

Policy Brief

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# HOMOLOGATION MONOPOLY



APRIL 2016

# 1. Introduction

At the end of 2008, the Ministry of Transport and Post Telecommunication (now Ministry of Infrastructure - MI) signed an exclusive contract with "Eurolab" company for homologation of vehicles that are registered for the first time in Kosovo. This contract was signed by the former minister Fatmir Limaj. The contract gives the company an exclusive ten year business activity, 2009 - 2019. Before the contract was signed, the Ministry did not promulgate any tendering procedures, thus avoided competition and providing an exclusive access to only one company.

On 12 August 2015, the Government of Kosovo, in compliance with Article 119, paragraph 3 of the Constitution and provisions of the Law no. 03/L-229 on Protection of Competition approved decision no. 17/44, to initiate procedures for eliminating all activities that restrict free competition, through establishment or the abuse of dominating position, or practices that restrict competition, as well as those that create obligation to citizens, and which are not provided by applicable laws.<sup>1</sup> The decision obligates all ministries to identify and review all barriers that restrict free competition. One such barriers identified by the Ministry of Infrastructure was the homologation of imported vehicles.

Therefore, last year the Ministry of Infrastructure sent a letter to "Eurolab", kindly requesting a review of the 2008 agreement. "Eurolab" refused to review the agreement, arguing that even in EU member states there is a monopoly on vehicle homologation.

This policy brief offers examples from countries of the region and the EU that there is no monopoly on homologation of vehicles in these countries. Moreover, this analysis shows the constitutional and legal violations made by the Ministry of Transport on the signing the exclusive ten-year agreement for homologation. In addition, the study shows that the price for homologation in Kosovo is higher than in many EU member states. At the end, a set of recommendations on how to change the current situation are provided.

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<sup>1</sup>Office of the Prime Minister. Decisions of the Government of Kosovo from the 44 meeting, 12 August 2015, Source: <http://bit.ly/1pdKEZ8>, accessed on 19 April 2016

## 2. Legal basis of vehicle homologation

Law on Road Traffic Safety regulates the basic principles and conditions for safety on roads.<sup>2</sup> This law also defines the obligations for vehicle homologation. Homologation certificate is issued in order to check whether the type of vehicle, equipment or parts thereof are in compliance with technical requirements provided by international regulations and conventions of which Kosovo might be a signatory state.<sup>3</sup>

Apart from the homologation of the vehicle type, the homologation of individual vehicles is carried out too. In order to carry out customs clearance, homologation of individual vehicles is made for new vehicles which do not possess the certificate of eligibility and imported used vehicles.<sup>4</sup> Used vehicles are considered vehicles which are three months past their first registration and have traveled at least three thousand kilometers.<sup>5</sup> Homologation should be carried out in case of a change in vehicle design, equipment or additional equipment.<sup>6</sup> A person is fined 650 to 2,500 Euros for violating these provisions.<sup>7</sup>

In order for a vehicle to avoid obligation of homologation, manufacturers or importers of new vehicles should submit to the owner a copy of the homologation certificate and the administrative decision that releases him/her from the obligation to subject the vehicle to the homologation test.<sup>8</sup> Moreover, homologation performed abroad is accepted only if it is carried out according to the administrative instruction.<sup>9</sup>

Based on Administrative Instruction no.2008 / 08 on vehicle homologation, vehicle and documentation control, issuance of the report on the fulfillment of conditions of the homologated type, as well as homologation itself is carried out by the institution authorized by the Ministry.<sup>10</sup>

<sup>2</sup> Law no.02/ L-70 on road traffic safety, Source: <http://bit.ly/1VDHdc4>

<sup>3</sup> Ibid, Article 333.1

<sup>4</sup> Administrative Instruction no.2008/08 on vehicle homologation, Article 5.4, Source: <http://bit.ly/1ccJrvF>

<sup>5</sup> Ibid, Article 5.5

<sup>6</sup> Law no.02/L-70 on road traffic safety, Article 334.1, Source: <http://bit.ly/1VDHdc4>

<sup>7</sup> Ibid, Article 334.3

<sup>8</sup> Ibid, Article 338

<sup>9</sup> Administrative Instruction no.2008/08 on vehicle homologation, Article 3

<sup>10</sup> Ibid, Article 7.2

In accordance with the Law on Road Traffic Safety, homologation prices were defined by the Ministry of Transport and Post Telecommunication in 2009.

