

in order to implement environmental legislation. This report of the 2016 suggested that Kosovo should focus on three areas:

- “→ ensure real-time measurement and reporting of air quality;
- ensure the establishment of a river basin management authority and preparation of river basin management plans and completing the water resources monitoring network, including ground water monitoring;
- implement the Climate Change Adaptation and Low Emissions Development Strategy, consistent with the EU 2030 framework for climate and energy policies”⁴

Following the European Commission report of the 2018, the findings revealed that no progress had been made during 2017-2018 in the environmental area. Therefore, the three previous suggestions of the European Commission remained the same, along with one new suggestion which was added. The latter suggestion dealt with household waste, more specifically the issues of illegal dumpsites.

Contrary to this, the 2019 report of the EC, showed that there had been some progress in the last year. One of the mayor steps of this progress was the adaption of the new Criminal Code with provisions on environmental crime.

Differently from the previous EC reports, this last one had some changes regarding the objectives that need to be achieved. The report suggested the following four categories:

- “→ establish an effective water monitoring system, publish the data and undertake urgent and permanent measures to reduce air and water pollution;
- continue to increase the household waste collection coverage and address the issue of illegal dumpsites;
- enforce legal provisions on environmental liability, damage and crime; implement the polluter pays principle and raise public awareness on environmental protection;
- implement the climate change strategy and the action plan on climate change, prepare a roadmap for alignment with the climate acquis and start the work on an energy and climate plan, in line with Energy Community recommendations.”⁵

The findings of the upper mentioned report, i.e. the 2019 EC report, identified some of the main issues that could prevent further progress. Most of these were a result of lack of trainings in the

⁴ European Commission, “Report on Kosovo 2016” , Brussels, November, 2016

https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_kosovo.pdf

⁵ European Commission, “Report on Kosovo 2019”, Brussels, May, 2019 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>

relevant institutions in order to have an impact on environmental issues, such as the ineffectiveness and lack of training of prosecutors and courts in the environmental area. The same case was with the environmental inspectorates who lacked administrative capacity and remained unable to ensure effective enforcement. Furthermore, the insufficient funding, the lack of capacities and technical skills, further weakened the implementation of relevant measures. The other issue identified by the EC report of the 2019, showed that there was a considerable need to improve the Implementation of the Strategic Impact Assessment Directives in the energy and transport sector. Another suggestion of the report was the consultation and involvement of the public, as well as civil society organizations.

National Program for Implementation of the Stabilization and Association Agreement

In order to implement the SAA successfully, in 2015 the Ministry of European Integration started drafting the first National Program for Implementation of SAA. Up to date, there have been four of this kind. The NPISAA constitutes the main national policy document for EU membership, and at the same time it defines the mid-term framework that all the necessary reforms need to be fulfilled according to SAA. Based on the Stabilization Association Progress Dialogue (SAPD) meeting in 2017, the requirements which need to be met in the environmental sector are the following:

Firstly, the Government needs to further continue its work on creation of horizontal legal framework according to EU standards and practice. Secondly, monitoring and reporting air pollution in Kosovo. Thirdly, monitoring network of water resources, as well as having municipalities implementing Master Plans on Waste Management and Information System for Waste, following the annual reports. And the last requirement of the SAPD meeting of the 2017 is the establishment of a Climate Change strategic plan.

Additionally, the NPISAA 2017 shows that Kosovo has fully implemented three Directives of the environmental area; as a measure of approximation of legislation based on the EU acquis. The

three Directives of the environmental area are: the Directives on Strategic Environment Assessment (Directive No. 2001/42/EC), the Directive on Environment Impact Assessment (Directive No. 85/337/EEC) and the Directive on Public Inclusion (Directive No. 2003/35/EC).

The report on NPISAA 2017 indicates the progress that had been made during the year of 2016. The 27th chapter contains a total of 52 short-term measures, of which 15 (28.84%) are legislative measures and the other 37 (71.15%) are implementing measures. 6 out of the 15 legislative measures had been fully implemented, and 23 implementing measures out of 37. This reveals that only 55.7% or 29 measures of short-term measures had been implemented, whereas 44.2% or 23 measures had not .

