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# Environmental governance in a contested state: the influence of European Union and other external actors on energy sector regulation in Kosovo

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**Abstract.** This article examines environmental governance in Kosovo, with a particular focus on the energy sector. The article considers the degree to which the emerging model of environmental governance is characterised by hierarchical and non-hierarchical modes of coordination. We examine the roles of a number of domestic institutions and actors – ministries, agencies, and regulatory bodies – and the influence of external actors, including the European Union, the United States, and Serbia. The European Union is building Kosovo’s own hierarchical governance capacity by strengthening domestic institutions, whilst the United States focuses primarily on market liberalisation, whilst simultaneously supporting European Union efforts. Moreover, environmental policy change is not wholly or predominantly driven by domestic actors, which can partly be attributed to Kosovo’s limited domestic sovereignty. We conclude that the emerging model of environmental governance in Kosovo is characterised by a weak hierarchy, partly as a result of external actor involvement, which disincentivises the government from responding to domestic non-state actor pressure.

**Keywords:** environmental governance, limited statehood, weak states, energy sector, Kosovo

## Introduction

This article explores environmental governance in Kosovo, focusing on the country’s energy sector. We examine the model of environmental governance that is emerging in Kosovo, within the context of its limited statehood and Vattelian sovereignty (Krasner, 2005). Since this model of environmental governance appears thoroughly institutionalised on paper, we examine whether the corresponding distribution of power is reflected in practice. We explore the extent to which Kosovo’s hierarchy and networks are weak, despite external efforts at strengthening both. In order to assess the effects of external involvement, we examine the roles of the European Union (EU), USA, and Serbia, each of which appear to have divergent policies and goals. Taking into account the competing governance agendas – the EU aiming to strengthen hierarchical governance, the US focusing on market liberalisation, and Serbia acting as a ‘spoiler’ (Menkhaus, 2007) – we examine the extent to which this helps to create a government more responsive to external incentives than domestic pressures, thereby weakening local non-governmental actors. Lastly, we examine whether Kosovo’s limited domestic sovereignty (Krasner and Risse, 2014) and extensive external actor involvement help to further weaken non-state actors.

We are particularly interested in exploring the roles of three external actors: the EU, USA, and Serbia. This is because Kosovo has ‘limited statehood’ (Risse, 2011) and lacks capacity to implement and enforce decisions and laws, which in turn leads to a higher degree of external intervention and non-hierarchical coordination (Börzel and Risse, 2010; Risse, 2011). Kosovo has been administered and supported (practically and financially) by external actors since 2000, and thus offers an exceptional opportunity for exploring: (a) how those external actors seek to facilitate environmental governance in the context of statebuilding;

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and (b) external actors interact and compete in the Kosovan space. The EU and the USA are of special interest for our analysis, as they have been the key drivers of Kosovo's post-conflict stabilisation and to an extent, its independence.

Our key argument is that the EU and the US are helping to build hierarchical governance in Kosovo by strengthening its state capacities, which are currently weak. At the same time, this type of external statebuilding interferes with Kosovo's Weberian/Vattelien sovereignty (Krasner, 2005), since donor conditionality and international 'trusteeship' of states like Kosovo has a marked impact on domestic authority structures, decision making, and the balance of power (Krasner and Risse, 2014; Lake and Farris, 2014).

EU and US efforts at strengthening Kosovo's own hierarchy are carried out through non-hierarchical steerage. The EU is involved through capacity building and conditionality, whilst American involvement is mainly operationalised through donations aimed at building state institutions, but also helping to facilitate privatisation of state industries. These two positions converge and diverge: as we explore below, donations from the US are not as explicitly tied to bargaining and normative change in environmental and energy issues to the extent that EU assistance is. The US also plays a strong role in market liberalisation, which at times undermines the EU's efforts at strengthening state capacity for environmental governance. The influence of key external actors is often exerted through non-hierarchical modes of coordination such as negotiation, lobbying, informal challenges to implementation, and normative pressure, with formal rules often interacting with informal practices.

The emergent unconsolidated model is the result of an unsystematic involvement of external actors, seemingly with no overall agreement or goal for the direction of Kosovan environmental governance, interference from Serbia, little support from domestic political elites, no meaningful opportunities for non-state actor involvement and, to an extent, informal practices such as corruption which are prevalent in the energy sector across the Western Balkan region (BIRN, 2014; Freedom House, 2013; Prelec, 2014). While the EU has driven change in environmental governance, primarily through monitoring Kosovo's compliance with the environment acquis, this has often been in cooperation and competition with other international actors. We find that non-state actors, such as non-governmental organisations (NGOs), have very little lobbying capacity in environmental and energy policy making in Kosovo, reflecting broader Western Balkan trends.

This paper is based on the analysis of documentary resources, including institutional reports from the main energy provider in Kosovo, local civil society organisations, EU, and domestic legislation. These are complemented by data from elite interviews and informal, non-recorded discussions with professionals within the field of regulatory governance in Kosovo.

The article first outlines the key concepts used and discusses the definitions of governance, and hierarchical and non-hierarchical coordination. Following Risse (2011) and Schneckener (2011), we also outline how these may be affected in areas of 'limited statehood' such as Kosovo. We then explore environmental governance in Kosovo, focusing on the energy sector and its regulation as a key component. The article then examines the extent to which external actors – the EU, USA, and Serbia – impact non-hierarchical coordination of this policy area and its implementation.

