



Integrated Border Management between Kosovo and Serbia: Protecting Sovereignty and the EU Agenda

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ABSTRACT

This study analyzes specific problems between Kosovo and Serbia, the integrated border management (IBM) of states, the free movement of citizens of both countries, and political process outcomes since 2011. Although IBM

and the free movement of citizens and goods are fundamental values of the EU, these have been problems in the context of Kosovo and Serbia since the year in question. Agreements concluded on the integrated management of the Kosovo–Serbia border have faced implementation problems and necessitated rearranged agreements. The problems mentioned have arisen due to the protracted dialogue process between Kosovo and Serbia and the problems resulting from efforts of both parties to protect their sovereignty and follow EU agenda. IBM and the free movement of citizens between Kosovo and Serbia have been problematic for many years and have hindered the free movement of citizens of both countries. Given the fundamental problems underlying the relations between Kosovo and Serbia with respect to IBM, and considering that Kosovo and Serbia both aim to be integrated within the EU, the EU itself is the last hope for overcoming this problem. Hoping to move forward toward integration, in August 2022, Kosovo and Serbia agreed to enable the free movement of citizens at the border points. This study sheds light on recent developments and analyzes the potential political outcomes of this decision.

The keywords: *integrated border management, freedom of movement, Kosovo-Serbia agreements, sovereignty, European Union, Integration agenda.*

Introduction

On February 17, 2008, Kosovo declared its independence. The International Court of Justice (ICJ), in its advisory opinion, found that the unilateral Declaration of Independence of Kosovo by the temporary self-governing institutions was in accordance with international law. Given this, the UN General Assembly issued a resolution that accepted the ICJ's advisory opinion that the unilateral announcement of Kosovo's declaration of independence was in accordance with international law (UN General Assembly, A/64/L.65/Rev.1, 2010). This resolution was peculiar because the UN General Assembly welcomed the readiness of the EU to facilitate dialogue between Kosovo and Serbia, stressing that the dialogue would contribute to peace, security, and stability in the region and to progress toward integration of Kosovo and Serbia into the EU (UN General Assembly A/64/L.65/Rev.1, 2010, para. 2). In fact, it was this resolution that paved the way for the dialogue process between Kosovo and Serbia, which began as

a technical dialogue in 2011 and progressed to a political level in 2012. The first technical-dialogue meeting between Kosovo and Serbia was held on March 8 and 9, 2011. The first political-level meeting was held on October 19, 2012 (Kosovo-Serbia Dialogue, Challenges and the Way Forward, 2018, p. 16).

The technical dialogue between Kosovo and Serbia faced challenges because Serbia had not recognized Kosovo as an independent state¹. The first signed agreement, dated December 2, 2011, was on integrated border management (IBM) between Kosovo and Serbia (Kosovo-Serbia Dialogue, Challenges and the Way Forward, 2018, p. 16). This agreement addressed the freedom of movement of citizens between Kosovo and Serbia.

The agreement, intended to facilitate the free movement of citizens of both countries, resulted in the removal of blockades that prevented Kosovo and Serbia citizens from crossing the border because they did not recognize each other's documents or vehicle license plates. The agreement on IBM and the freedom of movement posed many challenges for both parties, especially in implementation. Ten years since the agreement was signed, it is still being adjusted as part of political negotiations between the two parties.

Methodology

This paper presents a legal analysis of agreements on IBM and freedom of movement between Kosovo and Serbia. As mentioned, the IBM and freedom of movement between Kosovo and Serbia are problematic due to Serbia's attitude toward the state of Kosovo. This study seeks to answer a number of essential legal questions: On what IBM model did Kosovo and Serbia agree in 2011? How did the parties intend to implement the IBM model? How do citizens of both

¹ See European Parliament, Serbia–Kosovo relations: Confrontation or normalization? Briefing. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635512/EPRS_BRI\(2019\)635512_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635512/EPRS_BRI(2019)635512_EN.pdf)

countries benefit from the agreement? How might the agreement affect Kosovo and Serbia's pathway to EU integration? What are Kosovo and Serbia's obligations for implementing the agreement under EU rules on IBM and citizens' freedom of movement? In analyzing the normative content of the agreement, this study considers international and local literature as well as legal documents and agreements and makes historical comparisons over the past 10 years. It also examines how the EU's agenda for countries aspiring to integration relates to IBM and freedom of movement at the Kosovo–Serbia border. Ultimately, this study highlights how Kosovo and Serbia can overcome their technical and political struggles by substituting sovereignty principles with equality principles and thereby meet EU requirements for IBM and freedom of movement.

1. Integrated Border Management versus Freedom of Movement and Technical Dialogue between Kosovo and Serbia

“Any system of law must address the responsibility of its subjects for breaches of their obligations” (Crawford, 2013, p. 3). The agreements concluded in 2011 between Kosovo and Serbia on freedom of movement and IBM are interlinked. In the framework of the technical dialogue that took place in 2011, Kosovo and Serbia agreed on the freedom of citizens of both countries to travel freely between the two countries (Conclusions Agreed on July 2, 2011, point 1). Based on this, Kosovo and Serbia pledged to create an operational system for the passage of citizens between the two territories using identity cards (Conclusions Agreed on July 2, 2011, point 2). The agreement on freedom of movement, however, refers to the border between Kosovo and Serbia as “an administrative border” and not “a state border.” This demonstrates that Serbia initially faced a political struggle due to not recognizing Kosovo as an equal party in the dialogue process.

