

Policy Brief

Four Years, Four Prime Ministers from
ERA to ERA II: Where do we stand?!

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Introduction

The Stabilization and Association Agreement (SAA), Kosovo's first contractual agreement with the EU, marked its fifth anniversary this year. Back in March 2016, the government drafted a National Plan for implementation of the SAA (NPISAA), that was adopted by the Assembly after a revision by the parliamentary committee on EU Integration.¹ NPISAA constitutes an overarching policy document that encompassed short-term measures for 2016 and medium-term measures for 2017-2020. These were spread among the three blocks; political, economic, and European Standards, accompanied by a timeline and a responsible institution for their implementation.

Through these years, both the Government and the civil society monitored the implementation of the NPISAA, to ensure accountability and transparency within the highest political level of the administration, and to inform the general public. Monitoring reports, as explained in the next section, show that institutions have not managed to fully implement the foreseen measures in any of the one-year periods.

In parallel, and with the aim to maximize the economic and political benefits of the SAA, the European Commission (hereinafter, the Commission) launched a high-level dialogue on key priorities with Kosovo, resulting in the European Reform Agenda (ERA). It was drafted in close cooperation between the Commission, Kosovo authorities, civil society and the business sector.² Certainly, ERA does not include new reforms, but it rather serves as a document to prioritize several policies stemming from the SAA, regarding both legislation and implementing measures. The action plan for ERA implementation was adopted in November 2016, by the Mustafa Government.

ERA included three areas; good governance and rule of law, competitiveness and investment climate, and education and employment, with 22 measures spread across the three, all foreseen to be implemented by responsible institutions, at the end of 2017.³ This policy document was designed to be in line with Kosovo's Economic Reform Program, the key overarching policy document guiding economic policies. Yet, this document should be in conjunction with the government program that normally changes depending on the political parties that gain the power to form the government. This given, ERA should be also be in line with the national development strategy – the overarching policy document – with the aim to boost the level of implementation. The Mustafa government was pledged to fulfill these measures within a one-year period in accordance with the action plan; however, these priorities have not been implemented in 2020, at the time of writing this analysis.

On the other hand, following the government change in September 2017, a new ERA, the Haradinaj government adopted the so-called ERA II.⁴ Different from ERA, this document was adopted unilaterally without prior consultations with the Commission. As a result, the document left the public administration and civil society in the midst of ambiguity as to which document should serve as their key guiding framework. Furthermore, yet another new government came to power in 2020, and, although not all measures have been implemented from either ERA or the so-called ERA II, a new ERA II was recently introduced in October 2020.

1 National Plan for Implementation of the SAA. Ministry of European Integration. Available at <http://mei-ks.net/sq/programi-kombetar-per-zbatimin-e-msa-se>

2 Republic of Kosovo, the Government. "Kosovo- EU High Level Dialogue on Key Priorities – European Reform Agenda-". November 2016, Prishtina.

3 Ibid.

4 Republic of Kosovo, Government Decision 01/13. "Key Priorities of the European Agenda for 2018". November 2017, Prishtina. Available at http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_s%C3%AB_13-t%C3%AB_t%C3%AB_Qeveris%C3%AB_s%C3%AB_Republik%C3%ABs_s%C3%AB_Kosov%C3%ABs_2017.pdf

The implementation of ERA was planned for one year and it took four years to transition to ERA II, yet not all measures from ERA are implemented. In this four-year period, the Government

was led by four different prime ministers, and during 12 months, by a caretaker prime-minister and accompanied by two early parliamentary elections, as shown in the below figure 1.

