



**Republika e Kosovës
Republika Kosova – Republic of Kosovo
Qeveria - Vlada - Government**

***Ministria e Industrisë, Ndërmarrësisë dhe Tregtisë-
Ministarstvo Industrije, Preduzetništva i Trgovine - Ministry of Industry, Entrepreneurship
and Trade***

ANNUAL REPORT 2023

**Implementation of the Program for the Elimination
of Obstacles to Trade According to Articles 34 - 36 TFEU (2021 – 2025)**

LIST OF ABBREVIATIONS

KSA - Kosovo Standardization Agency
KMA – Kosovo Metrology Agency
EU – European Union
CEFTA – Central European Free Trade Agreement
CEN – European Committee for Standardization
CENELEC – European Committee for Electrotechnical Standardization
DI - QID – Department of Industry – Quality Infrastructure Division
ETSI – European Telecommunications Standards Institute
ECJ – European Court of Justice
EC – European Commission
MRC – Mutual recognition clause
FMG – Free Movement of Goods
MAFRD – Ministry of Agriculture, Forestry and Rural Development
ME – Ministry of Economy
MIET – Ministry of Industry, Entrepreneurship and Trade
MESPI – Ministry of Environment, Spatial Planning and Infrastructure
MIAPA – Ministry of Internal Affairs and Public Administration
SAA – Stabilization and Association Agreement
MH - Ministry of Health
NPISAA– National Program for the Implementation of the Stabilization and Association Agreement
MS – Member States
TBT – Technical Barriers to Trade
TFEU – Treaty on the Functioning of the European Union

I. EXECUTIVE SUMMARY

The Ministry of Industry, Entrepreneurship and Trade (MIET) has submitted to the Government of the Republic of Kosovo (GRK) the Program for the Elimination of Obstacles to Trade (2021-2025) according to Articles 34-36 of the Treaty on the Functioning of the European Union (TFEU). The Program for the Elimination of Obstacles to Trade was approved on June 22, 2021 by the Government of the Republic of Kosovo through Decision No. 22/16.

The Program for the Elimination of Obstacles to Trade according to articles 34 - 36 TFEU has as its legal basis Article 80 of the Stabilization and Association Agreement (SAA) entitled "Standardization, metrology, accreditation and assessment of conformity" and the request for the Republic of Kosovo to undertake the measures necessary in order to gradually achieve compliance with EU horizontal and sectoral legislation for product safety as well as to bring the quality infrastructure, such as standardization, metrology, accreditation and conformity assessment procedures in line with European standards".

In coordination with the Government of the Republic of Kosovo, MIET continues its work as an institution responsible for the execution of all coordination obligations in the field of free movement of goods and for the implementation of legislation in the non-harmonized field (field which is not covered by the harmonized rules of the EU), coordinating the activities with other ministries (ME, MESPI, MAFRD, MIAPA, MH) and the respective agencies.

The regulatory authorities according to their field of activity have continued to work on the implementation of the "Program for the Elimination of Obstacles to Trade" for the second year, respecting the deadlines for reviewing anti-barrier legal acts according to articles 34-36 of the TFEU.

Based on the recommendations of the Annual Report for 2022, the request for capacity building and expansion of the inter-ministerial working group (*on the main issues/ product legislation under Chapter I*) established by Decision No. 22/16, dated 22.06.2021 by Government of the Republic of Kosovo, has been addressed. MIET, after receiving proposals from line ministries and other agencies, has sent to the Government the draft for the amendment and supplementation of Decision No. 22/16, dated 22.06.2021. The decision on the amending and supplementing was approved Dt. 09.11.2022, No. 06/106, where now part of the working group are representatives of all institutions that represent the legislation that is part of the Program for the Elimination of Obstacles to Trade and the coordination of interinstitutional agreement on the free movement of goods.

According to the planned and realized activities so far, the review of the following acts has been carried out and will be carried out:

- During the year 2022, 10 legal acts were reviewed,
- During the year 2023, 32 legal acts planned for the year 2022 were reviewed,
- By the end of 2024 and 2025, it is planned to review 81 legal acts.

After reviewing 32 legal acts, during the year 2023, it was found that some acts have provisions that constitute unjustified barriers to trade and that these legal acts should be amended and supplemented or repealed. From Annex 1 of the Program, 27 acts have been reviewed, of which thirteen (13) acts reviewed do not contain barriers to trade, and from Annex 2, five (5) acts of the Program have been reviewed, of which three (3) acts do not contain barriers to trade.

During the work and discussion with the regulatory authorities on the existing legal situation and their plans for the adoption of amendments to the applicable primary legislation, it was established that a number of laws will be amended/replaced with new laws and that all by-laws will be redrafted. As a result, we agreed that the detailed review of the legislation adopted under these laws will be done after the approval of the new/amended legal acts, which is expected to be done mainly during the years 2024 and 2025.