Within the framework of the agreement on freedom of movement, Kosovo and Serbia agreed that, for five years, they would recognize

each other's KS vehicle plates, which are temporary plates that are not identified with the state symbols of Kosovo. The provisions on vehicle plates represent a challenge to the sovereignty of Kosovo by Serbia (Conclusions Agreed on July 2, 2011, point 6). An interesting innovation within the agreement was the requirement for temporary license plates on the vehicles to cross at border points (Conclusions Agreed on July 2, 2011, point 9). The agreement on freedom of movement also supported the creation of a joint group from the EU that would help operationalize the provisions of the agreement and the resultant obligations between Kosovo and Serbia (Conclusions Agreed on July 2, 2011, point 10).

In December 2011, in the wake of the technical-dialogue process and the agreement on freedom of movement, Kosovo and Serbia signed an IBM agreement. The purpose of the IBM agreement was to facilitate the freedom of movement of citizens and goods. The IBM provisions were based upon two important EU legal guarantees: the Treaty of Lisbon and relevant EU legislation, including the Schengen code for borders and the Frontex regulation (Conclusions Agreed on July 2, 2011, point 1).

In addition, Kosovo and Serbia pledged that, under EU supervision, they would implement the IBM provisions (Conclusions Agreed on July 2, 2011, point 2). In the IBM framework, the parties (Kosovo and Serbia) committed themselves to the following specific mutual obligations:

1. *Gradually creating common and secure IBM gateways, according to European best practices; and*
2. *A balanced presence of officials from each side and services such as Customs and Police (Conclusions agreed on July 2, 2011, point 5).*

The agreement provided for the presence at the border points of officials of the European Mission for the Rule of Law in Kosovo (EULEX), which acted as additional recognition of

Kosovo's sovereignty by Serbia. The agreement also included a guarantee from the EU to facilitate implementation and enforcement (Conclusions Agreed on July 2, 2011, point 7). In February 2012, Kosovo and Serbia signed a technical protocol for implementing the IBM agreement, based on which IBM points became operational at Jarinjë/Rudnica, Bërnjak/Tabaliqe, Dheu i Bardhë/Konçul, Merdarë/Merdare, Mutivodë/Mutivoda, and Muçibabë/Depce. The signatories of this protocol foresaw that the establishment of border points served to control persons, goods, and vehicles and to prevent, detect, and investigate criminal activity (point 4). In the interest of enforcing the agreement, Kosovo and Serbia established common border points based on the IBM model. The technical protocol provided for the working hours of officials, the model of border points, immunity of officials of both parties, official cards, and badges with state symbols for the officials of each party (points 19–23). Later, an IBM-related issue arose associated with information exchange between the parties in terms of criminal cases¹. Kosovo and Serbia had agreed to their obligations in relation to the EU. This underscores the importance of the IBM implementation approach in a common path for EU membership.

2. How the Implementation of Integrated Border Management and Freedom of Movement Agreements from Kosovo and Serbia Turned into a Challenge for Protecting Sovereignty

In general, the EU's approach toward sovereignty denotes “[V]ertical exercise of decision-making authority and coercive

¹ Technical Protocol for the Implementation of the Agreed Conclusions of the IBM Dialogue, 2012, point 31: “31. Without prejudice to any obligations entered into by the Parties with the EU and/or international organizations, the Parties shall establish mechanisms for the purpose of exchanging information and other data which are or may be relevant for the prevention, detection and investigation of criminal activities as well as for the protection of the lives and health of people, animals and plants, the environment and food safety in their part of responsibility, including the exchange of statistical data on the circulation of people and goods in order to detect the activities of illegal”.

capacities by two levels of governance (the EU and national actors) at the same time.” (Freudlsperger et al., 2022, p. 1990). As explained above, the IBM agreement between Kosovo and Serbia was an integral part of the political process related to the agreement on freedom of movement. This is because the purpose of concluding the agreements had to do with the free circulation of people and goods and easing the burden on people’s lives. In this sense, the first phase of the technical dialogue produced agreements on freedom of movement, customs stamps, and IBM. The agreement on freedom of movement aimed at mutual recognition of the documents of the two parties concerning crossings at border points (Kosovo-Serbia Dialogue: Implementation of Freedom of Movement and Integrated Border Management for the benefit of people, 2022, p. 12). Meanwhile, Kosovo, to implement the agreement on freedom of movement, issued accompanying legislation about the registration of vehicles with KS license plates and an administrative instruction concerning the registration of vehicles with Republic of Kosovo (RKS) license plates for vehicles with Serbian license plates (Kosovo-Serbia Dialogue: Implementation of Freedom of Movement and Integrated Border Management for the benefit of people, 2022, p. 13). According to the agreement on freedom of movement and operational conclusions reached on December 29, 2011, both parties issued entry–exit forms for citizens at border points. However, Kosovo did not apply entry–exit forms from the beginning. According to Kosovo laws, entry–exit forms created administrative burdens and barriers to the freedom of movement and the crossing of citizens at the borders. Since then, Serbia has applied the entry–exit forms (Kosovo-Serbia Dialogue: Implementation of Freedom of Movement and Integrated Border Management for the benefit of people, 2022, p. 13). Serbia’s tactics, in this case, show a continual negative approach to Kosovo and continuous attempts to make it difficult for Kosovo’s citizens to move freely through Serbia.

The agreement on freedom of movement was related to the need for Kosovo and Serbia to create border points to enable freedom of movement on December 26, 2011 (Kosovo-Serbia Dialogue: Implementation of Freedom of Movement and Integrated Border Management for the benefit of people, 2022, p. 13).

