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‘Exclusive or Special Rights’ in the Context of Public Services in Kosovo in Light of EU Competition Law: the Case of Homologation of Vehicles

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March 31, 2022

Abstract

This dissertation aims to explore the development and implementation of competition law in Kosovo as well as that of the European Union, which meet in the Stabilization and Association Agreement. By harmonizing its legislation with competition rules in the EU, Kosovo is in the process towards a competitive market. However, being a transitional state with a brief history of competition rules, it faces challenges in various fields, such as the functioning of the rule of law, high-level corruption, lack of transparency in public procurement, and law enforcement.

The dissertation will identify the legal provisions on restrictive practices, explore the concepts of public services and public undertakings, and special or exclusive rights granted by the state to private undertakings, as per Articles 101-106 of the TFEU. These concepts will be explored in relation to the case of homologation of vehicles in Kosovo. Moreover, we will see how exclusive rights might lead to anti-competitive behaviour, especially in Kosovo's public services sector. Finally, it will examine the impact of these rights on the functioning and the process of market liberalization.

Keywords: competition law, exclusive rights, homologation

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Introduction

Competition is manifested in a free market economy. Market liberalization, creation of equal conditions for market entry, protection of competition, are some of the main objectives of Kosovo's economic development. The Kosovar market is relatively small, therefore the effects of a free and fair competition between economic entities are manifested directly on the consumer. So, competition contributes to increasing quality and services, for the benefit of the consumer and the economic development of a country.

Kosovo, with the signing of the Stabilization and Association Agreement, is committed to the approximation of its laws with that of the EU. This includes competition rules, which are of high specificity in the process of Kosovo's integration into the EU, and its ultimate inclusion in the internal market. However, competition rules are relatively new in Kosovo. The first Competition Law was adopted less than 20 years ago. Although our institutions are working to approximate policies in recent years, we need to understand the functioning and impact that these policies and concepts of competition have on the Kosovo economic market. However, the goal of the Kosovo government is also the liberalization of the market, where important steps are being taken towards achieving it.

One sector that has been and continues to be monopolized is that of public services. A particular public service this document analyses is the homologation of vehicles in Kosovo. This dissertation will focus on identifying how special or exclusive rights granted by the state to (private) undertakings undermine competition in the context of public services in Kosovo. In order to gain better understanding of the restrictions imposed and to explore mechanisms to enhance competitiveness in this regard, the dissertation will explore a case study of homologation of imported vehicles in the territory of Kosovo. In 2009 an exclusive contract of ten years was signed between the Ministry of Transport and Communications and a private undertaking – EUROLAB - granting it an exclusive right on homologation of vehicles. Thus, granting an economic monopoly within the territory of Kosovo.

This monopoly was effective until the implementation of the recent decision of the newly established Government of Kosovo to repeal the Administrative Instruction No. 2008/8 on Homologation of Vehicles. An administrative instruction that has granted for years the exclusive right to perform the homologation of vehicles to only one company, vesting upon such a company also the legal authority to evaluate and supervise any centers that could offer this service.

The first chapter will cover Kosovo's journey from the post-war period, when the first competition rules were passed by UNMIK administration, to the present day. It will explore competition legislation that has been passed so far by the Kosovo Assembly and the challenges in implementation they have encountered. Also, in this chapter we will talk about the Competition Authority in Kosovo, its rights and obligations as well as its structure. The difficulties this regulatory authority in Kosovo has faced and continues to face.

Countries that want to join and are potential members of the EU need to harmonize their domestic laws with a set of rules and policies. This applies to the regulation of the competition too. Therefore, the second chapter will address Kosovo's perspective towards European integration. Milestones which mark the path towards the signing of the Stabilization and Association Agreement and the obligations stemming from this agreement.

Since Kosovo's competition legislation is almost entirely based on European competition and Kosovo is still in the early stages of implementing competition legislation in practice, in the third chapter a comparison with the good practices the European Union competition laws and its implementation will be discussed. Especially in the light of applying Article 106 of the TFEU.

1. Competition Law in Kosovo: A brief reference

Competition law and its development differ from country to country. Kosovo is still at an early stage in the domain of market competition regulation and support. For a country such as Kosovo, that has gone through war, and before that even isolation within Yugoslavia, this concept is relatively new. The same holds true for all Western Balkans countries. This section will explore Kosovo's route and competition rules from the first to the present-day rules, aligned with the EU acquis. Also, it will discuss the role of the relevant competition authorities in the supervision and enforcement of these rights and its challenges.

1.1 Historic Context

Under the former Socialist Federal Republic of Yugoslavia Kosovo was part of an economy predominantly controlled by the state through socially owned and state-owned enterprises, as many of the socialist countries were not bound to competition rules.

Kosovo went through a major transformation with the war of 1999 where it went from a constituent part of Yugoslavia to being administered by an international authority, namely the United Nations Interim Administration Mission in Kosovo (UNMIK). The UNMIK Mission was special in its scope and structure, as it was the first time the United Nations (UN) had been given such a complex mission. The mission was defined by Security Council Resolution 1244 (1999) on the situation relating Kosovo[1] and was intended to replace or play the role of a true state administration. UNMIK had the task of "establishing an international civilian presence in Kosovo in charge of providing an interim administration under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, while establishing and overseeing the development of provisional democratic self-governing institutions and ensure conditions for a peaceful and normal life for all inhabitants of Kosovo".

A shift in the economic system accompanied such a political overturn as well, from a state-controlled one where anti-competitive behavior was not sanctioned to a free market economy. Undoubtedly, after the war of '99, and the opening of the market economy, the need arose to regulate competition issues.

1.2 Main Legal Framework and Competition Authority

Kosovo first introduced competition rules for the promotion of a competitive and sustainable market economy by the adoption of the Law no 2004/36 on Competition[2]. The Law established for the first time a competition authority in Kosovo. The law was intended to ensure the development of a sound market economy in Kosovo by prohibiting acts that restrict, suppress or distort competition and was applied to all enterprises involved in economic activities within, or having economic effects within, the territory of Kosovo.[3]

Law No. 2004/36 on Competition was adopted before the adoption of the Constitution of the Republic of Kosovo.[3] General economic provisions are found in the Constitution. Article 119 of the Constitution lays down general principles and provides a specific provision relating to

[1] United Nations Resolution 1244 https://unmik.unmissions.org/united-nations-resolution-1244

[2] Law No. 2004/36 on Competition, as amended by a new Law No.03/l -229 on Protection of Competition https://unmik.unmissions.org/sites/default/files/regulations/02english/E2004regs/RE2004_44_ALE2004_36.pdf [3] Article 1, paragraph 1.1 and 1.2 of Law No. 2004/36.