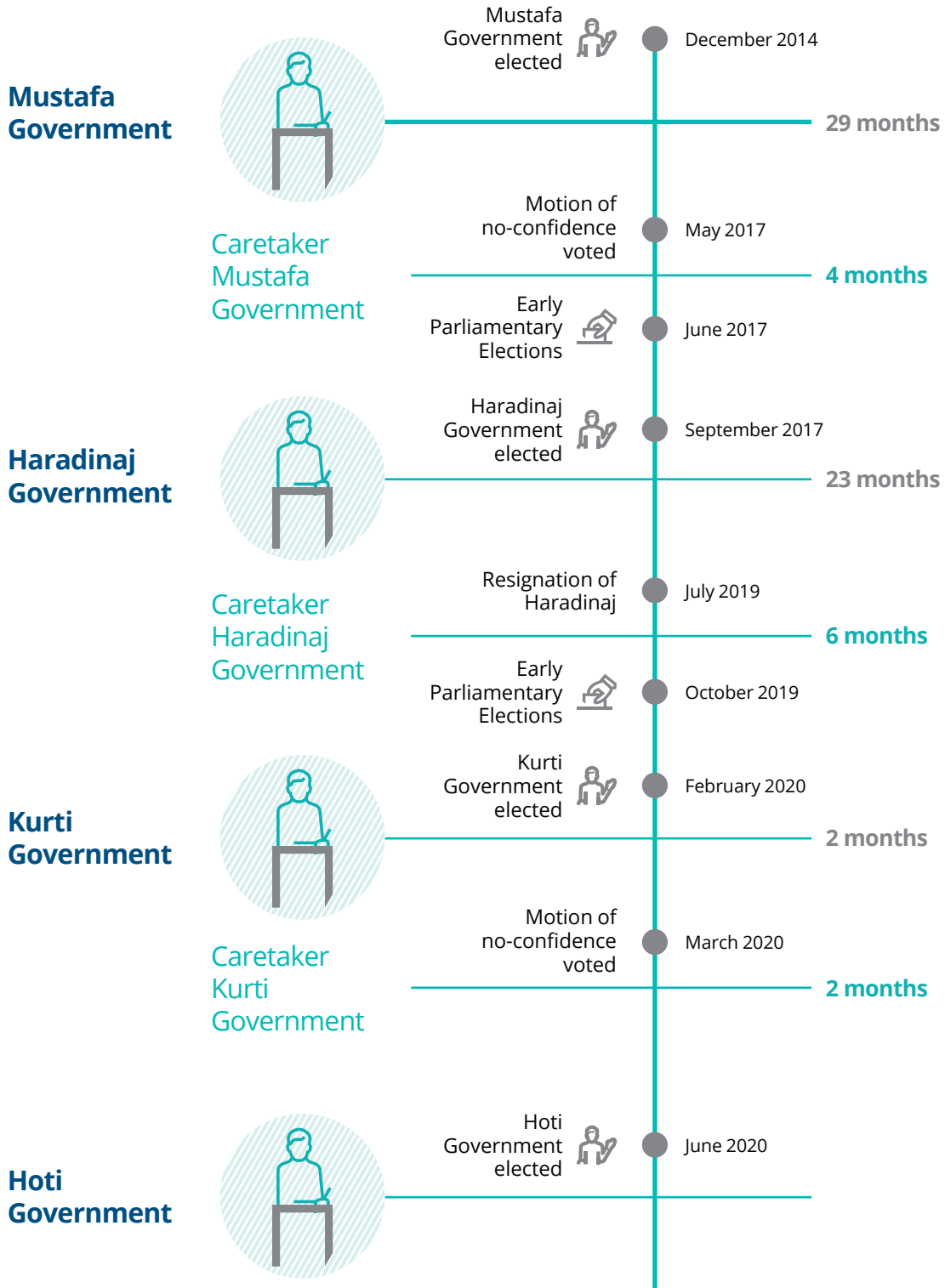


Figure 1: Government Changes in Kosovo (2016-2020)

This political instability jeopardizes the ability of the government to focus on reforms. Furthermore, other factors like (a lack of) political willingness, the cost of reforms, (a lack of) alignment with the national development agenda contribute to explain the current state of play towards implementing policy priorities adopted at the highest political level in the government.

Thus, this brief first follows the developments of ERA and its transition to ERA II, identifying intervening factors in their success. It then showcases the similarities and differences between both documents. Afterwards, it reviews the alignment of ERA II with the National Development Strategy, and concludes with a short reflection on the way forward.

The Pathway of European Reform Agenda to European Reform Agenda II

ERA was adopted in November 2016 by the Mustafa Government in cooperation with the Commission and it included three policy priority fields: (a) good governance and rule of law, (b) competitiveness and investment climate, (c) education and employment. 22 measures and 131 activities were spread across the three pillars. One year later, in November 2017, the newly elected Haradinaj Government unilaterally adopted the so-called ERA II. This policy document included three priority fields: (a) good governance and rule of law, (b) competitiveness and investment climate, (c) education and employment. The three policy pillar priorities of the so-called ERA II were identical with the ERA, though they included new measures per pillar. Once the so-called ERA II action plan was adopted, a sentiment of ambiguity was spread among the administration as to which policy document (ERA or the so-called ERA II) should be followed upon. This confusion arose due to the Government one-sided manner of developing the so-called ERA II.