### **Hierarchical and non-hierarchical modes of coordination in areas of limited domestic sovereignty**

Emerging modes of environmental governance in Kosovo must be viewed in the broader context of post-Communist energy transitions (Bouzarovski, 2009) discussed below, and governance and statebuilding since the 2000 UN intervention. Kosovo is an apt example of an 'area of limited statehood' (Risse, 2011): It has strong but not universal international recognition, and this has direct impact on its 'domestic sovereignty' as its authority structures

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are not autonomously determined (Krasner and Risse, 2014: 545). Such areas of limited statehood are also defined by the state's lack of capacity to 'implement and enforce central decisions, and a monopoly on the use of force' (Risse, 2011: 2).

In areas of 'limited statehood', modes of governance and coordination may deviate from the models seen in Western liberal democratic states. Whereas the latter will typically involve hierarchical steering and 'authoritatively enforcing the law' through "'top-down" command and control' (Risse, 2011: 11), governance in areas of limited domestic sovereignty tends to be non-hierarchical (Börzel and Risse, 2010: 211; Krasner and Risse, 2014). In areas of limited statehood, as Krasner and Risse (2014: 546) argue, external involvement is significant, since some of the functions 'traditionally associated with the state, have been assumed by external actors'. Statehood and sovereignty can be limited territorially (i.e. the government not exercising authority or control over a part of the country) or sectorally (i.e. specific policy areas maybe under the direct jurisdiction of external agencies). Both types apply in Kosovo's case: Kosovo has only limited territorial control (in virtually all policy areas) of North Kosovo, where Serbia intervenes actively; the Pristina government also has limited sectoral autonomy in a number of policy domains in which there is a high level of external involvement. Environmental governance is one such policy area, since change has often been initiated and led by the UN or the EU.

Due to a lack of capacity to enforce decisions, Risse argues, international actors frequently 'interfere authoritatively' in areas of limited statehood, thus making non-hierarchical modes of coordination 'more common' (Börzel and Risse, 2010: 211). Frequently, as in Kosovo, these interventions are framed in terms of 'state building', designed to 'tackle limited statehood directly' through capacity and institution building (Krasner and Risse, 2014: 551), and 'trusteeship' of external actors temporarily executing authority in the state (Lake and Fariss, 2014: 571). Previously, under the United Nations Mission in Kosovo (UNMIK), Kosovo was subject to trusteeship. However, the current arrangements and involvement of the EU through the Rule of Law Mission (EULEX) are more in line with what Krasner and Risse label as 'contracting': external control through delegation or agreement (2014: 552). The reality of statebuilding 'on the ground' is the involvement of a number of external actors and organisations each attempting to influence governance and pursuing different and at times conflicting agendas (Schneekener, 2011). We identify such tensions between the EU and the US in terms of their priorities for the Kosovan energy sector.

With regard to defining governance, we follow Börzel and Risse's (2010: 114) conceptualisation of a process that 'pinpoints the modes of social coordination by which actors engage in rulemaking and implementation', norm adoption, and social learning. Governance is also exercised through informal practices existing outside of the hierarchy and can be shaped by local interests and governance 'spoilers' (Menkhaus, 2007). In the Kosovan case, formal rules are subject to and compete with informal practices, including corruption, clientelism, and non-consensual interference from Serbia.

We also adopt Börzel and Risse's (2010: 114) distinctions of hierarchical and non-hierarchical coordination, in which hierarchical coordination 'usually takes the form of authoritative decisions with claims to legitimacy', such as laws. Non-hierarchical coordination is 'based on voluntary commitment and compliance' and other dispute-resolving mechanisms such as bargaining and arguing (Börzel and Risse, 2010: 114). Importantly, according to the authors, in non-hierarchical coordination, actors may have unequal bargaining power but 'no actor is subject to the commands of others' (Börzel and Risse, 2010: 114).

### **Energy as an area of environmental governance**

Given that environmental governance can be defined as a 'broad range of political, economic and social structures and processes that shape and constrain actors' behaviour towards the environment' (Levy and Newell, 2005: 2), it follows that the energy sector and its regulation

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form an important part of this process, since energy policies have an immediate and long-term impact on the domestic and regional environment (cf. Castán Broto et al., 2009). Environmental governance implies both ‘rule creating, institution building... monitoring and enforcement’ but also a ‘soft infrastructure of norms, expectations and social understandings of acceptable behaviour towards the environment’ (Levy and Newell, 2005: 3).

The impact of the energy sector on the environment is especially evident in areas where this sector and related businesses contribute significantly to pollution (c.f. Levy and Newell, 2005: 1). In Kosovo, old and inefficient power plants are the largest source of air pollution and have not until recently been subjected to the legal regulation applied within Western Europe. Efforts to regulate, modernise, and clean up the key polluting agents in the energy sector have coincided with Kosovo’s recent push for EU membership.