[3] After the Declaration of Independence on the 17 of February 2008, the Constitution of Kosovo was published for public feedback and entered into force and effect on 15th June 2008.

competition law. It aims for a market economy with favorable legal conditions for all domestic and foreign investors and enterprises.[4] It prohibits acts that limit free competition by establishing or abusing a dominant position and practices that restrict competition unless stated otherwise by the law.[6]

For the first time during the UNMIK Administration, an independent competition regulatory body, the Kosovo Competition Commission (KCC), was constituted.[5] The first authority of its kind for Kosovo, KCC has the responsibility and authority to enforce the law by monitoring and investigating competitive conditions and promoting competition between enterprises and consumer welfare.[6] However, the European Union Commission considered the KCC non-functional. Kosovo was instructed to proceed with the selection of candidates, the allocation of the necessary revenue for and the establishment of the Commission.[7]

The need for further alignment with European standards arose as the 2004 Law on Competition has many shortcomings, especially related to its scope and lack of implementation. Therefore, in order to develop a free competitive market, and based on the need to harmonize and regulate various competitive practices in Kosovo, following the best international standards and practices, the Assembly of Kosovo passed the Law on Protection of Competition No. 03 / L- 229 which entered into force in 2010[8],thus repealing the law No. 2004/36 on Competition. The Law on Protection of Competition is still in force, albeit amended amendment in 2014. The Law on Protection of Competition sets the rules and procedures for protection of competition in the market, as well as specifies the jurisdiction and the structure of Kosovo's Competition Protection Authority (Regulatory Authority).

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[4] Article 119 of the Constitution of the Republic of Kosovo, paragraph 1 and 2.

[6] Ibid. paragraph 3.

[5] The basis for the establishment of the Kosovo Competition Authority (KCA), by the Assembly of the Republic of Kosovo in 2008, can be found in Competition Law no. 2004/36.

[6] Ibid. Article 21.

[7] European Commission, Kosovo Progress Report 2008 (2008) 1, 37 ('The Competition Commission (CC) is not yet operational. The assembly has yet to appoint the candidates selected for this commission. Kosovo needs to finalise the establishment of the CC, including the allocation of the necessary resources').

[8] Law No.03/L –229 On Protection of Competition. Official Gazette of The Republic of Kosova / Pristina: Year V /No. 88 / 25 November 2010

Thus, in 2008 the Assembly of Kosovo constituted the Kosovo Competition Authority (KCA) or the Competition Authority as an independent regulatory body[9]. KCA is an independent body and has the responsibility and authority to implement competition law and promote competition between enterprises and consumer protection in Kosovo. It is also responsible for creating fair competition and effective development conditions in the areas of transport, telecom, and energy. However, its role is often undermined by the many problems it faces. One of the main challenges the Competition Authority and other regulatory authorities in Kosovo face is the tremendous political influence.[10] The political intervention/influence affects the proper functioning of the Authority and consequently undermines competition in Kosovo.

The legal mandate of the KCA is enshrined in Chapter VII of the Law No.03/L –229 On the Protection of Competition.

Article 28 of the Law lays down the responsibilities of the Authority, such as the proposal for issuing bylaws for implementation of the Law, decision making on initiating and leading the process of determining the distortion of competition, the right to impose punitive measures for violation of the Law, determination of the deadlines and the manner of their execution, the legal authorizations to complete the procedures and determine the measures, setting of conditions and deadlines for the restoration of effective market competition, the right to apply to the competent Court for issuing the order on investigation without prior notice to the undertakings concerned, issuing of opinions on the harmonization of draft laws and bylaws with this Law, the right to propose the methodological basis for market competition research through administrative instruction, and determination of the rules and measures for protection of competition.

At the request of the Assembly, the Government as well as central and local public institutions, the Authority gives professional opinions on issues in the field of trade competition policy and law, cooperates with international institutions and organizations in the field of competition regarding the fulfillment of international obligations of the Republic of Kosovo transferred to the competencies of the Authority, and finally it submits an annual report on the work of the Authority to the Assembly of Kosovo.

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[9] Law on Competition (n 17) Art 20(1)., Kosovo Competition Authority http://ak.rks-gov.net/?cid=1,11

[10] The Performance of the Kosovo Competition Authority, Group for Legal and Political Studies (GLPS), 2017. https://www.legalpoliticalstudies.org/wp-content/uploads/2017/10/GLPS-Policy-Report-KCA-Performance.pdf

The Law on Competition gives the Authority the right to impose fines upon enterprises that are involved in prohibited agreements and those that abuse the dominant position, as well as the responsibility to promoting competition in the territory of Kosovo. It empowers the Authority with tools for public advocacy enforcement, such as providing information and advice to individuals, companies and public authorities, offering/holding trainings and seminars on the rights and obligations set by the Law.[11] However, these 'tools' have been barely used if not at all.[12]

1.3 Challenges

The Law sets an obligation upon KCA for further improvement of legislative alignment and effective enforcement in state aid, which is far from met in practice. KCA has made some progress in the EU approximation of legislation and the development of its capacities, but enforcement of competition law in Kosovo is still lacking. The functioning of the Authority seems also conditioned by insufficient capacities and lack of expertise, in spite of incomplete legislation, , insufficient cooperation with stakeholders, insufficient capacity of implementation of professional opinions, and lack of expert knowledge on Competition and special jurisprudence by Kosovo Courts.

The independence of the Competition Authority in Kosovo was assessed the D4D study, which set out to determine the independence of the Competition Authority based on three (3) criteria: the selection and mandate of members of the board, decision-making, and finally the institution/organization itself.[13]

The selection of the members of the board of the Competition Authority is done through public calls inviting candidates to appear before the members of the Assembly of Kosovo. A small number of candidates usually express their interest, limiting the selection by the Assembly. The selection procedure by the assembly in practice has taken unnecessarily been delayed as many of these candidates appears several times and often the same candidates get rejected more than one time. This is a clear sign, according to the European Commission,[14] of the intervention of policymakers in the selection of their close people, and the political influence on the selection

[11] Law on Competition Art 24(1) (a) and (b).

[12] Competition Authority of Kosovo (Albanian only) https://rregullatori.com/autoriteti-kosovar-ikonkurencess/#1526570283454-2da334a4-1c56

[13] Sutaj, Visar. How Independent are Regulatory Authorities in Kosovo? A Closer Look at Regulatory Authorities in Competition. Democracy for Development Institute, 2017

[14] European Commission, Kosovo Progress Report 2015 and European Commission, Kosovo Progress Report 2016

processes. The quality of candidates is rather poor as they usually fail to even meet the minimal selection criteria.