Implementing the agreement on freedom of movement through the border points of Kosovo and Serbia offered several advantages to Kosovo's diaspora living and working in European countries. This agreement shortened travel distance through Serbia (Kosovo-Serbia Dialogue: Implementation of Freedom of Movement and Integrated Border Management for the benefit of people, 2022, p. 19). In contrast to Kosovo, which has been consistently constructive, Serbia has prevented the implementation of the agreement on freedom of movement and crossing at border points and positioned political barriers. Serbia has done so in the following ways:

1. Issuing entry–exit forms at the border crossing point, causing travel delays and traffic overloads.
2. Issuing illegal license plates.
3. Making intentional arrests of Kosovars passing through the territory of Serbia.
4. Imposing taxes of 10% to 100% of Kosovo's goods (Kosovo-Serbia Dialogue: Implementation of Freedom of Movement and Integrated Border Management for the benefit of people, 2022, pp. 19–20).

An important part of the freedom of movement was the agreement on IBM. Initially, at the signature stage, the IBM agreement was supported by the then Prime Minister Hashim Thaçi. However, later in the Kosovo Assembly debate, he emphasized that it may limit the sovereignty and territorial integrity of Kosovo in practice¹ despite the fact that, as noted above,

¹ Prime Minister Thaçi: The Agreement on Integrated Border Management finally defines in practice the sovereignty and territorial integrity of the Republic of Kosovo, Pristina, December 12, 2012. Speech of former Prime Minister Thaçi, addressed to the deputies

the agreements referred to the border as administrative borders recognized by Serbia.

Within the IBM framework, Kosovo and Serbia agreed to establish common border points. The common border points model, however, was not a “one-stop” model but separate models (Kosovo-Serbia Dialogue: Implementation of Freedom of Movement and Integrated Border Management for the benefit of people, 2022, pp. 19–20). In accordance with the technical protocol for implementing IBM, dated February 13, 2012, Kosovo established three border points (Merdarë, Bërnjak, and Mutivodë), as did Serbia (Jarinje, Muçibabë, and Dheu i Bardhë; Technical Protocol for implementing the Agreed Conclusions of the IBM Dialogue, 2012). The border points for Kosovo cost more than 10 million euros, and those for Serbia cost more than 12 million euros (Kosovo-Serbia Dialogue: Implementation of Freedom of Movement and Integrated Border Management for the benefit of people, 2022, p. 26). We should note that both parties delayed establishing the border crossing points. Kosovo and Serbia began construction of the border points in 2016 and mid-2017, respectively, and construction of some points, such as the crossing point in Mutivodë, was not completed until 2019 (Kosovo-Serbia Dialogue: Implementation of Freedom of Movement and Integrated Border Management for the benefit of people, 2022, p. 27). This demonstrates the obstacles created by Serbia to the implementation of the IBM agreement. The prolonging of construction at border points is a clear sign of resistance to implementing the agreement and has made the free movement of citizens between Kosovo and Serbia impossible.

The EU’s 2014 Progress Report on Kosovo noted the slow implementation of the IBM agreement and the existence of illegal

of the Assembly. <https://kryeministri.rks-gov.net/blog/kryeministri-thaci-arreves-ja-per-menaximin-e-integratuar-te-kufirit-fefundimisht-ne-praktike-sovereignitet-dhe-territorial-integrity-te-republic-of-kosovo/>

crossing roads in the north of Kosovo. The EU Progress Report recommended that Serbia close illegal roads (EU Progress Report on 2014, p. 6).

The implementation phase of agreements on free movement and IBM was delayed due to Serbia's approach, which caused a malfunction at the Merdarë border crossing point and created unnecessary queues. This delay affected the freedom of movement of citizens (Serbia is not implementing the Agreement on Integrated Border Management, 2018). Serbia has continuously created obstacles and delays at border points for Kosovo citizens, and there have even been cases when crossing the border took more than eight hours due to Serbia failing to fully implement the IBM agreement. Kosovo has implemented the IBM and free movement agreements constructively and based on a good neighborly approach, as promised in its declaration of independence (Declaration of Independence of Kosovo, 2008).

3. Integrated Border Management and Freedom of Movement between Kosovo and Serbia:

Lessons Learned from Non-Implementation to Reciprocity

The enforcement of agreements on free movement and IBM between Kosovo and Serbia had its challenges. The implementation dynamics were influenced by other processes within the dialogue between Kosovo and Serbia. One such process was the implementation of the agreement on the normalization of relations between Kosovo and Serbia (Law No. 04/L-199). Serbia has continuously, for political reasons, challenged the sovereignty of the RKS by not implementing all agreements, including those on freedom of movement and IBM. In a report submitted by the Government of Kosovo to Brussels, which covered the period from January 1 to June 14, 2016, Kosovo complained that Serbia was not fulfilling the agreements and obligations (Kosova complains to the EU that Serbia is not implementing the Agreements,

2016). The report showed that Serbia had sought to challenge the sovereignty of Kosovo by treating the Kosovo–Serbia border as an administrative border. The report also showed that Serbia used this argument to serve its nationalist rhetoric for internal consumption by Serbian citizens. This rhetoric bears similarities to that of Russian President Vladimir Putin directed toward the Russian people in justifying attacks against Ukraine’s sovereignty and its people. Regarding the implementation of the agreements for IBM between Kosovo and Serbia, the 2016 EU Progress Report for Kosovo indicated that, on the part of Serbia, there had been no progress at all in implementing the IBM agreement because Serbia had delayed the functioning of border points as defined by agreement (EU Progress Report for Kosovo, 2016, pp. 3, 8).

