



THE NEW AGREEMENT ON THE ASSOCIATION/COMMUNITY OF SERB MAJORITY MUNICIPALITIES: AN IMPORTANT STEP FORWARD, BUT NOT THE FINAL WORD

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On Tuesday 25 August, the governments of Kosovo and Serbia reached an agreement on the general principles and main elements governing the Association/Community of Serb Majority Municipalities in Kosovo (hereafter: Association). This agreement was concluded within the framework of the EU-facilitated high-level dialogue on normalisation of relations between Pristina and Belgrade as part of a package of agreements also dealing with energy, telecommunication, and the so-called “Peace Park” on the bridge over the Ibar/Ibër River in Mitrovicë/a.

The Serbian government and Kosovo Serb politicians reacted euphorically and interpreted the agreement on the Association as a guarantee for the autonomy of the Serb people in Kosovo and continued support from the Republic of Serbia.¹ Generally, criticism on the Serbian side is minimal, although opposition voices have assessed that the Association will function as an NGO within the Kosovo legal framework and that Serbia is using the Association to slowly let go of its interests and people in Kosovo.²

The Kosovo government lauded the agreement as a step toward the dissolution of parallel Serbian institutions in Kosovo and a measure that brings about the integrity of the Kosovo state. It stressed that the Association will not have any executive authorities and will not be a third layer of governance in Kosovo.³ The Kosovo Albanian political opposition and some political analysts and civil society organisations, however, have criticized the agreement because it brings about a “state within the state” or a “Republika Srpska” in Kosovo

¹<http://www.rts.rs/page/stories/sr/story/9/Politika/2017461/Vu%C4%8Di%C4%87%3A+Potpisani+sporazumi+u+Briselu%2C+formirana+Zajednica+srpskih+op%C5%A1tina.html>.

²http://kossev.info/strana/arhiva/patriotski_blok_dugo_najavljivana_kao_spas_opstanka_srba_zso_dozivel_a_fijasko_samo_nvo_u_kosovskom_sistemu/5984;

<http://stanjestvari.com/2015/09/02/%D1%81%D0%BB%D0%BE%D0%B1%D0%BE%D0%B4%D0%B0%D0%BD-%D1%81%D0%B0%D0%BC%D0%B0%D1%80%D1%9F%D0%B8%D1%9B-%D0%BD%D0%B8%D1%98%D0%B5-%D0%BB%D0%B0%D0%BA%D0%BE-%D0%BF%D1%80%D0%B5%D0%B4%D0%B0%D1%82%D0%B8-%D0%BA/>

³ <https://koha.net/?id=27&l=72451>; GOVERNMENT OF THE REPUBLIC OF KOSOVO, *Brief Summary of the Brussels Agreement Package* (27 August 2015), pp. 4–6.

– arguing the Association territorialises the ethnic division of Kosovo and can block the functioning of the Kosovo state.⁴

The 25 August agreement determines the general principles and main elements with regard to the Association's legal framework, objectives, organisational structure, relations with central authorities, legal capacity, and budget and support. It clarifies some of the ambiguities of the First Agreement of April 2013, especially with regard to the procedures for establishing the Association, its objectives, the organisational structure, its relation to the central authorities, and its budget. Another step forward is that there is greater transparency in general surrounding the agreement; immediately after it was reached it was published in English, Albanian, and Serbian.⁵ The Agreement is, however, far from the last word on the role and competences of the Association; hence, any definitive evaluation of how the Association will function in the Kosovo framework is premature at this stage. This analysis analyses the clarifications provided in the new agreement and provides some thoughts on the points that have been left open for subsequent discussions.

1. THE PROCEDURES FOR THE ESTABLISHMENT OF THE ASSOCIATION

The agreement clearly prescribes the procedures for the establishment of the Association. It guarantees that all relevant stakeholders are involved in the processes of finalising its Statute, though without the specific involvement of the Assembly of Kosovo. Within four months, the Management Team will present a draft statute for the Association to the High-level Dialogue. The Management Team consists of representatives from the four northern municipalities and was established in the wake of the First Agreement with the task to produce a draft statute. If approved by the High-level Dialogue, the draft will be adopted by a decree of the Kosovo Government. The decree, i.e. the statute, shall be analysed by the Constitutional Court prior to its adaptation by the Government. Finally, then, the Statute will be adopted by a constituent assembly composed of voted members and the assemblies of the participating municipalities.