The KCA is largely considered to lack sufficient decision making powers. The Authority has continuously disappointed expectations in undertaking investigations and making decisions that would subsequently protect the free market. Although it has the right of authorizations and decisions, the Authority rarely initiates investigations and decisions on mergers, abuse of dominant position, cartels, etcetera.[15] An exceedingly small number of investigative proceedings or decisions are published on the official website of the Authority. On the other hand, the Authority issues professional opinions related to the functioning of the market. One professional opinion that continues to be ignored is the issue of homologation of vehicles in Kosovo. This is a professional opinion that the European Commission constantly calls for implementation, on an annual basis through its Progress Reports.[16]

An essential aspect directly affecting the functioning of the Authority is the budgetary dependence of the Authority on the government. Unlike other regulatory authorities in the country, the Competition Authority is not self-sustainable., which calls into question its independence as an institution, and its practical overall activity. Insufficient budgeting Low budget is widely reflected in the development of activities, lack of workspace, lack of proper software support, lack of visibility in public opinion, and total lack of public relations.

2. The European Union and Kosovo

Although in 2000 Kosovo was not yet an independent country, the head of UNMIK attended the Zagreb Summit[17] as a guest. At this Summit, for the first time, the EU promised the integration process for the countries in the region, with the exception of Kosovo and Montenegro. The main EU condition for the countries of the Western Balkans was regional cooperation.

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[15] For almost two years (2011-2013), the board had taken a very little number of investigations. While for the next three years (2016) the were no commissioners appointed.
Abazi, Dardan & Burim Ejupi. Functionalization of How independent are the regulatory authorities in Kosovo? Independent Agencies: Merger Opportunities, Increased Oversight and Balance of Independence and Accountability. INDEP. 2016. https://indep.info/funksionalizimi-i-punes-se-agjencive-te-pavarura-sfidat-dhe-rruga-perpara-2/
[16] Progress Reports on Kosovo 2019-2020
[17] The Summit of Western Balkans and EU Countries held in Zagreb, Croatia on 24 November 2000.

An important moment for Kosovo was the establishment of the Mechanisms of Stabilization and Association, the first concrete step of its integration process into EU. This mechanism was set to prepare Kosovo for the fulfillment of the basic obligations towards the full inclusion in the integration process.

At the EU-Western Balkans Summit Thessaloniki on 21 June 2003, the Balkan countries were declared as potential countries for the start of the perspective towards EU membership. Although Kosovo was not among the declared countries, the EU subjected it to some of the preconditions to be met. [18] While two years later, although the status of Kosovo was yet undecided , The European Commission published the first document, mentioning the start of the process for the integration of Kosovo by promising assistance through various instruments to support Kosovo in its journey.[19]

In 2007 the first EU Report that mentions the possibility of a Stabilization and Association Agreement for Kosovo and confirmation of the EU's commitment to Kosovo to be part of the agreements and cooperation was published.[20] While in 2009, the first EU Report on Kosovo after the declaration of independence, although at the time only five EU countries had recognized Kosovo as an independent state, called for lack of lack of recognition by all EU countries not to affect relations between EU and Kosovo and highlighted the need for Kosovo to be included in the Stabilization and Association Agreement.[21]

The 2012 Feasibility Study for Kosovo enabled the start of the 2013 negotiations as well as the compilation of the SAA during 2014 between Kosovo and the EU. Finally, to be signed in 2016.

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[18] Declaration, EU-Western Balkans Summit, Thessaloniki, 21 June 2003 https://ec.europa.eu/commission/presscorner/detail/en/PRES_03_163

[19] EU. (2005, April). A European Future for Kosovo http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005DC0156

[20] Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA), OJ L 210, 31.7.2006, pp. 82–93. https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:210:0082:0093:EN:PDF

[21] KOSOVO UNDER UNSCR 1244/99 2009 PROGRESS REPORT, Brussels, 14.10.2009 https://issat.dcaf.ch/download/2136/18550/Kosovo%20EC%20Progress%20Report%20-%20EC%20(2009).pdf

2.1 The Stabilization and Association Process (SAP)

SAP was adopted and entered into force in 1999, as part of the agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part. Through the SAP, the EU aims to ensure and bring peace to the Western Balkans region. The SAP is set to support the efficiency of democratic institutions and rule of law. Meanwhile, supporting the countries in the region towards the development of an open market that is both competitive and complementary to that of the EU is another important goal set by EU. Through this process, regional cooperation between countries is promoted and support is created for capacity building towards the adoption and implementation of European standards, including the Acquis Communautaire. This process has three strategic goals: the stabilization and transition to a free and competitive market economy, promotion of regional cooperation and the European perspective.[22]

Under the SAP negotiations, the EU provides trade facilitation, economic, technical and financial assistance and contractual relations to member countries. Membership countries are measured through this process based on compliance with the obligations under the "Copenhagen Criteria" (1993)[23] and those of the Madrid (1995).[24]

By signing the SAA, Kosovo has taken an essential step towards fulfilling its aspirations for European integration, undertaking to make the necessary reforms in following through on the criteria defined by the European Council in Copenhagen on 21-22 June 1993. It was the first contractual agreement between the EU and Kosovo, signed on 27 October 2015 upon the consent of the European Parliament . The agreement entered into force in April 2016.[25]

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[22] Stabilisation and Association Process https://ec.europa.eu/neighbourhoodenlargement/policy/glossary/terms/sap_en

[23] The Treaty on European Union sets out the conditions (Article 49) and principles (Article 6(1)) to which any country wishing to become a member of the European Union (EU) must conform.
Certain criteria must be met for accession. These criteria (known as the Copenhagen criteria) were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995, Accession criteria https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/accession-criteria_en

[24] Madrid European Council, 1995 http://aei.pitt.edu/1452/1/madrid_dec_1995.pdf

[25] COUNCIL OF THE EUROPEAN UNION – Stabilisation and Association agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part,

The agreement is the culmination of the efforts and commitment on the European agenda of Kosovo institutions for more than a decade and a half, and at the same time represents a new beginning that paves the way in the process of European integration for Kosovo. Based on the European Neighborhood Policy and Enlargement Negotiations, as well as this agreement, Kosovo is finally considered a potential candidate for joining the EU as a member state. [26] Kosovo institutions have committed to implementing a series of reforms under the SAA for a period of ten (10) years.

The SAA in its ten (10) chapters lays down the scope of the agreement and covers a large amount in the domain of governance. From the general principles, political dialogue, regional cooperation, free movement of goods, establishment, provision of services and capital, approximation of Kosovo laws with the acquis, law enforcement and competition rules, freedom, security and justice, cooperation policies, financial cooperation and institutional, general and final provisions.

