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DEMOCRACY AND THE RULE OF LAW

Democracy

Kosovo has democratic institutions and they are being further developed. However, they face some difficulties and weaknesses which are the consequence of several internal and external factors.

First is the fact that the institutions are still quite young. They are still developing their own identity, configuration, institutional role, procedures and internal and external recognition. Building and consolidating democracy is a process that requires time, negotiation, communication and persistence. Furthermore, they are also building capacity in a context of scarce resources.

Second, these institutions still rely too heavily on external support for expertise and funding. Under such circumstances, the risk of seeing their constitutional autonomy reduced increases, or at least impacts on citizens' perception of the institutions' weak real power and insufficient democratic authority.

Third, Kosovo continues to seek increased international recognition. For the time-being, Kosovo remains a "quasi-state", a status that puts on a hold some important steps for acting as a fully-fledged state at the international level. It also distracts the institutions from internal problems and priorities.

Fourth, the legitimacy of Kosovo's constitutional institutions is not recognised across the whole territory and by all communities. Among other consequences, this has a negative impact on the balanced representation of the population, which is a basic requirement for democracy and rule of law. This problem relates mainly to North Kosovo, as the situation for the Serbian municipalities outside that area is improving.

Finally, citizens' frustration with the quality of life is rising, especially as expectations were very high. Unemployment, corruption, the poor quality of public services delivery and poor economic performance are serious problems that may erode trust in democracy and in the rule of law. Low participation in past elections is evidence of that disappointment.

On the positive side, the new phase of negotiations with Serbia creates new opportunities for solving fundamental political problems and, therefore, for devoting attention and resources to internal problems.

Decentralisation is also developing. The weak capacity of the local self-governments and the risk of uncontrolled fragmentation of a power that is only still in the process of being built is a matter of concern. However, if risks are minimised, benefits are expected in terms of strengthening the progressive integration and democratic governance of the communities and of improving their quality of life.

The system of checks and balances formally exists, but in practice it suffers from important weaknesses. The Assembly must increase its technical and political capacities and be more pro-active in fully exercising its constitutional power. The independence of the judiciary is being developed and its capacity is also being reinforced. However, it still relies too much on external assistance both in terms of budget support and operational capacity, as the role of EULEX illustrates. Furthermore, its

integrity remains a matter of concern and the main reason for citizen's lack of trust. Civil society is becoming more active but needs to develop its capacity to intervene in the democratic oversight of political institutions.

In general, democracy is developing but a lot of progress still needs to be made before it can be considered as being well established and functioning properly.

Rule of Law

The necessary institutions are in place and the fundamental legal framework has already been adopted. However, the rule of law is weakly embedded in Kosovo.

The role of the different institutions is not yet sufficiently understood and well balanced. The number of independent institutions and agencies is too high, in particular those reporting directly to the Assembly. As a result, the governance system is complex and accountability is blurred. In addition, political responsibility is weakly defined in several domains.

Serious concerns also exist regarding the implementation of legislation. The legislative agenda is becoming more realistic but still too demanding considering existing capacities. There is no systematic supervision of the implementation of the legislation adopted and excessive delays in the adoption of necessary secondary legislation are common. This is in part due to the absence of proper regulatory (mainly fiscal) impact assessment and to the poor policy making and implementation capacities of line ministries. Therefore, legislation is implemented only partially, and even legislation revoked continues to be applied. In such circumstances legal certainty and predictability cannot be ensured and judicial scrutiny is very difficult.

The overall quality of legislation needs to be improved. Too many amendments to pieces of legislation recently adopted show that improvements are needed in ministerial policy making capacity as well as in making the consultation mechanisms more effective.

Constitution

Kosovo's Constitution provides the necessary guarantees, conditions and directions for ensuring democratic principles and values as well as for protecting citizens' rights. Its practical implementation is helping to identify some of the difficulties that may be addressed through the amendments being prepared.

A process for amending the Constitution was launched following the problems encountered during the last presidential -- indirect -- election (2010). Draft amendments establishing direct election of the president and reshaping his/her constitutional powers are expected to be submitted to the Assembly shortly.

Parliament

The Assembly's intense legislative activity impacts negatively on its overall performance. As a result, the quality of laws is not satisfactory -- as evidenced by the large number of subsequent amendments -- and the Assembly's other important functions are neglected. This is particularly the case of the function of oversight over the government and over the functioning of the public administration.

The government has too much influence on the parliament's activity and some conflicts have arisen. Relations between the government and the Assembly need to be improved through political dialogue and mutual respect, instead of confrontation. The Auditor General's reports have led to some

dialogue between the Assembly and the government organisations concerned but it is so far limited to the Committee for Oversight of Public Finances.

Improving the administrative capacity of the Assembly (staff, skills, procedures and equipments) will contribute to increasing its overall performance and to putting into practice the democratic values of the separation of powers.

Government

Although a law on government is needed to increase transparency and improve the overall quality of the organisation and functioning of the government, no law has so far been adopted.

On the other hand, the newly adopted (September 2011) rules of procedure of government are a positive development and there are signs that these rules are being implemented, although not entirely. The main reason for these implementation gaps is that the policy making and implementation capacities of the line ministries are still insufficient; action is required to address this problem. The co-ordination mechanisms and planning capacities within the Prime Minister's Office are being improved. Co-operation between the Office of the Prime Minister, the Ministry of Finance and the Ministry of European Integration has started to produce first tangible results but this is still far from representing substantial policy co-ordination.

A feature of Kosovo's central government is the high number of independent organisations (some constitutional) reporting directly to the Assembly. A number of these institutions should be made part of the government organisation.

Public Administration

The decision-making process in the administration lacks transparency, impartiality and neutrality. Corruption allegations are common. Thus puts legality at risk. The bureaucratic administrative culture remains a main characteristic of the administration and serious efforts are needed to increase its legitimacy and relevance, which only a service-oriented culture can achieve.

Fundamental legislation for building a professional civil service system was adopted but its implementation is too much delayed by the absence (or very slow adoption) of relevant secondary legislation. At the moment, some public institutions are trying to implement the new legislation, but many others are still following the legislation revoked. The risk of losing momentum on this important reform is high, putting the rule of law at risk.

The area of public finance management includes a sufficiently robust Treasury management system but the practices in budget preparation are still far from being transparent and predictable. The notions of efficiency and effectiveness underpinning the concept of public internal financial control are being developed with great difficulty, since the underlying conditions, such as legality and accountability, are not well established.

Two positive developments regarding public procurement in 2011 are a new public procurement law fixing the shortcomings of the one issued in 2010, and a new law on public-private partnerships. Contracting authorities are now entirely responsible for the tendering procedures that they conduct, and monitoring, including on contract management, is strengthened. Although central purchasing, a leverage for better efficiency and integrity, is foreseen in the law, and an agency within the Ministry of Finance is now entirely devoted to this function, no steps have been taken by the government to make it operational.

Judiciary

The capacity and independence of the judiciary is improving but it is still below the required standards. It is perceived by citizens as ineffective and prone to corruption and political interference. The backlog of cases is important and increasing. Implementation of the decisions of the judiciary is another area of concern. On top of problems of integrity, the judiciary's weak performance does not contribute to raising the trust of citizens and improving the business climate.

The Kosovo Judicial Council is making efforts to raise the professionalism of judges through better recruitment, training, protection and working conditions, including salaries, which were significantly raised in 2011. However, its resources are rather limited and it relies largely on external assistance. The same can be said of the State Prosecutorial Council.

Integrity

The lack of visible results in fighting corruption undermines any serious effort to improve the rule of law. Perceptions of impunity are high in an environment in which corruption is a serious problem. Whether the result of a lack of willingness, of the relevant entities' and institutions' insufficient capacity, or of political or clan protection, the consequence is that rule of law is not sufficiently protected in Kosovo.

New attempts at adopting a new anti-corruption strategy are being made. However, unless consistent efforts to implement it are made, the probability of success is low. Most importantly, the operational capacity of the relevant institutions for preventing and fighting corruption needs to be strengthened.

Recommendations

To Kosovo

- Focus primarily on implementing the already existing rules and tools rather than embark on continuously amending legislation, setting up new bodies, and adopting formal strategies, usually without assessing the effectiveness of the previous laws, strategies and actions.
- Improve the internal co-ordination and co-operation for public administration reform (PAR). As a horizontal area of governance, success in PAR clearly depends on how, at a minimum, the Prime Minister's Office, the Ministry of Finance and the Ministry of Public Administration work together, showing commitment and ensuring co-ordination, guidance, support and resources. A clear message must be sent to the whole government, public administration and society in this regard.
- Kosovo must make visible improvements in the quality of public services delivery in the short-term. Key sectors and products must be selected for this purpose and a realistic plan must be implemented. Making the reform happen will improve the legitimacy of politicians and of the public administration, and will generate public support for further reforms.

CIVIL SERVICE AND ADMINISTRATIVE LAW

Main Developments Since the Last Assessment (May 2011)

Little progress has been achieved in Kosovo in the implementation of the Law on Civil Service (LCS) and of the Law on Salaries in the Civil Service (LSCS). A year and a half after the approval of these two important laws, several by-laws have been adopted¹ but others are still missing, mainly those concerning the LSCS. As a consequence, the LCS is being implemented only partially, and the LSCS is not being implemented at all.

The majority of institutions have transformed the previous fixed-term contracts into open-ended appointment letters, which has increased the stability of the civil service as well as the confidence of civil servants.

Almost all of the general secretaries and the chief executive officers (CEOs) of agencies have been recruited based on the new procedures², correcting the previous difficult situation of ad interim top civil servants due to the long-term expiration of their old contracts.

Salaries were increased in 2011 for all public officials. In civil service institutions they were increased by 30%, which represented the first increase since several years. In other areas, *i.e.* the health system, salaries were increased up to 50%. This salary increase was applied across the board and was not accompanied by the salary and job evaluation reform. As a consequence, an excellent opportunity for reforming the whole salary system of the public sector was wasted.

The draft Law on Salaries for High Public Officials has not yet been sent to the parliament.

The implementation of the Law on State Administration has already started. The Ministry of Public Administration (MPA) has prepared and distributed to internal organisations a procedural manual aimed at preparing them for the application of this law, including the standards to be respected. However, the regulation establishing those standards in accordance to article 34, 2 of the law has not been adopted yet.