Within one year after the adoption of the Statute of the Association, a review of its implementation will be conducted. This review will examine whether the Association might exercise additional competences as delegated by the central authorities, which was foreseen for in Article five of the First Agreement. In addition, the Association can present amendments to its Statute. Such amendments will have to be endorsed by governmental decree and reviewed by the Constitutional Court.

Involvement and participation from all sides, including the Assembly of the Republic of Kosovo, is absolutely necessary to ensure that the Association will be functional in the long-term and that the diverging interpretations which continue to exist on both sides will not hinder the actual work of the Association. Past experience learns that actual decision-making

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⁴ <https://koha.net/?id=27&l=72260>; <http://www.rtklive.com/?id=2&r=40685>; <http://koha.net/?id=27&l=72760>; <http://koha.net/?id=31&o=825>.

⁵ The European Union External published the agreement in English (http://eeas.europa.eu/statements-eeas/docs/150825_02_association-community-of-serb-majority-municipalities-in-kosovo-general-principles-main-elements_en.pdf). Shortly thereafter the Albanian version was published by the Kosovo Government (http://www.kryeministri-ks.net/repository/docs/Asociacioni_perkthimi_shqip.pdf), whereas the Serbian Government's Office for Kosovo and Metohija published the Serbian translation (<http://www.kim.gov.rs/p17.php>).

has been hampered as a result of diverging interpretations from different sides. The current agreement definitely presents a step forward in comparison to the First Agreement but it has not done away with the interpretative leeway. Constructive and transparent engagement from all sides is necessary to make sure that the next phase does not repeat the negative experience of the implementation of the First Agreement (remember that the implementation plan of the First Agreement foresaw that the Association would be established within six months after the agreement was reached).

2. ORGANISATIONAL STRUCTURE OF THE ASSOCIATION

The organisational structure foreseen for the Association is clearly based on that of the Association of Kosovo Municipalities, as prescribed in the First Agreement (art. 3).⁶ The Association will have the following organs:

(a) The Assembly as a supreme body composed of representatives appointed by each assembly of the participating municipalities among their elected members;

(b) The President and Vice-President will represent the Association and will be elected by the Assembly from among the members of the participating municipalities' assemblies and their mayors;

(c) The Council as an advisory organ of a maximum of 30 members among residents of participating municipalities, including all mayors of the participating municipalities;

(d) The Board consisting of 7 members voted by the Assembly from the mayors and residents of the participating municipalities will take necessary decisions for the daily managements with the assistance of specialised collegia.

(e) The administration will support the work of the Association. The staff of the administration will enjoy an employment status in accordance with Kosovo Law, including the Law on Labour and the Law on Civil Service. Kosovo Minister of Dialogue, Edita Tahiri, stated that the "Association will not have civil servants but ordinary employees".⁷ This statement seems to be the result of a one-sided reading of the Agreement and is not in line with Kosovo legislation, according to which municipal co-operation can take the form of joint administrative bodies for which participating municipalities assign civil municipal servants.⁸

3. FUNCTIONING AND COMPETENCES OF THE ASSOCIATION

The principles set out in the agreement combine elements from the two types of inter-municipal cooperation foreseen in Kosovo law. It clearly draws on the model of municipal associations for the Association's representative function toward central authorities, but looks at the model of municipal partnerships for its objectives and competences in the domains of education, health and social care, local economic development, and urban and rural planning.

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⁶ See also ECMI Kosovo. '[The Association/Community of Serb Majority Municipalities: What Is \(Im\)Possible Within the Legal Framework?](#)' (16 April 2015), pp.6–7.

⁷ GOVERNMENT OF THE REPUBLIC OF KOSOVO, *Brief Summary* (27 August 2015), p. 4.

⁸ '[Law \(no. 04/L-010\) on Inter-Municipal Cooperation](#)' (21 July 2011), Art. 11.