The modernisation of Kosovo’s energy sector and the development of environmental governance have both been hindered by the country’s history of conflict and post-Yugoslav economic transition. Kosovo’s energy supply was part of the Yugoslav network until the 1990s and was shaped by Communist economic practices during this time. Most post-Communist countries, Bouzarovski (2009) argues, share general features of centrally planned energy policies and their subsequent transitions. This initially included attempts to lessen reliance on Soviet imports (and therefore a heavy use of domestic natural resources such as lignite) and a system of cross-subsidised tariffs which ensured low prices for domestic consumers (Bouzarovski, 2009: 457). As with other post-Communist states, Kosovo is subject to neoliberal restructuring, ‘reinforced’ by EU accession (Bouzarovski, 2009: 458) of which energy policy is part. This includes “‘unbundling’ integrated energy companies’, ‘removing subsidies, liberalizing the tariff structure and allowing free access to the energy market’, with foreign companies often envisaged as the buyers of formerly state-owned energy assets (Bouzarovski, 2009: 458, citing Stern and Davis, 1998). However, this has generally been met with political resistance and state interference by governments ‘unwilling to relinquish control of... key political and economic instruments of power’ (Bouzarovski, 2009: 458).

Within this context, the availability of lignite in Kosovo was used to develop two power plants, Kosovo A and B, during the Yugoslav times. Other plants were developed using fuel oil and (to a limited extent) hydropower. Plans have been developed for the closure of the huge Kosovo A plant in 2017 once alternative generating capacity comes on stream, although the timetable for this is currently unclear (Balkan Investigative Reporting Network, BIRN, 2014; Kabashaj, 2012).

Measures to improve the stability of the highly erratic supply and increase its volume have involved further developing the use of hydropower. This has required the construction of additional power plants, including the Zhur plant and other plants in Belaja, Deçan, and Lumbhardi. It has also resulted in the adoption of renewable energy (which until now has been limited, partly due to the failure of international investors to carry out wind surveys or to have agreed a feed-in tariff with the regulator, prior to installation). Aside from small generation plants, the Kosovan Energy Corporation (KEK), which was established in 2005, generates almost all of the energy. In an attempt to liberalise the sector and attract investment, both the Kosovan energy transmission network (KOST) and Kosovo Electricity Distribution and Supply, which covers distribution and supply, have been unbundled from KEK. The latter was privatised in 2012 and sold to the Turkish Çalık-Limak consortium of companies.

The energy sector is by far the largest polluter in Kosovo, with claims that Kosovo A is the ‘worst, single-point source of pollution in Europe’ (BIRN, 2014). The Environment Ministry Environmental Protection Agency (KEPA) report (2011: 24) states that CO<sub>2</sub> emissions from the total coal use for operating Kosovo A and B are estimated at five million tonnes per year, with additional pollutants such as dust, sulphur dioxide (SO<sub>2</sub>), and NO<sub>x</sub> contributing considerably to air pollution. These emissions are significantly above those suggested by the

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Energy Community's Athens Memorandum, a 2002 document which governs South East Europe's electricity market integration.<sup>1</sup> For instance, dust emissions from the Kosovo A power plant are some 18 times higher than the Athens limits, whilst NO<sub>x</sub> levels from Kosovo B are some 1.6 times higher (KEPA, 2011: 24). This situation reflects general Western Balkan trends, where concerns over energy supply and growing domestic demand are often prioritised over environmental issues (c.f. Hakala and Järvinen, 2012: 40).

### **Environmental governance and energy policy in Kosovo**

At first glance, Kosovo appears to have a model of environmental governance in which a number of state and non-state actors coexist in an institutionalised<sup>2</sup> and emergent hierarchy. However, as this section illustrates, the hierarchy is, in fact, weak. Moreover, the formal distribution of power is not reflected in practice, due to the involvement of external actors and their incentives, which make the government of Kosovo responsive to international rather than domestic demands.

Within the formal legal and regulatory environment (i.e. hierarchical coordination) in Kosovo, interactions among state and non-state actors are governed by a complex and fragmented web of legislation. Hierarchy is obvious among state actors, including: the Assembly of the Republic of Kosovo; the Ministry of Environment and Spatial Planning (MESP); its agency, KEPA; and municipalities. The overall legislative role of the Kosovan Assembly (parliament) defines the remits of MESP and monitors its functions and administration of environmental resources (Assembly Support Initiative, 2007). The Assembly passes environmental laws and legislation which are translated into policies by MESP. Each environmental sector such as water, air, and waste has its own legal framework. The creation of this hierarchy involved a degree of external, non-hierarchical steering: the MESP was one of the ministries established through UNMIK regulation in 2002.

The majority of Kosovo's energy and environmental laws were adopted by the National Assembly after Kosovo's declaration of independence in 2008. Until 2000, Kosovo was a province of Serbia, but following the 1998–1999 conflict, and until 2008, it was administered by the UNMIK and through the Provisional Self-Government. Whilst the institutional context of the MESP existed prior to 2008, political debates throughout this period were dominated by independence-related issues, marginalising all other discussions, including environment and energy. Whilst it can be argued that the legislative context and architecture prior to 2008 were lacking in capacity to implement environmental governance, they nonetheless enabled the adoption of several key laws in the areas of both environment and energy. For instance, laws on air protection, energy, electricity, and water were passed in 2004, with laws on nature conservation, waste, and plant protection following in 2005 and 2007, respectively. Additionally, the MESP prepared a Kosovo Environmental Action Plan 2006–2010 in April 2006 (later updated for 2010–2015; World Bank, undated). The plan was financed and thus steered non-hierarchically by an external actor, the Swedish International Development Corporation Agency. It is geared towards environmental improvement and protection, within the framework of the policy harmonisation required by the environmental *acquis* and EU integration (MESP, 2006).