As explained above, apart from circumventing the agreements on IBM and freedom of movement, Serbia continuously challenged Kosovo’s sovereignty and did not recognize the agreements with Kosovo as interstate agreements. These challenges were made through the Constitutional Court of Serbia, which, in its decisions, challenged other agreements reached within the dialogue and concluded that “The instruction for the control of the crossing of the administrative line in the direction of the autonomous province of Kosovo and Metohija (Official Gazette of RS, no. 98/11) did not comply with the Constitution of Serbia”. The Court rejected and suspended the implementation of certain acts and actions taken based on the instruction (case IYo-224/2013¹; Diplomatic Mission Report, 2015). As this case illustrates, the Constitutional Court of Serbia referred to the border with Kosovo as an administrative line, which clearly violates the constitutional and territorial sovereignty of Kosovo.

¹ See Announcement from the 8th Session of the Constitutional Court, held on March 26, 2015. http://www.ustavni.sud.rs/page/view/0-102128/saopstenje-sa-8-sednice-ustavnog-suda-odrzane-26-marta-2015-godine-kojom-je-predsedavala-vesna-ilic-prelic-predsednica-ustavnog%20suda?_qs=предмет%20IYo-224/2013 [in Serbian].

The lack of implementation of the agreements on IBM and freedom of movement has been accompanied by challenges associated with border-related issues and essential issues of sovereignty. Consequently, aware of Serbia's delays in implementing the agreements and recognizing the international principle of reciprocity, in 2018, the Kosovo Government imposed a 100% tax on goods originating from Serbia (Decision of the Government of the Republic of Kosovo, no. 01/76, 2018).

In 2021, the new government, led by Prime Minister Albin Kurti, evaluated Serbia's approach to Kosovo in relation to the freedom of movement and goods and IBM. The new government furthered reciprocity in relation to license plates for border crossing points between Kosovo and Serbia. Kosovo's establishment of reciprocity on vehicle plates entering the country from Serbia was equivalent to Serbia's for vehicles entering from Kosovo to Serbia (Shehu, 2021).

As envisaged by Kosovo's reciprocity mechanism, from October 8, 2021, all vehicles with Serbian license plates entering Kosovo were required to be equipped with stickers to cover the state symbols on their license plates. Both Kosovo and Serbia foresaw such a reciprocity mechanism in the agreement reached between them concerning license plates at the border points (Conclusions reached from the negotiations between Kosovo and Serbia, 2021, point 2). Gradually, Serbia accepted Kosovo's state reciprocity. The NATO mission in Kosovo guaranteed the implementation of the reciprocity agreement for license plates at the border points between Serbia and Kosovo in Jarinje and Brnjak (Conclusions reached from the negotiations between Kosovo and Serbia, 2021, point 1).

After the agreement on vehicle license plates was reached, Kosovo and Serbia advanced the concept of free movement through a new agreement on August 27, 2022. This agreement aimed to ease border crossings with Kosovo documents and

eliminated the entry–exit document, which had created delays to the free movement of citizens at the border points between Kosovo and Serbia (Serbia and Kosovo reach free movement agreement, 2022).

In fact, the concluded agreement on license plates for the movement of vehicles, as well as the agreement on travel documents, was a step toward the normalization of relations between Kosovo and Serbia and was supported by the US Department of State (DASH: Agreement on documents a step towards the normalization of Kosovo-Serbia relations, 2022). On October 19, 2022, American Emissary Gabriel Escobar requested that the Kosovo Government postpone the implementation of the agreement on license plates. This agreement foresaw the illegal switching of license plates by Serbs in Kosovo with new Kosovo license plates so that they could cross the border (Escobar: Postponement of the deadline for license plates, PERSONAL request of Secretary Blinken, 2022). Not suspending the implementation of the license plate agreement was anticipated to create tense situations and protests by Kosovo Serbs. Recently, Kosovo Serbs withdrew from Kosovo institutions, including the Government and the Assembly, as a sign of opposition to the implementation of the agreements signed on license plates (Serbs in the north: We don't want another state, 2022).

Although progress has been made toward IBM and freedom of movement, it has taken more than 10 years, during which Kosovo and Serbia have fought with each other to protect their sovereignty in relation to each other and in relation to the EU's agenda for the Western Balkans regarding IBM. Integrated management of the Kosovo–Serbia border has conditioned the free movement of people and goods; therefore, in relation to EU agenda, only the issue of the agreement on IBM is addressed here in terms of fulfillment of EU criteria by Kosovo and Serbia.

4. EU Agenda for Integrated Border Management

“The principles and values based on which the European Union is built and operates comprise an accepted and necessary solid basis for the functioning of each society in national contexts, even if not part of it” (Mrasori, 2022, p. 55). One such principle/value is the EU IBM concept. The definition of European IBM includes “National and international coordination and cooperation among all relevant authorities and agencies involved in border security and trade facilitation to establish effective, efficient and coordinated border management at the external EU borders, in order to reach the objective of open, but well controlled and secure borders” (European Commission Glossary).

The domain of the EU IBM falls under primary and secondary legislation (Consolidated Version of the Treaty of the European Union and the Treaty on the Functioning of the European Union, respectively). EU primary law within the area of freedom, security, and justice stipulates provisions on IBM systems. The EU’s policy obligations on border checks are stated as follows:

Article 77

(former Article 62 TEC)

1. The Union shall develop a policy with a view to:

- (a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;*
- (b) carrying out checks on persons and efficient monitoring of the crossing of external borders;*
- (c) the gradual introduction of an integrated management system for external borders.*

To fulfill the obligations under this article, the European Parliament and the Council are requested to adopt legal measures. The EU primary law defines measures concerning:

- (b) the checks to which persons crossing external borders are subject;*

(d) any measure necessary for the gradual establishment of an integrated management system for external borders (Consolidated Version of the Treaty on the European Union and the Treaty on the Functioning of the European Union).