⁹ For more on the two types of inter-municipal cooperation foreseen in Kosovo law, see ECMI Kosovo: 'The Association', pp.4–6.

and social care, and urban and rural planning coordination. These objectives concur with the model of municipal partnerships.

In addition to these objectives, the agreement adds delivering of public functions and services which are more in line with the representative and consultative role of municipal associations:

- (a) Strengthen local democracy;
- (b) Adopt measures to improve local living conditions for returnees to Kosovo;
- (c) Conduct, coordinate and facilitate research and development activities;
- (d) Promote, disseminate and advocate issues of common interest of its members and represent them, including to the central authorities;
- (e) Provide services to its members in accordance with Kosovo law;
- (f) Assess the delivery of public services to its members and their residents as to support the Association in forming positions of common interests for the participation to the work of the central authorities;
- (g) Conduct monitoring as required for the implementation of its objectives;
- (h) Establish relations and enter in to cooperation arrangements with other associations of municipalities, domestic and international.

Whereas the latter elements are relatively clear and uncontroversial, competences related to “full overview” in the domains of education, social and health care, local economic development, and urban and rural planning domains are much vaguer. Already in the First Agreement, the term “full overview” (“vështrim i plotë” in Albanian, “pun nadzor” in Serbian) gave rise to diverging interpretations. The term hints at the relation between the Association and its participating municipalities, which has been left undefined in all agreements pertaining to the Association up to now, although it is of crucial importance. The translation of the phrase diverges from Albanian and Serbian version, “vështrim i plotë” and “pun nadzor” differ, as the Serbian version hints towards “oversight”, rather than “overview” meaning.

According to Kosovo legislation on inter-municipal cooperation, municipalities are the basic units for local self-government and carry legal responsibility for municipal competences. They have the right to establish forms of inter-municipal cooperation, but they retain all legal responsibility for acts and actions resulting from such cooperation, and the legality of their operations in the area of their competences will be reviewed by the central authorities.¹⁰ In the same spirit, the European Charter of Local Self-Government Charter determines that the “powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.”¹¹ This implies that municipalities cannot transfer executive competences to any super-municipal authority, and that the final responsibility for decision-making remains with municipal bodies. However, the Kosovo Law on Local Self-Government

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¹⁰ [‘Law on Inter-Municipal Cooperation’](#), Art. 4.3.

¹¹ Council of Europe. [European Charter of Local Self-Government](#) (Strasbourg, 1985), Art. 4.4.

foresees that municipal partnerships can take all measures to *implement and exercise* their functional cooperation through a *decision-making* body.¹²

The Kosovo government in a subsequent interpretation of the agreement stated that “the Association is not entitled to take decision for municipalities nor on behalf of its member municipalities”.¹³ Serbian Prime Minister Vučić, however, stated that the Association will take decisions on health, education, urban and rural planning, and economic development.¹⁴ The key element will lie with the interpretation of “full overview”. In the spirit of the Kosovo legal framework, this word seems to imply that the main responsibility for municipal competences in the domains of local economic development, education, health and social care, and urban and rural planning lie with the municipalities and that the Association will exercise and implement joint municipal decisions taken in these domains. Should the Association take over certain responsibilities from the participating municipalities, we are dealing with a change of Kosovo’s constitutional order, which would unavoidably lead to the re-examination of many provisions, including the entire community protection regime as it is currently set out in the Constitution.

The Statute should finally bring clarity on this matter by determining the legal capacity and the structure(s) of the Association, which according to Kosovo law can range between the following types:

- a) Joint *working bodies or committees* for reviewing certain matters determined under the competence of the municipality;¹⁵
- b) Joint *administrative bodies* for performing certain municipal competences and carrying out professional and administrative work within the competences defined by agreement. The participating municipalities assign civil municipal servants to work in the joint administrative body. However, these bodies are not legal entities and the final responsibilities remains with the municipalities.¹⁶ In other words, the Association cannot establish departments that would supersede the authority of the municipal assemblies/municipal departments.
- c) Joint *public enterprises* for performing local public services, in compliance with conditions and procedures set forward by the Law on Local Enterprises.¹⁷
- d) Joint *public institutions* for performing certain activities of public interest and of local importance in the fields of education, health, culture, social protection, and others. The mayors of all participating municipalities sign agreements regulating mutual rights and obligations with regard to public institutions. The decision to establish such a public institution has to be approved by a majority of the votes in the municipal assemblies, based on verification of resources provided by founders, permanent sources of funding, rights and obligations of the founder, mutual rights and obligations of the institution and the founders, duration of the operation, and organisational and management structure of the organisation.¹⁸
- e) Joint *public-private partnerships* for performing local public services and providing public infrastructure, in compliance with the legislation on public-private partnerships.¹⁹