<sup>1</sup>The Memorandum is officially known as the 'Memorandum of Understanding on the Regional Electricity Market in South East Europe and its Integration into the European Union Internal Electricity Market', signed by countries of the Western Balkans, as well as Bulgaria, Greece, Turkey, and the European Commission.

<sup>2</sup>Institutions in this context can be broadly perceived as all forms of formal and informal rules that govern actors' interactions within Kosovan environmental governance, which includes environmental laws, regulations, and forms of informal interaction.

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The MESP has significant authority in environmental governance: it is responsible for developing standards to control emissions and for promoting sustainable environmental practices and use of natural sources. Current environmental priorities, stated in the 2010–2015 Environmental Strategy and Action Plan, are meeting the EU *acquis*, partly through new and strengthened institutions, capacity building, and financial incentives for domestic industries (World Bank, undated).

The Energy Regulatory Office (ERO) was also established under UNMIK as a self-financed and independent body responsible for drafting secondary legislation, with the government only responsible for setting overall strategy. The ERO issues licenses to energy generators and transmitters, and reviews electricity tariffs. Other related bodies include non-majoritarian institutions such as the Kosovo Privatisation Agency and the Independent Commission for Mines and Minerals. In common with energy policy in many developing nations, these non-majoritarian institutions have been created whilst state ownership remained of much of KEK and KOSTT.

A number of non-state actors operate within this energy governance landscape, including NGOs and international private consultancy companies (discussed below). Whilst many environmental NGOs, such as Millennium and Ecocult, appear to be well established and efficacious, our research found no evidence that they undertook effective lobbying of key decision makers. In general, civil society in Kosovo has only just begun to engage in advocacy (USAID, 2013: 2), and this is reflected in the lack of organised lobbying. Additionally, international donations for NGOs have declined in recent years, as the donor focus has shifted from Kosovo to the Middle East and the Caucasus (Freedom House, 2013). However, the absence of a strong tier of lobbying organisations is also due to the fact that most environmental NGOs are primarily involved in local conservation projects or education activities. Moreover, the value of lobbying is perhaps not immediately clear: the environmental governance institutions, which are the obvious focus of lobbying, are not seen as key decision makers, but as implementing partners for EU rules and demands. Furthermore, there is some evidence of the ability of NGOs to mobilise around certain issues. In particular, the alleged involvement of the government and other key elites in corruption often acts as a focus for civil society protest. For instance, one case in which NGOs have demonstrated a capacity to mobilise large-scale public protest has been the dispute over high energy tariffs and alleged corruption at KEK.<sup>3</sup>

Despite some civil society activism around environmental issues, political interest and debate still focuses primarily on issues of sovereignty, nationhood, and minority rights. Amongst political elites there appears to be little or no interest in environmental or energy issues, and thus do not respond to these pressures. Political power is won and held according to party, ethnic, or regional loyalty (i.e. informal practices resulting in governance, c.f. Menkhaus, 2007). This, together with alleged corruption amongst the political elite, especially where it relates to the energy sector and privatisation (Freedom House, 2013; Prelec, 2014) leaves little room for civil society actors to influence political agendas on already marginalised issues such as the environment. This supports the findings of Tosun and Shulze (this volume), who suggest that the emergence of forms of environmental governance is dependent on domestic interest constellations, and their ability to exert leverage within the policy process. In Kosovo, domestic interest groups are weak, because: their power is undermined by informal practices of key power holders, which makes lobbying almost

<sup>3</sup>According to ERO staff (authors' interview with ERO official, Pristina, 15 April 2013), the majority of Kosovan consumers find that the electricity bill constitutes their single largest monthly expense. Kosovo's official unemployment rate is 35.1%. Moreover, 34.5% of the population live in 'general poverty', whilst 12.1% live in 'extreme poverty'. Kosovo Agency of Statistics, 2013. <http://esk.rks-gov.net/eng/>

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irrelevant; and the involvement of international actors, which incentivises the government to respond to external demands.

### **External actors: EU**

The emergent model of environmental governance in Kosovo is highly dependent on external actors. This is most obvious in the case of the EU, which is helping to build and strengthen hierarchy. However, the involvement of external actors is not linear and is at times contradictory. As this paper demonstrates, USA (with its focus on privatisation and market liberalisation) and Serbia (with its informal practices), often weaken Kosovo's hierarchical governance, which, in turn, undermines EU efforts.

Domestic mechanisms of environmental governance operate within a complex formal framework derived from the EU's extensive involvement. Kosovo is a typical 'environmental newcomer' with lower levels of environmental regulation, higher industrial pollution, and high implementation costs for meeting EU environmental rules and norms (Börzel, 2009: 33). Broadly speaking, the EU helps to build hierarchical governance in Kosovo by strengthening state institutions and enhancing domestic sovereignty. This is predominantly carried out through rule and norm transfer, some of which takes place via the Energy Community (Renner and Trauner, 2009: 458).