The implementation of ERA was erratic since the very beginning due to the factors already mentioned, resulting in substantial delays. The Ministry of European Integration (currently in the process of transition to an office within the Prime Minister's Of-

fice), the designated coordinator of these reforms, drafted a monitoring report on December 2018, covering a two-year period (2016-2018).⁵ According to it, only 10 out of 22 priorities and 92 measures were fully implemented (45.45% and 68.15% respectively), whereas 12 priorities and 43 measures (54.55 % and 31.85 % respectively) were in progress.⁶ According to the same source, good governance and rule of law performed best, with five (5) out of nine (9) priorities fully completed, followed by education and employment with three (3) out of six (6) fully completed, and competitiveness and investment climate with two (2) out of seven (7) priorities fully completed. However, due to the Constitutional Court decision to suspend the Law on Salaries in Public Sector, a measure under the first pillar, the number of priorities in ERA lowered down to 21, artificially boosting the total percentage of priorities fully completed to 47.61 %.⁷ The decision of the Constitutional Court brings to light the sloppy and ill thought process of lawmaking, thus declares that the law is inapplicable. Currently, the entire public administration legal construction is missing half of its foundation. This decision also points out to the weak process of law-making in place

All in all, the total number of measures fully implemented did not reach even half of the planned. In parallel to the government's assessment, civil society monitoring also reported that 10 out of 22 measures were fully completed, 15 were in the process, and four were not completed.⁸ It is important to note that the monitoring report of the government and civil society shows the same percentage of measures being implemented and in the process of adoption, indicating the credibility of the government-monitoring dimension.

5 Final Report on the implementation of the European Reform Agenda (2016-2018). Ministry of European Integration, Republic of Kosovo. December 2018. Available at <https://www.mei-ks.net/sq/agjenda-pr-reforma-evorpiane-era>

6 Ibid.

7 See Constitutional Review of Law No.06/L-111 on Salaries in Public Sector. Case No. KO219/19. Available at <https://gjk-ks.org/en/decision/vleresim-i-kushtetutshmerise-se-ligjit-nr-06-l-111-per-pagat-ne-sektorin-publik/>

8 Civil Society ERA Monitoring Report. Available at <http://www.eramonitoring.org/>

In the meantime, the political landscape was altered again through an early parliamentary election. Haradinaj resigned in July 2019 after being called for questioning by the Specialist Chambers.⁹ Yet, Haradinaj served as a caretaker prime minister for six-months, until February 2020 when a new government led by Vetëvendosje came into power. Unfortunately, there is no law on government that regulates the powers of a caretaker government; however, a caretaker government automatically loses the power to send legislation for approval in the parliament. Since legislative making is the most frequent form of policymaking in Kosovo, most of the reforms were put on hold during this six-month period. **Thus, given these political changes reform sustainability has been limited.**

On 25th March, the members of the parliament, amidst COVID 19 pandemic, overthrew the Kurti's government with a no confidence vote, making it the shortest government in power. Kosovo had a caretaker government in place for two months, until 3th June when a new government led by LDK, the former coalition partner of Vetëvendosje in Kurti's government, was elected. **This harsh political environment has undoubtedly caused a loss in reform commitment.**

Moreover, four months after the establishment of the new government, on October 2020, the Hoti Government adopted ERA II in cooperation with the Commission.¹⁰ This ERA II includes three policy priority fields a) good governance and rule of law, b) competitiveness, investment climate, and sustainable development, and c) education, employment, and health. An action plan is yet to be finalized, though we have a Draft Action Plan on ERA II planned to enter into force on January 2021.¹¹

9 See the Resign Declaration by Prime-minister Haradinaj. 19 July 2019. Available at <https://kryeministri-ks.net/deklara-ta-e-doreheqjes-se-kryeministrit-haradinaj/>

10 See Government of Kosovo Decision. Nr. 02/36. 19 October 2020. Available at <https://kryeministri-ks.net/wp-content/uploads/2020/10/Vendimet-e-mbledhjes-s%C3%AB-36-t%C3%AB-t%C3%AB-Qeveris%C3%AB.pdf>

11 Throughout the entire document we refer to current draft plan as ERA II. Thus, the comparison and the analysis are based on the current draft of ERA II shared by the government with CSO community on 28 October, 2020.

European Reform Agenda policy priorities as compared to European Reform Agenda II

Different from its predecessor, ERA II includes two additional and essential pillars: sustainable development and health. As world leaders have agreed the future should be green and sustainable, our government's policy alignment with the 2030 Agenda is a step in the right direction and should be applauded. The Assembly also unanimously adopted the SDG Resolution, joining the global community in building a fair and a sustainable future for our children.¹² In parallel, health should top the government's priorities in the coming years, in particular now with the COVID pandemic and its recovery plan. Thus, including health policy in the list of ERA II priorities is an indispensable decision.

