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ON

PUBLIC ADMINISTRATION

KOSOVO 2020

REPORT

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I. INTRODUCTION

This report aims to present an overview of the current situation in the area of public administration in Kosovo, focusing on those being part of the overall Kosovo-EU dialogue. As such, the report focuses on the description of the legal and institutional frameworks in the relevant areas, and based on discussions within the Thematic Roundtable on Public Administration, it aims to highlight the main strengths and challenges in each area. The report is expected to serve as background information for the Diagnostic Report and Draft Strategy on European Integration, which will be developed in the very near future, using the problem tree analysis methodology.

The Thematic Roundtable on Public Administration, which functions in support to the European Integration Task Force, has, so far, held three working meetings and two workshops, with 100 participants from the various societal segments, such as government, civil society, donor community etc. The aim of the TRT was to discuss on the strengths and challenges with regards to the functioning of the legislative and the executive in relation to the most pressing requirements deriving from the European integration process, as well as the progress as regards the civil service reform and decentralization. The selection of the TRT themes for discussion from a varied number of issues having to do with the public administration in the European integration context, was done so as to ensure a prioritising approach, by also reflecting the priorities on public administration emerging from the Kosovo-EU cooperation mechanisms (i.e. Feasibility Study Questionnaire, Kosovo Feasibility Study, Progress Report and European Partnership Action Plan).

Looking at the mentioned structures, it can be concluded that for an accelerated integration process with regards to the public administration, Kosovo needs to further develop its capacities to develop and monitor the implementation of policy and legislation, which is why the report's first and second sections deal with the functioning of the Assembly and the (centre of) Government. In addition, in parallel to the establishment of such policy and legislation mechanisms, Kosovo needs to also further develop its human resources management and development; hence the third section of the report focuses on the civil service reforms taking place, including the legal and the institutional frameworks for such reforms. Finally, in order to ensure that the implementation of policies and legislation is done as closer and as much as possible to the benefit of the citizenry, Kosovo needs a sustainable decentralization process, which is in the focus of the fourth section.

II. LEGISLATIVE

1. Requirements stemming from the European integration process

With regards to the functioning of the parliaments in the framework of the European integration process, although there are no requirements directly related to *Acquis*, nevertheless, the EU – through its other planning and monitoring mechanisms – presents a series of requirements in this aspect, in particular about issues such as:

1. Observance of the division between the powers, in particular regarding the oversight of the executive branch;¹
2. Effective supervision of the local legislation harmonization process with the *Acquis*.²

With regards to the operation of the Assembly of Kosovo, the EU, through the European Partnership 2008, has assigned the following priorities to Kosovo:

1. To ensure the effective functioning of the Assembly and its Committees, including its administrative capacities. This means to strengthen the capacities of the Assembly to effectively monitor the implementation and assessment of the application of the legislation through the improvement of the legal, advisory administrative structures etc.³
2. To increase its oversight over the executive, while simultaneously ensuring the transparency of the Assembly (through cooperation with the civil society), a requirements that has been repeated in the Progress Reports and holds an important position in the Questionnaire on the Feasibility Study 2012. In a more detailed fashion, these requirements are linked with putting in place and effective implementation of mechanisms to oversee the work of the Government, e.g. through the scrutiny of implementing reports of the strategic framework, governmental annual reports, annual reports on the application of the budget legislation, and through parliamentary queries, interpellations etc.⁴
3. To improve the checking of compatibility of the legislation with the *Acquis*, including the development of adequate mechanisms in the Assembly to scrutinize the proposed legislation from the perspective of its compatibility with the *Acquis*, and, at later stages, the harmonization of this legislation with the *Acquis*.⁵ Furthermore, this requirements consists in the development of effective mecha-

¹ European Commission (2012), 'Commission Staff Working Document' p. 5.

² OECD (1998), "Preparing Public Administrations for the European Administrative Space", Sigma Papers, No. 23, OECD Publishing, p. 112. (<http://dx.doi.org/10.1787/5kml6143zd8p-en>). It should be kept in mind that such requirements have been repeated in the European Commission Progress Reports.

³ Council Decision 2008/213/EC of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC. (http://europa.eu/legislation_summaries/enlargement/estern_balkans/r18015_en.htm).

⁴ Ibid.

⁵ Ibid.

nisms for cooperation with the Governmental institutions the function of which is to ensure similar functions (currently, such function is being carried out by the Ministry of European Integration).