The Kosovo Institute of Public Administration (KIPA) has moved from its old premises, and this move has affected its capacity to deliver the whole planned training programme. In spite of this situation, it has nevertheless managed to organise an information and training programme on the LCS for human resources managers from all public institutions.

¹ Regulation on recruitment procedures; Regulation on suspension and termination of the civil service working relationship; Regulation on probationary periods for civil servants; Regulation on civil servants' personal files; Regulation on job descriptions; Regulation on the right and proportional representation of minorities in the civil service; Regulation on working time; Regulation on the transfer of civil servants; Regulation on the appointment of civil servants; Regulation on disciplinary procedures in the civil service; Regulation on resolving appeals in the civil service; Regulation on leave in the civil service. Regulation on job classification has been recently approved by the government as well (February 2012).

² Regulation on the management of top civil servants; Regulation on the appointment of top civil servants

Following the approval of the Law on Protection of Personal Data, the Assembly elected the members of the board of the State Agency for Protection of Personal Data (August 2011). The normal functioning of the Agency was delayed due to the lack of a budget in 2011.

Access of the public to official documents has not improved, in spite of the adoption of the new Law on Access to Public Documents. The main reasons for this situation are the following: non-classification of official documents; lack of training; unclear and insufficient role of the Ombudsperson as the institution in charge of monitoring the implementation of the law. Furthermore, it is not entirely clear who should take decisions to release documents or not. The obligation has been put to the communications staff but they tend not to be equipped to make decisions that are often legal in nature. A new regulation was recently adopted³ establishing procedures, forms and responsibilities for dealing with the requests for access to public information. It remains to be seen if it will contribute for better implementation. There is a risk that formality prevails against substance.

Public Administration Reform (PAR) is clearly not a priority for the government. The Action Plan for Public Administration Reform is not yet approved. The government has shown very little political will to progress with PAR in general and with civil service reform in particular. The Ministry of Public Administration (MPA) has to reinforce its capacity for policy design and for monitoring implementation.

No progress has been achieved in extending public administration services to the North Kosovo.

Main Characteristics

Patronage, politicisation and lack of professionalism are still the main characteristics of the civil service system in Kosovo. While waiting for the full implementation of the new LCS, motivation is low, skills are insufficient, and greater efforts are required to implement a service-oriented administrative culture. Limited managerial capacities and lack of delegation of power from the top level are other problems that need to be addressed.

The civil service is shifting from a pure position-based system to a mixed system with career patterns. However, the measures related to career advancement have not been enforced because the government has not yet approved all the necessary regulations (*e.g.* on performance appraisal). Therefore, the measures concerning vertical promotion cannot be enforced. The same situation applies to horizontal progression in salary steps, which is also due to the non-implementation of the LSCS.

The salary system continues to be unfair, unbalanced and incoherent. The old salary system based on coefficients and fixed salaries is still in place. The discretionary practice of adding several supplements to the basic salary is continuing. In certain cases these supplements represent up to 2 or 3 times the basic salary, thereby distorting the overall salary system and increasing the difficulties in implementing the new system. The legal situation concerning salaries in the civil service is a paradox at the moment. The new law has formally been in force since mid-2010, but it has not yet been implemented. The old legislation, which was abrogated by the 2010 law, is still implemented in the area of salaries.

The partial implementation of the LCS and the non-implementation of the LSCS show little respect for the rule of law in Kosovo. These laws were adopted and a sufficient “*vacatio legis*” was foreseen.

³ Regulation no. 04/2012 on official evidence of requests for access to public documents (29/02/2012)

If for some reason the laws could not be fully implemented, the Assembly should have adopted interim measures, which has not been the case.

The new LCS has restrained the scope of the civil service: out of a total of almost 72,000 employees, 21,000 are civil servants. In the entire public administration 89.5 % are Albanians and the remaining 11.5 % belong to minorities⁴.

The approval of the new civil service framework has created a particular legal situation for the groups of public officials outside the scope of the civil service (health, education, etc.). For these categories the legal framework is ambiguous. It is composed of the old regulation of the United Nations Interim Administration Mission (UNMIK) on the civil service, the new labour law and sectoral legislation, wherever it exists. This fragmentation of the legislation makes it difficult to implement and, at the same time, creates differences with the civil servants, for whom the legislation is considered to be more advanced. The MPA announced as a priority for 2012 the elaboration of a comprehensive legal framework for human resources management in the institutions outside the civil service. Such a framework must ensure implementation of the same standards and principles for creating a merit-based system as those applied in the civil service legislation.

The situation is the same with regard to the salary legislation for institutions outside the civil service. The current system is also based on the old UNMIK system, which does not ensure objectivity.

The electronic system for the management of human resources (HRMIS) is not yet operational. The data for this system are extracted from the payroll system which has not the potential to provide the required information for planning and managing the public workforce. The HRMIS is to be a useful tool for the government in designing HR strategies and also in providing reliable data on the civil service and on civil servants in general. The government is launching a World Bank funded project aimed at improving the situation of the HRMIS.

The system of political checks and balances in Kosovo is distorted due to the excessive predominance of the executive. The Assembly has not succeeded in properly supervising the implementation of laws by the government and the overall performance of the administration. On the one hand, MPs are fully absorbed with the legislative agenda and on the other hand, parliament receives very little information on the current implementation stage of civil service and other legislation. The administrative capacity of the Assembly is also not sufficient to provide the professional support required by parliamentarians. A twinning project that has just started aims to address this problem.

The Assembly also does not pay enough attention to independent institutions reporting to it, such as the Ombudsperson, the Independent Oversight Board (IOB) and the Anti-Corruption Agency (ACA). There is little debate and almost no follow-up on the issues and problems reported by these institutions. Parliament issues some recommendations, but it does not follow the implementation progress of those recommendations.

The Ombudsperson institution lacks resources: of its five deputies, two are on duty but not being paid due to reduced budgetary funds. It remains to be seen if all deputies are necessary as well. The number of complaints lodged with the Ombudsperson increased about 15%, with the judiciary being the most represented sector (40% of all complaints). The Ombudsperson also lacks the power for effective enforcement of the Law on Access to Public Documents.

The number of complaints addressed to the IOB has also increased. In particular, the complaints concern decisions on the termination of employment and on the recruitment of general secretaries.

⁴ Data provided by the Department of Civil Service Administration (DCSA/MPA)

The non-enforcement of the IOB's decisions is the main problem with regard to the role of this constitutional institution.

The Constitutional Court is working properly and its decisions are accepted and implemented.

The administrative institutional framework is almost complete, but its effectiveness is still a matter of concern in many regards (e.g. the Department of Civil Service Administration (DCSA); the IOB; etc.).

The administrative legal framework is also being completed and its quality is acceptable. However, poor implementation of legislation damages the rule of law. The random implementation of the Law on General Administrative Procedures is having a detrimental effect to the rule of law as well. The law will now be reviewed, and hopefully this review will provide a new opportunity for advancing the implementation of the PAR Strategy.

Reform Capacity

The implementation and sustainability of reforms are matters for serious concern. Reform capacities remain very weak and are dependent on external aid, in terms of both expertise and funding. The MPA is struggling to obtain the leadership of reforms, especially for the civil service, but without many results. The government does not pay the necessary attention to the PAR process, including the development of a professional public administration. It does not view the administration as a tool for the achievement of strategic objectives.

The MPA capacity needs to be strengthened. The current resources and skills are not enough for leading the implementation of the ongoing reforms. In addition, it has little capacity for influencing the government's agenda. The overlap of competencies between the MPA and the Prime Minister's Office (PMO) for the overall leadership of PAR and policy co-ordination creates some confusion and results in a misuse of available resources. Co-operation between the MPA, the PMO and the Ministry of Finance, as well as with the Ministry of Local government Administration for implementing the reforms in the civil service and the public administration is improving and shall be reinforced.

The capacities of the MPA's Department of Civil Service Administration (DCSA) remain weak. Although some staff are experienced, gaps in capacities are evident. The staff are not proactive and lack vision and leadership skills, and at the moment they are not succeeding in leading the reforms. The DCSA has done commendable work in networking with HR managers in institutions to communicate the new civil service regulations and to train these managers for implementation of the regulations. However, the forum of HR managers was only marginally involved in the preparation and discussion of the implementing legislation. HR managers should constitute an important tool for spreading the reform, although they are not very influential in their institutions.

The number of staff in the PAR Department who are in charge of the overall co-ordination of the PAR (4 civil servants) is too low to allow them to perform their role adequately.

The MPA has also demonstrated its weakness in the process of administrative simplification. In 2009 a special division was created in the ministry for this process, but it has been very passive and has relied completely on IT solutions, without a proper review procedure of administrative processes.

The IOB continues to keep a low profile in the civil service reform process. Its competencies overlap in part with those of the MPA/DCSA, but the major problem remains the capacity to enforce IOB decisions.

The KIPA is far from acquiring the overall leadership in training and capacity-building of the public administration. The institution has been neglected by the government in terms of funds and support. There is a good interaction between the MPA and the KIPA, but this is not sufficient.

The Civil Servants' Trade Union is weak, but it has the potential as an institution to boost civil service reform and to push the government for quicker and firm decisions. NGOs and other civil society organisations could also contribute to this action, although they demonstrate limited substantive expertise. The business community is not active as an external pressure for reforms. For the sake of reinforcing the role of the social partners, effective social dialogue and consultation need to be implemented.

Recommendations

To Kosovo

- The MPA should complete the legislation related to implementation of the Law on Civil Service and should start as soon as possible the full implementation of the law.
- The government and the MPA should decide on the action plan for the implementation of the Law on Salaries in the Civil Service and complete the implementing legislation related to that law.
- The DCSA should improve its capacities to lead the reforms and take a proactive attitude towards full implementation of the new system.
- The MPA should review the Law on General Administrative Procedures and prepare a programme for its implementation.
- The MPA should lead the preparation and co-ordinate the implementation of an administrative simplification plan aimed at improving the delivery of services to the public and to businesses.
- The MPA should prepare an action plan for the elaboration of the legal framework related to the management of HR and to salaries in the institutions outside the scope of the civil service.