With the same Administrative Instruction, vehicle owners are obliged to carry out the first technical inspection at an authorized institution for homologation.<sup>11</sup> Besides the homologation monopoly and the first technical inspection, this Administrative Instruction creates the third monopoly, it appoints the authorized center for homologation, the supervisor of vehicle technical control centers.<sup>12</sup>

### 3. Law violations in signing the exclusive contract

By entering into an agreement without tendering procedure, by giving exclusivity to one company for homologation of vehicles, the Ministry of Transport has violated constitutional principles, namely Article 119, paragraph 3, according to which "actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition **are prohibited**, unless explicitly allowed by law."<sup>13</sup>

Furthermore, Law no. 2004/36 on Competition was in force at the time when the exclusive agreement for homologation was signed, Article 3 of which prohibits monopolizing agreements.<sup>14</sup> Homologation agreement is also in conflict with the new Law on Competition.<sup>15</sup>

The agreement is also in conflict with the Law on Public Procurement, which requires an open and transparent process when public institutions contract services or grant licenses. Given that there was no public call for competition for the license, but only a direct agreement with one company without providing any reasoning, this agreement should be investigated by judicial authorities.


<sup>11</sup> Ibid, Article 8.6

<sup>12</sup> Ibid, Article 14

<sup>13</sup> Constitution of the Republic of Kosovo

<sup>14</sup> Law no.03/L-229 on Competition, entered into force in December 2010. Source: <http://bit.ly/1Let9mf>

<sup>15</sup> Law no.2004/36 on Competition, entered into force on 29 October 2004. Source: <http://bit.ly/23W3K5M>



Besides the monopoly for homologation, the Ministry has made other violations too, as indicated in the Administrative Instruction no. 2008/08 on Vehicle Homologation.

First is the **conditioning** of vehicle owners to carry out the first technical inspection at the institution authorized for homologation. This violates Article 4.5 of the Law on Protection of Competition, according to which agreements which "make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or by the use of their trade, have no connection with the subject of such contracts" are prohibited.<sup>16</sup>

In addition, conditioning consumers to carry out the first technical control is considered an unfair aggressive commercial practice according to the Law on Consumer Protection. According to this Law, "a commercial practice shall be regarded as aggressive if, in the concrete case, taking into account all its features and circumstances, by harassment, coercion, including the use of physical force, or threats and illegal influence, that significantly impairs or is likely to impair the freedom of choice or influences the ordinary consumer's behavior with regard to certain commodity, which have influenced in taking a decision with regard to an action which under normal conditions he/she would not have taken".<sup>17</sup>

Besides the homologation monopoly and the first technical control, this Administrative Instruction creates a third monopoly - it appoints the authorized center for homologation as **the supervisor of all centers** for vehicle technical inspection.

Therefore, the company that carries out homologation and the first technical inspection of the vehicle, also supervises the other technical inspection centers.

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<sup>16</sup> Law no. 03/I-229 on Protection of Competition, Source: <http://bit.ly/1VDoYnJ>

<sup>17</sup> Law no. 04/I-121 on Consumer Protection, Article 56

## 4. Practices from other countries

Countries in the region and the European Union have completely opposite policies to those established in Kosovo. In all countries taken as a comparative model to Kosovo, vehicle homologation prices are significantly lower; homologation is carried out only in those cases when the vehicle undergoes major changes; and there are multiple centers for homologation.

### a. Homologation in Macedonia

Homologation of imported vehicles is also mandatory in Macedonia. This means that every imported vehicle has to pass technical and environmental tests to be allowed to participate in traffic. What distinguishes the homologation model of Macedonia from that of Kosovo is that **in Macedonia at least five centers for technical controls are licensed** to carry out homologation.<sup>18</sup> Therefore, these centers, in addition to being licensed for regular technical inspection, have the right to carry out homologation of imported vehicles. This means that unlike Kosovo, in Macedonia there is no monopoly on carrying out homologation.