¹² [‘Law \(no. 03/L-040\) on Local Self-Government’](#) (20 February 2008), Art. 29.3. This is literally taken over from the [Comprehensive Proposal for the Kosovo Status Settlement](#) (26 March 2007), Annex III, Art. 9.1.2.

¹³ GOVERNMENT OF THE REPUBLIC OF KOSOVO, *Brief Summary* (27 August 2015), p. 4.

¹⁴ <http://www.rts.rs/page/stories/sr/story/9/Politika/2017461/Vu%C4%8Di%C4%87%3A+Potpisani+sporazumi+u+Briselu%2C+formirana+Zajednica+srpskih+op%C5%A1tina.html>

¹⁵ [‘Law on Inter-Municipal Cooperation’](#), Art. 10.

¹⁶ [‘Law on Inter-Municipal Cooperation’](#), Art. 11.

¹⁷ [‘Law on Inter-Municipal Cooperation’](#), Art. 12.

¹⁸ [‘Law on Inter-Municipal Cooperation’](#), Art. 13.

¹⁹ [‘Law on Inter-Municipal Cooperation’](#), Art. 9.

Taking into consideration the broad objectives of the Association, the Association should be considered an umbrella for different types of inter-municipal cooperation between Serb-majority municipalities in Kosovo. Whereas working bodies are suited for the consultative and representative objectives of the Association, joint public institutions and administrative bodies are more accurate for the provision of public services in education, health and social care, local economic development, and urban and rural planning. According to the Kosovo law, the participating municipalities, however, take the decision for the establishment of such bodies and carry legal responsibility. How this relationship will be reflected in the Statute remains to be seen.

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3. RELATIONS WITH THE CENTRAL AUTHORITIES

The objectives of the Association are primarily directed toward the municipal level of local self-government. With regard to the relation between the Association and the central authorities, the agreement states that the Association will work with central authorities on the basis of mutual cooperation and information sharing. In line with Kosovo legislation, the role of central authorities is limited to the review of the legal compatibility of any decisions or acts of municipalities and municipal partnerships with the Constitution and legal framework.²⁰

Vice versa, the Association will promote the interests of the Kosovo Serb community in its relation with central authorities, also through nomination of representatives in the competent bodies/organ of the central government, including the Communities Consultative Council. This refers to the monitoring role that was envisaged in the First Agreement, for which the Association representative will have access and information from central authorities. In addition, the Association can propose amendments to the legislation and other regulations relevant for the performance of its objective and initiate proceeding before the competent Courts against any acts or decision affecting the exercise by the Association of its powers.

A compromising spirit will be crucial for the effective functioning of the Association within the Kosovo framework. In that regard, the Association's Statute should have a preamble, which lays out the purpose of the structure, namely: to improve the provision of public services to the Kosovo Serb community while forging better union of communities in Kosovo, in alignment with the Kosovo legal framework.

The Association will not have any central-level decision-making or -blocking powers. Such measures would have rendered redundant and clashed with all the positive measures that there are currently in place for the representation of the Serb community and other minority communities at the central; level, including the guaranteed assembly seats, the vital interest procedures, and provisions of representation at the highest level of the government.

