



MA in International Law
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Stabilization and Association Agreement between Kosovo and The European Union

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Abstract

The collapse of Yugoslavia resulted in Western Balkans territories having tremendous conflicts with each other. Since the mid 2000s, the EU has become the provider of security and stability within these countries, seeing the need of reconciliation and prosperity, while offering integration in the EU, thus after the fulfillment of basic criteria. The EU's relations with the Western Balkans states and territories were moved from the "External Relations" to the "Enlargement" policy segment in 2005. As of 2015, Albania, North Macedonia, Montenegro and Serbia are officially recognized as state candidates for membership. While Kosovo and Bosnia and Herzegovina are now potential candidates. With the Stabilization and Association Agreement with Kosovo, the EU closes the circle of such agreements with all states of the region namely the Western Balkans. Accession of Kosovo to the European Union is part of the future enlargement agenda of the EU, thus much is being done towards this direction, per contra a one sided aim to fulfill all needed criteria. Hence, the aim of this paper is to briefly analyze the situation of the SAA, ECA and IPA, and an overall scrutiny upon the differences of SAA's of the aforementioned states. The paper is mainly written based on secondary sources, while all the used statistics have been previously found from the Government of Kosovo.

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INTRODUCTION

The expression of interest of countries to join the European Union results in the EU typically concluding Association Agreements in exchange for commitments to political, economic and free trade between the country and EU member countries. The Stabilization and Association Agreement function is to establish a legal framework for cooperation between two parties, in this case a non-EU member state and EU itself, which conditions the country to gradually comply with European standards. Through this process, the EU expressed its determination to take up the challenge and responsibility to contribute to the stability of the Western Balkans region.

The SAP for the Western Balkans was launched in 1999¹. Ever since, the so-called Stabilization and Association Agreements (SAAs) have formed the backbone of the European Union Enlargement Policy in the region. More precisely, the SAA it is a contractual agreement, specific to each country. In previous instances SAAs have served as the basis for the accession process to the EU.

Prior to the signing of the SAA, the European Commission issues a Feasibility Study². The Studies aim is to identify whether SAA negotiations are hindered by any legal implication and whether an SAA is likely to be implemented by the candidate country. The Feasibility Study mainly focuses on examining whether the country has fulfilled political, economic and legal criteria in order to further proceed with the SAA. Since the SAAs are unique to each country, the negotiation, ratifying and the implementation of the agreement has different characteristics

¹ European Commission, Communication on the stabilization and association process for countries of South-Eastern Europe - Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia, former Yugoslav Republic of Macedonia and Albania, COM/99/0235 final, Brussels, 26 May 1999, available <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51999DC0235&from=EN> (accessed 06/03/2019)

² Feasibility Study on a Stabilization and Association Agreement. Available at https://ec.europa.eu/neighbourhood-enlargement/.../ks_feasibility_2012_en.pdf (accessed 06/03/2019)

CONSECUTIVE ORDER OF EU-KOSOVO REPORTS

- On 24 November 2000, the Zagreb Summit took place and brought together European Union leaders and representatives of the Western Balkans states and territories. The meetings intend was extending practical help towards these territories as they were yet struggling to fully recover from a dreadful decade of conflicts. The summit had a long-term ambition, to reaffirm the right of Balkan States to become part of European integration. Even though Kosovo was not part of the aforementioned summit, the Head of UNMIK Mission had been part of the summit as a guest. Neither Kosovo nor Montenegro were mentioned in the formal summit statement since both of these territories became independent countries only years after. The historic changes at that time had opened the way for regional reconciliation and cooperation. The summit enabled all the countries in the Western Balkans to establish new relations, beneficial to all of them, for the stability in the region and peace and stability on the European continent.³
- On 6 November 2002, the European Commission commenced the so-called Stabilization and Association Process Tracking Mechanism⁴ (STM). The main purpose of these mechanisms were to prepare Kosovar territory for the moment when the conditions for the formal involvement of Kosovo in the process are created. It had been intended to help the authorities in Kosovo to prepare for reinforced policy-making relations within the framework of the EU's Stabilization and Association process.
- On 21 June 2003 the Thessaloniki Summit was held, from which a joint statement of state representatives and government member states of the EU was made, highlighting the prospect of European Integration of all countries of Western Balkans. Kosovo had not