In light of the primary law provisions, the EU adopted secondary laws on borders. Regulation (EU) 2016/399 provides definitions of border concepts and lays down rules governing border control of persons crossing the external borders of EU member states (art. 1). The regulation defines several concepts associated with IBM. According to the regulation, *internal borders* refers to the common land borders (including river and lake borders), the airports for internal flights, and the sea, river, and lake ports for regular internal ferry connections of member states (art. 2 point 1). The *external borders* refers to the land borders of member states, including river and lake borders, sea borders, and their airports, river ports, sea ports, and lake ports, provided that they are not internal borders (art. 2 point 2). The *border crossing point* means any crossing point authorized by the competent authorities for the crossing of external borders (art. 2 point 8). A *shared border crossing point* means any border crossing point situated either on the territory of a member state or on the territory of a third country, at which the member-state border guards and third-country border guards carry out exit and entry checks one after another in accordance with their national law and pursuant to a bilateral agreement (art. 2 point 9). *Border control* means the activity carried out at a border consisting of border checks and border surveillance (art. 2 point 10). *Border checks* means the checks carried out at border crossing points to ensure that persons, including their means of transport and the objects in their possession, are authorized to enter the territory of the member states or authorized to leave (art. 2 point 11). *Border surveillance* means the surveillance of borders between border crossing points

and the surveillance of border crossing points outside the fixed opening hours to prevent persons from circumventing border checks (art. 2 point 12). *Border guard* means any public official assigned, in accordance with national law, to a border crossing point or along the border or the immediate vicinity of that border who carries out border-control tasks (art. 2 point 14).

Later on, to ensure European IBM, the EU adopted Regulation (EU) 2019/1896. This regulation ensures European IBM at the external borders with the aim of managing those borders efficiently in full compliance with fundamental rights (art. 1). Moreover, this regulation defines additional notions associated with IBM. According to the regulation, *situational awareness* means the ability to monitor, detect, identify, track, and understand illegal cross-border activities to find reasoned grounds for reaction measures based on combining new information with existing knowledge and to reduce the loss of migrant lives at, along, or in the proximity of the external borders (art. 2 point 7). Furthermore, *reaction capability* means the ability to perform actions aimed at countering illegal cross-border activities at, along, or in the proximity of external borders, including the means and timelines to react adequately (art. 2 point 8). The *external border section* means all or any part of the external border of a member state, as defined by national law or as determined by the national coordination center or any other responsible national authority (art. 2 point 11). According to this regulation, *pre-frontier area* means the geographical area beyond the external borders, which is relevant for managing the external borders through risk analysis and situational awareness (art. 2 point 18).

Regulation (EU) 2019/1896 addresses European IBM components, including border control, measures to facilitate legitimate border crossings, analysis of the risks for internal security, and analysis of threats that may affect the functioning or security of external borders. Furthermore, it addresses information

exchange and cooperation between member states and interagency cooperation among the national authorities in each member state responsible for border control. In addition, it addresses cooperation among the relevant EU institutions, bodies, offices, and agencies; cooperation with third countries; technical and operational measures related to border control; and the use of state-of-the-art technology for quality control, including large-scale information systems (art. 3).

The key element of European IBM according to Regulation (EU) 2019/1896 related to third countries, such as Kosovo, is invoked in Article 3. Article 3 specifies cooperation with third countries, focusing in particular on neighboring third countries (art. 3, point (g)). Regarding shared responsibility, EU IBM principles specify that member states may cooperate at an operational level with other member states or third countries (art. 7 para. 5). Regarding national coordination centers, the regulation requires that each member state shall designate, operate, and maintain a national coordination center, which shall coordinate and exchange information among all authorities responsible for external border control at the national level (art. 21 para. 1). Regarding national situations, the regulation specifies that each national coordination center establishes and maintains a national situational picture to provide all authorities with responsibility for external border control at the national level with effective, accurate, and timely information (art. 25 para. 1). In terms of cooperation of member states with third countries, Regulation (EU) 2019/1896 specifies the following: “Member States may cooperate at an operational level with one or more third countries in relation to the areas covered by this Regulation. Such cooperation may include the exchange of information and may take place on the basis of bilateral or multilateral agreements, other forms of arrangements, or through regional networks established on the basis of those agreements” (art. 72 para. 1). The regulation requires that bilateral

and multilateral agreements and other forms of arrangements comply with EU and international law (art. 72 para. 2). The EU IBM provisions according to Regulation (EU) 2019/1896 include an annex on rules for statutory staff deployed at borders (Annex V).

As we can see, the EU IBM provisions in Regulation (EU) 2016/399 and Regulation (EU) 2019/1896 establish the foundation of IBM. These principles reflect the Treaty on the Functioning of the European Union (TFEU) provisions described previously. At present, the TFEU provisions within the EU agenda for the Western Balkans apply to the IBM agreement between Kosovo and Serbia signed in 2013. The IBM agreement invokes principles of the TFEU provisions. Consequently, the IBM agreement between Kosovo and Serbia is linked to EU primary law. However, differences have arisen between Kosovo and Serbia in their approaches to the implementation of the agreement. As a result of these differences, both parties are failing to fulfill the values and principles of good governance between countries and the TFEU provisions and good neighborhood policy enshrined in the IBM agreement signed in 2013. Both countries have reverted to earlier positions on old conflicts, and enforcement of the IBM agreement signed in 2013 remains unresolved. From the history of this agreement, we conclude that the EU's support for the deal actually preceded the general aim of resolving conflicts between countries and supporting them in the EU integration agenda. As noted above, the EU's support in August 2022 helped Kosovo and Serbia reach an agreement to facilitate freedom of movement.