However, the working relations between the central-level authorities and the Association will depend for a great deal on the principles of mutual cooperation and information sharing. This principle applies to the Association as to all other positive measures for the promotion and protection of minority rights in Kosovo. Guaranteed representation of Kosovo Serb political representatives in the Kosovo government is installed to ensure constructive participation of the Serb community in the Kosovo government, but without political will

²⁰ [Constitution of the Republic of Kosovo](#), Art. 124.7; '[Law on Local Self-Government](#)', Arts 29, 76, 79, 82.

it can turn into a mechanism for deadlock and lead to political divisions along ethnic lines – as indicated by the troublesome track-record of the new Kosovo Government.²¹ A compromising spirit will be crucial for the effective functioning of the Association within the Kosovo framework. In that regard, the Association’s Statute should have a preamble, which lays out the purpose of the structure, namely: to improve the provision of public services to the Kosovo Serb community while forging better union of communities in Kosovo, in alignment with the Kosovo legal framework. In addition, the Statute should determine a clear process of inter-institutional resolution of potential conflicts, while avoiding the risk of constant deadlock through procedures with the Constitutional Court.

4. RELATIONS WITH THE REPUBLIC OF SERBIA

Kosovo legislation provides possibilities for cooperation and support from the Republic of Serbia to Kosovo municipalities, on the condition that the central authorities are not circumvented and that the role of the Republic of Serbia remains restricted to financial and technical assistance in the implementation of municipal competences. Such cooperation may take the form of the provision of financial and technical assistance, including expert personnel and equipment, in the implementation of municipal competences.²²

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The agreement only provides information on financial support from the Republic of Serbia. It states that the Association will have its own budget, comprising of:

- (a) Contributions from its members;
- (b) Income and revenue from the services provided;
- (c) Transfers from the central authorities;
- (d) Contributions and financial support from other organisations and associations, domestic and international as well as from the Republic of Serbia.

This latter element is particularly important, as it tells that the Association will receive part of its funding from the Republic of Serbia, which is in line with Kosovo legislation.²³ Pertaining to that financial support from the Republic of Serbia, the agreement states that the Association’s budget will be administered in accordance with the principles of transparency and accountability. Again, it remains to be seen how the Statute will determine the technical assistance from the Republic of Serbia, including expert personnel and equipment, will be organised.

The question of the influence of the Republic of Serbia on the Association and the fear of many Kosovo Albanian commenters that the Association gives Serbia a medium for direct interference into Kosovo internal affairs, however, can only to a certain extent be regulated through the Statute. In line with what we said above, the (dis)functionality of cooperation with the Republic of Serbia depends more on the intention and attitude of all stakeholders involved. To take an example from recent Kosovo politics, the guaranteed representation of Kosovo Serb political representatives in the Kosovo government does not by definition entail interference by the Serbian government, but it can lead precisely to that as is the case with Srpska lista at the moment. However, even then, constructive support and engagement with the Kosovo Serb community from the part of

²¹ ECMI Kosovo. ‘[Forging a Working Environment Within the Government of Kosovo](#)’ (18 January 2015).

²² ‘[Law on Local Self-Government](#)’, Art. 30.2.

²³ [Law \(no. 03/L-049\) on Local Government Finance](#) (13 March 2008), Art. 8.

the Serbian government does not necessarily has to complicate the functioning of the Kosovo state. It can provide welcome incentives and support for the integration and positive discrimination of the Serb community in Kosovo. However, when the point of departure is a lacking willingness to reach a compromise solution, then the entire legal framework for the protection of minority rights – including the possibility to establish municipal cooperation – loses its fundamental value and purpose.

5. OPPORTUNITIES AND CHALLENGES

The agreement on the Association is a clear opportunity for the Kosovo society and the government to build functioning local institutions that will be inclusive and fully representative of its people. Many challenges remain, however, to be addressed by the Statute of the Association. The Statute should clarify all outstanding issues and diverging interpretations identified above, through clear and precise definitions of competences and working procedures for inter-institutional cooperation.

However, legal solutions are only part of the answer. How the Association shall function for a large part depends on political will and intentions. This particularly applies for the relations between the Association, Kosovo's central-level institutions, and Serbia. The Association will only be functional to the citizens it serves in an atmosphere of transparent and constructive engagement of all stakeholders. Clear working procedures for inter-institutional cooperation can and should ensure the functionality of the Association, but the intentions and purposes should be written out in the Statute's preamble and should be supported by all stakeholders involved. Only that way will the Association not function against a background of constant disagreements and diverging interpretations – as has been the case during the negotiation phase.