Five centers in Macedonia licensed to carry out homologation are:

1. AMSM USLUGI HOMOLOGACIJA DOOEL, Skopje;
2. Faculty of Mechanical Engineering in Skopje;
3. AUTOMAKEDONIJA A.D., Skopje;
4. KONFORMA DOOEL. Skopje;
5. ASUC BORO PETRUSHEVSKI, Skopje.

Licensing of these centers is carried out by the Ministry of Economy, specifically by the Bureau of Meteorology.<sup>19</sup> This bureau is specialized to assess the instruments and technical infrastructure necessary to carry out homologation.

Another difference between Kosovo and Macedonia is in regards to the age of imported vehicles. Whilst last year the Government of Kosovo has decided to remove the age restriction on the import of used vehicles, Macedonia has tightened its import measures and does not allow the importation of vehicles below the Euro 4 standard.

<sup>18</sup> Customs Administration of the Republic of Macedonia. Source: <http://bit.ly/1UQ5UP4>

<sup>19</sup> Bureau of Meteorology, Republic of Macedonia, <http://bit.ly/1PWL9Nb>

There is difference between two countries also in regards to the price of homologation. Depending on the type of vehicle, homologation price in Macedonia around 90 Euros<sup>21</sup>, whereas in Kosovo the cost is 100 Euros.

### b. Homologation in Albania

Currently in the Albanian legislation, specifically in the Highway Code, for vehicles registered for the first time are required to be checked in terms of compliance with the homologated type, but not homologation itself, since the latter is an attribute of the manufacturer of the vehicle and Albania does not produce motor vehicles.<sup>21</sup>

At the end of 2015, the Highway Code of the Republic of Albania was amended by a decision of the government on 30 September. These amendments define the criteria to be met by motor vehicles before being registered for participating in traffic in Albania. Amendments also foresee the conditions to be met by entities that will carry out the service of inspection and verification of compliance with the homologated type of motor vehicles, their trailers and systems, produced and imported into the Republic of Albania.<sup>22</sup>

Entities for verification are selected through procedures of consolidation or public-private partnerships. These procedures are managed by the Ministry of Transport of the Republic of Albania.

### c. Homologation in Montenegro

Montenegro is not a producer of vehicles or vehicle parts and therefore all vehicles in Montenegro are imported. In order to participate in traffic, every imported vehicle first of all has to meet the technical criteria of safety, as well as ecological criteria for protection of the environment and human health.

According to the Law on Road Traffic Safety, each vehicle or motor equipment shall be subject to control, audit and technical inspection before entering road traffic<sup>23</sup>. Vehicles that meet the requirements set by the Ministry of Infrastructure and Maritime Affairs are issued a certificate of homologation and safety<sup>24</sup>.

<sup>20</sup> "Zëri" daily. State Monopolies. Article by Liridon Llapashtica, 21 December 2013.

Source: <http://bit.ly/1VAyh7v>, accessed on 19 April 2016

<sup>21</sup> Correspondence of questions with Nikolin Berxhiku – Ministry of Transport of the Republic of Albania, 28 January 2015

<sup>22</sup> Amendments in the Albanian Highway Code. Source: <http://bit.ly/1XGkYAm>, accessed on 29 April 2016

<sup>23</sup> Nusret Canović - advisor Ministry of Infrastructure and Maritime Affairs of Montenegro.

*Chapter 1 – Free movement of goods*. Brussels, 5 March 2013. Source: <http://bit.ly/1K6Svls>

<sup>24</sup> Nusret Canović - advisor at the Ministry of Infrastructure and Maritime Affairs of Montenegro, <http://bit.ly/1K6Svls>

Homologation is carried out for identification and verification of compliance of vehicles with safety features of its parts and equipment, in order to meet technical and regulatory requirements stipulated by the Law on Road Traffic Safety, which is in compliance with EU Directives 2007/46 and the rules of the UN / ECE.