³ Zagreb Summit Final Declaration. Available at:
<https://www.esiweb.org/pdf/bridges/bosnia/ZagrebSummit24Nov2000.pdf> (Accessed 06/03/2019)

⁴ Stabilisation and Association Process Tracking Mechanisms. Available at:
https://en.wikipedia.org/wiki/Stabilisation_Tracking_Mechanism (Accessed 06/03/2019)

been overlooked by this statement, which stated the support of the full implementation of Resolution 1244 of the UN Security Council on Kosovo and the 'standards before status' policy of UNMIK⁵. Nevertheless, standardization is required in order to move towards the determination of Kosovo's status, which opens the possibility of implementation of the European perspective.

- In 2005, a document which refers to the European Perspective of the Western Balkans, mentioned for the first time the full integration of Kosovo in the European Union. This document identifies the lack of status as an obstacle in launching the process of Association Stabilization. Regardless of lack of status, on this occasion the European Commission promised to find ways for Kosovo to benefit from the EU instruments. It was stated that the strong commitment of all parties to a multi-ethnic, stable and democratic Kosovo will be essential to achieve a sustainable settlement that reinforces the security and stability of the region, and to ensure its further progress towards the EU⁶.
- The negotiation period of Kosovo status occurred in 2007, mediated by Maarti Ahtisaari. The EU's High Representative, Javier Solana, and the Commissioner for Enlargement, Olli Rehn, compiled the report⁷ that foresaw the prospect European as well as Kosovo, namely as the countries of the region. This document foresaw the possibility of the Process Stabilization Association for Kosovo after status determination. The report underlined that Kosovo must fulfill all conditions namely as the other territories. It had been stated that the EU will be giving Kosovo the same opportunities as previously given to other Western Balkans territories.
- In 2008, Kosovo declares independence. The assembly unanimously declared Kosovo to be independent from Serbia, while all 11 representatives of the Serb minority boycotted the proceedings. The legality of the declaration had been disputed. Serbia sought

⁵ Thessaloniki Summit Declaration. Available at: http://europa.eu/rapid/press-release_PRES-03-163_en.htm (Accessed 06/03/2019)

⁶ Communication from the Commission - 2005 enlargement strategy paper. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1551970136238&uri=CELEX:52005DC0561> (Accessed 06/03/2019)

⁷ Summary note on the joint report for the state preparations of Kosovo. Available at: http://europa.eu/rapid/press-release_MEMO-07-121_en.htm (Accessed 06/09/2019)

international validation and support for its stance that the declaration was illegal, and in October 2008 requested an advisory opinion from the International Court of Justice. The Court determined that the declaration did not violate international law.

- In 2009, the European Commission published a study for the aftermath of the declaration of Kosovo's Independence. At that time, the independent Kosovo had been recognized by the vast majority of member states of the European Union, except five; Spain, Greece, Romania, Cyprus, and Slovakia, which to this day still have not recognized the independence of Kosovo, thus it has not brought any problem for the SAA. However, they have had an impact that the Feasibility Study to be called only "Study" for Kosovo's case, differentiating it from the rest of the region. This study highlights the necessity that lack of recognition by all EU members should not be an obstacle to relations between the EU and Kosovo. This document recalls launching visa dialogue but also launching of the "Stabilization and Association Dialogue" which according to this document, deepens and strengthens Kosovo's Participation in the Process Stabilization Association.
- In 2012, the Feasibility Study⁸ had been published for Kosovo. The key message from this study had been that there are no obstacles for Kosovo to sign the Stabilization and Association Agreement. Nevertheless, areas where Kosovo had been advised to take serious reforms were identified. Rule of Law, Public Administration and protection of minorities had been mentioned, highlighting the open market trade.
- The SAA was negotiated between October 2013 and May 2014, it was initialled in July 2014 and the Council of the EU agreed to its signature on 22 October 2015⁹. For the first time, the EU Only principle has applied, where the agreement is signed by the representatives of each European Institution, rather than the representatives of member states. For the EU, it was signed by Federica Mogherini, High Representative for Foreign Affairs and Security Policy and Johannes Hahn, Commissioner for European