The findings of this report show to have significant improvement compared to those of 2016, where only 47.8% of the environmental chapter had been implemented. Despite of having 44.8% unimplemented measures of 2017, there is an 8.62% implementation improvement compared to 2016. ⁶

Continuing with the NPISAA 2018 report, the 27th chapter on Environment includes 21 measures. Ten of the measures are legislative, and the other 11 are implementing measures. The findings of this report show that only 47.62% of the measures of this chapter had been implemented during 2018. The other 52.38% that failed to do so, are the following:

“Adoption of three draft-laws:

a) Law on the waste from the Mining Industry;

b) Law on hunting;

c) Law on the forests of Kosovo;

Adoption of two sub-legal acts:

a) AI on rules and standards of the discharges on air by the stationary sources of pollution;

b) AI on waste export, import and transit;

Adoption of two policy documents:

a) Strategy on waste management and AP 2018 – 2020;

b) Strategy and action plan on climate change”. ⁷

⁶ Government of Kosovo, “Report on the Implementation of the National Program for Implementation of the Stabilization and Association Agreement (NPISAA) during 2017”, page 294, 295, Pristina, March 2017 <https://www.mei-ks.net/repository/docs/pkzmsa20172021ang.pdf>

⁷ Government of Kosovo , “Report on the Implementation of the National Program for Implementation of the Stabilization and Association Agreement (NPISAA) during 2018”, page 35 https://www.mei-ks.net/repository/docs/3_raporti_mbi_zbatimin_e_pkzmsa-se_gjate_vitit_2018_final_eng.PDF

The findings of this report show that the implementation of the foreseen measures in acquis had not been implemented at a satisfactory level. Most of the key factors of this chapter, such as legal acts and reforms on environmental policies had not met the required deadline. Moreover, a good amount of these measures had been transferred from previous years, such as the Climate Change Strategy, the Law on Hunting, as well as the Law on Forests in Kosovo.⁸

Ongoing with the National Program for Implementation of Stabilization and Association Agreement (NPISAA) 2019 – 2023, there can be seen a different approach regarding the environmental issues. In contrary to the previous report (NPISAA 2018-2022), the NPISAA of 2019-2023 is more structured when it comes to the steps that need to be taken in the future.

According to the report of 2019, the environmental chapter contains 19 measures: 9 (47.37%) legislative measures and 10 (52.63%) implementing measures. The findings of this report show that 21,05 % or 4 measures have been implemented, while 78.95% or 15 measures are yet to be implemented. These measures include:

1. “APPROVAL of five draft laws on: waste from mineral extraction industry, hunting, integrated pollution prevention and control, waters, environmental impact assessment.
2. Approval of three AIs: for the management of asbestos-containing wastes; for the rules and rates of air emissions from stationary sources of pollution; and for classification, labeling and packaging of hazardous chemicals;
3. Approval of six policy documents: strategy and AP for management waste 2019-2028; PV 2020 - 2022 for the implementation of the State Water Strategy 2017 - 2036; concept paper for strategic environmental assessment; concept document climate change; concept paper on regulation of waste field; and the concept paper for "Albanian Alps";
4. Prepare a report on the assessment of the impacts on the quality and quantity of water.”⁹

The most concerning issue, based on the findings of this report, is the failure to meet the foreseen deadlines. In order to meet the requirements of the legislative framework, the environmental sector is facing serious delays which require special attention. Especially, the attention should be focused on the: “Law on Waste from Mineral Extraction Industry, Law on Hunting, Law on Prevention and Integrated Pollution Control, Kosovo Water Law, AI on asbestos-containing waste

⁸ As above.

⁹ Government of Kosovo, “Report on the implementation of National Program for the Implementation of the Stabilization and Association Agreement (NPISAA) during 2019”, page 35 , February 2020, https://www.mei-ks.net/repository/docs/raport_mbi_zbatimin_e_pkzmsa_gjate_vitit_2019.pdf

management, AI on classification, labeling and packaging of hazardous chemicals, AI on rules and norms of emissions in the air from stationary sources of pollution and from the policy framework Strategy and PLV for managing Of Waste 2019-2028 and PLV for 2020 - 2022 for the implementation of the State Water Strategy in Kosovo 2017 - 2036. The delays are mainly related to the Law on Environmental Impact Assessment and the Concept Paper for Strategic Environmental Assessment”.¹⁰

The NIPSAA 2019 report suggests that Kosovo should ensure the measurement and reporting of the air quality, the creation of river basin management authority and their preparation plans, following with the monitoring network of water resources. In addition, it foresees the implementation of a strategy for climate change adaption, focusing on the development of low emission, in accordance with the 2030 EU framework.