Vehicle homologation in Montenegro is carried out in two ways: (1) homologation of the vehicle type for wholesale (over 10 vehicles) and (2) individual homologation of vehicles. **In Montenegro there are seven licensed centers** for homologation and technical inspection:

1. Engineering Faculty in Podgorica (Mašinskim fakultetom iz Podgorice)
2. Mobil auto doo Podgorica,
3. Šišević Company doo Podgorica,
4. M.R. Cetinje doo,
5. "Dik" doo Rožaje,
6. Autoremont LMI doo Kotor,
7. Wagen doo Bijelo Polje.

On 30 July 2015, the Ministry of Infrastructure and Maritime Affairs licensed these seven centers for technical inspection, which also carry out vehicle homologation<sup>25</sup>. The homologation prices range from **30 to 80 euros** depending on the type of the vehicle<sup>26</sup>.

#### d. Homologation in some EU countries

In October 2017, vehicle homologation scheme known as European Community Whole Vehicle Type Approval (ECWTA) was amended with the implementation of the Directive 2007/46/EC.<sup>27</sup> The directive offers countries a common legal framework which is mandatory regarding the vehicle type homologation a) produced in bulk; b) in smaller numbers; and c) unique vehicles.

Homologation of the vehicle type is carried out by the national authority and there are some requirements for minimum safety and environmental standards for certain parts of the vehicle. After the type of a vehicle is homologated, the "Certificate of Conformity" is issued.

<sup>25</sup> Vehicle homologation in Montenegro too, Source: <http://bit.ly/1PIYFbu> and <http://bit.ly/1PIZ91u>, accessed on 29 April 2016.

<sup>26</sup> Government of Montenegro, <http://bit.ly/1Q417vv>, accessed on 29 April 2016



Certificate is recognized by all EU countries for vehicle registration purposes. However, this applies only to recognition of homologation of the type and not for personal vehicle homologation, as it varies from state to state.

Regarding the movement of vehicles within the EU, if the person lives in an EU member state and moves to another country for less than six months, the car registration is unnecessary and homologation is therefore not necessary. Although the stay for a period of less than six months does not require registration of the vehicle, the payment of road tax or any other vehicle tax for vehicles might be obligatory, depending on the state policy.<sup>28</sup>

### e. United Kingdom

In the United Kingdom the process of homologation of vehicles is managed by the Driver and Vehicle Standards Agency within the Department of Transportation.<sup>29</sup>

Vehicle homologation is mandatory if you: 1) build or rebuild a vehicle; 2) make drastic changes; 3) rebuild a classic car; or 4) import a vehicle.<sup>30</sup> Process of application for homologation in the United Kingdom is made through mail by attaching relevant documents and the payment to the application. In this application you may choose the location where you want to inspect your vehicle. It is important to note that **in the United Kingdom there are around 40 providers of this service.**<sup>31</sup> The process of setting the date for inspection of the vehicle in most cases is completed within four weeks. Charges should be paid before the inspection process. After the homologation process ends, the vehicle is ready for licensing and registration.

There are two types of vehicle inspections before homologation: basic and normal. Basic inspection is carried out only in cases when vehicle does not pass the normal inspection. Charges for inspection of M1 vehicles are these <sup>32</sup>:

<sup>27</sup> European Commission, Directive 2007/46/EC, Source: <http://bit.ly/1RPY3QI> accessed on 25 January 2016

<sup>28</sup> Your Europe, Source: <http://bit.ly/1SKAKJT>, accessed on 28 January 2016

<sup>29</sup> For details regarding the competences of these Boards see the link: <http://bit.ly/1PWAA33>.

<sup>30</sup> Gov.uk, Vehicle Approval, <http://bit.ly/2OJMd3>, accessed on 27 January 2016

<sup>31</sup> In this link you may find the locations: <http://bit.ly/1PCEkVn>

<sup>32</sup> Details regarding the charges for all types of vehicles can be found in this link: <http://bit.ly/1P8ULr0>

**Table. 1** Charges for inspection of M1 vehicles

Homologation type	Inspections	Re-inspections
Basic (classes A, C, S)	450 £	90 £
Basic (classes L, M, N, P)	199 £	40 £
Normal	199 £	40 £

Source: [www.gov.uk](http://www.gov.uk)

Vehicles that have a registration certificate in any of the EU countries can usually register in the UK without going through the homologation process. This is carried out through "Mutual Recognition Scheme." However, vehicles registered in countries like: Greece, Malta, Cyprus or countries of Eastern Europe are not a part of this scheme.