During the year 2023, priority has been given mainly to the secondary legislation which derives from the primary laws which are part of Annexes 1 and 2 of the Program for the Elimination of Obstacles to Trade.

Based on the recommendations of the Annual Report for 2022, the competent ministries and other regulatory authorities, coordinated by MIET, will report again to the Government of the Republic of Kosovo by the end of November 2023 on the findings of the legal acts reviewed with the deadline determined for the further detailed review of the legal acts covered by this Program as well as the proposed corrective measures for the elimination of unjustified barriers to trade.

The annual report for 2023 merges the legal acts contained in Annexes 1 and 2 of the Program into an integral Annex of the report which should be organized by product areas (*e.g. chemicals and vehicles*) and not by technical or non-technical nature of legal acts, which will be constantly updated reflecting the development of their status.

Competent ministries and other regulatory authorities, during the preparation of new or amended legal acts related to the trade of products, will take into account the comments and recommendations given in the framework of the technical assistance for the detailed review of the legislation that may cause unjustified barriers to trade.

II. ADOPTION OF THE PROGRAM BY THE GOVERNMENT OF THE REPUBLIC OF KOSOVO IN 2021

The implementation of the Program for the Elimination of Obstacles to Trade requires coordination between the regulatory authorities for the review of regulations for non-food (industrial) products as well as food products, interoperability and an intersectoral cooperation between the regulatory authorities that are the subject of the Program, for taking measures for the elimination of unjustified barriers to trade identified during the review process and also for the preparation of the annual report. Also, the continuous implementation of the Program requires and will require in the following years a well-coordinated work between the regulatory and implementing authorities.

MIET is responsible for leading and performing all tasks related to coordination in the field of free movement of goods and for the implementation of legislation in the non-harmonized field (field which is not covered by harmonized EU rules). In addition to MIET, other ministries and respective agencies have a direct regulatory role for the Government of the Republic of Kosovo according to their areas of responsibility:

- Ministry of Economy (ME),
- Ministry of Health (MH),
- Ministry of Environment, Spatial Planning and Infrastructure (MESPI);
- Ministry of Internal Affairs and Public Administration (MIAPA),
- Ministry of Agriculture, Forestry and Rural Development (MAFDR),
- Regulatory Agency for Electronic and Postal Communications - RAEPC
- Independent Commission for Mines and Minerals - ICMM
- Kosovo Agency for Medical Devices and Products - KAMDP (MH)
- Food and Veterinary Agency - FVA (MAFRD)
- Emergency Management Agency- EMA (MIAPA)
- Kosovo Metrology Agency - KMA (MIET).

MIET, through the interministerial working group for the coordination of the work of all competent ministries in relation to technical legislation, is responsible for the implementation of the tasks arising from the free movement of goods based on international agreements signed by the Republic of Kosovo, established by Decision No. 22/16, Dt. 22.06.2021 and the Decision on the amendment and supplement was approved Dt. 09.11.2022, No. 06/106 of the Government of the Republic of Kosovo, to continue the work in the implementation of the tasks according to the aforementioned Decision referring to point:

3.2 Rules regarding the adoption and implementation of technical regulations in areas that are not regulated by EU harmonization rules; AND

- points 4 and 4.1 of the Decision as follows:

4. To carry out the tasks under point 3.2 MIET coordinates the work with the competent regulatory authorities to implement the "Program for the Elimination of Obstacles to Trade 2021-2025", through:

4.1. Continuous revision of non-harmonized technical and non-technical legislation, which may contain unjustified barriers to trade, and elimination of such barriers through appropriate corrective measures.

In addition to the line ministries, which are responsible for the drafting and implementation of legislation for different groups of products, it is also worth mentioning the Central Inspectorate for Market Surveillance, as it is the most important authority for the realization of a role that requires the supervision of products in the market which are also within the framework of non-harmonized rules and applicable legal principles. ICompetent inspectorates of other ministries,

such as the Ministry of Environment, Spatial Planning and Infrastructure (MESPI), Ministry of Economy (ME) and Ministry of Health (MH) as well as Kosovo Customs will contribute to the required inputs mainly through the Coordination Body for Market Surveillance (CBMS). Also, the Kosovar Standardization Agency has an important role in this process, which continues to support ministries and agencies with the adoption of harmonized standards, which are an essential part of the implementation of the legislation for the free movement of goods.

The program consists of five main activities:

1. 1. Revision of unharmonized technical legislation, which may contain "measures of equivalent effect" and elimination of unjustified barriers with a corresponding corrective measure.
2. Revision of non-technical national legislation, which through sales agreements and restrictions on use may create unjustified obstacles to trade, and removal of unjustified obstacles with an appropriate remedial measure.