As Padgett (2011) explains, the Energy Community and the internal market are at the centre of the EU's framework of cooperation with neighbouring suppliers and consumers. The overall aim is to ensure a steady and reliable energy supply. The Community is not an extension of the EU, but it is 'ingeniously designed to bind non-Member States to EU law without admitting them to EU institutions' (Padgett, 2011: 1077) and has helped to create an integrated regional electricity market across the Western Balkans. Whilst governance is concerned with norms and learning as well as with rules (Börzel and Risse, 2010), the Energy Treaty places a strong emphasis on rule adoption; it is an example of non-hierarchical 'external governance' (Renner and Trauner, 2009: 458) where participation helps countries meet accession requirements (Padgett, 2011: 1073).

Kosovo's record in meeting requirements such as establishing stable regulatory and market frameworks is patchy. Environmental issues are still largely neglected by domestic state actors. Opinion polls indicate that 69.9% of the public is dissatisfied with Kosovo's efforts to preserve the environment (Gallup Balkan Monitor, 2012). This is despite the fact that, on paper, Kosovo has already started to harmonise its environmental laws with EU standards, for example, through the 2009 Law on Environmental Protection, which stipulates explicitly that the government will 'adapt the legal requests and procedures' on environment and sustainable development to fit with the EU environmental acquis. The government of Kosovo and the MESP are obliged to mainstream environmental protection into their respective policies within the framework of EU integration (European Commission, 2012). Whilst the EU sets this out as a condition of membership, this too represents an example of non-hierarchical steering, since the EU does not 'command and control' Kosovo (Börzel and Risse, 2010: 115). Although conditionality means that sanctions (e.g. denial of membership) can be applied to states that do not comply with EU's demands, the role and effectiveness of conditionality in compliance are contested (e.g. Aybet and Bieber, 2011; Pickering, 2011; Spoerri, 2011; Subotic, 2009). The existing literature suggests that domestic actors frequently 'go through the motions' of compliance whilst neglecting normative change (Subotic, 2009: 167), and that conditionality sometimes leads to 'short term changes that the EU would characterize as progressive' (Pickering, 2011: 1941).

One effect of the EU's involvement is that the model of environmental governance emerging in Kosovo is highly institutionalised, but 'on paper' only. Post-independence governments 'go through the motions' of adopting environmental protection laws (and

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responding to non-hierarchical steering) but without really remaining committed to the issues (i.e. not responding to EU environmental norms), or creating meaningful opportunities for non-state actors, such as NGOs, to participate in debate and decision making (c.f. USAID, 2013: 2–3). This has the effect that the Kosovan governments will respond only selectively to a whole range of environmental challenges, prioritising only those that align with EU demands. For instance, the spate of additional environmental and energy laws post-2008 closely reflect EU concerns regarding the environmental impact of lignite use in Kosovo as documented in earlier Commission reports (European Commission, 2012). As recently as 2012, the Commission made an explicit link between air quality, the energy sector, and environmental governance in its Stabilisation and Association Agreement with Kosovo. It was explicitly stated that the adoption of the energy *acquis*, reform of KOSTT, and the establishment of a more efficient energy regulator were necessary to improve overall environmental quality, since ‘lignite power plants are the main source of air pollutants’ (2012: 46). Whilst the Commission noted that laws and frameworks in the fields of energy and the environment are in place, it criticised the (lack of) ‘capacity to implement and enforce legislation (which) needs to be strengthened’. The report adds that Kosovo needs to ‘close the Kosovo A power plant, in line with its Energy Community Treaty obligations’ in order to improve air quality (2012: 46) and that ‘environmental considerations need to be mainstreamed into other policies, particularly energy’ (2012: 46). Subsequent (2013, 2014) progress reports suggest that this has not been done: the Commission stated in 2014 that Kosovo’s implementation of environmental laws remains weak, as does the administrative capacity of institutions in the environmental sector (Commission, 2014: 40–41). As an example highlighting the disconnect between environmental laws and their implementation, the Commission (2014: 41) noted that an ‘eco tax’ collected during car registrations contributes to the Kosovo budget but ‘is not allocated to any environmental projects’. In 2014, the EU also warned that Kosovo’s failure to close Kosovo A is jeopardising the €60m ‘green energy grant’ set aside for the plant’s closure (Zogiani, 2014).

The EU also seeks to shape environmental and energy governance through institution building to increase Kosovo’s own capacities. In the energy sphere, the EU (together with the US and others) is partly responsible for the creation of KOSTT out of KEK (European Commission, 2009). The effect of this involvement has been a limited domestic capacity for enforcing authority structures, since the unbundling and creation of various ministries were not wholly locally initiatives. Generally, EU’s statebuilding focus in Kosovo can be described, following Schneckener (2011), as a mixture of ‘Liberalisation first’, ‘Security First’, and ‘Institutionalisation First’. Through EULEX, the EU aims to strengthen both security and domestic institutions such as the judiciary; additionally, its norm promotion in the region means that an emphasis is also placed on political and market liberalisation (Schneckener, 2011: 236). At times, these priorities have differed to those of the US donors, especially in the field of energy, where market liberalisation rather than environmental norms is pursued, as discussed below. This illustrates that international actors involved in local governance often ‘pull’ in different directions (Schneckener, 2011: 230). This also applies to local actors, since governance is often underscored by ‘evolving interests’ and struggles for power (Menkhaus, 2007: 77).