To the European Commission

- Underline the importance of completing and fully implementing civil service reforms, including civil service salary reforms, as a precondition for the success of other reforms. Technical and financial support should be provided to these reforms.
- Provide financial support for intensive training related to the implementation of ongoing civil service reforms.
- Contribute to strengthening the capacity of the MPA to lead and co-ordinate PAR.
- Assist in simplifying administrative procedures and in providing better services to citizens and to the business community.
- Support the creation of conditions for effective participation and social dialogue in matters related to PAR and the civil service.

INTEGRITY

Main Developments Since the Last Assessment (May 2011)

Limited progress in the promotion of integrity and fight against corruption in Kosovo over the last year can be reported. The perception of corruption continues to be very high and citizens believe that most state institutions are involved in corruption.

Formally, anti-corruption continues to be a top priority for the government and other institutions, and some initiatives have been adopted in this area.

The new Anti-corruption Strategy and its action plan were approved by the government on 11 January 2012 for the period 2012-2016. It must now be adopted by the Kosovo Assembly. The current strategy mostly focuses on implementing the existing legal framework. The strategy addresses issues related to prevention, law enforcement, criminal prosecution, inter-institutional co-operation and increasing awareness.

The new Strategy was drafted following consultation with state institutions and international organisations as well as civil society. However, criticism has been made that the consultation process was not effective and that the action plan was prepared without assessment of the previous strategy⁵. About 50% of the activities foreseen in the previous action plan were not implemented.

Several laws related to anti-corruption and integrity were approved or amended in 2011: the Law on Protection of Informants (whistleblowers); the Law on Public Procurement; the Law on the Declaration, Control and Origin of the Assets of High Level Officials; the Law on Conflict of Interest; the Law on Financing of Political Parties; the Law on Money Laundering Prevention, etc. Many of these laws were approved in 2010 and amended in 2011. The frequent changes in the legal framework demonstrate an absence of impact assessment and proper consultation, and contribute to weakening the rule of law.

Improvement on the procedures for the declaration of assets by high-level officials can be reported. However, these procedures are still very formalistic and no investigations are carried out on the sources of the revenues or on particular discrepancies in the declaration. The Anti-Corruption Agency (ACA) has limited resources and power for performing such investigations. A false declaration of assets is not considered a criminal offence, which further limits the measures the agency and the prosecutor's office can undertake in these cases.

The ACA has fostered co-operation and co-ordination with domestic and international organisations on activities for preventing corruption.

Positive steps were made towards the creation of a professional and impartial judiciary. The Kosovo Judicial Council (KJC) organised a vetting procedure for existing judges, in close co-operation with international organisations. This process was very important, in spite of some mistrust caused by cases where the KJC and the President refused the appointment of some judges without grounding

⁵ Press declarations of the NGOs "Lëvizja Fol", Kosovo Democratic Institute and "Lëvizja Çohu" following the approval of the strategy by the government in January 2012.

the decision. The attractiveness of the judiciary was also improved through important salary increases.

In 2011, the prosecutor's office dealt with 959 cases related to corruption (467 cases from previous years and 492 new cases) involving 1 862 persons. Out of these cases, 538 were resolved with about 50% of indictments filed. They relate, however, to cases of petty corruption. The State Prosecutorial Council is becoming more active and fully operational.

In January 2012, the Special Department on Anti-corruption and the special prosecutor arrested four officials of the Ministry of Health, among those the General Secretary of the ministry. They are accused of breaching procurement rules and causing economic damage to the state budget.

Previous high-level cases, especially the one related to the raid at the Ministry of Transport in 2010 and the alleged accusation of the minister, are still dormant and no concrete actions have been taken. The absence of results reinforces public distrust of political and judicial institutions, including EULEX.

Main Characteristics

Improving the integrity system in Kosovo requires systematic actions and visible results. The current situation undermines the rule of law, the trust of the society and of the international community in the public institutions, and the capacity for boosting economic development.

Kosovo generally has a comprehensive, reasonable and continuously improving legal framework for promoting integrity and fighting corruption. The main problems concern implementation. The adoption of the new Anti-corruption Strategy may help to improve this issue.

The integrity and professionalism of the public administration continues therefore to constitute a problem for the overall progress of Kosovo. Despite some improvements, the general perception is that state institutions are corrupt and deeply influenced by politics and nepotism. The perception that clannish solidarity – which is a cultural and social feature of Kosovo – influences the decision-making process and protects corrupt people undermines the rule of law as well. According to the Balkan Monitor (survey), almost 75% of the respondents think the political parties are corrupt; 63% consider the judiciary corrupt and 40% consider civil servants are corrupted. In almost all areas, from the civil service to the prosecutor's office and the judiciary, political interference and nepotism are reported as important factors influencing the professionalism, therefore opening possibilities for corruption.

The governance system is not performing well and the system of checks and balances is weak in Kosovo, which does not contribute to improving the fragile rule of law.

The Parliament exercises a very limited role in supervising the implementation of the existing legal framework and government policies. Its overburdened legislative agenda does not allow any room for exercising its oversight function.

The independent oversight bodies -- the ACA, the Ombudsperson, the Independent Oversight Board (IOB), etc. -- have limited time and opportunities to discuss their findings with the Parliament. Their annual reports are treated very formally by the Parliament and there is no follow up on the recommendations they issue. The Office of the Auditor General (OAG) is becoming an exception in this regard.

Concerns are being raised regarding the funding of political parties and electoral campaigns. Following the elections from previous years, all political parties were fined by the Central Electoral Commission (CEC). The Annual Working Report of the State Prosecutor highlights cases of abuse in

the early parliamentary elections of 12 December 2010. At the time of writing, 1 343 people had been accused of election fraud and abuse of the right to vote.

Most of the stakeholders in Kosovo identify the judiciary as the weakest link in the concerted efforts for fighting corruption and promoting integrity. Despite progress in the vetting and appointment of judges, public opinion still considers the judiciary to be influenced by politics.

The weak protection of judges to external pressure and intimidation does not help the judiciary to exert its independence when confronted with a high-profile case. The current practice is to surrender such sensitive trials to EULEX judges⁶. It is planned to create a single Appeal Court in Pristina for the entire country. The creation of a unique Appeal Court is expected to loosen the traditional ties between district and appeal courts and increase objectivity and impartiality in judging cases.

The number of judges is increasing and 117 new positions have been advertised. However, the judiciary still remains underfunded. The 2012 budget is EUR 19 million, with the salary expenses alone of the 1 900 employees accounting for EUR 17 million. The financing of other projects and activities relies on international support. This situation may put at risk the implementation of the new Law on Courts which will come into force on January 2013. The number of prosecutors is also increasing. There are currently 92 prosecutors and 45 vacant positions are supposed to be advertised in 2012.

The effectiveness of the judiciary continues to be a matter of concern. Statistics from the Kosovo Judicial Council put into evidence that the backlog of cases is increasing.

The increase of salaries in 2011 in the civil service and other sectors of the public administration improved the remuneration package for a wide range of public employees, improving conditions for increased integrity in the public administration. However, the increase of salaries was not accompanied by the salary reform, and all the existing weaknesses linked with subjectivism and the lack of transparency of the salary scheme still persist.

The institutional framework and the involvement of different segments of the state in the fight against corruption require clarification. A strategy for improving co-operation among the different actors in this field (the Parliament, the government, the judiciary, the Special Prosecutors' Office, the police, EULEX, the ACA, etc.⁷) is being drafted by the State Prosecutorial Council.

The ACA is independent from the executive and reports to the Parliament. It has little or no influence in policy design or in the preparation of the legal framework. Its capacity for investigating asset declarations remains weak.

Reform Capacity

The creation and management of a "clean" environment in the political sphere, the judiciary, the public administration, and society as a whole constitutes a continuous task involving cultural change, a solid legal framework, a proper and capable institutional setup, a strong system of checks and balances, freedom of the press, and an active civil society. Kosovo shows serious deficiencies in

6 OSCE (2012), "Independence of the judiciary in Kosovo: institutional and functional dimensions", January.

7 A Consultative Council on Anti-Corruption has been created by the President and had its first meeting on 15 February 2012. It aims to conduct regular and timely intra-institutional exchanges of information, harmonisation and co-ordination of actions as well as regular periodic reports to measure results in the fight against corruption.

almost all of these areas. Tackling such problems requires time, political will, persistency, co-ordination, resources and capacity.

The capacity and commitment of the government in leading and co-ordinating a comprehensive effort for building an integrity system in Kosovo appear to be weak. One example is that no list of commodities or common use items has been established to be mandatorily procured by the contracting authorities through the Central Procurement Agency established under the Ministry of Finance, although central purchasing should bring in cost-effectiveness and efficiency.

In addition, the Assembly does not seem to have a clear understanding of its role in raising the momentum for fighting corruption and in monitoring integrity in the government and in the administration.

The situation in the judiciary and in the prosecutorial services is slowly improving but their role is not to lead the overall reform policy. The ACA is also increasing its capacity but its role, functions, institutional positioning and lack of power do not allow it to play an important role in encouraging reforms. Despite the role of EULEX, the international community is not supposed to play such a role either.

The President's recent creation of the Consultative Council on Anti-Corruption may have a positive impact in raising awareness and may also contribute to better co-ordination and exchange of information among the different state organisations. However, there is a risk of overlapping existing institutions and distracting efforts and resources. Empowering all managers and making them responsible for improving integrity and preventing corruption in their organisations would be a more effective approach.

Therefore, the perception is that one must turn to civil society to find an actor "championing" the anti-corruption cause.

Civil society organisations are becoming more active and carrying out studies and surveys regarding integrity and corruption in the public administration in Kosovo. Several NGOs have published surveys on the declaration of assets of public officials,⁸ Procurement Monitoring Reports,⁹ integrity reports, Political Parties Financing Review reports and public participation in decision making reports,¹⁰ etc. Business organisations are more structured and make concrete proposals for the public administration. Unfortunately their capacity needs to be improved and their contribution is rarely considered by government institutions, as they do not create or build partnerships with civil society.

Kosovo must focus mainly on implementing the already existing rules and tools rather than embarking in continuous amendments to the legislation, setting up new bodies and adopting formal strategies, usually without assessing the effectiveness of the previous laws, strategies and actions.