The implementation of the SAA is based on two main planning frameworks, the National Programme for the Implementation of the SAA (NPISAA)[27] and the European Reform Agenda (ERA).[28]

The first ERA signed and adopted by the Kosovo institutions on the 1st of April 2016 was based on three pillars, as the following: Good Governance and Rule of Law, Competitiveness and Investment, and Education and Employment. As a guidance tool it helps the Kosovo institutions understand EU reforms and priorities that derive from the SAA. However, given the new reality we are living in, a second phase of ERA has launch. While it keeps the same pillar approach, some of the pillars have added additional priorities ,which correspond to today's context such as the Covid 19 pandemic. In this regard, the new priorities of ERA focus on the health system addressing

2015http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2016:071:0003:0321:EN:PDF Law No. 05/L-069 on Ratification of the SAA, available at https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=11239. https://gzk.rksgov.net/ActDocumentDetail.aspx?ActID=11239

[26] "Since June 2000 (European Council of Feira), all EU partners in the Western Balkans involved in the Stabilisation and Association process, which are not yet recognised as candidates, are considered potential candidates for EU membership. Currently, Albania, Bosnia and Herzegovina and Kosovo are potential candidates."

[27] National Programme for Implementation of SAA http://mei-ks.net/en/national-programme-for-implementation-of-saa

[28] European Reform Agenda (ERA) – Kosovo http://www.mei-ks.net/repository/docs/era_final.pdf

new and existing issues within the system, mirrored by the pandemic. Other key priorities are mitigation of the economic and social impact of this crisis.[29]

The National Programme for Implementation of the SAA is approved by the Assembly of Kosovo and constitutes the main national policy document for EU accession, whose primary goal is to meet the obligations of the SAA within the deadlines provided by this agreement. It consists of short-term measures such as legislative agenda, and implementation of mid-term priorities, subjected to clear budgetary planification and proper assignment of implementation responsibility to the Prime Minister. The former Ministry of European Integration was recently merged with the PM's office. The Programme was adopted by the Assembly of Kosovo.

The measures provided in NPISAA are based and within the 33 chapters of EU aquis, excluding chapters 34 and 35. The measures are divided in three main pillars. The main pillar consists of the political criteria. The second pillar is comprised of economic measures and finally, the third pillar aims to implement European standards by approximation of Kosovo's legislative framework with that of EU acquis.

2.2 European Standards

Among the political criteria, the rule of law, and economic development the SAA aims at supporting Kosovo's economic and international cooperation, supporting the approximation of national legislation with EU acquis, developing a free trade area between the parties and assigning a fundamental role to competitiveness towards a functioning market economy.

Harmonization of legislation with the EU acquis represents the main conditions of the association. The political and legal reforms are determined as inevitable processes for the EU accession aspiring states.

Among the most important reforms undertaken by the Kosovo's Government are those in terms of the social, economic, legal system and the introduction of a new legal framework for the development of a democratic state, based on human rights and freedoms, freedom of business,

[29] On the other hand, as for the entire globe, the year 2020 and the beginning of 2021 was daunting because of the pandemic, in Kosovo there were rapid changes within government, resulting in the newly established government. Since the elections, which were held in October of 2019 until now, three Governments have been changed. Taking into account the political instability and the pandemic outbreak, an emphasis has been placed on electoral reform, basic and human rights, and domestic issues.

political pluralism, etc. Upon the signing of SAA, Kosovo and other candidate countries are obliged to harmonize their legal system with that of the EU, in particular in meeting the Copenhagen criteria for the integration of candidate countries into the political and economic environment of the EU. The set of reforms will help states prepare for the next phase of starting EU membership negotiations. The approximation of Kosovo's with the EU legislation is of particular importance for its journey towards a free functional market and the fulfillment of the conditions of the SAA with the EU.

The adoption and implementation of the rules and principles of EU competition law into the national legislation are seen to be of crucial importance in this regard. By entering into this agreement, Kosovo is committed to implementing rules of competition for public undertakings and undertakings with exclusive or special rights. Kosovo is also committed to regulating state monopolies of a commercial nature so that there is no discrimination regarding the conditions under which goods and services are procured and traded. Article 75 of the SAA condemns those activities that may affect trade between parties, distortion of competition, dominant position, and state aid. Moreover, Article 75 (2) states "Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the competition rules applicable in the EU, in particular from Articles 101, 102, 106 and 107 of the Treaty on the Functioning of the European Union and interpretative instruments adopted by the EU institutions."

EU competition rules apply beyond EU borders. They first extended their reach in 1994 with the entry into force of the European Economic Area (EEA) Agreement between the EU and the Member States[30] and EFTA (European Free Trade Area). The SAA's signed with the Western Balkan countries include binding EU competition rules.

From an economic point of view, the SAA strengthens economic and trade relations between Kosovo and the EU by gradually establishing a free trade area between the EU and

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[30] "The EEA Agreement is based on the primary legislation of the EU (Treaty of Rome) at the time of the EEA Agreement's entry into force, and on secondary legislation (EEA-relevant regulations, directives, decisions and certain non-binding instruments). Hence, a large part of the EEA Agreement is identical to the relevant parts governing the four freedoms as laid down in the Treaty on the Functioning of the European Union. A central feature of the EEA Agreement is its dynamic aspect; the common rules of the EEA Agreement are updated continuously with new EU legislation."
The main text of the Agreement is available here: https://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf

Kosovo. Among others, the SAA provides technical and financial support for economic reforms. Such reforms aim at strengthening the functioning of the market economy, in order to be able to withstand the competitive pressure of the EU market.

In political terms, Kosovo undertakes to pursue an even more ambitious reform agenda towards political, economic and social development, and in turn the EU is committed to providing Kosovo with all the tools at its disposal, including financial ones, for the implementation of these reforms so that the country meets the membership criteria.

2.3 Kosovo Progress Reports

In the framework of the European Union Enlargement Strategy, the European Commission publishes annual reports on candidate and potential candidate countries for membership in the European Union. The European Commission annually publishes reports that reflect the situation in meeting the Copenhagen criteria - such as the Political, Economic and European Standards. The main values of the EU are related to the free market economy, free movement of people and the country's democracy. Upon the entry into force of the Stabilization and Association Agreement all spheres of life are affected, including those mainly related to the regulation of free trade in goods between Kosovo and the EU. The emphasis is however on the the rule of law, democracy, human rights and regional relations. Where Kosovo stands year after year in relation to meeting the Copenhagen criteria is the main question addressed in the "Progress Report".