The EU’s non-hierarchical shaping of environmental governance in Kosovo extends in other capacity-building and ‘learning’ (Börzel and Risse, 2010: 11) directions as well. The EU financed several environmental projects and collaborated with different state and non-state actors in an attempt to build up the capacities of the environmental sector. This included the 2010–2012 EU-KEPA Twinning Project to Support the Environment Sector. Here, the EU contributed €1m to support Kosovo in developing administrative and institutional foundations required by the *acquis*. As a tool for pre-accession institution building, the project



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encouraged collaboration between the government of Kosovo and four external institutions: the Environment Agency Austria; the Federal Environment Agency of Germany; the Finnish Meteorological Institute; and the Latvian Environment, Geology, and Meteorology Centre. This type of collaboration also offers policy diffusion opportunities, often found in 'nodal' types of governance where 'shifting networks' and hybrid domestic–international bodies may facilitate funds and policies (Schneekener, 2011: 250).

In sum, the EU's involvement in non-hierarchical policy making can be described as the 'carrot and stick' approach of incentives and rewards/sanctions (Manners, 2002: 245). As Börzel and Risse (2010: 11) point out, incentives and benchmarking are important aspects of non-hierarchical steering, together with 'communicative learning processes', which are not as explicitly articulated in American involvement in statebuilding in Kosovo. The EU is involved in environmental governance in Kosovo through this exchange and norm diffusion, or broadly speaking, 'Europeanisation' (Börzel and Risse, 2000). For Europeanisation to take place, Börzel and Risse (2000: 2) argue, there must be some 'misfit' between European and domestic policies. Due to the legacies of conflict and Communism, the Western Balkans are thought to diverge from EU policies and structures in more comprehensive ways than CEECs (Juncos, 2011). Kosovo's energy sector pollution levels are an instance of this divergence. The effect of the EU's carrot and stick approach has largely been felt in the evolution of domestic environmental institutions, laws, and hierarchies, which still lack the necessary domestic capacity or willingness for their full implementation.

### **External actors: United States**

The US is also concerned with building hierarchical governance in Kosovo by strengthening institutions: this often takes place through development aid aimed at building institutions such as ministries. However, the US also encourages market liberalisation, and the policies here are not always complementary to the EU's – and its own – attempts at strengthening the hierarchy. The US has been heavily involved in Kosovo since the late 1990s and is still able to exert influence on domestic politics and determine key policy decisions, largely via a significant donor presence in the country and within the region.

However, American non-hierarchical steering in Kosovo does not closely resemble that of the EU, since bargaining, incentives, and conditionality are not as evident, or at least, not as explicitly stated (e.g. in USAID (2013)). Some of Kosovo's key institutions – such as the Ministries of Finance and Energy and Mining (now defunct), the Central Bank of Kosovo, KEK, and ERO (USAID, 2010: 10) – were set up with significant input from USAID and other US donors. A large number of mainly US-funded consultants, including Deloitte, PricewaterhouseCoopers, Advanced Engineering Associates International, Mott MacDonald, and others operate in the Kosovan energy and regulatory space. For instance, the consultancy Tetra Tech (funded by USAID) advises KEK on privatisation and operations, illustrating that in contrast to the EU, American assistance does not only go to NGOs, but also to businesses.

Although figures for total US disbursements to Kosovo declined in 2010 and 2011, according to the Balkan Civil Society Development Network (BCSDN), USAID is still the largest bilateral donor, and its donations are exceeded only by multilateral aid from the EU (€67m) and the World Bank (€50m) (BCSDN, 2012). Significantly, compared to the other two large bilateral donors, Germany and Norway, far more of US aid to Kosovo is earmarked for specific projects (including within the energy sector) – 73% in 2009 compared to 3.5% for Germany and 0% for Norway (OECD, 2012: 12), suggesting a greater degree of US control over aid in Kosovo.

American influence in Kosovo is not separate from the process of Europeanisation; rather, the two interact through both cooperation and competition. For instance, USAID highlights that the US government's goals are: 'building institutions', encouraging 'democratic process',

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promoting economic development, and the rule of law and European Integration (USAID, 2010: 4). USAID specifically highlights that ‘*all* our assistance will contribute to support Kosovo’s integration into Europe’ (USAID, 2010: 6, added emphasis). These goals resonate with EU policy for the region and adopt the ‘Europeanisation’ narrative. In contrast, other major non-EU donors, such as the Norwegian government, focus less on European integration, and more on promotion of peace and human rights (The Norwegian Embassy Fund, 2011).

Despite US support for EU integration, however, its policy preferences for Kosovo in general, and the energy sector in particular, have not always coincided with those of the EU. For instance, within its broader goal of capacity building, USAID (2013: i) identifies three main development objectives for its 2014–2018 Kosovo strategy: (1) improved rule of law and governance, (2) increased investment and private sector employment, and (3) enhanced human capital. This contrasts EU involvement, whose priorities are much more diverse. The EU’s priorities for Kosovo range from the political (normalisation of relations with Serbia, minority rights, regional and international obligations) to economic and justice concerns (including corruption and money laundering) (European Commission, 2014). In the Commission progress reports, for instance, investment is integrated into economic and internal market categories, suggesting that whilst the EU deems investment an important factor for a functioning market economy, it is not singled out as a priority in its own right (e.g. European Commission, 2014: 24).