8 Levizja Fol (2011), http://levizjafol.org/images/uploads/files/Deklarimi_i_Pasuris%C3%AB_2010-2011.pdf, October.

9 Levizja Fol ("Speak" Movement) published several Procurement Monitors and especially monitored the procurement procedures in the Ministry of Health.

INPO, Iniciativa për Progres <http://inpo-ks.org>.

10 Kosovo Democratic Institute – KDI www.kdi-kosova.org/al/publikime.php#2011pub.

Recommendations

To Kosovo

- The reform of the judiciary should continue and the appointment of new judges should follow the same quality and integrity criteria as in the first round. Protection of judges against undue pressure should be provided and threats brought to light and punished.
- The implementation of the legislation aimed at increasing professionalism and transparency and integrity in the administration (*e.g.* law on civil service; law on general administrative procedures; law on access to public documents) and in the political life (*e.g.* funding of political parties and electoral campaigns; conflict of interests) should be reinforced and closely monitored.
- The quality of the control exercised by the ACA on declaration of assets and conflict of interest should be improved. In this regard the criminalization of false declarations may be considered.
- Public institutions should create conditions for effective participation of the civil society in the preparation and implementation of policies for preventing and tackling corruption.
- Public servants must be given training in ethics and in the fight against corruption, especially those working in more risky areas.

To the European Commission

- Ask for effective results in the prevention and fight against corruption as a pre-condition for further engagement in the European integration process.
- Support a program for administrative simplification and transparency with the participation of the civil society.
- EULEX may consider concentrating its efforts on assessing the internal capacity of Kosovo's judiciary and on assisting its strengthening.
- Support training of public servants on public service ethics as well as public campaigns for increasing public awareness on corruption.

PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

Main Developments Since the Last Assessment (May 2011)

After the delays in concluding the annual budget for 2011 and the hasty preparation of the 2012-14 Medium-Term Expenditure Framework (MTEF), the Kosovo government has managed to stabilise its work in the area of **public expenditure management (PEM)**. The 2012 budget was prepared on schedule as regulated by the Law on Public Financial Management and Accountability (LPFMA). The budget bill was submitted to the Kosovo Assembly at the end of October and the Assembly adopted the Kosovo Consolidated Budget in December 2011.

After the controversial public spending decisions taken by the government of Kosovo to increase expenditure in early 2011, the IMF has resumed dialogue with the Kosovo authorities and according to their report released in December, the government of Kosovo has fulfilled the objectives agreed in June 2011, including issues like the budget preparation timetable and improvements in structural balance. Public deficit decreased to 1.8% of GDP in 2011. The only exception is that there are still payment arrears reflecting the low level of the monitoring of overdue liabilities. This is one of the reasons why since October 2011 the Ministry of Finance (MoF) has required new monthly reports from all budget organisations on outstanding liabilities.

In May 2011 the Treasury established a Monitoring Unit to check the accuracy of transactions prepared by the budget organisations. These are rather technical checks to make sure, among other things, that entered codes are right and that recording is done on time. The Treasury Debt Management Unit also has become operational in 2011 and in the beginning of 2012 the government of Kosovo issued its first government securities. The government is planning to issue more securities in 2012 with a total value of about *EUR* 75 million, which is around 1.5% of GDP.

With regard to **public internal financial control (PIFC)**, the planned instructions and manuals were formally approved in 2011. The introduction of manuals has been accompanied by a series of seminars, including high-level symposiums for ministers, general secretaries of ministries and mayors. In 2011 the Central Harmonisation Unit (CHU) for internal audit (IA) focused on finalising their systematic training and certification programme. The programme trained almost half (around 60) of all internal auditors in government organisations and 32 of them passed the exams and received the CIPFA (Chartered Institute of Public Finance and Accountancy) certificates. This all coincided with a technical assistance that ended in September 2011. Since then, development and co-ordination from the Ministry of Finance has virtually stopped, particularly on the part of the CHU for financial management and control (FMC). Implementation of the approved instructions for FMC has not really begun. The CHU for IA has, however, continued with some activities based on their annual plan.

Regarding **external audit**, the Office of the Auditor General (OAG) has continued to implement its Corporate Development Strategy. By March 2012, the number of staff working in the OAG has reached 132 (from 114 in the beginning of 2011) and since September 2011 the position of Auditor General is co-financed by the Kosovo budget. There has been some improvement in audit completion timelines and the number of audits outsourced by the OAG has been reduced, from 23 in 2010 to 18

in 2011. The Committee for Oversight of Public Finances (COPF) of the Assembly has developed a solid routine to discuss the reports prepared by the OAG with the presence of the audited organisations.

Main Characteristics

The overall situation concerning public finances in Kosovo is somewhat better than a year ago, since the expenditure hikes seen in 2011 have not been repeated and the 2012 budget is slightly more conservative. Over the next few years the government plans to increase the public sector salary bill at the pace of inflation estimates, which, providing that GDP grows in real terms, should make room for reducing the deficit if the current estimations turn out to be broadly adequate. Nevertheless, due to the fact that around 40% of public expenditure is capital spending, there are sizeable risks in terms of planning of annual budget execution and estimating future permanent costs. The revenue plans for 2012 still include significant one-off revenues such as donor budget support and the privatisation of state assets.

The legislation for **Public Expenditure Management (PEM)** is in place and contains many elements that are required by international standards and practice in EU countries. However, discrepancies remain in some areas, between the relatively strict and detailed legislative framework and its implementation. The balance of power between different actors (the Assembly, the MoF and the budget organisations) is, in practice, mainly within the MoF. The financial management information systems are well established, but administrative capacity is weak, especially for the analysis of data. There are noticeable problems with administrative discipline, since parts of the commitments are not properly entered into the Treasury system, thus leading to arrears.

The Ministry of Finance, the Ministry of European Integration, and the Strategic Planning Office within the Prime Minister's Office (OPM) have continued to co-operate for better integration of the government work plan, the European Partnership Action Plan (EPAP) and the budget documents, including the MTEF. The approach to harmonise these strategic documents is still relatively technical but the sequencing and timing of these is well thought out. Since the end of 2011 the government work plan and the EPAP are both discussed in the government at the end of December, when the budget for the next year is basically clear.

The MTEF includes many of the features that are common in international practice. Despite the short timeframe for preparations, the 2012-14 MTEF includes a new feature: narrative references to the government strategic priorities. This is work in progress and so far these priorities have not had any impact on spending allocations. But the intention of the MoF and the OPM is to build a clearer link between government priority setting and public spending through budget ceilings. The MTEF does not cover a number of aspects that are common practice in many EU countries, including: *i)* comparisons with projections of other institutions and previous MoF projections, *ii)* tax expenditure, *iii)* public debt and deficit broken down by levels of government. The MTEF includes a promising basis for sectoral analyses but due to the high number of first level budget organisations the analysis is equally split between those administrative boundaries. It also provides some contextual performance information concerning the area of each budget organisation, but this information is still far from being sufficient for reporting on policy outcomes. The MTEF also includes budget ceilings, but they are not yet final at that stage in the budget process as the MTEF is followed by an incremental procedure through negotiations and the next ceilings proposed by the Ministry of Finance are closer to final budget allocations.

In Kosovo, the number of first level budget organisations is high (around 50 at the state level and 37 at the municipal level). In particular, the number of independent organisations reporting directly to the parliament is remarkably high. Many of these organisations should, in principle, be part of government organisations since they are effectively contributing to the sectors governed by

ministries. This has implications on the ability of the MoF to steer public spending and may have restricted future developments in budgeting, for instance for developing policy capacities in line ministries or moving towards programmatic budgeting. Today there is no real basis for programmatic budgeting as there is very little capacity in the line ministries for medium-term planning and the MoF has not loosened its firm grip on budget planning.

An assessment of the fiscal impacts of all new policy and legislative proposals is required, template forms have been prepared and the Ministry of Finance has a role to review these cost estimations before they are discussed by the Council of Ministers. The main problems being the capacity of the ministries to prepare adequate cost estimations and the end of the year rush to submit legislation. Furthermore, the Assembly often receives contradictory material from the government where despite a negative opinion from the Ministry of Finance the proposal is still passed forward to the parliament.

The Kosovo Consolidated Budget includes all the main blocks of public spending (including expenditure on pensions and health-care) but as donor funding is largely outside the budget, there is room to improve its comprehensiveness. The budget is divided into programmes but these follow primarily the administrative structures of the budget organisations and do not change the line-item nature of the budget. Budget documents are very detailed, including detailed lists of staff for each budget organisation. This level of detail may restrict the capacity for strategic planning in the long run. At the same time, the government's possibilities for shifting funds between budget lines during the year are quite broad, which means that there is no rationale for the Assembly to adopt the budget at the current level of detail.

The Treasury system is well established and provides for the necessary central controls over budget expenditure. The budget is executed through a central Treasury single account system. The Treasury system is used by all budget organisations, including municipalities. The main weakness is in ensuring proper commitment control to avoid liabilities that cannot be paid out on a regular basis. One source of the problem is simply that budget organisations are not consistent in recording invoices when these are received. In December the total amount of outstanding payment arrears was around EUR 2 million, which is insignificant compared to total expenditure but it indicates that public internal controls are not effective in all organisations.

Information on budget execution is provided monthly, quarterly and annually but these reports are generally not used as inputs to the planning of future budgets. On a positive side, the Final Report on the Budget is prepared early enough during the next year to potentially be taken into account for the following budget discussions. In practice, the annual financial report is not well used for future budget discussions.

Public Internal Financial Control (PIFC) is still at an early stage of development. In principle, a coherent and comprehensive statutory base is in place. Central Harmonising Units (CHU) have been established for **Financial Management and Control (FMC)** within the Treasury Department and as its own department for internal audit. The general understanding of the concept of managerial accountability as well as high-level attention to the PIFC challenges within the MoF need to be further developed, especially in the area of FMC. The PIFC policy paper and implementing rules are in place but the level of understanding of technical concepts and requirements appears to be low in most budget organisations. There is a significant implementation gap between the existing regulation and work carried out by the budget organisations, as well as by the MoF. Systemic weaknesses also include a lack of qualified staff in most parts of the administration and a poor overall control environment. Although the regulations stipulate that the MoF must prepare two different annual reports to submit to the Assembly -- one for FMC and the other for internal audit developments -- the MoF has thus far only prepared reports on the developments of IA.