Since articles 34-36 are applied to the non-harmonized field of products, part of the detailed review is all national legislation that is related to the terms of trading products in order to eliminate even the barriers that come as a result of an incorrect transposition of European legislation into national legislation. Based on the recommendation of the 2023 Annual Report, point 3, the legal acts contained in Annexes 1 and 2 of the 2022 report have been merged into an integral Annex of the 2023 report, which should be organized by **product areas** and not by technical or non-technical nature of legal acts.

3. The further activities of MIET – DI/QID, KSA and relevant line ministries to fulfill the obligations regulated by the provisions of Directive (EU) 2015/1535 and Regulation (EU) 1025/2012 which have been transposed into national legislation, respectively in "*Regulation (GRK) No. 28/2018 on the notification method on technical regulations, conformity assessment procedures and standards*".
4. Creation of product contact points as an information center for interested parties under the provisions of Regulation (EU) 2019/515 on Mutual Recognition of Goods Lawfully Marketed in another Member State.
5. Preparations of market surveillance authorities for the implementation of market surveillance according to the principles and provisions of Regulation (EU) 2019/515 on Mutual Recognition of Goods Lawfully Marketed in another Member State.

With Decision No. 20/89, Dt. July 20, 2022, the Government of the Republic of Kosovo approved the Annual Report 2022 - Implementation of the Program for the Elimination of Obstacles to Trade according to articles 34 - 36 TFEU (2021 - 2025)", with the main points as follows:

1. Competent ministries and other regulatory authorities, coordinated by MIET, will report again to the Government of the Republic of Kosovo by the end of November 2023 on the findings of the legal acts reviewed and on the time frame determined for the further detailed review of legal acts covered by this Program as well as the corrective measures proposed for the removal of unjustified barriers to trade.

2. The 2023 Annual Report will merge the legal acts contained in Annexes 1 and 2 of this report into an integral Annex of the report which should be organized by product areas (e.g. chemicals and vehicles) and not by technical or non-technical nature of legal acts.
3. The competent ministries and other regulatory authorities, during the preparation of new or amended legal acts related to the trade of products, will take into account the comments and recommendations given in the framework of the technical assistance for the detailed review of the legislation that may cause unjustified barriers to trade.
4. Capacity building and expansion of the interministerial working group (on the main issues/ product legislation in Chapter 1) established by Decision No. 22/16, Dated 22.06.2021 of the Government of the Republic of Kosovo.

III. PROGRAM IMPLEMENTATION IN THE SECOND YEAR

For the reporting period from 2022 when the 2022 Annual Report - Implementation of the Program for the Elimination of Obstacles to Trade according to articles 34 - 36 TFEU (2021 - 2025)" was approved, the following activities were carried out:

1. Withdrawal of unharmonized technical legislation by the Government of the Republic of Kosovo (Annexes 1)

The relevant ministries and regulatory authorities during 2023 have undertaken the following actions:

- Regulation (MTI) No. 01/2014 on Basic Requirements and Conformity Assessment of Household Electrical Appliances for Freezing, Refrigerators and Their Combinations, Related to Energy Efficiency Requirements, has been repealed Ministers of MIET decision of date 29.12.2023, protocol number 7730/01.

The Ministry of Economy will prepare the legal basis for drafting by-laws that regulate this field.

- Regulation (MTI) No. 01/2013 on Technical Requirements for Wood Panels has been repealed by Minister's of MIET decision of the date 29.12.2023, protocol number 7729/01.
- Administrative Instruction (MESP) No. 02/2019 on Export, Import and Transit of Waste, will be repealed with the entry into force of Draft-Administrative Instruction MESPI No.XX on the Determination of Conditions, Criteria and Procedures for Issuing Permits for Import, Export and Transit of Waste , which was drafted in accordance with EU Regulation 1013/2006 and is expected to be approved by the end of 2023.
- Administrative Instruction (MI) No. 02/2018 on Determining the Conditions and Procedures for Homologation of Road Vehicles - The provisions which constitute a violation of articles 34-36 TFEU, with Law 08/L-004 on Amendment and Supplement of Law No. 05/L-132 on Vehicles, have been repealed.

- Administrative Instruction (MIA) No. 08/2019 on Defining Technical Protective Equipment and Firefighting and Rescue Means, will be reviewed and recommendations will be addressed after the approval of the new Law on Fire Protection and the Law on Firefighting and Rescue which have been drafted and are expected to be processed for approval.
- Regulation (GRK) No. 28/2013 on Food Additives - Law No. 08/L-120 on FOOD entered into force on August 12, 2022. Regulation (EC) 1333/2008 on Food Additives will be transposed during 2024 by MAFRD.