According to the latest Progress Report for Kosovo, when it comes to economic criteria, the European Commission considers that Kosovo is still at an early stage and has made limited progress in developing a functioning market economy. Some of the biggest obstacles that face economic operators in the Kosovo market range from the salaries for public servants, the widespread informal economy, a slow and inefficient judiciary, a high prevalence of corruption to the generally weak rule of law. It is worth mentioning here the step back that Kosovo, and the entire World actually, has experienced while dealing with the Covid-19 pandemic crisis and the imposition of freedom restrictive measures by the government. According to the key findings of the 2020 Report on Kosovo, Kosovo has made progress when it comes to coping with competitive pressure from market forces in the EU.[31]

Kosovo is doing well on its way to approximating and harmonizing its legislation with EU acquis, but not as good when it comes to implementation. Some of the areas where the Commission considers that Kosovo is making progress are those of free movement of goods, services and capital, as well as financial services, public procurement and competition. However, there's still a long way to go, as found by both EU Commission and national observers. Kosovo should still "ensure the functional capacity and operational independence of the competition and State aid authorities and increase cooperation and coordination between all stakeholders, including ministries, regulators and the judiciary; further align the legislative framework, specifically its implementing legislation, on both competition and state aid and ensure its enforcement; fulfil SAA obligations by establishing a comprehensive inventory of aid schemes and aligning those with State aid rules".[32]

3. The case of the homologation of vehicles

This section will reveal the exclusive contract awarded to a company in Kosovo, EUROLAB, for the homologation of vehicles in Kosovo. Such a contract was signed by the (then) Ministry of Infrastructure of Kosovo. The contract was awarded for a period of ten (10) years and covered the entire territory of Kosovo. This case has undoubtedly sparked many debates in the Assembly of Kosovo[33] and of the civil society[34] over the years and has been associated with corruption at the state level. The current Prime Minister of Kosovo Mr. Albin Kurti, recently has stated that "The end of extortion through homologation has begun. For 12 years in a row, we had a monopoly on homologating vehicles enriched by an oligarch by imposing trade barriers. Citizens need good services and not unjust obligations. It is now in the hands of the members of the

[31] Progress Report on Kosovo, available at : https://ec.europa.eu/neighbourhoodenlargement/sites/default/files/kosovo_report_2020.pdf
[32] Ibid,.
[33] Haxhiu: the lack of government representatives shows that they want to continue the monopoly of the Devolli (family), 2019 https://kallxo.com/shkurt/haxhiu-mungesa-e-perfaqesuesve-te-qeverise-tregon-qe-keta-duan-tia-vazhdojne-monopolin-devolleve/
[34] "Anti-Corruption Week", Debate on Monopoly in Vehicle Homologation https://kallxo.com/shkurt/java-kunder-korrupsionit-debat-per-monopolin-ne-homologimin-e-veturave/

Assembly of the Republic to implement the legal initiative to amend and supplement the Law 05/ L - 132 on Vehicles."[35]

Some of the main reasons why this has been widely considered as a scandalous case are: the natural monopoly given by the state of Kosovo for the homologation of all cars entering from the EU for the highest prices in the region and in the EU; the extraordinary legal security for the private company by conditioning any intention to terminate the contract with international arbitration actions; ; as well as the open possibility for extension of this monopoly for an indefinite period of time, by means of an Administrative Instruction.

3.1 Legal framework

Chapter 4 of the Law No. 02/L-70 on Road Traffic Safety, lays down the criteria on Examination and Homologation of the Vehicles.

Administrative Instruction No. 2008/8 on the homologation of vehicles defines the obligations on homologation of vehicles, the declaration of compliance, the declaration of the suitability of the vehicle, as well as the conditions and criteria that must be met by the institution authorized for homologation in the territory of Kosovo. The Ministry is the authority that authorizes and licenses the institution that will do the homologation in the territory of Kosovo. Therefore, the former Ministry of Transport and Post Telecommunications (presently the Ministry of Environment, Spatial Planning, and Infrastructure) concluded an exclusive contract with the company "EUROLAB" for the homologation of vehicles registered for the first time in Kosovo after the year 2008. The contract, based on Article 22 (1) of the Administrative Instruction, granted the company exclusive trade rights for a period of ten years, from 2009 to 2019.[36] The "authorized institution" is referred to in the singular. Following the Law on Road Traffic Safety, which governs the basic standards and conditions for road safety, homologation prices were defined by the

[35] Isa Vatovci, 28.05.2021, Statement of Mr. Albin Kurti, Prime Minister of the Republic of Kosovo https://kallxo.com/lajm/albin-kurti-filloi-fundi-i-zhvatjes-permes-homologimit/

[36] Regarding this administrative instruction, the Kosovo Competition Authority during the drafting phase of this AI, has given a professional opinion, recommending the Ministry of Infrastructure to review certain articles that the Authority has considered to be in conflict with the Law on Protection of Competition "- Valon Prestreshi - Chairman, Kosovo Competition Authority in an interview given to Kallxo.com on the 25.4.2018 https://kallxo.com/shkurt/trashja-e-monopolit-ne-homologim-te-automjeteve-ne-kundershtim-me-ligjin/

Ministry of Transport and Post Telecommunication in 2009. The commitments for vehicle homologation are also established by this law.

3.2 Challenges

On 12 August 2015 the Government of Kosovo approved the Decision No. 17/44[37], pursuant to Article 119, paragraph 3 of the Constitution and the provisions of Law No. 03/L-229 on Competition Protection. This decision intended to initiate a procedure that would eliminate all activities that restrict free competition, such as the establishment or abuse of a dominant position, or practices that restrict competition, as well as those that create obligations for citizens. All state agencies and ministries were bound by this decision and had to look and review all possible barriers, such as those mentioned above, in their pertinent activities. The Decision came into force the day it was signed. The Ministry of Infrastructure identified the homologation of imported vehicles enabled by Administrative Instruction No. 2008/8 as one of such restrictive practice.[38]

In the remit of EU's support for the liberalization of the free market in Kosovo and the application of EU competition law to public enterprises in Kosovo, the Progress Report issued by the European Commission for Kosovo in 2019[39] concludes that there are monopolies of a commercial nature within the meaning of Article 37 of the TFEU in Kosovo. The Commission has continuously expressed its concerns about the exclusive agreement of Kosovo with a private enterprise for the mandatory homologation of vehicles for all imported cars.