⁸ Feasibility Study for Kosovo's SAA. Available at: https://ec.europa.eu/neighbourhood-enlargement/.../ks_feasibility_2012_en.pdf (Accessed 06/03/2019)

⁹ SAA between the EU and Kosovo has been signed. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2015/10/27/kosovo-eu-stabilisation-association-agreement/> (Accessed 06/03/2019)

Neighbourhood Policy and Enlargement Negotiations, while on the side of Kosovo it was signed by Prime Minister Isa Mustafa and Minister of European Integration and Chief Negotiator Bekim Çollaku.

- In April 2016, the Stabilization and Association Agreement was put into force. Being an international agreement, the SAA defines mechanisms and official terms for implementation of all reforms, which will progressively align Kosovo with EU in all policy areas, until the fulfillment of all EU standards. The High Representative Mogherini said "This deal opens a new phase on relations between EU and Kosovo an important contribution to peace, stability and prosperity in Kosovo and the region in general. I expect the implementation of this agreement ".

IMPLEMENTATION OF THE SAA

Being the first contractual agreement between Kosovo and the EU, the SAA represents a new phase of political relations between the two parties. As an international agreement, it determines the mechanisms ought to implement all reforms which will progressively align Kosovo with the EU in all policy fields, until the fulfillment of all EU standards. The SAA covers all fields of governance. Kosovo's obligations stemming from the SAA can be divided into two categories:

1. General Obligations of Kosovo to engage in progressive political dialogue and to enforce EU rules in it all chapters of the acquis; 2. Specific obligations of Kosovo, to be fulfilled within the period of certain time. Overall, it contains ten main chapters, as well as seven annexes, five protocols, and a joint declaration:

Title I: General Principles;

Title II: Political Dialogue;

Title III: Regional Cooperation;

Title IV: Free movement of goods;

Title V: Establishment, Supply of Services and Capital;

Title VI: Approximation of Kosovo's law to the EU Acquis, law enforcement and competition rules;

Title VII: Freedom, Security and Justice;

Title VIII: Cooperation Policies;

Title IX: Financial Cooperation, and

Title X: Institutional, General and Final Provisions.

Most of the SAA is based on the EU acquis, namely in the entirety of legal norms that are applicable within its territory by all member states as legal entities. Approval and implementation of the Acquis is the core of negotiations for membership, and it represents a form of self-membership. Therefore, Kosovo being a country that aims to join the EU should adopt the entire Acquis and make it part of its internal legislation. Nevertheless, the implementation of the SAA entails legal obligations for Kosovo, and such implementation needs more comprehensive and long-term preparations.

Therefore, in order to successfully implement this agreement and all of the implied reforms, the National Program for Implementation of the Stabilization and Association Agreement (NPISAA) had been drafted from the Government of Kosovo. The overall idea of the NPISAA was to create a framework of all reforms necessary to fulfill the SAA obligations, more importantly the priorities for gradual approximation of local legislation with the EU Acquis through the implementation of the approximated legislation.

The preparations for drafting the NPISAA have started in January 2015, coordinated by the Ministry of European Integration, whereas the process for its drafting started in April based on the Government Decision no. 06/22 dated 03 April 2015 for initiating its preparation¹⁰. With regard to the content, NPISAA foresees a comprehensive framework; short-term measures (covering 2016) and mid-term priorities (covering 2017-2020) separated in two categories: legislative measures and priorities and implementing measures and priorities.