2. Revision of Kosovo's non-technical legislation which may contain unjustified barriers to trade (Annex 2)

The relevant ministries and regulatory authorities have taken the following actions during 2023:

- Law No. 04/L-156 on Tobacco Control, Law No. 04/L-041 on Tobacco Production, Collection, Processing and Trade, and Administrative Instruction (MIET) No. 02/2021 on the Determination of Conditions and Criteria for Entities Dealing with the Trade of Tobacco and its Products, are being reviewed, the new Law on tobacco is being drafted and transposes the EU directive 2014/40/EU and is expected to be finalized by the end of 2023.
- Administrative Instruction (MTI) No. 09/2020 on the Control and Quality of Liquid Petroleum Fuels has been partially repealed and UA 01/2017 on the Quality of Liquid Petroleum Fuels was returned to implementation with Decision Prot. No. 3580 dated 07.05.2021. The part which regulates "Marking of liquid petroleum fuels and their monitoring" is still in force.

3. Review of National Legal Acts against Articles 34-36 of the TFEU which may contain unjustified barriers to trade, from Annexes 1 and 2 of the Program

According to the relevant recommendations from the 2022 Annual Report, point 3, in this annual report the two Annexes have been merged into a single integrated one.

3.1. Review of legislation from Annex 1 which may contain unjustified barriers to trade

MIET in cooperation with line ministries and respective agencies, with the assistance of experts engaged by the "LUX-Dev" Project during 2023, has carried out a detailed review against articles 34-36 of the TFEU, of the following legal acts:

- Regulation (MTI) No. 01/2017 on electromagnetic compatibility;

- Technical regulation (MTI) No. 06/2018 on electrical equipment designed for use within certain voltage limits;
- Regulation (MTI) No. 03/2017 on Elevator Safety;
- Regulation (MTI) No. 05/2018 on the Safety of Elevators in Use;
- Administrative Instruction (MTI) No. 08/2022 for determining the conditions for placing ready-mixed concrete on the market;
- Administrative Instruction (MTI) No. 08/2020 for setting the conditions for placing aggregates and fillers for concrete on the market;
- Regulation (MTI) No. 04/2012 on crystal glass products;
- Regulation (MTI) No. 03/2016 on the labeling of footwear;
- Regulation (MTI) No. 02/2020 on national measurement standards and reference materials;
- Regulation (MTI) No. 06/2016 on measuring instruments;
- Administrative Instruction (MI) No. 10/2023 on the technical control of vehicles;
- Regulation No. 40 on the use of radio frequency bands for which individual authorization is not required and the defined technical conditions for the use of radio equipment in these bands (Ref. Prot. No. 046/B/18);
- Regulation (MED) No. 05/2017 on the construction, installation and supervision of electronic communications infrastructure (Ref. Prot. No. 05/2017);
- Technical Regulation No. 31 on Radio Equipment (Ref. Prot. No. 032/B/17);
- Regulation on the licensing of aircraft stations (Ref. Prot. No. 007/B/12);
- Regulation (MEA) No. 03/2020 on the safety of pressure equipment;
- Regulation (MED) No. 02/2019 on the control examination and assessment of technical safety pressure equipment in use;
- Regulation No. 02/2012 on the administration of mining waste;
- Regulation No. 06/2011 on mining safety;
- Administrative Instruction (MIA) No. 23/2012 on the technical norms for supply of motor vehicles with fuel derivatives, their storage and pumping in retail sale points;
- Regulation (GRK) No. 24/2012 on technical norms for the protection of high buildings from fire;
- Administrative Instruction (MIA) No. 08/2018 on technical norms for the protection of warehouses from fire and explosions;
- Administrative Instruction (MIA) No. 01/2020 on technical standards for fire protection of electrical infrastructure and equipment;
- Administrative Instruction (MAFRD) – No. 06/2017 on the special conditions for evidencing, control and marking of flour, which is placed in free circulation in the market of the Republic of Kosovo;
- Administrative Instruction (MAFRD) No. 07/2016 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists.
- Regulation (MEPTINIS) No. 02/2020 on safety of machinery
- Administrative Instruction No. 09/2012 on labeling of energy related equipment

The detailed analysis of all legal acts is presented in a separate document, which was discussed and agreed with all line ministries and respective agencies.

Documents with findings from the review process were sent to line ministries and other regulatory authorities to decide on the necessary remedial measures after potential unjustified barriers to trade were identified.

Below is a summary of the findings from the detailed review of these acts:

- **Regulation (MTI) No. 01/2017 on electromagnetic compatibility**

The requirements related to the obligation to use the official languages of the Republic of Kosovo for the contact details of the manufacturer and importer, as well as the presumption of conformity to harmonized national standards, constitute unjustified barriers as a result of errors in the transposition of the EU acquis.

It is proposed to revise only the relevant provisions and harmonize them with Law No. 06/L-041 on Technical Requirements for Products and Conformity Assessment.

- **Technical regulation (MTI) No. 06/2018 on electrical equipment designed for use within certain voltage limits;**

Requirements related to the obligation to use the national language and limitation of the presumption of conformity to harmonized national standards constitute unjustified measures/barriers.