The different emphasis placed on investment and privatisation by EU and the USA has, at times, had a knock-on effect on the energy sector. Developments surrounding the privatisation of Kosovo B and rights to the new Kosovo C (‘Kosova e Re’) plant illustrate this. Initially, the Kosovan government planned the development of a 2100 MW Kosovo C plant, which would have greatly increased energy generating capacity. It also planned that the ownership and running of the new plant should be transferred together with ownership of Kosovo B *and* mining rights on a long-term basis (up to 40 years) to one single provider. Hence, privatisation would have occurred without competition. This contrast with the EU’s objective of opening up electricity markets and limiting natural monopolies whilst at the same time ensuring efficient regulation and ‘increased competition across and within borders’ (Pollitt, 2009: 15). The EU criticised the plan on the basis that a foreign firm would hold a virtual monopoly on Kosovo’s electricity market, leading to higher tariffs (Xharra, 2012). However, the plans were allegedly supported by the US Embassy.<sup>4</sup> The government made attempts to remove the Energy Regulator Office’s involvement in the process of assigning tenders for the construction of this new generating capacity that were, however, rebuffed within the Parliamentary Assembly (International Civilian Office, 2009: 8). Nonetheless, the Kosovan government has made little progress in the privatisation and construction of Kosovo C. The plans were later reviewed by the World Bank (2011) with suggestions for a mix of thermal and renewable sources, a scaled-down 600 MW Kosovo C, the opening of a new lignite mine, closure of Kosovo A, and the refurbishment of Kosovo B. Even the new plans, however, involve only a limited degree of liberalisation and are the focus of civil society protest (Gashi, 2011).

This episode illustrates the influence of US involvement in Kosovo in general, and energy and environmental governance in particular. The originally proposed Kosovo C would have required 15% of Kosovan landmass for open cast mining, ash dumps, and power plants. This original plan matches with investors’ focus on lignite which is the ‘least expensive thermal option, even when the ... higher environmental costs are priced in’ (World Bank, 2011: v). In addition to the environmental degradation, the pollution resultant from this project would have violated the Athens agreement and would not have been in line with EU’s vision

<sup>4</sup>Authors’ interview with civil society activist, 29 June 2011, Pristina.

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for liberalised electricity markets (c.f. Pollitt, 2009). This was used as the legal basis for opposition to the plan by civil society organisations, which persuaded the EU to support their position against the plan.<sup>5</sup>

A further source of tension between the EU and US, which has an impact on environmental governance in Kosovo, is that American donors appear to place less emphasis on the environment in their programming. For instance, whilst USAID prioritises energy supply projects in Kosovo, and is still committed to Kosovo C, it does not place as much emphasis on environmental issues, or encourage and require Kosovo to strengthen its energy laws and regulation. In fact, a number of actors, notably the World Bank and the European Bank for Reconstruction and Development – where the US is a major donor – have been criticised for investing heavily in Western Balkan energy projects that deviate from EU environmental standards (Gallop, 2013). This concerns the proposed Kosovo C plant, which would disincentivise Kosovo from reaching its 2020 renewables target (25%), committed to through the Energy Community (Gallop, 2013).

The case of Kosovo C illustrates the divergence between EU and US agendas. Whilst there is a shared commitment to stabilising Kosovo through EU integration, US donors focus more on market liberalisation through investment, with far less concern with environmental governance. The overall effect of this for environmental governance is that a lack of coherence – and the absence of consistent normative pressure from both actors – weakens the environmental governance ‘message’. It also undermines EU efforts to build hierarchical capacities in this sector.

#### *External actors: Serbia*

The EU’s attempts at strengthening hierarchical environmental governance are also undermined by Serbia’s non-consensual and informal involvement in the Kosovan energy space. Unlike the EU and the US, Serbia does not have an interest in enabling governance in Kosovo, but rather, sabotaging domestic governance efforts. The implication of this for environmental governance is the further weakening of (already weak) Kosovan hierarchical steering.

Serbia’s involvement stems from its non-recognition of Kosovo’s independence, and its subsequent attempts to limit Kosovo’s statehood and capacity to enforce decisions (c.f. Risse, 2011). Since 2000, Serbia has had no *formal* decision-making power in Kosovo. Nevertheless, Serbia has continually attempted to interfere in Kosovo’s domestic affairs and thus limit its statehood.

Serbia’s contestation of Kosovo’s independence has informal effects on Kosovo’s ability to enact domestic sovereignty on parts of its territory (c.f. Krasner and Risse, 2014: 549). For instance, Serbia finances informal ‘parallel institutions’ in Serb majority areas of North Kosovo, spending approximately €200m annually (International Crisis Group, 2011: 4).<sup>6</sup> Serbia’s influence means that Kosovan institutions (which govern over all their assigned competencies such as regulation) have little or no authority, legitimacy, and significance in the routine running of the North (see Krasniqi, 2012). Whilst this is most visible in elections (whereby Northern Kosovo Serbs tend to vote in Serbian, rather than Kosovan elections) and public service provision, it also has important consequences for the energy sector and environmental governance.

One instance where informal practices undermine formal rules is in the case of electricity bill non-payment, which is particularly acute in the North according to ERO officials.<sup>7</sup>

<sup>5</sup>Authors’ interview with civil society activist, 29 June 2011, Pristina.

<sup>6</sup>This figure is likely to have decreased since 2011; however, it is difficult to find a precise, up-to-date number as this funding is often unclear and contested.

<sup>7</sup>Authors’ interview, ERO official, 1 July 2011.