The EU is traditionally conceived of as a project for pacifying intra-European relations (Sweeney & Winn, 2022, p. 202). The EU policy on IBM for Kosovo and Serbia has developed as part of a broader integration perspective of both countries. Although the study's main goal is to expose the grim reality between Kosovo and Serbia on IBM and a common pathway to the EU integration process, this study advocates the EU's soft

implementation powers in the future to urge Serbia to implement agreed international agreements with Kosovo. The rationale for this is that the EU ought to use a utilitarian approach to treating Serbia's dysfunctional and neglected approach in implementing agreements with Kosovo.

5. Obligations of Kosovo and Serbia in Relation to the EU for Integrated Border Management

“IBM has been confirmed as a priority area for strengthening the cooperation with third countries in the European Commission's strategic security management approach, where non-EU countries are encouraged as partners to upgrade their border security, border surveillance, and border management systems” (Wagner, 2021, p. 425). The EU supported the deal to resolve conflicts between countries and supported Kosovo and Serbia in the IMB agreement within the EU integration agenda, and both countries followed a dense exchange of international-agreement implementation ideas.

In different circumstances, however, Kosovo and Serbia were practically unable to ensure cooperation and implement IBM provisions. Unfortunately, this showed that both countries were unable to fulfill their obligations arising from the Lisbon Treaty embodied in the IBM agreement, especially the good neighbor policy. In this respect, Kosovo and Serbia made unilateral choices through the adaptation of their administrative structures and provisions only for the sake of implementing EU principles for border control. It could be argued that the NATO and EULEX¹ mechanism eases the EU border-control principles with regard to the supervision and exchange of data on border control. In this sense, Kosovo and Serbia have followed different paths in implementing the IMB provisions. Although the IBM agreement

¹ See Council Joint Action 2008/ 124/ CFSP of 4 February 2008 on the EU Rule of Law Mission in Kosovo, EULEX KOSOVO [2008] OJ L42/ 92.

invokes the Treaty of Lisbon, the implementation efforts have been disproportionate, especially by Serbia, and this violates its obligations and EU standards.

In the framework of the EU integration agenda, the IBM agreement refers to the binding nature. The binding nature refers to enforcement under EU law on IBM. As detailed in the previous section, Regulation (EU) 2016/399 and Regulation (EU) 2019/1896 lay the foundations of IBM. Therefore, implementing IBM for Kosovo and Serbia must follow the provisions under Regulation (EU) 2016/399 and Regulation (EU) 2019/1896. There are several steps in fulfilling these provisions for both countries. First, both countries must transpose the provisions into national law. Second, each institution within national law must define the countries' enforcement position on IBM and related institutional data issues. Third, for a practical reason of implementation, countries should create institutional teams composed of government officials who will supervise (at the technical level) each of the provisions related to external borders, border crossing points, border control, and border surveillance.

Regarding the first step, both countries should transpose EU provisions on border management into national legislation. Kosovo's first basic law on border management precedes the IBM agreement signed in 2012. Kosovo adopted the first amendment in 2013 and the second in 2018. Kosovo's first basic law on border management precedes the IBM agreement signed in 2013. Neither the first basic law nor the second amending law transposed EU rules on IBM. The first transposition of EU rules in IBM by Kosovo was made with the third amendment in 2018 (Kosovo Law no. 04/L-072 On State Border Control and Surveillance, 2013, as amended by Law no. 06/L-013, published: 23.04.2018). Kosovo's law on state borders transposes few EU rules on border management. Article 1 of the law specifies that "This law aims to transpose Regulation (EU) 2016/399 of the European Parliament

and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).”

As far as Serbia is concerned, in 2018, it adopted the Law on State Borders. The law, however, does not mention any reference to the transposition of EU rules on border management (Serbia Law on Border Control No 24/2018, 2018). As for the second step, the respective countries should establish their implementation position on IBM and related institutional data issues. This means that Kosovo and Serbia must compile a list of applicable and non-applicable measures derived from the relevant law and the IBM agreement. This will help describe what works effectively and what could potentially undermine the IBM agreement. Regarding the third step, institutional technical teams composed of government officials from both countries under EU facilitation can exchange data on border crossing points, border control, and border surveillance.

We have clarified the conception of IBM and its implementation in Kosovo and Serbia. We should reiterate that, in the basic areas of responsibility in this agreement, the EU is a major facilitator in promoting the implementation of IMB in practice. The EU enforcement trigger mechanism may involve several steps. The first step involves ensuring continued political stability in the region and between countries. The second involves a cyclical reporting system for both countries every quarter. The third step involves conditioning state institutions, especially state institutions involved in border management, with financial assistance from EU funds. The EU has a decisive position in this agreement because its aim is to promote peace, its values, and the well-being of its citizens.¹

¹ See the Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

Conclusions

Negotiating agreements on freedom of movement and IBM between Kosovo and Serbia began in 2011. Since then, tense political backlash between the two countries has accompanied both agreements and interstate relations. Although reaching agreements on free movement and IBM between Kosovo and Serbia demonstrate a positive attitude at the beginning of the dialogue process, a different scenario with failing outcomes emerged later. Gradually, many obstacles arose for both parties in implementing the agreements. As a result, the ongoing tensions in the dialogue process between Kosovo and Serbia caused difficulty in implementing the agreements and have resulted in restrictions on the freedom of movement of citizens, overloaded traffic, and travel delays at the border between Kosovo and Serbia.

Kosovo and Serbia's obligations to implement IMB cannot be disconnected. One reason is that, in brokering bilateral deals between Kosovo and Serbia, the EU stood as a guarantor (Van Elsuwege, 2020). The EU acted as a facilitator of these agreements and of the dialogue between Kosovo and Serbia, which helped both countries to implement agreements according to EU law based on its agenda for the Western Balkans. However, for 10 years, the EU has been aware of Serbian deviations and political backlash in implementing these agreements, which have hindered the effective management of the border and the freedom of movement of people in both countries.

