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THE END OF THE BEGINNING: THE RATIONALIZATION OF AGENCIES IN KOSOVO

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End of last year marked the final deadline for the harmonization process of special laws that regulate the organization and functioning of independent agencies in Kosovo, aiming to clearly define their type and functioning, in parallel to the rationalization process, thus downsizing the actual large number of agencies. In figures, there are 79 agencies currently in Kosovo, out of which 32 are functioning under the Assembly of Kosovo, while the remaining 47 are under the state administration. The issue of the large number of existing agencies became relevant back in 2015 when a high-level meeting between the Special Group for the Public Administration Reform of Kosovo and the European Union resulted with a recommendation to undertake a comprehensive and qualitative analysis with regards to agencies. Supported by SIGMA/OECD, the analysis was concluded in 2016 resulting with a series of findings and recommendations.

Key findings identified included the following:

- The large number of agencies established throughout the years served to accommodate the needs of those closely related to politics and governments', rather than serving a certain purpose or need;
- By 'exploiting' Article 142 of the Constitution, the Assembly of Kosovo established numerous agencies that exercise executive powers which is against the principle of power division, as these competences should remain within the executive;
- Various executive agencies exercise policymaking tasks which is a competence of respective ministries and should remain their exclusivity given their nature;
- There was no typology classification in place in terms of what type and by whom should an agency be established;
- There was a lack of an overarching legal framework that regulates the performance assessment mechanisms for the independent agencies, and as a result, clear accountability lines were lacking and no measures were undertaken against those low performing agencies.

The rationalization processes, in particular the establishment of clear lines of accountability, is being discussed since 2017. This issue was at the core of the public administration reform process and a standard required by the European Union; therefore, it was acknowledged by all key EU documents, including the EC Country Report, ERA (I and II), the sectorial contract for budgetary support, etc.

Following this, in 2018, a strategic document under the name the Action Plan for the Rationalization of Agencies was drafted and approved, planning a four-round rationalization process starting in 2018 and concluding by end of 2021. The first round was foreseen to conclude during the first year with rationalization of 9 agencies that reported directly to the parliament, and due to their nature, some of them were to be transferred under the executive and others merged or transformed into a ministerial department. In the second and third round, 46 agencies under the executive were to undergo the rationalization process, out of which, 20 in 2019, and 26 in 2020. The fourth and final round included the remaining 12 agencies and special bodies that are currently under the Assembly of Kosovo, the state administration, and some others with undefined status, all concluding by end of 2021.

Parallel to the abovementioned Action Plan, a new horizontal law known as the [Law No. 06/L-113 on the Organization and Functioning of State Administration and Independent Agencies](#) (*hereinafter*: LOFSAIA) was enforced. This law established the legal framework for the establishment, organization, functioning, accountability and performance of state administration and independent agencies. In this regard, LOFSAIA provides a clear definition of key types of agencies by categorizing them into independent, regulatory and executive agencies. In addition, it also defines the establishment mechanism which is mandatory to be done by the law, as well as clear regulations for the internal organization, performance system, supervision and merging or dissolution process.

Where do we stand today?

Although three years have passed, little progress was made in terms of rationalization process with none of the 79 agencies dissolved, merged or transformed. During 2021, a draft-law for the first round of rationalization of agencies was approved by the Government, aiming to transfer 4 (out of 9) agencies from the Assembly of Kosovo to the state administration, in compliance with the principles and rules set with LOFSAIA. Another legal initiative undertaken during the same year is the drafting process of another draft law form the rationalization of 6 additional agencies (out of 20) that function under the executive. As for the remaining agencies, currently there is no concrete plan in place stipulating the timeframe of the rationalization process.

The rationalization process in neither a simple nor an easy process. Since the initial phase, the process was followed by resistance, institutional reluctance, and lack of political will to move forward with the process. The consequences of such approach and the status quo created will be multidimensional, starting with constitutional consequences (violation of power division principles as currently the Assembly exercises executive powers through its agencies), legal consequences as most agencies engage in drafting and leading policy processes that is a sole responsibility of respective ministries, and lack of accountability. On an important note, this continuous situation plays against any rationality of public spending given that these agencies are funded by the state while their existence and functioning never provides with enough grounds or proper rationale for this public expenditure.

Besides legal consequences, the failure to demonstrate progress has financial consequences as well. The slow progress assessed by the European Union as well specifies that the failure to ensure results costed our country a 2.2 Mil Euro support contract that was supposed to be transferred to Kosovo if the indicators were to be met.

What is the way forward?

The rationalization process goes beyond legal obligations and the work should intensify during the next period so that the process is accelerated and provides concrete results in reducing the number of agencies while providing clear accountability lines. The process remains under the Government's responsibility, however, without an active role of the Assembly of Kosovo the process is destined to fail.

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