Also, vehicles homologated in the UK can be accepted by other countries of the EU, however it is up to the relevant authority in the country exporting the vehicle.

## f. France

In France, to register a vehicle which was previously registered in another country of the EU, it should be inspected only if it is **older than four years**. Vehicles should also be inspected every time they change the owner. Technical inspection is also carried out every two years by one of many technical inspection centers.<sup>33</sup>

In France the private company UTAC is the authorized technical center. UTAC, inter alia, has the following functions: monitors technical inspection centers, ensures that controls are standardized and provides technical assistance. All information collected by UTAC is given to the Ministry of Transport.<sup>34</sup> It is worth noting that vehicle inspection does not have to be carried out in this center, but **can be carried out in one of the centers for technical inspection**.<sup>35</sup>

Inspection centers are licensed by the Ministry of Transport for a period of 10 years as networks of companies which carry out technical inspections.

<sup>33</sup> Your Europe, Registration - Formalities and Documents - France, <http://bit.ly/1SviS7m>, accessed on 26 January 2016

<sup>34</sup> UTC OTC, Mos Mission, <http://bit.ly/1SviS7m>, accessed on 26 January 2016

<sup>35</sup> AngolInfo, The Controle Technique in France, <http://bit.ly/1P8Vx7u>, accessed on 25 January 2016

Altogether, there are five networks and these networks have at least 90 departments (inspection centers).<sup>36</sup> Prices in France are not regulated and are determined by the market. Prices for inspection range from **70 to 90 euros**.<sup>37</sup>

Technical inspection centers get audited by bodies licensed by the Ministry of Transport. License for these companies is valid for four years.<sup>38</sup>

### g. Sweden

To register a vehicle in Sweden, one must go through several stages that are fewer in number if the vehicle is imported from an EU country. These procedures should be carried out if the vehicle is imported into Sweden for a time period longer than a week. After the application for registration at the Swedish Transport Agency, the vehicle owner must apply for inspection of the vehicle registration at the Swedish Company for Motor Vehicle Inspection or the Swedish Vehicle Testing Institute. Next, the technical verification of the identity of the vehicle should be carried out, which can be performed in one of many vehicle inspection companies in Sweden. Some of these tests that are mandatory for all countries due to EU directives might not be carried out if they were performed in another EU member state.<sup>39</sup>

### h. Finland

In Finland the vehicle registration is managed by the Finnish Transport Safety Agency (Trafi). A foreign vehicle might be used in Finland without being registered for period of up to six months if its insurance is recognized. Although the process is administered by Trafi, several registration components are carried out by the vehicle inspection center, insurance company and vehicle retailers. Vehicle homologation is carried out when the vehicle is imported or when vehicle passes three years from the date of production<sup>40</sup>. This process might be carried out in **many local testing centers** at the price of **38-60 euros**.

<sup>36</sup> UTAC OTC, Les Resaux de Controle, Source: <http://bit.ly/1PWBqwo>, accessed on 25 January 2016

<sup>37</sup> French-Property.com, MOT Vehicle Test in France, <http://bit.ly/1T00KIO>, accessed on 3 February 2016

<sup>38</sup> UTAC OTC, Les Organismes D'Audits, <http://bit.ly/1SKCrH5>, accessed on 3 February 2016

## 5. Conclusions and recommendations

Kosovo is the only country in the region that has established a monopoly on vehicle homologation. Moreover, the price of homologation is substantially higher compared to other regional countries, and even more expensive than in many EU countries.

By entering into agreement without tendering procedure and by giving exclusivity to one company for homologation of vehicles, the Ministry of Transport and Post Telecommunication has violated constitutional principles, namely Article 119, paragraph 3, according to which "actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition are prohibited, unless explicitly allowed by law."