Revision of relevant provisions is recommended.

- **Regulation (MTI) No. 03/2017 on Elevator Safety;;**

The detailed analysis showed that the reference only to harmonized national standards creates a barrier for imported EU products.

It is recommended to revise the relevant article and harmonize it with Law No. 06/L-041 on Technical Requirements for Products and Conformity Assessment.

- **Regulation (MTI) No. 05/2018 on the Safety of Elevators in Use;**

No provision was identified in violation of Article 34-36 of the TFEU.

- **Administrative Instruction (MTI) No. 08/2022 for setting the conditions for placing aggregates and fillers for concrete on the market;**

No provision was identified in violation of Article 34-36 of the TFEU.

- **Administrative Instruction (MTI) No. 08/2020 for setting the conditions for placing aggregates and fillers for concrete on the market;**

No provision was identified in violation of Article 34-36 of the TFEU.

- **Regulation (MTI) No. 04/2012 on crystal glass products;**

The detailed analysis resulted in inaccuracies in the labeling of crystal glass that could create unjustified barriers to imports.

It is proposed to revise the Annex to the Regulation.

- **Regulation (MTI) No. 03/2016 on the labeling of footwear;**

The analysis showed that the limitation of the scope of application of this regulation creates the possibility of unjustified barriers for these products.

It is proposed to reformulate the relevant article.

- **Regulation (MTI) No. 02/2020 on national measurement standards and reference materials;**

No provision was identified in violation of Article 34-36 of the TFEU.

- **Regulation (MTI) No. 06/2016 on measuring instruments;**

From the detailed review of the regulation, it resulted that the requirement to use the official languages of the Republic of Kosovo regarding the information and documentation that the manufacturer or importer must provide in case of a request from the Market Inspectorate, is not a completely correct transposition of the EU acquis. Likewise, according to the reasoning above, references to harmonized national standards are unjustified barriers as a result of incorrect transposition of the EU acquis.

Revision of relevant provisions is recommended.

- **Administrative Instruction (MI) No. 10/2023 on the technical control of vehicles;**

No provision was identified in violation of Article 34-36 of the TFEU.

- **Regulation No. 40 on the use of radio frequency bands for which individual authorization is not required and the defined technical conditions for the use of radio equipment in these bands (Ref. Prot. No. 046/B/18);**

No provision was identified in violation of Article 34-36 of the TFEU.

- **Regulation (MED) No. 05/2017 on the construction, installation and supervision of electronic communications infrastructure (Ref. Prot. No. 05/2017);**

No provision was identified in violation of Article 34-36 of the TFEU.

- **Technical Regulation No. 31 on Radio Equipment (Ref. Prot. No. 032/B/17);**

The review showed that the provisions related to the obligation to use the official languages of the Republic of Kosovo in the case of contact details, information and documentation

required by the Market Inspectorate should be revised, as a barrier due to not very correct transposition.

Revision of relevant provisions is recommended.

- **Regulation on the licensing of aircraft stations (Ref. Prot. No. 007/B/12);**

No provision was identified in violation of Article 34-36 of the TFEU.

- **Regulation (MED) No. 03/2020 on the safety of pressure equipment;**

The barriers related to the obligation to use the official languages of the Republic of Kosovo for the contact details, registrations and correspondence of the manufacturer with the conformity assessment body as well as the presumption only in reference to the harmonized standards are a consequence of the incorrect transposition.

It is recommended to revise only the relevant provisions that regulate these issues.

- **Regulation (MED) No. 02/2019 on the control examination and assessment of technical safety pressure equipment in use;**

From the review of the regulation, it was found that this act contains provisions that constitute unjustified obstacles and barriers for the placement in use of these devices in violation of Directive 2014/68/EU. Such requirements are also in Law No. 06/L-031 on pressure equipment.

The provisions in the basic law and in this regulation must be revised.

- **Regulation No. 02/2012 on the administration of mining waste**

No provision was identified in violation of Article 34-36 of the TFEU.

- **Regulation No. 06/2011 on mining safety;**

No provision was identified in violation of Article 34-36 of the TFEU.

- **Administrative Instruction (MIA) No. 23/2012 on the technical norms for supply of motor vehicles with fuel derivatives, their storage and pumping in retail sale points.**

The mandatory use of "Ex" and other standards is a barrier that comes as a result of the incorrect transposition of the EU acquis.

A revision of the relevant provisions is proposed.

- **Regulation (GRK) No. 24/2012 on technical norms for the protection of high buildings from fire;**

No provision was identified in violation of Article 34-36 of the TFEU.

- **Administrative Instruction (MIA) No. 08/2018 on technical norms for the protection of warehouses from fire and explosions;**

Mandatory use of standards constitutes unjustified barriers to trade.