Obvious differences existed between Kosovo and Serbia regarding the protection of sovereignty. Serbia did not accept Kosovo as an equal interstate party in the dialogue, defining Kosovo as its state unit in its constitution. In this context, Serbia considered the border with Kosovo to be an administrative border. Kosovo sought to protect its sovereignty, according to its declaration of independence on February 17, 2008, and considered the agreements for IBM and freedom of movement to be interstate agreements and the border

with Serbia to be an interstate border. The ongoing tensions in the dialogue process between Kosovo and Serbia made the Republic of Serbia non-constructive, which presented continuous obstacles to the implementation of these agreements.

The EU IBM model is intended to manage the crossing of external borders efficiently (Wagner, 2021, p. 425). In terms of following the EU agenda regarding IBM and meeting EU criteria, it can be said that the Kosovo–Serbia agreements on IBM evolved under special conditions of supervision and support from the EU. However, this was not a guarantee that both countries were meeting the standards of EU rules for IBM. In 2018, Kosovo took important steps to implement EU law in relation to IBM. However, Serbia has not done this and has not taken any action toward the harmonization of internal legislation in this aspect.

The review of the latest agreements in 2021 and 2022 was a step toward Kosovo's efforts to show its state attributes and strengthen its constitutional sovereignty in relation to Serbia. However, the agreements of 2021 and 2022 (agreements for travel documents and license plates), which affected the freedom of movement between Kosovo and Serbia, are facing difficulties in their implementation. Finally, international factors played a role, where by the US and EU requested Kosovo to postpone the implementation of the agreement on vehicle license plates of 2022, which is related to the free movement on the Kosovo–Serbia border.

There seems to be no end to issues on IBM and freedom of movement between Kosovo and Serbia, and both countries are failing to find sustainable solutions. The obstacles that have arisen may stall progress because both countries are simultaneously pursuing integration into the EU and protecting their traditional sovereignty. Such an approach by Serbia, as evidenced by its actions described above, is a clear sign of its lack of political will to advance good relations with Kosovo and its unjust use of EU soft policy to postpone its agenda with Russia. We argue that

this approach may hinder credibility of the integration process for countries that aspire to become part of the EU and share values with neighboring countries. Of late, new agreements negotiated between Kosovo and Serbia regarding the circulation of cars at the border points with Kosovo license plates caused tensions among Kosovo Serbs, who were encouraged by Serbia to reject Kosovo institutions and increase pressure on Kosovo institutions for political demands. Furthermore, Serbia's implementation approach in relation to the EU moved different tactics to different degrees of policy argumentation, depending on its interest. Arguably, this proves that politically Serbia has been a destructive factor in implementing agreements on free movement and IBM between Kosovo and Serbia. The long-standing agreement on IBM is essential for both countries in their process of rapprochement with the EU; therefore, implementation of IBM by both countries will foster cooperation and good neighborly relations.

REFERENCES

- Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*. Advisory Opinion. *ICJ Reports*, 2010, 403.
- Announcement from the 8th Session of the Constitutional Court, held on March 26, 2015. http://www.ustavni.sud.rs/page/view/0-102128/saopstenje-sa-8-sednice-ustavnog-suda-odrzane-26-marta-2015-godine-kojom-je-predsedavala-vesnailic-prelic-predsednica-ustavnog%20suda?_qs=предмет%201Vo-224/2013 [in Serbian].
- Conclusions Agreed (Freedom of Movement) Agreement between Kosovo and Serbia*. July 2, 2011.
- Conclusions Agreed on IBM, between Kosovo and Serbia*. December 2, 2011.
- Conclusions reached from the negotiations between Kosovo and Serbia*. September 30, 2021.
- Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union*. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>
- Council Joint Action 2008/ 124/ CFSP of 4 February 2008 *on the EU Rule of Law Mission in Kosovo*, EULEX KOSOVO, 2008.

- Crawford, J. (2013). *State Responsibility*. Cambridge University Press.
- DASH: Agreement on documents a step towards the normalization of Kosovo-Serbia relations (2022, August 30). *Tema*. <https://www.gazetatema.net/rajoni/dash-marrevesja-per-dokumentet-nje-hapdrejt-normalization-to-relationship-i353361>
- Decision of the Government of the Republic of Kosovo, no. 01/76. November 21, 2018.
- Declaration of Independence of Kosovo*. February 17, 2008.
- Escobar: Postponement of the deadline for license plates, PERSONAL request of Secretary Blinken (2022, October 21). *Gzeta Nacionale*. <https://nacionale.com/live/kerkesa-personale-e-sekretarit-blinken-per-kurtinshytyni-afatin-per-number-plate>
- EU Progress Report 2014 for Kosovo. Brussels, 8.10.2014 SWD(2014).
- EU Progress Report 2016 for Kosovo. Brussels, 9.11.2016 SWD(2016).
- Freudlsperger, C., Maricut-Akbik, A., & Migliorati, M. (2022). Opening Pandora's Box? Joint Sovereignty and the Rise of EU Agencies with Operational Tasks. *Comparative Political Studies*, 55(12), 1983–2014. <https://doi.org/10.1177/001041402111066223>
- Glossary. *European Commission, Migration and Home Affairs*. https://home-affairs.ec.europa.eu/pages/glossary/european-integrated-border-management_en
- Kosova complains to the EU that Serbia is not implementing the Agreements (2016). *Insajderi*. <https://insajderi.com/kosova-ankohet-se-se-serbia-nuk-po-zbaton-marreveshjet/>
- Kosovo Law no. 04/L-072 *On state border control and surveillance*, published: 20.01.2012. *Official Gazette*, 2/2012, as amended by Law no. 04/L-214, published: 02.09.2013. *Official Gazette*: 33/2013, as amended by Law no. 06/L-013, published: 23.04.2018. *Official Gazette*: 4/2018. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2801>
- Kosovo-Serbia Dialogue, Challenges and the Way Forward* (2018, March). Kosovo Democratic Institute.
- Kosovo-Serbia Dialogue: Implementation of Freedom of Movement and Integrated Border Management for the benefit of people* (2022, March). Balkans Policy Research Group (BPRG).
- Law No. 04/L-199 *On Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia*.