Moreover, by comparing the price of homologation in Kosovo with the countries in the region and the EU, it appears that Kosovans from 2009 to 2015 have spent 2.4 million Euro more than they would have if there were no monopoly and if the price were similar to the countries in the region.

In this analysis, GAP Institute has argued that the monopoly on vehicles is illegal and that such practice should be stopped as soon as possible.

There are two more arguments that support this request. First, decision of the Kosovo Competition Authority on fiscal cash registers could serve as a precedent to terminate the monopoly contract. This commission had found that there is an illegal competition in the market by the fact that the Ministry of Economy and Finance (now Ministry of Finance) in 2009 had licensed only two companies to sell, install and maintain fiscal electronic devices.<sup>42</sup> Relying on Law on Competition, the commission had instructed the Ministry to "liberalize the market and facilitate the introduction of other operators in the market."<sup>43</sup>

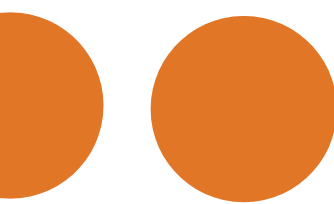
<sup>39</sup> Swedish Transport Agency, Source: <http://bit.ly/1QPPpwt>, accessed on 5 February 2016

<sup>40</sup> Finnish Transport Safety Agency, Source: <http://bit.ly/1XcUjLj>, accessed on 5 February 2016

<sup>41</sup> Expat Finland, Source: <http://bit.ly/1SCVvZO>, accessed on 5 February 2016

<sup>42</sup> Decision of the Kosovo Competition Commission on sales of fiscal cash registers, dated 01.09.2010, <http://bit.ly/20PAQG4>

<sup>43</sup> Notification of the Kosovo Competition Commission regarding the fiscal cash register retail operators, dated 01.09.2010, <http://bit.ly/1TfVz1d>



The second argument that proves that homologation of the vehicles should have never been a monopoly, is the licensing of over 100 technical inspection centers by the Ministry of Infrastructure, which perform similar work to that of the "Eurolab".

Therefore, GAP Institute recommends that:

1. Considering that the contract was signed contrary to the Constitution and the applicable laws, the case should be sent to the prosecutor's office for investigation.
2. Request from the Kosovo Competition Authority to interpret the "Eurolab" monopoly taking into account the earlier interpretation on fiscal cash registers.<sup>44</sup>
3. Given that the homologation fee is not set with the exclusive 10-year agreement, the Kosovo Competition Authority should also examine the reasonableness of the fee (100 Euros) for homologation.
4. If the fee is not a part of the agreement, then the Ministry of Infrastructure should issue a new decision on homologation fees.
5. The right to supervise other technical inspection centers should be taken away from "Eurolab" as it represents a conflict of interest; besides, their licensing and inspection is already carried out by the Ministry of Infrastructure.
6. Administrative Instruction no.2008 / 08 on Vehicle Homologation be amended and allow licensing of more than one homologation entity.
7. Article 8.6 of the Administrative Instruction no.2008 / 08, which stipulates that the first technical inspection should be carried out by the company for homologation be removed. This is because it goes against the Law on Protection of Competition and the right of the consumer to choose, which is guaranteed with the Law on Consumer Protection.

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<sup>44</sup> Source: [https://ak.rks-gov.net/repository/docs/Operatorete\\_arkave\\_fiskale.pdf](https://ak.rks-gov.net/repository/docs/Operatorete_arkave_fiskale.pdf)



GAP Institute is a Think-Tank established in 2007 in Kosovo. The main goal of GAP is to attract professionals in order to create an environment of professional development and research, which is encountered in similar institutions in western countries. This also provides the opportunity for Kosovars to research, develop and implement projects with the aim of advancing the Kosovar society. The priority of this Institute is to mobilize professionals in addressing economic, political and social challenges of the country. The main goals of GAP are to fill the gaps between the Government and the citizens, and also fill the gaps between problems and solutions.

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