A reformulation of the relevant provision is proposed.

- **Administrative Instruction (MIA) No. 01/2020 on technical standards for fire protection of electrical infrastructure and equipment;**

No provision was identified in violation of Article 34-36 of the TFEU.

- **Administrative Instruction (MAFRD) – No. 06/2017 on the special conditions for evidencing, control and marking of flour, which is placed in free circulation in the market of the Republic of Kosovo;**

In this instruction, mandatory testing before placing on the market, mandatory requirements for flour packaging, licensing systems for flour importers, which are contrary to the relevant provisions of the EU acquis, are foreseen.

Repeal of the Administrative Instruction is proposed.

- **Administrative Instruction (MAFRD) No. 07/2016 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists.**

No provision was identified in violation of Article 34-36 of the TFEU.

- **Regulation (MEPTINIS) No. 02/2020 on safety of machinery**

Incorrect transposition of some points related to the content of the declaration of conformity and limitation of the presumption of conformity to harmonized national standards are considered as unjustified measures of equivalent effect.

It is recommended to revise/amend the relevant provisions.

- **Administrative Instruction No. 09/2012 on labeling of energy related equipment**

Lack of transposition of the new Regulation 2017/1369/EU. Unjustified measures of equivalent effect and quantitative restrictions regarding the placement of the label and the data sheet and the use of the official language.

It is recommended to repeal the entire legal act and transpose the new Regulation 2017/1369/EU.

3.2. Review of legislation from Annex 2 which may contain unjustified barriers to trade

Line ministries and other regulatory authorities have reviewed and updated the list of legal acts included in Annex 2 of the Program, replacing some of them with new draft acts which have already been prepared according to the plan that will be approved by the end of **2023**, aiming to reflect new developments and updated accordingly. This means that legal acts that will be repealed in **2023** (e.g. Law No. 2004/18 on Internal Trade, Law No. 04/L-022 on the Civil Use of Explosives) were replaced by new laws **that will regulate the same areas (the Draft Law on Internal Trade, the Draft Law on Explosives)**.

In this way, MIET and the line ministries have ensured the optimal use of the assistance resources of the "LUX-Dev" project expert and in this way have carried out the ex-ante control, i.e., the review of compliance with articles 34-36 TFEU of the new legislation of Kosovo which is planned to be adopted. It is proposed that in the future such an approach will also be used for other legal acts that are defined in Annex I or Annex II as soon as these are replaced by the draft acts that will repeal (or amend) them, especially when the text of such draft acts is in the preliminary stage of preparation. Such an approach also guarantees the sustainability of the implementation of the Program and prevents the appearance of unjustified barriers to trade in the legislation of Kosovo (ex-ante control of compliance with Articles 34-36 of the TFEU).

The review against articles 34-36 of the TFEU of five (5) legal acts from Annex 2 of the Program conducted until the end of May 2023 was carried out by MIET with the assistance of the experts of the "LUX-Dev" project and includes the detailed review of the following legal acts (draft acts):

- **Law No. 06/L-034 on Consumer Protection (including the special text of the Draft Law on Amending and Supplementing Law No. 06/L-034 on Consumer Protection),**
- **Law No. 02/L-128 on Narcotic Drugs, Psychotropic Substances and Precursors**
- **Draft Law on Internal Trade (in place of Law No. 2004/18 on Internal Trade),**
- **Draft Law on Explosives (instead of Law No. 04/L-022 on the Civil Use of Explosives),**
- **Regulation (GRK) No. 18/2016 for Registration and Approval of Food Business Operators**

The detailed analysis of the three legal acts in force and the three draft legal acts is presented in separate documents. Documents with findings from the review process were sent to line ministries and other regulatory authorities to decide on the necessary remedial measures after potential unjustified barriers to trade were identified.

- **Law No. 06/L-034 on Consumer Protection**

Requirements that were identified and should be removed refer to: mandatory use of the national language; the declaration of the country of origin/requirements for the

presentation of goods (presentation, labeling), as measures of equivalent effect and which are prohibited by article 34 of the TFEU.

The articles that should be amended to remove unjustified barriers to trade (language requirements) are articles 16 paragraph 2 and 19 paragraph 2 which will prevent this law from resulting in an additional burden for products originating in other countries (MS of the EU), while more precisely they allow the possibility of using other means for informing consumers, such as designs, symbols and pictograms. On the other hand, the proposed changes of Article 18 paragraph 2 (presentation, labeling) in the future should be implemented on a voluntary basis (marking the country of origin) which will result in the facilitation of trading in Kosovo of similar goods produced in an EU member state, not having the effect, as it is now, to encourage consumers to buy national products to the detriment of equivalent products from these EU importing countries.