Based on the structure of the Copenhagen Criteria, all priority measures are divided in three blocks: Political Criteria, Economic Criteria and European Standards.¹¹

¹⁰ Government Decision No. 06/22, pg. 6. Available at: http://www.kryeministri-ks.net/repository/docs/Vendimet_e_mbledhjes_se_22_te_Qeverise_2015_.pdf (Accessed 06/03/2019)

¹¹ National Programme for the Implementation of the SAA. Available at: <http://mei-ks.net/en/national-programme-for-implementation-of-saa> (Accessed 06/03/2019)

- **Block 1**; under this block, NPISAA sets out the measures and priorities in fields such as democracy and rule of law, namely human rights and freedom and protection of non-majority communities and the Judiciary and anti-corruption policies, as well as regional cooperation.
- **Block 2**; reflects the efforts that are to be put in ensuring a consistent economic growth, based on the Copenhagen criteria for establishing a functional market economy that shall be able to withstand the competition pressure made by market forces within the European Union.
- **Block 3**; describes the legal and institutional framework of particular chapters of the acquis, the priorities for approximation of legislation and specific steps to be undertaken, as well as the need for a successful implementation of political and institutional measures which shall serve as the foundation for legal and economic reforms.

The structure of the NPISAA is organized in two parts: The Narrative and the Matrix of short-term measures.¹²

- The Narrative part of each Chapter summarizes the SAA's obligations and the obligations emerging from other EU accession mechanisms, the current state of play as well as short-term measures and mid-term priorities.
- The matrix of short-term measures within each Chapter outlines in detail the concrete measures to be taken, divided in two categories: legislative measures and implementing measures. This part is structured in such way that enables the correlation of legislative measures with SAA provisions, identification of specific secondary national acts that will align with the acquis acts for transposition and the responsible and supporting institutions, as well as the determination of deadlines.

¹² National Programme for Implementation of the SAA. Available at: <http://mei-ks.net/en/national-programme-for-implementation-of-saa> (Accessed 06/03/2019)

The responsibility for monitoring and implementing the programme lies with the Government of Kosovo, and each member of the cabinet and each state administration bodies that they govern, and all other institutions involved in the preparation of the Programme, since it is the central governing mechanism of the country. Thus, the Assembly has been one of the main institutional pillars in the implementation of this Programme, particularly with regard to the adoption of legislation. The Commission for European Integration has had a key role both in terms of pushing forward the legislative agenda, as well as a coordinator of monitoring the fulfillment of obligations assumed by the Assembly of Kosovo.

Implementation of the NPISAA in 2018¹³

The National Programme for Implementation of the SAA contains a total of **532 measures**; 144 legislative measures; 388 implementing measures. Out of a total of 532 measures, 164 of them were planned to be implemented during January-September, while the remaining 368 measures were planned to be implemented by the end of 2018. Based on the progress status findings, the implementation rate of the Program during January - September is 46.05%, as 77 out of 164 planned measures have been fully implemented, while the rest of 87 measures are a work on progress

The program contains a total of 144 **legislative measures**, out of which 82 measures, 37 of which have been implemented during January-September.

The program contains a total of 388 **implementing measures**, out of which 82, 40 of which were implemented during January - September.

Measures that have not been implemented in the the **Political Criteria Block¹⁴**, within the foreseen deadline are as follows:

¹³ All aforementioned statistics are found by the Government of Kosovo. Available at: mei-ks.net/sq/raporti-statistikor-pr-zbatimin-e-msa-s (Accessed 06/03/2019)

¹⁴ http://webcache.googleusercontent.com/search?q=cache:hACz-t72l3gJ:mei-ks.net/repository/docs/1_raporti_mbi_zbatimin_e_pkzmsa_janar-shtator_2018_final_publ_eng.pdf+&cd=1&hl=en&ct=clnk&client=firefox-b-d

1. Approval of the Draft Law on Administrative Conflicts approved;
2. Adoption of two sub-legal acts in the field of local self-government (supplementary and amendment): Adoption of two sub-legal acts and a policy document on missing persons;
3. AI for forensic examination and regulation for internal organization and job placement at the Forensic Institute and the concept document for missing persons;
4. Adoption of the Action Plan for Joint Approach;

Measures that have not been implemented in the **Economic Criteria Block**, within the foreseen deadline are as follows:

1. Drafting 25 professional standards that are verified by ACA;
2. VET curriculum review for 20 profiles and training of 40 trainers and teachers, based on the core curriculum.