Kosovo Environmental Protection Agency

Besides the reports of the European Commission and those of the National Program of the Implementation of the SAA, there is a governmental institution which deals with environmental protection. The main body that is in charge for the assessment, monitoring, and reporting on environmental progress in Kosovo is the Kosovo Environmental Protection Agency (KEPA). This body is committed in establishing a fully functioning system of monitoring, as well as an environmental information system which will be able to report on the air quality, water, soil, and biodiversity, as well as promoting renewable sources in order to ensure a healthy environment. These are the objectives of KEPA in order to meet its SAA obligations, within the framework of the EU integration process. Furthermore, the KEPA aims to further develop environmental indicators in national level, while providing support to policymakers and raising awareness on the importance of environmental protection.¹¹

Some of the reports of KEPA, such as the Annual Report on the State of the Environment in Kosovo 2017 and the report on Municipal Waste Management in Kosovo 2018, show that the

¹⁰ As above.

¹¹ <https://www.ammk-rks.net/?page=2,9>

Environmental Impact Assessment Law does not fully comply with EU Directives. The necessary amendments on the assessment of effects of certain public and private projects on the environment have not been adopted yet. There is an absence of implementation of provisions which contain the introduction of the public participation and decision making in rules on quality control on environmental reports, provisions which avoid conflict of interest, as well as the implementation of non-compliance penalties.

A good example of the impact of the environmental provisions in Kosovo is the case of the Power Plant Project “Kosova e Re”. The above mentioned issues have led to a complaint directed to the Secretariat of the Energy Community regarding the new coal-fired power plant project “Kosova e Re”, regarding the Environmental Impact Assessment Procedure. On 21st of December 2018, there was an issue of an Environmental Consent which allowed the building of the Power Plant, even though the report on Environmental Impact Assessment had never been made public. According to Kosovo Civil Society Consortium for Sustainable Development (KOSID), which is the Consortium of Kosovo's leading CSOs, this was a violation of the legislation, more specifically of the Environmental Impact Assessment Law, article 20, which states that “the main conclusions and recommendations, included in the EIA Report and the proposal decision for environmental consent shall be subject to public debate”. There were continuous requests made by NGO BIRN to the Ministry of Environment, for the publication of the EIA, who continuously failed to make the report public. Therefore, a good number of Kosovar NGOs initiated a lawsuit against the Government and submitted a complaint to the Energy Community regarding violations of the Directive 2011/92/EU. These are both pending; however, the current Government has stated that its intentions are to terminate the agreement on this project. This withdrawal means that Kosovo is taking actions in becoming an ecological state as it is getting closer towards improvement of environmental protection strategies against fossil fuel-based energy and the protection of public health.

Conclusions and the remaining challenges regarding the legislation

It is evident that throughout the years Kosovo has made significant progress in the environmental area. The findings on the reports of the EU Commission, NPISAA, KEPA, show that in the after its independence, Kosovo was at an early stage of implementing environmental provisions. However, through a gradual process Kosovo has emphasized the importance that the environment has, and it is continuously working on improving the implementation of environmental provisions, based on EU standards, and practice. Moreover, the case of the power plant “Kosova e Re”, indicates that the interest in environmental laws and standards, is no longer just a concern of the governmental institutions, but in contrary, it is becoming a field of interest to the civil society as well.

Despite all the progress that has been made, the findings of the above mentioned reports point out a handful of problems which need to be addressed. In order to resolve these environmental problems, it is important to stress the need of further implementation and enhancement of the current environmental legislation.

Therefore, the enforcement of provisions in the current national legislation is one of the first steps which will not only improve the environment, but will also assist Kosovo in its European Integration process. These provisions need to address issues on environmental liability, damage and crime, and continuing with the implementation of the polluter pays principle. Secondly, it is crucial to increase institutional capacities in order to have an effective application of the legislation. These should be followed by trainings of relevant actors on knowledge and skills on environmental protection in both central and local level. Another vital step would be the allocation of responsibilities among stakeholders regarding the implementation of environmental laws. Furthermore, putting in place policies and measures, updating and implementing the climate change, adaptation and low emissions development strategy, would significantly improve the implementation of the SAA. Lastly, it is also highly important to increase the public awareness in environmental protection, especially during this time, where citizens are clearly showing more interest towards environmental protection.

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