The last and most severe restriction that should be annulled is article 16 paragraph 8 regarding the request for the presentation of the flag of the country of origin of the product, which should also result in the repeal of the more detailed rules found in the Administrative Instruction (MTI). No. 01/2019 on Determining the Shape, Content and Usage of the Flag on the Origin of the Product.

Finally, as soon as the consideration of the Draft Law on Amendment and Supplement of Law No. 06/L-034 on Consumer Protection it should be noted that in the near future the consolidated version of articles 76 to 83 should be harmonized with the new Directive 2019/771/EU (and in parallel with the closely related 2019/770/EU) in order to regulate the new aspects for the sale of goods and related guarantees which will contain new rules adapted by the EU, also for "goods with digital elements or related to digital services".

- Law No. 02/I-128 on Narcotic Drugs, Psychotropic Substances and Precursors

The law is not fully compatible with the EU acquis that is in force. The provisions of the law are from 2008 when they required compliance, in addition to international conventions, with Regulation 273/2004.

Non-harmonisation is considered as measure of equivalent effect as the trading rules differ from the rules to be fully transposed.

Therefore, the subject provisions of the law must be harmonized with the new Regulation (EU) No. 1258/2013, which amends Regulation 273/2004) (and Regulation (EU) No. 1259/2013, which amends Regulation 111/2005) to adequately regulate production control and monitoring, wholesale circulation and retail, import, export, transit, transport, purchase, supply, sale, possession, consumption, use of these substances, without hindering the principles of free movement of goods.

- Draft Law on Internal Trade

No unjustified barriers to trade have been identified in the draft law.

The draft law is in accordance with articles 34-36 of the TFEU, which is particularly important since this law is a systematic law that contains horizontal rules regarding the obligation of any trader who once wants to engage in the trade of goods.

Particular attention during the review was paid to ensure that the law does not contain restrictions which may take the form of authorization procedures/national provisions

regarding inspections and controls/criteria for competent authority procedures/restriction of use/national prohibition of specifications, products/substances for reviewing provisions.

- Draft Law on Explosives

No unjustified barriers to trade have been identified in the draft law.

The draft law is in accordance with articles 34-36 of the TFEU, as it transposes Directive 2014/28/EU on the making available on the market and supervision of explosives for civil use and Directive 2013/29/EU on the making available on the market of pyrotechnic substances. As such, it eliminates the inconsistencies with the *acquis* in force, evidenced in the rules found in the current Law No. 04/L-022 on the Civil Use of Explosives (which will be repealed after the approval of the law).

- Regulation (GRK) No. 18/2016 for Registration and Approval of Food Business Operators

No unjustified barriers to trade have been identified in the regulation.

However, since in the meantime the new Law No. 08/L-120 on Food (July 2022), which is the basis of this by-law, has been adopted, the relevant Ministry must ensure timely approval of the new Regulation for Food Business Operators in full harmony with the new law. In accordance with Article 42 of the new law, the deadline for the new regulation is August 2023, which if not complied with would lead to taking a measure of an equivalent effect, i.e. authorization procedures (criteria that are not objective, transparent, known in advance to existing enterprises and can be seen as a basis for possible arbitrary decision-making by the competent authorities and/or creates grounds for legal uncertainty due to the inconsistency between the new law and the old by-laws).

4. Fulfillment of obligations from Regulation (GRK) No. 28/2018 on the Method of Notification on Technical Regulations, Conformity Assessment Procedures and Standards

The regulation which is in force from 2018 for the needs of the CEFTA notification system for the drafts of new technical regulations that are planned to be adopted in the member states, aims that through the electronic system/platform to give them the opportunity to comment on new drafts and to propose changes that would prevent the creation of new unjustified obstacles to the trade of all CEFTAS countries.

MIET (through the Contact Point in QID) has notified the Chamber of Commerce in the Republic of Kosovo after receiving the notification to distribute information to their members to provide comments on future legislation of CEFTA countries that may affect export plans of individual business operators.

During 2023, CEFTA's online platform for notifications has been launched after 2 years of review and the process of notifying legal acts/bylaws has begun. During this year, Kosovo has

notified through the platform 4 draft acts that have been drafted and has received 14 notifications from other CEFTA member states.

In the future, the regulation will also be used within the framework of the World Trade Organization and within the framework of the European Union..

5. Preparation of the legal basis for contact points for products as an information center for stakeholders according to the provisions of Regulation (EU) 2019/515 on the Mutual Recognition of Goods Lawfully Marketed in Another Member State

The working group established on the basis of Law No. 06/L-41 on Technical Requirements for Products and Conformity Assessment, in March of 2022 prepared an "Action Plan for the implementation of these Regulations:

- Regulation (EU) on Market Surveillance and Compliance of Products (2019/1020), and
- Regulation (EU) on the Mutual Recognition of Goods (2019/515).