When comparing ERA with ERA II in terms of the policy priorities outlined, one can observe the recurrence of several priorities that were not implemented during the previous years. The analysis reveals that the measures on establishing a robust track record on the fight against corruption and organized crime, further improvement of the process of appointments and dismissals of senior public officials while ensuring transparent, merit-based and nonpolitical selection process, and the continuation of the process of rationalization of independent institutions and agencies after the independent review, are among the measures that need continuous focus and political willingness for successful implementation under the good governance and rule of law pillar (Pillar I). The high political costs that these reforms carry for the government, is an explanatory factor of their poor or lack of implementation.

The second pillar on competitiveness, investment and sustainable development (Pillar II) also includes measures that were part of ERA, like the promotion of foreign direct investments and the systematic implementation of the action plan against informal economy. Both measures are closely related to rule

12 See Resolution on the adoption of Sustainable Development Goals. Parliament, VI Legislature. 25/01/2018. Prishtine. Republic of Kosovo.

of law – a sector that encounters a lack of political will to improve. Any foreign company that wishes to invest in Kosovo needs an efficient justice system and laws that guarantee the enforcement of contracts, amongst others.

Moreover, in regard to employment, education and health (Pillar III), ERA foresaw the drafting of an action plan to tackle youth unemployment, while in ERA II the objective is to decrease youth unemployment while implementing the youth employment action plan. The improvement of the quality of education continues to be an objective in ERA II, as well.

Furthermore, a cross-cutting aspect in all three pillars is the mitigation of COVID-19's impact on all policy priorities. For instance, Pillar I foresees ensuring mitigating measures for the impact of the COVID-19 pandemic on the holding of court hearings in criminal trials for cases transferred by EULEX. In Pillar II, the implementation of post-COVID-19 measures to support the private sector and employees affected by this crisis is foreseen, as well as ensuring an increased coverage of need-based social benefits for the groups most affected. Pillar III points to the need to strengthen Kosovo's ability to detect, assess, and respond to public health events taking into consideration the assessment of Kosovo's capacities in the area of communicable disease surveillance, prevention and control.

European Reform Agenda II Alignment with the National Development Strategy

The National Development Strategy (NDS) (2016-2021), has a key focus on growth and serves as a tool to advance the Kosovo's European Integration agenda (National Development Strategy, 2016).¹³ In view of this, its measures should be aligned with the European Reform Agenda, and the Economic Reform Program, which serves as a key document

in the economic dialogue with the EU. Furthermore, at their basis, all three documents should reflect the content of the Stabilization and Association Agreement. The harmonization of these key policy documents, which are mutually reinforcing, would eliminate overlapping measures and objectives and enhance coordination.

It is thus important to analyze whether the ERA II priorities are harmonized with NDS. The latter includes four pillars: a) Human Capital, b) Good Governance and Rule of Law, c) Competitive Industries, d) Infrastructure. It is worth noting that this overarching development strategy leaves completely out the health sector. Conversely, ERA II embraces health as a pillar priority and incorporates five (5) measures, including the adoption of a new health strategy; a revision of the legal basis in the area of health insurance; the adoption of a law on infection diseases; the development and adoption of the action plan to address recommendations of the ECDC assessment on capacity development; health governance, surveillance, preparedness and response in the area of communicable diseases; assessment of health situation of the population, performance of healthcare institutions and patient satisfaction. On the other hand, the Minister of Health has adopted a sectorial strategy on health covering a period of 2017 – 2021. As a consequence, there is a sectorial strategy on health, that is part of the ERA II list of priorities but is not reflected on the government's national development strategy. Thus, in the field of health policy there is lack of alignment between ERA II and NDS.

Another related sector, education, is also part of the third pillar in ERA II, while in NDS it is addressed as part of the first pillar on human capital. ERA II establishes 19 measures related to needs assessment, external evaluation of pre-university performance, enhancing human capacities, revision of legislation and similar. Similarly, in NDS the quality of pre-university education, the gap between education system and labor market needs, and strengthening the accreditation process and inspection are addressed.

Moreover, ERA II also addresses employment in its third pillar, focusing on the need to increase the number and to improve services of labor inspectors,

13 See PLAN for sustainable development. National Development Strategy 2016 -2021. Republic of Kosovo. Office of the Prime Minister, 2016.

to strengthen human capacities of the labor inspectorate through training in the area of occupational safety in construction and energy sectors and for investigation of accidents at work, and the need for more effective protection of workers health in their workplaces. Similar measures and objectives are addressed in the second part of the Human Capital pillar in NDS. Both ERA II and NDS include different measures related to education and employment, yet in general terms they address key challenges of the system and foresee similar implementation measures.