For FMC, the focus is on the secure and efficient management of the financial management information system. The new rules and instructions aim to widen the focus to also include good planning and reporting arrangements, but these arrangements are still new to budget organisations and proper links between budgeting and financial controls do not exist.

Responsibility over budget execution is delegated to budget organisations, but it will take years of active coaching and guidance to bring all of these organisations up to the level that is expected by the PIFC concept. The CHU for FMC has so far been mainly involved in the development of procedures for budget organisations. They do not have the capacity or the position to lead the FMC changes throughout the government and there is no real high-level support.

The Law on Internal Audit provides a solid legal basis for setting up the internal audit units in Kosovo. Internal audit departments have been established in most budget organisations, including municipalities. The main challenges include starting a proper dialogue with the municipalities dominated by Serb communities and establishing a way to provide more rational audit service to a number of small independent institutions that report directly to the Assembly. Currently the internal audit of the Ministry of Finance, with seven auditors, provides service to some of the smaller budget organisations but it should not in principle be in a position to provide this support to the independent institutions reporting directly to the Assembly.

A special feature in Kosovo is the obligation of all larger budget organisations to form audit committees. Today there are formally 43 audit committees, which should as a rule meet four times a year with the top management and audited departments of the organisation to discuss audit findings and recommendations. In some organisations where the audit committee works (this is not so in all cases), the implementation rate of audit recommendations is higher, as assessed by the CHU for IA. Members of the audit committees are normally remunerated but their professional background is often insufficient and they lack interest in the work.

The CHU for IA has been somewhat active in communicating with internal auditors in budget organisations, even without the presence of a technical assistance project. This co-operation provides some basis for further development in the area, although there is still room to increase national ownership of the IA developments, for instance by securing some national funding for the development of IA in Kosovo (*e.g.* for training). Real progress depends nevertheless on the ability to change the wider administrative culture towards basic accountability principles.

A legal framework for **external audit** operations is in place and being implemented and the Office of the Auditor General (OAG) with all the crucial functions has been set up. Also, the internal rules governing the audit work (*e.g.* audit manuals, guidelines, guides on audit quality management) have been developed and adopted. The OAG of Kosovo is an independent constitutional audit institution reporting to the Kosovo Assembly. Its formal status is comparable to that of the supreme audit institutions in EU member states. The OAG is (and should be) part of the overall civil service regulation but the secondary legislation regulating the implementation of the Civil Service Law is too prescriptive to allow the OAG to work in a fully independent manner.

The OAG has a relatively good reputation among the general public as an independent institution that plays a role in fighting corruption and promoting change in the areas of public finance, although in reality this is not the institution's primary role. The mandate of the OAG is sufficiently wide but the number of mandatory audits is high, as the OAG is required by law to audit all budget organisations every year. There is a functioning training and certification scheme within the OAG and most of the audit staff has received some level of professional certification.

In terms of the dichotomy between regularity audit and performance audit, the OAG mainly carries out regularity (financial and compliance) audits. Thus, for the current 2011/12 audit season¹¹ they plan to carry out 86 regularity audits and four performance (economy, efficiency or effectiveness) audits. In the 2010/11 audit season they carried out three performance audits and only one resulted in an audit report. The performance audit guide of the OAG is, however, rather general. It does not give much practical methodological advice.

Besides auditing the reliability of financial reporting on public spending or the regularity, economy, efficiency or effectiveness of public spending, the OAG also analyses and assesses management methods and policies in the ministries and public enterprises. For the 2011/12 audit season ten reviews of this kind have been planned.

Their main audit is the audit of the implementation of the Kosovo Consolidated Budget (KCB). It is a financial and compliance audit with limited elements of performance audit. They audit the financial statements of the KCB and give an audit opinion on the reliability of information presented therein. As to the compliance component of the audit of the implementation of the KCB, they perform a limited assurance engagement. The audit work is focused on systems examinations rather than on substantive testing and only provides easily measurable evidence of irregular government spending.

The relationship of the Auditor General with the Central Harmonisation Unit (CHU), which is responsible for developing and promoting internal audit, is fairly good. The Auditor General evaluates the work of the internal auditors and reports on that to the COPF of the Assembly but does not use their work, claiming that it is not adequate for purposes of the audits conducted by the OAG.

The COPF, despite being a new committee, has been active in discussing the audit reports presented by the OAG. The members of the COPF seem to be reasonably engaged with the results of the OAG's work and the audited entities are usually invited to explain the audit findings in the COPF meetings. There is further room to engage the Assembly by involving other committees, depending on the topics, to review the audit findings.

Reform Capacity

After returning to a more regular budget calendar and gaining a fresh perspective on realising some of the one-off additional revenues such as international budget support and the sale of state assets, the development of the strategic planning and budgetary framework in Kosovo could, in principle, become more favourable. There are, however, no real actors who would drive changes in the area of public finance management. The top management of the MoF is not very proactive and the Assembly does not play any significant role in the area.

The Ministry of Finance in Kosovo still depends significantly on donor funded technical assistance. It has demonstrated its willingness to continue to develop the public finance management system but often this has been done with ongoing support from a donor funded project. This is clearly the case with regard to PIFC, where the project that supported the development of internal audit and of financial management and control ended in 2011. The CHU for FMC does not have the capacity nor the standing to fulfil the triggering role that is needed. The PIFC reform does not seem to be high on the agenda of the Ministry of Finance.

In the area of external audit, the OAG has shown a clear commitment to the development of its audit capacities. A Twinning project ended in September 2011. A new project currently under preparation will go forward with assistance to the development of the OAG starting from the second half of 2012. Meanwhile there is support from the Swedish National Audit Office. Overall, the sustainability of the

¹¹

The audit season is from 1 September in year N until 31 August in year N+1.

existing development of the OAG is still dependent on the current management recruited by the international community. As the Law on the Establishment of the Office of the Auditor General as well as the Constitution need to be amended before the end of the period of international supervision, both opportunities and potential threats for strengthening the sustainability of current reforms need to be carefully managed.

Reform capacity in Kosovo continues to be largely dependent on international support.

Recommendations

To Kosovo

- The plan to introduce more performance information in the budget documentation (including the MTEF) is generally welcome, but as long as the more fundamental gaps, such as weak capacity for policy planning in line ministries, limited managerial accountability in ministries and a large number of small independent organisations are not properly addressed, the plan for using performance information as a central tool in budgeting should be kept as a long-term objective.
- The Ministry of Finance should devote more analytical resources to scrutinising ministries' and other public organisations' estimates of the budgetary impacts of new policies and legislation.
- As long as there is no reform to optimise the number of independent institutions reporting to the Assembly, there is a need to find a rational way to ensure sufficient audit function to support these organisations. Consideration should be given to the different options, including keeping the current situation where the Ministry of Finance provides these services or else eliminating the obligation for internal audit if the OAG will continue providing annual audit opinions on these organisations.
- The Minister of Finance needs to strengthen the staff and standing of the CHU for FMC in order to advance in the area of PIFC reforms. There is a need for more co-operation for change management between departments within the MoF and with other organisations, such as the OPM and the Ministry for Public Administration.
- Kosovo should consider consolidating the annual reports on IA and FMC to make them more meaningful for the Assembly. In the longer term, it should think about consolidating all the public finance reform reporting into the regular government reporting documents such as the MTEF and the annual financial statement.
- The OAG is recommended to continue the planned work to strengthen the professional capacities of its services and consideration should be given to developing an audit assurance model to be used in their financial and compliance audits in order to improve evidence-gathering procedures.

To the European Commission

- The Commission should give more political support to and exercise pressure on the Minister of Finance in order to advance with the overall reform agenda. The Commission services should become more actively engaged with the projects financed by other donors in Kosovo.
- When planning assistance to support the Ministry of Finance in the development of performance (or programmatic) budgeting, the Commission should insist that the project

focuses to a large extent on building budget planning and analytical capacities in the line ministries.

- In order to advance with the reforms in the area of PIFC, it is vital that the Commission put pressure on the Minister of Finance to strengthen the human capacities of the CHU for FMC by filling the vacant positions in the Ministry of Finance and ideally by finding more proactive managers to run the process.
- Because the mandate of the current manager of the OAG is ending, the Commission should pay close attention (at least through close dialogue with the government and the Assembly) to the arrangements that will be put in place, to ensure that the independence acquired and the capacities developed are retained during the transition to the new management to be fully designated by the Kosovo Assembly in 2013.

PUBLIC PROCUREMENT

Main Developments Since the Last Assessment (May 2011)

The most significant events were the following:

- the adoption on 29 August 2011 of a new Public Procurement Law (PPL), which became effective on 4 October 2011;
- the adoption on 21 October 2011 of a new Law on Public-Private Partnerships (PPPs), which became effective on 10 December.

The new **Public Procurement Law (PPL)** has replaced the law of 2010, which in turn had replaced the law of 2007 amending the law of 2003. The speedy adoption of the 2011 PPL was due to the effective “hijacking” of the 2010 law, which did not reflect, as adopted, the aim of the government, to fix the major flaws that had been detected in the functioning of the public procurement system. The 2011 PPL successfully achieves this purpose.

These successive developments, although generally positive, have had some negative impacts. The secondary legislation of the 2007 law had just been completed when it became obsolete with the introduction of the 2010 law. The object of this legislation remained unaddressed until the 2011 law, resulting in a regulatory vacuum that caused some confusion among contracting authorities and economic operators as well as for the auditors and the courts. Secondary legislation has been fully updated and simplified so that a complete legal and regulatory framework is in operation.

The new PPL implements more effectively the key mandatory provisions of EU law, although incorporation of the provisions of Directive 2004/17/EC and of its aim to provide greater flexibility to utilities remains limited to the options of periodic indicative notices and of a qualification system, whereas utilities may not freely opt for a negotiated procedure with prior publication of notice. Such a restriction is conceivable because the utilities in Kosovo are, for the most part, state-owned monopolies that are not subject to competition. This situation is not likely to last.