Following the continuous recommendations from the Ministry of Infrastructure, the Ministry of Infrastructure and Transport (MIT) on the 29th of October 2019 stated that the new vehicles, imported by licensed companies, will no longer be subject to homologation by the company authorized to perform such a service. The companies authorized for selling such vehicles

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[37] Decision 17/44, Government of the Republic of Kosovo, p. 18. http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_se_44-te_te_Qeverise_se_Republikes_se_Kosoves_2015.pdf

[38] Administrative Instruction No. 2008/8, Ministry of Transport and Communication, Republic of Kosovo https://www.mit-ks.net/repository/docs/2015_11_02_075939_Udhezimi_Administrativ_Nr2008-08_Per_Homologimin_e_Automjeteve-scan.pdf

[39] COMMISSION STAFF WORKING DOCUMENT Kosovo* 2019 Report https://ec.europa.eu/neighbourhoodenlargement/sites/default/files/20190529-kosovo-report.pdf

in the Kosovo market will be responsible for the verification of data from the manufacturers. The same verification will apply to buyers when registering their vehicles.[40]

The European Commission was not the only institution that recommended that Kosovo institutions deal with the elimination of restrictive practices, with homologation in mind. In 2017 the KCA published a Professional Opinion[41] addressed to the Ministry of Infrastructure, which requires the review and amendment of the provisions in the Draft-Administrative Instruction (MI) on Determination of Conditions and Procedures for Homologation of Road Vehicles. KCA suggests the liberalization of the market by allowing access to other business companies based on the principle of free and fair competition of the market. Furthermore, The KCA recommends to MIT that it should be the free market that principally determines the price of the homologation service, whereas the Ministry could only set the ceiling price.

However, this recommendation was not respected by MIT when issuing Administrative Instruction (MIT) 2/2018 on Determining the Conditions and Procedures for Vehicle Homologation[42] in terms of only referring to "authorized subject" in singular in the text of Administrative Instruction. According to the KCA, the use of singular limits the possibility of granting authorization to more than one operator, whereas for the KCA the enterprises authorized by the Homologating Authority (Ministry) to provide homologation services are authorized business entities.[27]

3.3 “Special or Exclusive Rights” under Article 106 TFEU

Somewhere between the rules addressed to undertakings and those to State Aid, lie the rules addressed to Member States when they grant special or exclusive rights to undertakings. The Treaty, through Article 106 (1), stipulates that Member States must not adopt any measure which would harm the effectiveness of competition rules, particularly those rules provided for in Article

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[40] Statement of the Ministry of Infrastructure and Transport of the Republic of Kosovo, 29th of October 2019 https://www.mit-ks.net/sq/lajme/homologimi-hiqet-per-automjetet-e-reja-

[41] Professional Opinion by Kosovo’s Competition Authority https://ak.rks-gov.net/assets/cms/uploads/files/Mendime%20Profesionale/Mendim%20Profesional%20i%20AKK-s%C3%AB%20%20p%C3%ABr%20Ministrin%C3%AB%20e%20Infrastruktur%C3%ABs%20-%20Homologimi.pdf

[42] Administrative Instruction (MI) 2/2018 on Determining the Conditions and Procedures for Vehicle Homologation, Ministry of infrastructure https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=16325

[27] ‘Homologation Monopoly’. Insitute GAP, 2016. https://www.institutigap.org/documents/37624_Monopolyfinal.pdf

18 and Articles 101 to 109, and that competition rules also apply to undertakings which enjoy these special or exclusive rights.[43] It refers to 'public undertakings' and those undertakings 'granted special or exclusive rights'.

Private enterprises that provide services of general interest are considered 'public undertakings', or any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it".[44] However, public enterprises operate similarly to private ones, have an economic purpose and a degree of autonomy alongside public authorities.[45] Moreover, 'exclusive or rights' are rights granted by a competent authority of a Member State through any legislative, regulatory, or administrative provision that has the effect of restricting the exercise of the activities defined in Articles 8 to 14 to one or more entities, and that has a significant impact on the ability of other entities to carry out such activity.[46]

While there has been no clear disparity between 'special or exclusive rights' given to an undertaking, the Court refered to 'exclusive rights' on the case of *Société Civile Agricole du Centre d'Insémination de la Crespelle v Coopérative d'Élevage et d'Insémination Artificielle du Département de la Mayenne*, where it found that "by making the operation of the insemination centres subject to authorization and providing that each centre should have the exclusive right to serve a defined area, the national legislation granted those centres exclusive rights". The Court in this case determined that the program for artificial insemination of cattle in France involved exclusive rights as per how the legislation was used at the time. [47] The sole rights or monopoly given by the State to certain undertakings, thus make it easier to identify "exclusive rights".

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[43] TFEU, Article 106 (1).

[44] Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31980L0723

[45] The Situation of Public Undertakings in The European Union by European Parliament https://www.europarl.europa.eu/workingpapers/econ/w21/sum-1_en.htm

[46] Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0025

[47] Case C-323/93 https://curia.europa.eu/juris/showPdf.jsf;jsessionid=F95BAF33139F8C13EC6B914D31E9D632?text=&docid=99317&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1440633

In *Sacchi,* 'exlusive rights' where identifies as a Member State granted sole rights to transmit television advertisements to a broadcaster over the whole territory of that Member State thus leading in a broadcasting monopoly. [48] Another significant case is that of Höfner and Elser v Macrotron GmbH for defining 'undertakings' as well as recognizing an 'exclusive rights' as per the meaning of Article 106 (1) (ex Article 86 TEC) when the right to operate employment recruiting services was granted to a sole undertaking.[49]

Throughout the years, the CJEU has dealt with the complex provision that Article 106 is through its case law, and has given context to its scope and function.[50] Because it specifically mentions the competition rules, we see it paired mostly in practice with Article 102 which provides that "any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States."[51] This is because we can compare the exclusive rights in the Article 106 to the public undertakings statutory monopoly and dominance under Article 102.[52]

Article 106 brings forward the challenge of applying provisions, such as rules on competition and free movement, that are intended for different recipients, undertakings and member states. Article 106 and Article 102 jointly apply in cases where obligations are imposed on undertakings by Member States and have their positions affected through force or enticement, or in cases when undertakings are put in dominant positions that they cannot avoid.[53] Case law has also shown there is no need to show that there has been an abuse of its dominant position by the undertaking, it is enough for a "potential or actual anti-competitive consequence liable to result from the State measure".[54]

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[48] Case 155/73 Sacchi https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61973CJ0155

[49] Case C-41/90 Klaus Höfner and Fritz Elser v Macrotron GmbH https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:61990CJ0041

[50] See Case C-179/90, Merci v Siderurgica; Case C-323/93, La Crespelle v the Mayenne Cooperative, ECR [1994] I-5077; Case C-260/89, ERT v DEP; and Case C-266/96, Corsica Ferries v Gruppo Antichi Ormeggiatori del porto di Genova and Others, ECR [1998] I3949.

[51] Article 102 TFEU.

[52] https://europeanlawblog.eu/2014/09/09/the-appeal-in-greek-lignite-clarification-of-the-law-or-jumpstarting-article-106-tfeu/#sthash.Dp7Pzlx1.dpuf

[53] Tóth, András, Public Services and EU Competition Law (July 31, 2017). Available at SSRN: https://ssrn.com/abstract=3011433 or http://dx.doi.org/10.2139/ssrn.3011433

[54] T-556/08., Slovenská pošta a.s. v European Commission, p. 102.