Among other things, the action plan envisages the preparation of a new primary law (recommended "New Law on Product Market Surveillance") which would provide the necessary legal basis for the establishment of a "product contact point" within MIET, which will provide information on the legal rules valid in the Republic of Kosovo in the non-harmonized field. The product contact point will be established ("merged" with the MIET division performing tasks from Article 31 of the Law on Technical Requirements for Products and Conformity Assessment) in order to meet all requirements and carry out all duties which are regulated by the two EU legal acts mentioned above and are vital for the elimination of unjustified barriers to trade.

Based on this Action Plan and the recommendation for the drafting of the new Law, a Concept Document has been drawn up for the field of market supervision, which was approved by Decision No. 19/89, dated 09.08.2023 by the Government of the Republic of Kosovo.

The preparation of the new law on product compliance inspection is planned to be finalized by the end of 2024 as foreseen in the Government's National Development Plan.

In order to fully align with Regulation (EU) 2019/1020, the regulatory authority, in this case MIET referring to this Concept Document, has planned the adoption of a "Special Law for Inspection of the Compliance of Products" thereby creating a coherent approach and harmonization with Law on Inspections.

The transposition of the aforementioned Regulations into the legal system of the Republic of Kosovo will eliminate the existing legal deficiencies in relation to the field of activity of the inspectorates which inspect non-food industrial products, thus creating a horizontal and functional legal basis for over seventy (70) areas of products.

The new law will create a more suitable environment for preventing and eliminating the placement of non-compliant products on the market, will assist the authorities in combating unfair trade practices, will protect the safety and rights of consumers, and will have a direct impact on the country's economy. The new law will also improve the legal framework in the

field of product market surveillance, as a prerequisite for improving and modernizing the free operation of the market, consumer protection and enabling fair competition.

6. Preparations of market surveillance authorities for the implementation of market surveillance according to the principles and provisions of Regulation (EU) 2019/515 on Mutual Recognition of Goods Lawfully Marketed in Another Member State.

Regulation (EU) 2019/515 places the burden of proof on national market surveillance authorities (inspectorates) that intend to deny market access to goods that have been legally placed on the market in another EU member state. They must present in writing the precise technical or scientific reasons for their intention to deny the product access to the national market. The economic operator is given the opportunity to defend his case and present solid arguments to the competent authorities.

The training of the regulatory authorities on the methodology of detailed controls and of the inspectorates that apply the technical rules for the products will be a continuous activity within the framework of this Program in the years to come.

IV. RECOMMENDATIONS

for Decision of the Government of the Republic of Kosovo after the discussion of the annual report:

1. The 2023 Annual Report prepared under the "Program for the Elimination of Obstacles to Trade according to Articles 34 - 36 TFEU (2021 - 2025)" has been approved.
2. Competent ministries and other regulatory authorities, coordinated by MIET, will report again to the Government of the Republic of Kosovo by the end of November 2024 on the findings in the reviewed legal acts and on the deadline set for the further review of details of the legal acts covered by this Program as well as the corrective measures proposed for the removal of unjustified barriers to trade.
3. The competent ministries and other regulatory authorities, during the preparation of new or amended legal acts related to the trade of products, will take into account the comments and recommendations given in the framework of the technical assistance for the detailed review of the legislation that may cause unjustified barriers to trade.
4. The Annex of the Report should also include a column where the deadline for the elimination of the unjustified barriers to trade will be determined.
5. Competent ministries and other regulatory authorities are obliged to regularly participate in all the activities of the Working Group.
6. Strengthening the structure of the Quality Infrastructure Division by raising it to the Department level, with the increase by at least three (3) additional employees to cope with all the responsibilities in Chapter 1 - Free Movement of Goods.

7. Ministries and other regulatory authorities to regularly take into account the latest ECJ Decisions on articles 34-36 TFEU and then on a quarterly basis to check and report to the MIET on the compatibility of the articles of the relevant national legislation regulating the same issue as the legislation of EU member states which was (by the relevant decision of the ECJ) found to be contrary to Articles 34-36 TFEU.

For this purpose, the GK will charge the MIET with the regular monitoring of the relevant case law register of the ECJ and the immediate notification of the latest decisions to the relevant ministry and/or regulatory authorities, which in a quarterly period must report to the MIET on the executed review of the respective national legislation and its outcome (if a similar unjustified barrier to trade is found, and if so, the time limit for amending or repealing the relevant national articles containing MEE or prohibited sales agreements).

Such ongoing activity should be adequately reported in the annual report (as a new annex) containing the list of:

- 1) case of the ECJ taken into account,
- 2) the relevant national legislation examined,
- 3) the ministry and/or other responsible regulatory authority
- 4) the result of the review
- 5) time limit for legislative intervention, if applicable (repeal or amendment of relevant national articles, if comparable barrier to trade is found).

ANNEX

The list of legal acts that is subject to detailed review against articles 34-36 of the TFEU.