Framework agreements have been introduced (with a maximum time frame of 36 months) as well as the legal basis for e-procurement and e-auctions, although the latter are not yet operational. Consideration of environmental performance and protection is encouraged. As in 2007, it was considered too early to introduce the competitive dialogue procedure into the law.

The new PPL now addresses the issue of responsibilities within a contracting authority, which had been pointed out in the EC’s 2010 Progress Report; contracts with higher values will be signed by the management officer and the head of the entity.

The former independent Public Procurement Agency (PPA) has now become the Central Procurement Agency (CPA), established under the Ministry of Finance. Its only function is central purchasing, as it is no longer responsible for providing *ex ante* approval of tender procedures in specific cases. Under the new PPL, responsibility for conducting any procurement award procedure now lies firmly with the contracting authority itself.

The new **Law on Public-Private Partnerships (PPPs)** states that these partnerships may be realised in the form of a concession or of a public contract within the meaning of EU public procurement law. It also sets forth the concept of an institutional PPP as well as award procedures, while referring to the publication and advertisement requirements in the PPL for work concessions. This new PPP Law provides a robust legal framework in this area, with the reservation that further work will be needed for its alignment with the EU *acquis* on a few substantive issues, especially the right to review and remedies and the establishment of time-limits for tendering. However, a revision of the law is foreseen at a later stage.

Main Characteristics

In terms of procurement market size (approximately 14% of GDP), a total of 12,310 contracts were signed in 2011, representing approximately EUR 552 million. This figure does not include the annual amount for the exceptional long-term contract for the construction of the Morine-Merdare Highway, which represents approximately EUR 236 million.

The structural problems of the economy as a whole and of the governance system in Kosovo are reflected in the functioning of the public procurement system. Many local firms depend on public sector orders, many officials and politicians have business connections, and many contractors are affiliated to political parties, which implies that they do not win contracts because of their abilities or their good performance record but on the basis of their connections. NGOs report a worsening situation, whereas the Auditor General notes the risks of favouritism (criteria that are not measurable or technical specifications that are not clearly set out). There have also been cases where regular tendering procedures were bypassed.

One of the symptoms of the limited competitiveness – and of the failure to properly regulate a market economy that is not functioning well – is that 34% of tender notices were cancelled in 2011, due to insufficient completion in more than two-thirds of the cases. The need to use the payment of electricity bills as an additional eligibility requirement is an example of the many problems hampering the development of the public procurement system; these problems cannot be addressed by regulatory or institutional development measures within the system.

Besides alignment with EU procurement law, reforms in recent years have aimed at better implementation:

- Firstly, since the 2010 PPL the contracting authority has been responsible for producing a management plan that is to be agreed with the contractor as well as procedures for ensuring the timely and correct implementation of the contract. The **Public Procurement Regulatory Commission (PPRC)** is responsible for monitoring those contract management activities. These provisions have caused some concern for contracting authorities since they do not clearly assign responsibility for the appointment of contract managers; they also have doubts about the involvement of regulatory officers in what is essentially a practical implementation matter. This concern is compounded by the recognised lack of staff, resources and capacity for monitoring such activities within the PPRC.
- Secondly, the PPRC intends to monitor carefully some of the new developments, especially the use of the negotiated procedure (which is possibly a reaction to the withdrawal of the prior approval mechanism), the selected qualification criteria, and the validity of contract signature (with respect to responsibilities within a contracting authority).

As was the case for previous laws, the new PPL is lengthy and complex, which may be an issue where the majority of procurement is assured by medium-value and low-value contracts. Its provisions are bureaucratic and formalistic, leading to a mechanical application of the law and legal disputes

concerning inconsequential formalities. These problems may hold back the development of a group of professional procurement officers. The simultaneous removal of *ex ante* control and the introduction of new initiatives to increase monitoring and to introduce regulatory control over contract management do not lighten the load for procurement officers but instead give mixed signals that are clearly not understood on the ground.

At the institutional level, the **PPRC**, which reports to parliament, has a board of three members within a total staff of 27 persons. In 2011 the PPRC budget was EUR 279,468. The PPRC is responsible for the overall development, operation and supervision of Kosovo's public procurement system, including policy, legislation and regulation, international co-ordination, monitoring and control, advisory and operations' support, publication and information, professionalisation and capacity-strengthening functions, development and procurement co-ordination. Moreover, since the adoption of the 2011 PPL, the PPRC has developed and implemented detailed rules regarding contracting authorities' disposal of assets.

The reporting and statistical system is satisfactory and, besides compliance monitoring, it is used to identify the strengths and weaknesses of the procurement system and those areas that are in need of improvement and development. The system is based on data collected through the electronic Public Procurement Register, which is established and maintained through krpp.rks-gov.net. The Register is a repository for all notices, invitations, declarations, tender dossiers, reports, complaints and decisions filed or issued in connection with each and every procurement activity. Contracting authorities have to provide the Register with all signed contracts, including those with a nominal value. In 2011 a total of 4,880 tender notices and 5,846 award notices were published, the latter figure due to the publication of award notices with small value – price quotation.

A large technical assistance project on e-procurement is underway, with funds of approximately EUR 1.3 million provided by the World Bank as a component of the "Public Sector Modernization Project".

Since its creation in 2008, the **Procurement Review Body (PRB)**, with a board of five members reporting to parliament, 13 technical staff and in 2011 a budget of EUR 253,008, has been responsible for carrying out review procedures. The new PPL has created a new position, the head of the PRB Secretariat, to support the board. Cases are reviewed by a panel, comprised of one or three board members or the whole board depending on the value of the contract, on the basis of a report prepared by an expert and communicated to the parties concerned. The review procedure is transparent, with public hearings, and every decision is published on oshp.rks-gov.net in Albanian, Serbian and English. The deadline for decision-making is 15 days after the date of transmission by the contracting authority of documentation on the tendering procedure, and may be extended in complex cases to a maximum of 20 additional days; no overrun has been reported. The complaints fee is EUR 500, which may be considered as prohibitive in low-value cases. The PRB faced resource and staff allocation difficulties at the outset, but it has resolved these problems and has become an effective review body.

The annual number of complaints submitted to the **PRB** has been decreasing (585 in 2010, 386 in 2011), which is probably due to the softening in 2010 followed by the removal in 2011 of the former PPA approval mechanism, which resulted in a number of appeals. Although the provision has been in force since 2007, a novelty since 2011 is that the PRB has been imposing more systematically fines of not less than EUR 5,000 on any contracting authority that fails to implement a decision or to comply with an order, for instance the order to reassess an award procedure (this measure has been applied in eight cases, including a fine of EUR 200, 000).

The **Central Procurement Agency (CPA)** has been in existence for nine years as the former Public Procurement Agency (PPA), but it has not conducted any centralised procurement in the past four

years. In accordance with its obligation under the PPL since 2007, the CPA submitted lists of common-use items for mandatory central purchasing on 27 February 2012 but, as was previously the case, the government has not so far given its approval to these lists. Even a reduced and unofficial list mentioning only fuel procurement did also not obtain government approval in 2011. At the same time, although a contracting authority has had since 2007 the option on a voluntary basis of appointing the PPA to conduct on its behalf or to assist in conducting a given procurement, the auditor general has noted that this option has rarely been used.

The **Kosovo Institute of Public Administration (KIPA)** is in charge of training public procurement officers. With assistance in curriculum development from the PPRC, KIPA's overall performance is now appreciated by some contracting authorities. There are two levels of training (basic and advanced), each with a duration of at least 15 days and sanctioned by a certificate that is valid for three years. A person holding this basic certificate who fails to obtain an advanced certificate in the subsequent three-year period is not eligible to hold the position of procurement officer until he/she obtains the advanced certificate. In 2011 in total 521 officers were trained, like the preceding year, in 13 groups. 489 successfully completed the test and obtained the basic public procurement certificate, valid for three years. Under the IPA multi-beneficiary project on "Training in Public Procurement in the Western Balkans and Turkey", the localisation of the training modules is completed according to the new PPL *i.e.* translating and supplementing the text with relevant national legal and administrative provisions. Five trainers were certified in the first phase of Training of Trainers (TOT) and the next 25 trainers are expected to be certified by the end of June 2012. The new law states that any interested person may attend a professional training course in procurement. However, it appears that no training has been designed or carried out to address the need for economic operators. Part of the problems may stem from corrupt or (rather) incompetent procurement officers and poor public governance at large, but potential contractors also have to be informed of their rights and duties.

Public-private partnerships (PPPs), including concessions, are within the remit of an *ad hoc* unit within the **Ministry of Finance (MoF)** that drafted the new Law on Public-Private Partnerships (PPP Law) and actively pilots and monitors its implementation. By early January 2012, the Rules of Procedure of the PPP Committee, the PPP Work Plan for 2012, and the PPP Directive for Publication of Notices had already been approved, as well as the first project under the new law, concerning waste management in a municipality.

Reform Capacity

The institutional framework provided for under the new PPL should offer a solid basis for the development of a sound public procurement system in Kosovo. The entities involved in the regulation and monitoring of public procurement are well staffed, experienced and committed. Concern is not over the degree of commitment to regulation but over the tendency to over-regulate. This tendency may be inevitable given the drive to establish an operational system within such a short time frame, moreover a system that is aligned with the *acquis*.

At the same time, there is doubt over the commitment of the government to implement the PPL with respect to centralised procurement. Notwithstanding the early establishment of the CPA (then known as the PPA), its ability to carry out its functions has been hampered by the lack of any decision on the part of the government. Some contracting authorities consistently recognise the value of centralised procurement and the scale economies that it would achieve. Instead, unqualified but politically well-connected procurement officers in ministries are purchasing the same items, resulting in evident inefficiencies. It is not clear whether this situation is the result of a lack of commitment/political will or a lack of capacity. In any event, this issue needs to be addressed.