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The 2011 figures suggest total technical losses of 16.78% and commercial losses of 21.37% of the total electricity consumption (ERO, 2012: 34). Three areas of electricity supply have been created by KEK – A, B, and C – corresponding to the degree of non-payment. In ‘A’ areas, electricity is less frequently cut off than in B and C areas. Mitrovica (partly in Serb-majority North Kosovo) is reported to have commercial losses of 48% in 2009, largely due to KEK’s ‘inability to carry out billing and collection activities’ in North Mitrovica (ERO, 2012). Non-payment in Serb majority areas, whilst partly due to the region’s high unemployment rate and a relatively poor population, is also encouraged by the official Serbian policy of contesting and denying the authority of all Kosovan institutions and (public) services. Furthermore, there is also a ‘Serbian power utility maintaining an unlicensed branch’ in the North which hinders Kosovo’s management of its power system (European Commission, 2012: 45).

In addition, the Kosovan energy sector is shaped by its connections with the former Yugoslav grid, some of which is effectively controlled by Serbian actors. For instance, the North includes power facilities such as those on Mount Kopaonik and the ‘Ujmani’ hydropower plant. Furthermore, water from Gazivoda Lake (bordering Serbia) is used to cool the Kosovo B power plant. Kosovo thus has to rely on good relations with Serbia to ensure the smooth running of these operations. Kosovan policy makers have tried to overcome the constraints this imposes on independent decision making on energy by creating an energy supply connection with neighbouring Albania (Sahiti, 2012: 11).

Furthermore, in 2010, the Energy Community Secretariat ruled that Serbia is in breach of agreed regulations, since it had not paid the relevant electricity transit fees to KOSTT, despite a set of mutual agreements governing the relationship between KOSTT and the Serbian transmission network operator, EMS (BIRN, 2014).

In 2014, EMS and KOSTT signed a framework agreement regarding commercial and operational relations between the two companies, which should also help resolve energy issues in the North (BIRN, 2014). However, the agreement is not yet fully operational (BIRN, 2014), and the energy sector thus remains one of the last remaining spheres through which Serbia can infiltrate Kosovo and create challenges to governance.

Serbia’s non-consensual involvement in the energy space in Kosovo is informal and is often denied by Kosovo’s energy officials.<sup>8</sup> It does not form an attempt at governance as such: Serbia has no authority to unilaterally impose decisions on Kosovo, nor does it offer positive incentives, bargaining, and learning opportunities. However, in some cases, for instance, running parallel institutions in the North, Serbia behaves as though it *has* authority to govern hierarchically. This has predominantly resulted from an attempt to project its power and control into its former province and less from any real interest in local affairs. This illustrates clearly the notion that governance is not simply about the establishment of hierarchies, rules, and steering but often involves localised power struggles (c.f. Menkhaus, 2007).

Although Serbia has no real authority in Kosovo and its decision making, its non-consensual involvement in energy matters decreases Kosovo’s capacity to implement all rules and decisions pertaining to this sector. Serbia is, in effect, a governance ‘spoiler’ (see Menkhaus, 2007). This also politicises the energy sector, drawing both parties into protracted debates over resource control and revenue and detracting Kosovan authorities’ attention further away from mainstreaming energy into environmental policies. The effect of Serbia’s informal practices is a reduced ability of Kosovo to autonomously operate and regulate its energy market and supply, further destabilising an already unconsolidated model of environmental governance.

<sup>8</sup>Authors’ interview with KEK official, 29 June 2011, Pristina.

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## Conclusion

When the variety of different institutions and actors and their formal and informal inputs into policy making are considered, energy policy as an aspect of environmental governance in Kosovo appears exceedingly complex. The emerging model of environmental governance seems to be characterised by a weak hierarchy, mainly as a result of external actor involvement, with policy change being driven primarily by donor preferences and EU conditionality, rather than domestic debate and demands. Above all, the weakness of hierarchy reflects a lack of domestic state capacity – further weakened by the informal and non-consensual involvement of Serbia – and the weakness of non-state actors.

Whilst it might be assumed that the presence and influence of international actors would provide an opportunity for non-state actors to exert influence and to lobby at multiple levels, the case of Kosovo C demonstrates that this is not necessarily the case. Rather than empowering domestic non-state actors, the presence of multiple external actors actually enables the Kosovan government to respond directly to the particular external agenda it favours and to resist the demands of civil society or indeed other external interests. Yet, as our case study demonstrates, despite a broad consensus shared by donors regarding the need for liberalisation and greater environmental regulation, the critical divergence between the EU and the US has stymied the Commission's attempts to achieve more progressive environmental reforms.

What the case study seems to confirm is that the extensive involvement of external actors is no substitute for the weakness of state institutions and the lack of hierarchy. Domestic non-state actors seem to suffer most: they appear to be excluded from the critical (and somewhat covert) interaction between external actors and the Kosovan government. Thus, what may at first glance appear to be a model of progressive multi-level steering is in fact a mirage: extensive external involvement and the lack of domestic sovereignty and capacity leaves environmental governance in Kosovo vulnerable to informal practices which undermine statebuilding efforts and external actors' attempts at strengthening hierarchy. Informal practices such as interference from Serbia, and clientelism inherent in domestic politics, create a context in which environmental interests are subordinated to local power struggles or are irrelevant for political campaigns and re-election, and thus further weaken hierarchical steering of environmental governance.

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