Comparable cases to that of Kosovo are those of the postal sector in Germany and Slovakia, for which the European Commission requires to liberalize the sector. The case of Deutsche Post AG was raised on the basis of discrimination against postal service providers. The State of Germany through the Postal Law gives an exclusive link to the German Postal Law for commercial transport of postal items weighing less than 100 grams at a much cheaper price than the basic tariff. However, these tariffs and discounts do not apply to private postal service operators in Germany, as the Deutsche Post prepares the post office itself and therefore reduces the cost of the service.

Undoubtedly, these tariffs put Deutsch Post in a more enviable position compared to other postal service providers. This was the result of German legislation and not necessarily the result of Deutsche Post's actions. The Commission found that this exclusive license granted through German postal law gives the market holder a dominant position in the market and is contrary to Article 106 (1) and Article 102 of the TFEU. Therefore, he demanded the abolition of this exclusive license in order to liberalize the postal service market. However, the reasoning claimed under Article 106 (2) were reviewed and rejected.[55]

Through an amendment to Slovak Postal Law, the legislators created a monopoly in the postal service sector in Slovakia. Though there was existing monopoly by Slovenská pošta, this new law also granted monopoly on the delivery of hybrid mail, by reserving the right to a sole provider. This legislative proposal was approved by the Slovak Parliament and entered into force on 1 April 2008. The European Commission found that Slovenská pošta is a 'public undertaking' as per the meaning of Article 106 (1) and has in association with Article 102 the Commission calls for the repeal of the law in order to open the market for hybrid postal services to market operators in the country.[56]

The intent behind the combination of Article 106 with the other provisions of the Treaty was to limit the means through which member states could block the enforcement of the treaties

[55] COMMISSION DECISION of [Ö] 2004 on the German postal legislation relating to mail preparation services, in particular to the access of self-provision intermediaries and consolidators to the public postal network and related special tariffs https://ec.europa.eu/competition/antitrust/cases/dec_docs/38745/38745_32_1.pdf

[56] Summary of Commission Decision of 7 October 2008 relating to a proceeding under Article 86(3) of the EC Treaty on the Slovakian postal legislation relating to hybrid mail services (Case COMP/F-1/39.562) https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:322:0010:0011:EN:PDF [30] Ibid. Article 106 (1) and 106 (2).

through measures and rights of a special or exclusive nature.[57] Article 106 in combination with other provisions, and in this case 102 has direct effect.

However, Article 106 (2) provides a derogation from applying competition law in cases when undertakings are entrusted with the operation of services of general economic interest or revenue-producing monopoly. Under the provision, any law going against competition rules violates the Treaty, unless it takes such measures intending to facilitate a service of general economic interest.[58] As per Article 106 (2), undertakings are subject to the competition rules of the Treaties as long as the application of these rules does not hinder the performance of the tasks that are given to them[59] and the development of trade must not be affected to such an extent as to conflict with the interests of the Union.

Public services in the European Union are defined as 'an economic activity of general interest defined, created and controlled by public authorities and entities, to varying degrees, against a particular legal regime, whether or not actually performed by a public body or private'. Public services are not considered state interference as they do not involve productive activities, but essential activities for the public good and derive from the will of public authorities. Unlike administrative services provided by the state free of charge, the public services are provided subject to a fee.[60]

Services of general interest are economic activities with the purpose of providing overall public goods which are of general interest, and that would not be offered by the market without public intervention.[61] Although subject to EU market rules if they qualify as economic activities, the current framework and case law has given wide discretion to the Member States about defining what they consider to be services of general interest.[62] Private enterprises do not normally provide public services of the general interest, however there are cases when the state cannot or does not want to provide this service and charges private enterprises. However, by statute or regulation the

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[57] O'Neill, James, The Combined Application of Article 106 (1) and Article 102 TFEU: A reference rule without reference? University of Amsterdam, Faculty of Law (29th July, 2016) https://scripties.uba.uva.nl/document/642330
[58] Ibid. Article 106 (2).
[59] Article 106 (2), TFEU.
[60] Public Service Missions Attributed to Undertakings in The Member States, European Parliament https://www.europarl.europa.eu/workingpapers/econ/w21/sum-2_en.htm
[61] https://ec.europa.eu/competition/state_aid/overview/new_guide_eu_rules_procurement_en.pdf
[62] https://journals.sagepub.com/doi/pdf/10.1177/1023263X19890211g

state authorities determine the substance and scope of such a service. Thus, establishing the rights and obligations of the private enterprise in the context of public service. Based on the basic principles of public services, the latter should be provided for all and under the same conditions, to be provided as a service without interruption and in a regular manner but when it is no longer needed, to be terminated as a service.[63]

In the case of the homologation of vehicles, Article 106 (2) cannot be used to justify the undertaking's exclusive right, as the rules competition do not in any way hinder its performance or the task that is assigned to them. The undertaking, in this case, is the sole provider of the homologation of vehicles, effectively giving it the dominant position in the market and eliminating any competition and obstructing competition rules. Furthermore, EUROLAB is not considered an "undertaking with having the character of a revenue-producing monopoly" as it does not share its profit with the state authorities.

The Commission has presented guidance on the requirements making up the definition of a SGEI in the Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest.[64] Member States according to the requirements Member States should not "attach specific public service obligations to services that are already provided or can be provided satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the State, by undertakings operating under normal market conditions".[65] In the case of homologation, the Government of Kosovo with the Administrative Instruction (MIT) 2/2018 has identified only one undertaking as fulfilling all the criteria to offer the services of homologation, putting all other undertakings in less favorable positions and shunning them from the market all together. When selecting the provider, it has not shown in any way that it has made the choice to provide the services to the community with least cost and it has instead determined the price list making it impossible for the prices to be set

[63] PUBLIC UNDERTAKINGS AND SERVICES IN THE EUROPEAN UNION by European Parliament https://www.europarl.europa.eu/workingpapers/econ/w21/sum-2_en.htm

[64] European Union: European Commission, Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest.

[65] European Union: European Commission, Communication from the Commission European Union framework for State aid in the form of public service compensation.

by a free market and disregarding the fact that compensation cannot exceed what is necessary to cover the costs of exercising the obligation, including a reasonable profit.[66] Furthermore, it has not been shown that there was a correct and genuine economic interest in granting the exclusive right to the undertaking as it has not shown any reason as to why the service cannot be provided by the market by a number of undertakings with the potential to conduct the same activity.