Recommendations

To Kosovo

- The Public Procurement Law as well as every sectoral law referring to public-private partnerships, in particular the Law on the Energy Regulator, needs to be harmonised with the new framework Law on PPPs so as to avoid any loophole or inconsistency; the alignment with the EU *acquis* should be completed insofar as this was one of the aims of the new law.
- Following constant changes in the past three years, some stability and certainty in the legal framework for public contracts, the proper monitoring of the enforcement of existing rules, and their simplification and rationalisation, should prevail as the preferred short-term goals.
- Professionalisation could be enhanced by recruiting experienced practitioners or professional procurement organisations to: *i)* participate in workshops and training sessions with the regulatory authorities; *ii)* be involved in developing new or additional curricula for KIPA to teach not only procurement officers but also designated groups of individuals, such as policy-makers, auditors and tenderers, *iii)* be placed in selected ministries to assist in procurement over a given period of time and to develop case studies for later dissemination through KIPA.
- In the longer term, some further amendments to the PPL might be envisaged, notably by introducing competitive dialogue and reflecting the full provisions and intent of Directive 2004/17/EC.

To the European Commission

The focus of support should always be on the implementation of the rule of law, rather than on formal upgrading and alignment with EU standards.

- In the short-term, initiatives to improve competition in the private sector and in public sector governance in general must be encouraged first, inciting both parties to operate in a fair and transparent manner and to address the issues of political favouritism. Consideration should be given to extending capacity-building support to other stakeholders and observers of the public procurement system, especially auditors and judges.
- The lack of action with respect to the activities of the CPA must be addressed at political level. Depending on the response, various forms of assistance could be envisaged, ranging from simple workshops that deal with how to best develop central purchasing to joint purchasing initiatives or to direct technical assistance in developing an appropriate model. The CPA could also be encouraged to actively promote voluntary co-operation with contracting authorities
- Support to the capacity-building of the PRB should continue, and the indexation of its decisions must be encouraged so as to consolidate the interpretation given to diverse provisions of the law and to build accordingly consistent case-law orderliness. This indexation would enable economic operators to better consider their claims prior to raising an appeal, which could be costly and lengthy and have little chance of success.
- In the medium and long-terms, the kind of external support likely to be the most needed is the input of practitioners and professional procurement organisations, with a view to strengthening capacity within regulatory authorities, based on the practical needs of procurement officers operating in competitive procurement markets. This input could introduce a more practical and moderated approach to the procurement function.

PROCUREMENT/CONCESSIONS STATISTICS for 2011¹

Number of contracting entities²		
Central government		91
Regional and local authorities		37
Other (bodies governed by public law)		1
Utilities		32
Total number of contracting entities		161
Awarded³ public contracts/Contracting entities	Total value (EURO)	Total number⁴
Central government	367 612 264.70 ⁵	4712
Regional and local authorities	153 267 964.42	4593
Other (bodies governed by public law)	175 849.56	4
Utilities	267 260 689.04	3001
Total public contracts awarded	788 316 767.72	12 310
Awarded concessions/Contracting entities		
Central government		
Regional and local authorities		
Other (bodies governed by public law)		
Utilities		
Total concessions awarded		
Awarded public contracts above the EU thresholds⁶		
Works ⁷	273 962 757.90 ⁸	22
Services ⁹	38 355 064.51	57
Goods ¹⁰	233 741 553.45	157
Mixed contracts Design contests	2 158 906.02	110
Total public contracts above the EU thresholds	548 218 261.88	346
Awarded concessions above the EU thresholds		
Works ¹¹		
Services ¹²		
Other		
Total concessions above the EU thresholds		
Procurement methods used¹³ (above the national thresholds¹⁴)		
Open procedure	239 101 891.28	3747
Restricted procedure	7 450 000.80	5
Negotiated procedure with prior publication of a notice	26 600 075.83	5
Negotiated procedure without prior publication of a notice ¹⁵	34 295 214.22	331
Other procedures (competitive dialogue, etc.)	26 618 799.06	8222
Low- value procurement (estimated)		
Participation rate (average number of submitted tenders)		5.10
Works		6.13
Services		4.45
Goods		4.69
Review procedure		
Number of complaint received		386
Number of complaint treated		367
Number appealed to the Court		25
Number of decisions with interim measures		7

Note : Data delivered by the Public Procurement Regulatory Commission and Procurement Review Body

A list of the 10 biggest procuring entities (name, main activity, (estimated) annual procurement budget):

1. Kosovo Energetic Corporation KEK J.S.C. EUR 213,677,633,63
2. Municipality of Prishtina, EUR 37,900,854,09
3. Ministry of Infrastructure, EUR 24,404,587,13
4. Ministry of Health, EUR 18,027,559,45
5. Ministry of Security Forces, EUR 15,620,814,22
6. Municipality of Prizren, EUR 13,504,241,51
7. Post and Telecommunication of Kosovo J.S.C, EUR 12,974,662,02
8. KOSTT J.S.C, EUR 11,061,233,26
9. Prishtina International Airport "Adem Jashari", EUR 9,869,243,49
10. Ministry of Education, Science and Technology, EUR 8,320,542,28

A list of the 10 biggest public contracts/concessions awarded and/or advertised in 2011 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

1. Emergency power supply for the period January-December 2011, Kosovo Energy Corporation KEK J.S. EUR 33,248,034,58
2. Fuel supply for boilers and heavy machinery, Kosovo Energy Corporation KEK J.S. EUR 28,859,760,00
3. Fuel supply for boilers (1% sulfur Mazut) for Thermal Power Plant B, Kosovo Energy Corporation KEK J.S. EUR 18,573,840,00
4. Supply with modulated power and peak for the period May 2011-March 2012, Kosovo Energy Corporation KEK J.S. EUR 18.320.956,70
5. Supply with electrical filters for block A3 and A4 at Thermal Power Plant- "Kosova" A, Kosovo Energy Corporation KEK J.S. EUR 16,994,000,00
6. Supply with electrical filters for block A3,A4, A5 at Thermal Power Plant- "Kosova" A, LOT 1, Kosovo Energy Corporation KEK J.S. EUR 8,903,000,00
7. Supply with navigation equipment and relocation of existing equipments, Prishtina International Airport "Adem Jashari", EUR 7,808,296,00
8. Services of works supervision and road management services of Sector 7 of Morine-Merdare Highway, Ministry of Infrastructure , EUR 6,950,000,80
9. Supply with modulated power and peak for the period May 2011-March 2012 , Kosovo Energy Corporation KEK J.S. EUR 6,912,003,20
10. Purchase of the services for the transportation of the KEC workers, Kosovo Energy Corporation KEK J.S. EUR 6,474,893,04

¹ Statistics should cover contracts awarded in the period 1 January 2011-31 December 2011

² As of 31 December 2011

³ Statistics should refer to contracts awarded (based on contract award notices), if not available, please give the data on contracts advertised (based on contract notices)

⁴ Please indicate whether the data include the low value contracts

⁵ (131 446 265.18 + Part of the Contract for construction of Morine-Merdare Highway in 2011 of 236 165 999.52)

⁶ Please indicate whether the data include contracts awarded by the utilities sector

⁷ Above €4,845,000

⁸ (37 797 758.38 + Part of the Contract for construction of Morine-Merdare Highway in 2011 of 236 165 999.52)

⁹ Above €125,000 for public institutions, €387,000 for utilities

¹⁰ Above €125,000 for public institutions, €387,000 for utilities

¹¹ Above €4,845,000

¹² Above €125.000

¹³ Both for public contracts and concessions

¹⁴ Including contracts above EU thresholds

¹⁵ Including single-source procurement

POLICY MAKING AND CO-ORDINATION

Main Developments Since the Last Assessment (May 2011)

The early elections in 2010, followed by political disputes over presidential elections, created a substantial backlog of business in the government's agenda that was not cleared until the second half of 2011. However, the new government has proved stable and this has enabled some progress in organising the policy making processes in Kosovo.

The most meaningful changes in the area of policy making and co-ordination relate to the adoption of the new "Regulation of Rules and Procedure of the Republic of Kosovo" in September 2011. These came into effect immediately with the exception of the provisions relating to concept papers and explanatory memoranda which came into effect in January 2012. The new rules of procedure cover all the necessary areas of government proceedings and give a clearer legal mandate to various functions of the Office of the Prime Minister (OPM). One of the features of the new rules of procedure is that despite being relatively detailed, these give further authority to the OPM to prepare instructions and guidelines for government organisations. By the beginning of 2012, most of these had been drafted but some were still being prepared for official adoption by the government.

Among others, the OPM has drafted and consulted detailed instruction on the procedures, criteria and methodology for the preparation of strategic documents. In 2011, it carried out a survey of all the existing strategies and in December it required all ministries to inform it of strategies they are planning to prepare in 2012. Together with the annual work plan, the government has adopted a list of strategic plans that are scheduled to be adopted in 2012.

Based on the annual legislative programmes, the plan for 2012 has become more feasible compared to the one for the previous year. The number of laws that are planned to be adopted during the year is still high but has been reduced from around 150 in 2011 to 86 in 2012. The 2012 legislative programme also includes the draft laws that were included in the 2011 programme but were not ready as planned. Another step towards greater transparency is that the OPM finished the creation of a registry for all secondary legislation in 2011, which includes all regulation since 1999.

The new rules of procedure also strengthen the formal requirements relating to public consultation. A detailed instruction on this is to be issued by the OPM, which has been developing it in co-operation with the Kosovo Civil Society Foundation. The new rules require each ministry, when putting forward their submission for the annual government work plan, to prepare a communications work plan for the year as well. By January 2012, more than half of ministries had prepared communications work plans.

The requirements for impact assessment (other than fiscal impact assessment) contained in the old rules of procedure have been abolished. Ministries were completing them only retrospectively, which contributed little to policy analysis and decision making. The requirement has been replaced by new requirements for concept papers and explanatory memoranda.

The introduction of concept papers is the most outstanding new element in policy preparation. Concept papers were piloted in eight line ministries in 2011 and the experience shows that most of the ministries need strong support to start following the new procedure properly.

On a negative side, the Law on government has still not been enacted and is being blocked by the Assembly as part of broader political disagreements.

For the first time in 2011, the OPM, Ministry of Finance (MoF) and Ministry for European Integration (MEI) implemented the integrated calendar for developing the overarching government planning documents, the annual work plan of the government, the European Partnership Action Plan (EPAP), the Medium-Term Economic Framework (MTEF), and the budget in the timeline that has been considered optimal in their plans. It was the first time the EPAP was adopted before the calendar year that it aimed to steer; the EPAP for 2012 was adopted by the government in December 2011. The previous practice was to adopt EPAP almost in the middle of the year it was planned for.