- Mrasori, F. (2022). The Role of the Unilateral Harmonization to the EU Integration. *Lex Portus*, 8(2), 54–77. <https://doi.org/10.26886/2524-101X.8.2.2022.3>
- Prime Minister Thaçi: The Agreement on Integrated Border Management finally defines in practice the sovereignty and territorial integrity of the Republic of Kosovo, Pristina, December 12, 2012. Speech of former Prime Minister Thaçi, addressed to the deputies of the Assembly. <https://kryeministri.rks-gov.net/blog/kryeministri-thaci-arrevesja-per-menaximin-e-integratuar-te-kufirit-fefundimisht-ne-praktike-sovereignitet-dhe-territorial-integrity-te-republic-of-kosovo/>
- Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (*Schengen Borders Code*) (codification). <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0399&from=EN>
- Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1896&from=en>
- Report of the Diplomatic Mission of the Republic of Kosovo in Belgrade, sent to the Ministry of Foreign Affairs of the Republic of Kosovo on April 1, 2015.
- Serbia and Kosovo reach free movement agreement (2022, August 27). *The Guardian*. <https://www.theguardian.com/world/2022/aug/27/serbia-and-kosovo-reach-free-movement-agreement>
- Serbia is not implementing the Agreement on Integrated Border Management (2018, October 14). *Epoka e Re newspaper*. <https://www.epokaere.com/serbia-spo-e-zbaton-marreshjen-per-integrated-border-management/>
- Serbia-Kosovo relations: Confrontation or normalization? Briefing. *European Parliament*. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635512/EPRS_BRI\(2019\)635512_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635512/EPRS_BRI(2019)635512_EN.pdf)
- Serbia Law on Border Control*, published: 22 March 2018. *Official Gazette*: No 24/2018. <https://www.refworld.org/docid/6049f11a4.html>
- Serbs in the north: We don't want another state (2022, November 6). *Radio Evropa e Lirë*. <https://www.evropalire.org/a/proteste-ne-veri-te-kosoves/32117774.html>
- Shehu, B. (2021, September 20). Kosova decides reciprocity for license plates with Serbia. <https://www.dw.com/sq/kosova-vendos-reciprocitet-p%C3%ABrtargat-me-serbin%C3%AB/a-59238177>
- Sweeney, S., & Winn, N. (2022). Understanding the ambition in the EU's Strategic Compass: a case for optimism at last? *Defence Studies*, 22(2), 192–210. <https://doi.org/10.1080/14702436.2022.2036608>

Technical Protocol for the implementation of the Agreed Conclusions of the IBM Dialogue 1 of December 2, 2011. February 23, 2012.

United Nations General Assembly, A/64/L.65/Rev.1 Distr.: Limited, 8 September 2010.

Van Elsuwege, P. (2020). The EU and its Neighbours. In R. Wessel, J. Larik (Eds.), *EU External Relations Law: Text, Cases and Materials*. (2nd. ed., pp. 437–459). Hart Publishing.

Wagner, J. (2021). The European Union's model of Integrated Border Management: preventing transnational threats, cross-border crime and irregular migration in the context of the EU's security policies and strategies, *Commonwealth & Comparative Politics*, 59(4), 424–448. <https://doi.org/10.1080/14662043.2021.1999650>

Ракай А., Вунікі Д., Мучай Ф. Інтегроване управління кордоном між Косово та Сербією: захист суверенітету та порядок денний ЄС. – Стаття.

У цьому дослідженні аналізуються конкретні проблеми між Косово та Сербією, інтегроване управління кордонами (ІУК) держав, вільне пересування громадян обох країн та результати політичних процесів з 2011 року. Незважаючи на те, що ІУК та вільне пересування громадян і товарів є фундаментальними цінностями ЄС, вони були проблемними у контексті Косова та Сербії з зазначеного року. Укладені угоди про інтегроване управління косовсько-сербським кордоном зіткнулися з проблемами реалізації та вимагали перегляду угод. Зазначені проблеми виникли через тривалий процес діалогу між Косово та Сербією та проблем, що стали наслідком зусиль обох сторін захистити свій суверенітет і слідувати порядку денному ЄС. ІУК та вільне пересування громадян між Косово та Сербією були проблематичними упродовж багатьох років і перешкоджали вільному пересуванню громадян обох країн. Враховуючи фундаментальні проблеми, які лежать в основі відносин між Косово та Сербією щодо ІУК, і враховуючи, що Косово та Сербія прагнуть інтегруватися в ЄС, сам ЄС є останньою надією на подолання цієї проблеми. Сподіваючись на просування вперед у напрямку інтеграції, у серпні 2022 р. Косово та Сербія домовилися забезпечити вільне пересування громадян на прикордонних пунктах. У цьому дослідженні описані останні події та аналізуються потенційні політичні наслідки цього рішення.

Ключові слова: інтегроване управління кордонами, свобода пересування, угоди між Косово та Сербією, суверенітет, Європейський Союз, Інтеграційний порядок денний.