Measures that have not been implemented in the **European Standards Block**, within the foreseen deadline are as follows:

1. Membership of the Kosovo Metrology Agency at the International Bureau of Weights and Measures (BIPM);
2. Development and functionalization of software for risk management and intelligence business;
3. Adoption of three sub-legal acts in the area of company's right of establishment and the freedom to provide services;
4. AI for the beneficial owner, AI on the duties and responsibilities of the State Council for Regulated Professionals, and AI on the stages foreseen for obtaining it the right to exercise a regulated profession;

Overall, based on the progress status findings, the implementation is 66 out of 142 planned measures have been fully implemented, while the rest, 76 measures are being implemented.

THE DIFFERENCE OF KOSOVO'S SAA WITH THOSE OF OTHER WESTERN BALKANS COUNTRIES

Even though in terms of form and used language it is hardly distinguishable, Kosovo's SAA differentiates from those of other Western Balkans Countries. Starting the negotiation process between Kosovo and the EU and the beginning of the SAA Process, the EU legal experts had tried a formula of having contractual relations with Kosovo by using an agreement model which implies only to entities that are not sovereign countries.

In the agreement text, it is hardly stated that the EU will prejudice the position of member states on its status, thus while mentioning a few objectives that mostly revolve around Kosovo's potential path towards European Integration, the phrase "*should circumstances so permit*" is often used. The main difference between these agreements, stand upon the fact that the EU does not take over any obligation or promise that Kosovo will most definitely advance on her European path, unlike the other countries that have signed the SAA. Moreover, in the other states agreements it is mentioned their safe path towards their integration in the EU, if all obligations are fulfilled in accordance with the International Law.

Yet another difference can be seen on the SAA between Kosovo and that of Serbia.

In the SAA between Kosovo and the EU. it is written that the political dialogue between the parties, aims to promote the participation of Kosovo in the democratic international community, however only if objective circumstances permits¹⁵. On the other hand, the chapter on political dialogue in the SAA between Serbia and the EU, clearly stipulates that this dialogue aims in particular to promote the full integration of Serbia in the community of democratic nations and a gradual rapprochement towards the EU. Serbia has, undoubtedly, gained more with this dialogue, since for the time being Serbia has gained the candidate status and opened the negotiations with the EU in approximately 17 different chapters , while Kosovo in the other hand has only implemented the SAA.

Macedonia was the first regional state to sign the SAA. The implementation of the SAA has contributed to the acceleration of Macedonia's economic development and its industrial and agricultural production. Since the adoption of the SAA in March 2007, Montenegro has

¹⁵ Article 5 of SAA refers to the obligation of Kosovo to engage in the improvement of relations with Serbia

advanced in pursuing fiscal consolidation and improving the business environment. Albania on the other hand started implementing its SAA with the EU in April 2009. Its progress is mainly showing improving the functioning of the market economy. Albanian firms increased their exports to the EU market in 2009, while in 2011 an increase in import is also shown. In Kosovo, on the other hand, progresses with such impacts have not been made yet.

In reality, this SAA enables Kosovo to have benefits just like other states, except for EU integration, if by integration we mean a path towards membership. The SAA does not open this path formally speaking, even though its implementation - in terms of preparing Kosovo and achieving standards - can help it a lot.