While in the beginning of 2011 most of the posts of general secretaries were occupied by directors on temporary promotion, most general secretaries are now officially appointed. There is a new General Secretary in the MEI, appointed from the civil service, who is recognised by stakeholders as someone who has started to open up the institution and turn it into a more proactive player in the government.

In 2011, the MEI started taking first tangible steps in donor co-ordination by proposing some priority fields, setting deadlines for the ministries and organising meetings between the ministries and the EC services. However, the nature of donor co-ordination is still fairly technical.

Main Characteristics

The overall legal and institutional framework is in place for a good system of policy making, work planning, filtering and dispute resolution mechanisms and co-ordination. The annual government work plan system is now well in place and it includes both top-down and bottom-up elements. It is composed of two parts: part A includes activities directly linked with the 2011-2014 government Programme and part B includes activities proposed by line ministries. The government work plan is accompanied by two separate lists: annual plans for legislation and strategies. The agenda of the government meetings normally includes 10-15 items and there are always items that relate to the annual work plan or the annual legislative programme.

The management of the quarterly monitoring of the implementation of the government's annual work plan has become institutionalised as regular practice in the OPM and line ministries. However, the system for monitoring those decisions of the government that do not figure in the work plan (of which there are quite a lot, of varying degrees of importance) has not been made effective. The recent changes in procedures and the new database for monitoring the implementation of government decisions may bring improvements if implemented in 2012.

The OPM includes four departments that are directly relevant for government policy making: *i)* the government Co-ordination Secretariat dealing with the organisation of government meetings, preparation and co-ordination of the annual government work plan, and the monitoring of government decisions; *ii)* the Office of Legal Support Services being responsible for legislative oversight before government decisions and guidance to ministries on legislative drafting; *iii)* the Strategic Planning Office co-ordinating the strategic planning process; and *iv)* the Office of Public Communication organising government communication and informing the public on government decisions.

The new rules of procedure clearly spell out the requirement for policy analysis, to consider different options and the consequences of those options. For this purpose, a concept document must be submitted to the government in advance of any new primary legislation or amendments to primary legislation, important secondary legislation, recommendations that have significant social, economic or other impacts. Within 15 working days of the approval of the annual government work plan, the

OPM (the general secretary) shall consult the MEI and the MoF and issue an instruction indicating those items in the work plan in which a concept document must be submitted. In the beginning of 2012, the list was approved but later than foreseen by the new rules of procedure. However, it is evident that the implementation of the rules of procedures in terms of policy analysis will be a challenge due to limited policy capacities in all government organisations.

The system of impact assessment has so far not been working with the debatable exception of fiscal impact assessment where there is some oversight by the MoF. However, the existing procedures are not properly implemented by the ministries and often the view of the MoF does not have a significant impact. There are cases where the government agrees with plans and submits drafts to the Assembly, accompanied by a negative opinion by the MoF.

The greatest weakness in the system remains the low capacity in line ministries for policy development and legal drafting. Their capacity to produce concept papers and explanatory memoranda required by the new rules of procedure is low. Their capacities for consultation with the public and civil society are similarly weak. There is a tenacious belief within the public administration in Kosovo that the drafting of laws is the only process that matters in policy development. This attitude has further negative impacts on consultation practices. All ministries have departments for European integration and policy co-ordination but their capacities vary and their leverage *vis-à-vis* other departments is not always clear.

The fact that the Kosovo government organisation includes a significant number of small independent organisations reporting directly to the Assembly does not support the creation of proper policy knowledge and capacities in the sectoral ministries.

Consultation practices are still rudimentary, although there are exceptional cases. For instance, the Office of Legal Support Services in the OPM has started engaging non-governmental stakeholders in the process of preparing draft legislation and instructions and guidelines for ministries. The new rules require that before a ministry submits a concept document, a draft law or sub-legal act, strategic plan or sectoral strategy to the government, it must consult any ministry or other government body whose work might be affected by the proposal. As from 2012, a table must be added listing the comments received from other bodies together with an indication of whether such comments were incorporated in the proposal. At the beginning of 2012, the implementation of these rules was patchy.

There are no ministerial committees to filter material before government meetings in Kosovo. At their weekly meeting, the general secretaries review all major items of work on the agenda of the following weeks' government meetings and consider any important issues relating to the co-ordination of government business, including concept papers and any items on which there is unresolved contention between ministries. The group is also tasked with reviewing the regular reports on the implementation of the government's annual work plan and other reports requiring co-ordinated action across ministries, such as the European Commission's annual progress report. In practice, the work of the group is still superficial and hindered by the limited mandates and managerial capacities of most general secretaries.

There is an increasing practice of creating inter-ministerial co-ordination groups for specific government tasks, for example, the inter-ministerial Committee for Public Administration Reforms or the Committee for Public Enterprises.

In terms of advice to the government, the Strategic Planning Office does, in practice, provide a certain amount of advice to the Prime Minister on strategy-related issues presented to the government. For instance, the government Programme 2011-2014 was drafted in co-operation with political and civil service staff of OPM and MoF. The new administrative instruction on strategies

(after approval and implementation) is expected to strengthen the co-ordination role of the Strategic Planning Office.

There has been improved co-operation between the OPM and MoF, including for the preparation of the Medium-Term Expenditure Framework. There are also further plans for strengthening the role of the OPM in the budgetary planning process in 2012. The OPM, MEI and MoF have created a number of strategic planning arrangements. The Plan for Implementation of Economic Vision 2011-2014 has set a basic framework for identifying priorities in some of the economic policy areas. Extending the plan to other areas (health care, education, public governance, etc.) would improve this as a tool for medium-term planning and prioritising government activities. In addition, institutional strategic development plans are being introduced and co-ordinated by the Ministry of Public Administration. This multitude of planning elements is not sufficiently co-ordinated and should be reviewed in terms of workload and feasibility.

Communications staff in line ministries has been trained recently and the related capacities in ministries and the OPM have been strengthened over the past year. However, public communication remains variable and reactive mainly because the overall importance attached to communications at the political level remains low.

Despite showing signs of improvement, compared to some other countries in the region, the European integration system in Kosovo lacks dynamism. The number of staff in the MEI suggests that with the new management, capacities for co-ordinating the European integration affairs could be improved significantly. Co-ordination of EU funds planning in Kosovo is still superficial and there are not any plans to prepare for decentralised management of the Instrument of Pre-Accession. The EI departments in ministries are also responsible for strategy, policy development, public consultation and donor co-ordination. Generally, the number of staff in ministries is not able to cover their wider remit properly.

Reform Capacity

The government of Kosovo has resumed to a more regular workflow after the political instability from the beginning of 2011. It is likely that development of the strategic planning and implementing the new rules of procedures can be carried out on a more fruitful ground. The relative strength in Kosovo for strengthening the policy making and co-ordination system is that the current head of the Centre of government (General Secretary of the OPM) has been in office during the mandates of several prime ministers, his role is recognised by the current PM and he has strengthened the key departments in the OPM over the past two years. At the same time, the average level of general secretaries of the ministries is still not well regarded, which forms a systematic weakness in the capacities to develop policy capacities in the ministries.

The reform capacities in Kosovo could benefit from stronger donor co-ordination. Currently there are a number of projects working in closely related areas but their timing has not been co-ordinated and the beneficiary institutions are often not aware that it is their role to co-ordinate between projects.

Capacity to drive changes in Kosovo continues to be generally dependent on international support but there is more local capacity to plan and implement changes in the area of policy making and co-ordination. Outside support may be needed more for substantial work with the line ministries and perhaps for the development of information systems. Also, the Assembly should become more actively involved in shaping the developments for more robust policy making capacities in government organisations.

In ministries, the likelihood for positive development is more diverse partly since there are still cases of complete turnover of staff working in specific policy areas or policy co-ordination matters, and the interest from political leadership for policy inputs varies.

Political pressure to produce laws at high speed, leading to claims that “we haven’t got time for policy development” is still prevalent and should be counterbalanced by the international community.

While the overall trajectory is upwards, this relies on leadership from central institutions. The recent co-operation between the MoF, MEI and OPM is an important element in strengthening government work planning at large. The new cadre of general secretaries is well institutionalised for cross-ministerial work and could in principle play a substantial role in driving reform, individually and collectively.

Recommendations

To Kosovo

- The Prime Minister’s Office, the Ministry of Finance and the Ministry of European Integration should continue their ongoing work to integrate the key planning documents of the government, but more importantly they need to place more focus on developing the capacity for multi-annual planning and policy formulation in line ministries.
- The Ministry of Finance should devote more analytical resources to scrutinising ministries’ and other public organisations’ estimations of the budgetary impacts of new policies and legislation. The Ministry of Finance needs to make a stronger case to the Council of Ministers if future costs are clearly underestimated.
- The new Rules of government Procedures need to be implemented as rigorously as possible during the first year of implementation (2012) otherwise the credibility of the new rules may be undermined. The OPM itself should be stricter in meeting the formal deadlines set.
- In order to make the implementation of the new rules of procedure (including concept documents and proper explanatory memoranda) more realistic, it is important not to pose unrealistic and strict deadlines for legislation, even if they are related to the *acquis*.
- The government of Kosovo needs to review the strategic planning arrangements with the aim of making the institutional strategic development plans a part of the overall strategic planning framework.
- Donor co-ordination has to be strengthened and the future IPA programmes have to be planned more closely in line with the national policies, particularly as from 2014 onwards Kosovo is likely to start benefiting from financial resources of the EU for regional development, human resource development and agriculture.

To the European Commission

- Any future financial assistance planned by the Commission in the wider domain of policy making and co-ordination (including strategic planning, integrated planning systems, performance budgeting, etc.) should primarily focus on developing policy capacities in the line ministries.

- Financial assistance should be planned to support the government of Kosovo in its preparations for the multi-annual IPA programmes financed beyond 2013. If planned in advance, this programming exercise could strengthen links between national policy planning and IPA programming.
- In order to encourage the development of more policy analysis and the implementation of the new rules for concept documents and explanatory memoranda, the Commission should stop making reference to deadlines for the adoption of laws. Instead, the Commission should more explicitly discourage overly ambitious legislative programmes, particularly when they are aimed at harmonisation of the *acquis*.