As per Article 106 (3) the Commission shall ensure the implementation of the provisions of this Article and shall, where appropriate, communicate to the Member States the appropriate directives or decisions.[30] It gives the Commission the right to make general laws and issue decisions and directives in relation to this Article.

Concluding Remarks

The case of homologation of vehicles in Kosovo, over the years has been a concern for the European Union, the European Commission in particular, as well as for Members of the Parliament and the Competition Authority of Kosovo. In 2009 an exclusive contract of ten years was signed between the Ministry of Transport and Communications and a private undertaking – EUROLAB – awarding it with an exclusive right on homologation of vehicles. Thus, granting an economic monopoly within the territory of Kosovo. This exclusive contract was awarded in strange circumstances, namely without public procurement. That is however not the only rule or governmental decision that the award of this exclusive contract has been in violation.

Besides constitutional provisions, such as Article 119 (3), the contract has been granted to the private undertaking while the Law on Competition of 2004 was in force. As the exclusive agreement is monopolizing in nature, it has violated Article 3 of this law. The contract was also in violation of the Law on Protection of Competition, promulgated by the Assembly of Kosovo in 2010. In addition to the laws of Kosovo, the contract is also at odds with the EU competition law.

Though there's unsureness on what exactly measures violate Article 106, the prohibited measures subject to Article 106 (1), consist of those measures that lead to the abuse of a dominant position or that potentially give an enterprise the space to act in such a manner that it abuses its competencies when in a dominant position. Article 106 (1) prohibits measures that lead to the

[66] 2012/21/EU: Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest

infringement of another Treaty provision as Articles 101 and 102 TFEU and other free movement provisions, in regards to public undertakings. In the case of vehicle homologation in Kosovo, the State has given such exclusive rights to an undertaking to offer a mandatory service, making it the sole provider of that service, therefore this measure has the similar effect of those of abusive behaviors.[67]

According to case of Société Civile Agricole du Centre d'Insémination de la Crespelle v Coopérative d'Élevage et d'Insémination Artificielle du Département de la Mayenne "the mere creation of a dominant position by the granting of an exclusive right within the meaning of Article 90(1) (current Article 110 TFEU) of the Treaty is not as such incompatible with Article 86 (current Article 106 TFEU) of the Treaty. A Member State contravenes the prohibitions contained in those two provisions only if, in merely exercising the exclusive right, the undertaking in question cannot avoid abusing its dominant position."

The company providing vehicle homologation services in the territory of Kosovo, is an undertaking granted exclusive rights as per the meaning of Article 106 (1) and based on the latter case. The Kosovar undertaking, by exercising its exclusive right can't avoid abusing dominant position as the administrative instruction issued and implemented by Kosovo authorities has created a clear monopolization of the vehicle homologation market, as the company to which the exclusive contract for homologation of vehicles has been given was also named as an authorized center and appointed supervisor for the vehicle technical control centers. Hence, there are no other authorized control centers and a clear abuse of its dominant position.[68]

Moreover, Kosovars were the only ones in the region who were obliged to pay for homologation for new cars, and such payment was to be made to a monopolized the only control center. The current government of Kosovo,[69] has proposed to supplement and amend the Law on Vehicles in order to enable the abolition of the homologation service. The Law on Supplementing

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[67] Jones, A., Sufrin, B., & Dunne, N. (2019-08-27). Jones & Sufrin's EU Competition Law: Text, Cases, and Materials. Oxford: Oxford University Press, pg. 577-580.

[68] Article 14 of AI No.2008/08 ON VEHICLE HOMOLOGATION "Professional supervision of vehicle technical inspection centers (hereinafter: the center) shall perform an authorized institution for homologation."

[69] The last 20 year, there have been two main parties that have been in power. The former, have been involved in numerous corruption affairs. With the election of 2020 and 2021, the opposition party Vetevendosje, has won the majority of seats in the Parliament.

and Amending the Law on Vehicles was finally passed by the Kosovo Assembly on the 17th June of 2021, and entered into force on 20 August 2021.[70]

This comes after years of pressure from Non-governmental Organizations, citizens of Kosovo and the former opposition members of the Parliament of Kosovo, and many failed attempts[71] since 2009. The EU Office in Kosovo has clearly stated that the monopoly on homologation is a burden to the people of Kosovo by consequently having the highest prices in homologation and creating trade barriers.[40].

This contract has been awarded in abnormal conditions, contrary to the law on public procurement, to the applicable competition legal framework and the Constitution of Kosovo. In addition, although Kosovo has undertaken through the Stabilization and Association Agreement to implement a European Reform Agenda, including observance to the best European competitiveness standard and practice, such a contract is in clear violation of EU law, in particular Article 106 of the TFEU as well as the Articles that apply to Undertakings, with the emphasis of Article 102.

To facilitate the access of other companies in provision of such an activity the current beneficiary of such a monopoly must be removed from the supervision of technical control centers. No information has yet transpired on whether any other company has applied for provision of such service.

The European Commission, as in the cases of Deutsche Post and Slovenská pošta, has pressured the state of Kosovo to repeal the administrative instruction granting to EUROLAB the monopoly of homologation service, contrary to the Constitution of Kosovo, Kosovo Laws on Protection of Competition and the competition rules of the European Union. Above all, it creates barriers for other market participants in the market.

Market liberalization remains one of the main goals of competition rules. The process of market liberalization in Kosovo, in the context of public services, is a major indicator of Kosovo's

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[70] Kosovo Official Gazette No. 3, 5 August 2021: https://gzk.rks-gov.net/ActDetail.aspx?ActID=45621

[71] Newspaper article "LDK nuk e voton projektligjin për homologim të veturave të propozuar nga VV" https://www.arbresh.info/lajmet/ldk-nuk-e-voton-projektligjin-per-homologim-te-veturave-te-propozuar-nga-vv/

[40] EU Press Release https://eeas.europa.eu/delegations/mali/64368/eu-raises-concern-economic-committee-overhomologation-monopoly-causing-undue-cost-kosovo_en

progress in meeting its obligations to the EU and SSA. Therefore, it is important to continue the approximation of Kosovo legislation with that of the Acquis Communautaire. In addition to preparing Kosovo for accession to the EU common market, these actions are important for the functioning of the market economy and economic development in the country.

A recurring issue in Kosovo is the limited institutional and administrative ability to confront anti-competitive behavior. In order to fulfill their mandate and ensure and work towards a free market, where competition is free and fair, strengthening of KCA role is necessary. Transparent and competitive selection of KCA members shall help in this regard, by ensuring that they qualify for the job in such an important institution. Continuous and on job training for KCA members must be provided by including the good practices of the countries of the region that have passed the same path, as well as the established practices from the most developed EU countries. And last, but not least important is the increase of the awareness of judges and courts in Kosovo regarding competition issues.

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