Furthermore, good governance and rule of law is included as a distinct pillar in both ERA II and NDS. Good governance and rule of law are the priority encountered in almost all government policy documents and priorities. Yet, there is lack of political willingness to translate these planned measures into tangible results. One factor explaining the state of play in good governance and rule of law could be the high political cost that these reforms carry. Moreover, this sector has also continuously covered most of the public debate space. NDS measures are related to the strengthening of the property rights system in order to create legal certainty among investors; enhance the efficiency of judiciary – in particular to lower the time for case disposition; enhancement of service delivery for business and the public; improve the public procurement system to decrease corruption; improve the efficiency and coordination of state inspections; regular review of regulatory policies to ensure the business are not sanctioned because of a law/regulation forbids legitimate work; and the shift from border taxation to taxation inside Kosovo by merging the Tax Administration and Customs to more effective management and decrease of operation costs and level of informality.

ERA II includes measures related to enforcement of anti-corruption legislation, implementation of judiciary and internal affairs; improving the immigration policy framework, fight against terrorism, and the implementation of the strategy on rule of law. ERA II measures are more specific and related to anti-corruption policy, while NDS goes further by including measures related to taxation and regulatory policies for the purpose of creating fair competition in the market.

On this note, competitiveness, investment and sustainable development is the second pillar of ERA II, which correlates closely to NDS measures on investment and one of the objectives of the strategy toward establishing fair competition. However, sustainable development is completely ignored and is not even mentioned in the section where NDS alignment and correlation with other policy documents like the SAA and ERP are discussed. It is important to note that sustainable development alignment with other documents remains a new development.

Discussion and the Way Forward

The government of Kosovo, in consultation with the Commission, developed and adopted the ERA action plan in 2016. ERA included 22 measures spread among three pillars. Only half of the ERA measures were successfully implemented, though this document was adopted at the highest political level where robust political commitment to reform was proclaimed. In the meantime, two early parliamentary elections have taken place (2017 and 2019), followed with a change in the prime minister's office. It is also highly important to note that during this period the government was led by two caretaker prime ministers for ten months, in addition to two months during 2020, totaling to 1 year out of 4 years with a caretaker government in place. Throughout this time, the reforms either progressed in a slow pace or have been put on hold, leading to delays in implementation and the overall advancement of the EU agenda.

The number of measures not implemented in ERA portrays a worrisome picture of the state of play and it indicates that ERA has lost relevance once undertaken by the chaotic domestic political context.

Four year later, in 2020, Kosovo was led by prime minister Kurti for 50 days, and by the same as a caretaker for another 50 days. Since June 3rd Kosovo is led by prime minister Hoti from LDK. His government in consultation with the Commission adopted ERA II priorities, in October. A draft action plan for the implementation of these priorities is developed and is based on 133 activities. As the analysis reveals, several measures in ERA II were also part of ERA. The repeated reforms in the good governance and rule of law pillar are bound to high political costs. ERA measures like the provision of a track record on the fight against corruption and organized crime, depolitization of senior public officials while ensuring transparent, merit-based and nonpolitical selection process, and rationalization of independent agencies are also ERA II measures; however, the political cost to successfully implement these reforms remains high. Given this, the reluctance to implement them is also expected to be high, like in previous years. This reluctance combined with the

political instability caused by frequent government changes provides us with a – low scale implementation scenario-.

Therefore, there is a need for continuous monitoring and bottom-up pressure (civil society including media, particularly investigative journalism) combined with top-down pressure (from the EU), the so-called “sandwich pressure” towards the government. In the meantime, to increase the level of implementation and to eliminate overlapping objectives, the ERA II measures should be aligned with those of the NDS.

Most importantly, as shown throughout the analysis, political stability is the underpinning condition towards reform sustainability; thus, party leaders should show political maturity and aim to build consensus while prioritizing the European integration agenda in practice. Focus should be put on health sector and economic recovery from the COVID-19 pandemic. As an end note, lessons should be learned from the lack of successful implementation of ERA measures to avoid repeating previous mistakes.



Democracy Plus (D+) is an independent, non-profit and nonpartisan organization, officially registered in March of 2016. D+ strives the development of a democratic society through increasing civic participation in political process, generating greater public accountability and influencing decision-making. We integrate information technology in of all our efforts as we make an effort to utilize the power of Internet, which plays an important role for democratizing a society.

D+ aims to contribute in establishing good governance practices in public institutions at the central and local level, strengthening the rule of law, advancing political parties and the process of free and fair elections.