EUROPEAN REFORM AGENDA (ERA)

European Reform Agenda is a high level dialogue between the Government of Kosovo and the European Commission (EC) which consists of the primary priorities of Kosovo within the Stabilization and Association Agreement, as follows:

1. Good governance and the rule of law,
2. Competitiveness and investment climate and
3. Education and employment.

The priority actions under ERA have been identified by the Kosovo government and the European Commission. Kosovo's biggest challenge has been as it continues to be the rule of law sector, with a special focus on the independence of judiciary. A few medium-term priorities of this area, which Kosovo has focused on¹⁶, remain to be the adoption of the legislation which will make the suspension or removal of public officials convicted for corruption as mandatory, and to ensure a transparent selection process in line with law for any institution, agency or regulatory bodies, being fully based on merits.

¹⁶ Kosovo – EU High Level Dialogue on Key Priorities European Reform Agenda (ERA)

This agreement was signed in 2015 and has started to be implemented since 2016. All three priorities and reforms were expected to be met by 2017. However, we are at the beginning of 2019 and Kosovo has had a similar stagnation as the period before the implementation of the ERA

THE INSTRUMENT FOR PRE-ACCESSION ASSISTANCE (IPA)

Since January 2007, the Instrument for Pre-Accession Assistance has been set up in order to function as a financial instrument for candidate countries or potential candidate countries of the European Union. The legal framework for this new instrument allows beneficiary countries to prepare themselves for successful participation in EU.

The five components under which IPA provides its financings are: 1. Transition Assistance and Institution Building; 2. Cross-Border Co-operation; 3. Regional Development; 4. Human Resources Development; 5. Rural Development

The IPA¹⁷ is a programme designed to help Kosovo's path toward European Integration but not only. With such a funding program, the EU helps Kosovo in further development in many areas, with a special focus on the fundamental areas of the state and its implementation of the SAA. With a funding of 645.5 Million Euro for the period of 2014-2020, sectors of Democracy and Governance; Rule of Law; Energy; Innovation; Education; Agriculture and Regional and Territorial cooperation have been expected to be funded and well developed for the time being.

In August 2018, budget allocations were revised by the EU for all Western Balkans States, which resulted in Kosovo losing approximately 43.4 Million Euros, which caused for the 2014-2020

¹⁷ https://ec.europa.eu/neighbourhood-enlargement/instruments/funding-by-country/kosovo_en

budget to fall in 602.1 Million Euros. Thus, at the same time, Serbia's budget has been raised to 31 Million Euros more, and that of Montenegro for 8.6 Million Euros.

CONCLUSION

With the implementation of the SAA, Kosovo and the EU have entered into formal contractual relations. The implementation of this agreement has posed a challenge both for Kosovo and for the European Union. The challenges of Kosovo remain mainly due to its capacities for implementation, while EU has faced challenges since some member states have outcome obstacles as a result of not recognizing Kosovo. Such an agreement has undoubtedly created huge opportunities for Kosovo mentioned throughout this paper, however the formal path of progress of Kosovo towards its candidate status has yet to be open.

Nonetheless, even with little difference on the SAAs agreements, all Western Balkans countries are seen to have moved towards their goal of becoming a member state, since beside Kosovo and Bosnia and Herzegovina, all other countries have already won the potential candidate title. Kosovo has yet to apply for its membership in the EU, whereas Kosovo's Governmental Programme has stated that such thing will occur no later than the end of 2018 and the visa liberalization will be given while the state candidate status will be received no later than 2020, thus no such thing has happened, yet.

Kosovo's path towards its state building and integration, as hard as it could get, has been easier with the help of EU Institutions, especially with the implementation of the Stabilization and Association Agreement, IPA and the European Reform Agenda. Much work is still needed to be done regarding a full integration into the European Family, however progress is being made thus in small steps. Kosovo should identify its correlative advantages in most of the areas that progress is ought to be made. 2018 can be seen as the year of regress since only 21% of the SAA

and 18% of the ERA have been implemented, while the candidate status or the visa liberalization are nowhere to be seen.

Using the EU financial assistance more effectively will, without a doubt, make a significant difference when competing in the economical market outside the borders. Institutional reforms, education system, and the improvement of tax administration and collection would also increase the probability of further reaching the ultimate goal.

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