1.1. Oversight of the Executive

As mentioned above, one of the main requirements for the European integration process for the Assembly is to ensure the observance of the division between the powers, through, inter alia, the exertion of the oversight function of the executive.

At the legal regulatory level, the rules of procedure of the Assembly provides for a number of mechanisms that enable the exertion of oversight functions, which consist in:

1. Parliamentary interpellations;
2. Questions for verbal answers;
3. Questions for written answers;
4. Reporting to the Parliamentary Committees,
5. Control over the executive for the application of the legislation adopted by the Assembly, and
6. Investigative Parliamentary Committees that are established ad-hoc.⁶

Regarding the parliamentary interpellations, the rules of procedure of the Assembly provides that it may be presented as a request by at least 6 MPs or a parliamentary group.⁷ The request in writing is submitted to the Speaker of the Assembly who then submits the request to the Prime Minister or the relevant minister. The Regulation also determines the timeframe for the interpellations to be conducted, as well as their duration which last up to three hours.

On the other hand, with regards to the parliamentary questions (queries), the verbal ones may be presented by the MPs at the start of each parliamentary session, as the questions have been submitted beforehand to the Office for Proposals and Submissions within the Assembly. Should the question from an MP fail to receive an answer in two plenary sessions, then it is published in the Gazette of the Assembly and on the Assembly webpage. Also, the Assembly will issue a media advisory on the question that received no answer within 24 hours following the plenary session.⁸

With regards to the questions in writing, they may be submitted to the Prime Minister or the relevant minister who should respond within a deadline of 2 weeks. Should such answer fail to be provided, then the question that received no answer should be published in the newsletter of the Assembly and shall be distributed to MPs.⁹

⁶ Ministry of European Integration (2012), 'Answers to EC Feasibility Questionnaire', p. 17.

⁷ Assembly of Kosovo (2010), 'rules of procedure of the Assembly', Article 44.

⁸ Assembly of Kosovo (2010), 'rules of procedure of the Assembly', Article 45.

⁹ Ibid. Article 46.

Furthermore, the Parliamentary Committees may invite the minister of the head of the relevant institution that reports to the Assembly to report on the scope of the relevant institution and to review the issues that fall under his/her competences.¹⁰

Finally, the Assembly may use the Investigative Parliamentary Committees (that are established ad-hoc in accordance with the Law on Parliamentary Investigations) as another oversight mechanism, which based on the decision for their establishment by the Assembly, may investigate any matter, and summon to testify any official in Kosovo in relation to the matter under investigation.¹¹

Although recently it seems that there have been efforts to increase the degree of exertion of the oversight function of the Assembly over the executive branch¹², it still seems that the Assembly remains under the dominance of the Government.¹³ Government officials fail to attend regularly the Assembly sessions and fail to respond adequately to parliamentary questions or requests for reporting.¹⁴ Also, it has been noticed that a considerable part of the recommendations and decisions of the Assembly are not taken into consideration,¹⁵ which restricts to a large extent the exertion of the oversight function over the executive. Furthermore, a decrease in the number of parliamentary questions, the majority of which come from the opposition, has been noticed.¹⁶ The very important oversight mechanism – that of the investigative committees is almost not used at all. Furthermore, it is up to the Assembly to further strengthen its capacities to oversee the executive, in the respect of monitoring the implementation of the legislation in general, and also in respect of budget spending (see the section on the oversight of the approximation and harmonization of the country's legislation with that of the *Acquis*, including the monitoring of the implementation of the legislation)¹⁷.

Strengths:

1. The legal framework regulates adequately the Assembly mechanisms to exert effective oversight on the functioning of the executive, and
2. A larger number of efforts on the part of the MPs to use oversight mechanisms, especially with regards to the mechanism of the interpellation and parliamentary questions.

¹⁰ Ibid. Article 65.

¹¹ Ibid. Article 71.

¹² European Commission (2012), 'Commission Staff Working Document' p. 5. For more information see Ministry of European Integration (2010-11) 'Input for the Progress Report'.

¹³ SIGMA (2011), Kosovo Assessment, p. 5.

¹⁴ European Commission (2011), Kosovo Progress Report, p8.

¹⁵ Kosovo Center for Security Studies *et al* (2010) 'Progress Report Made in Kosova', p11.

¹⁶ Initiative for Progress *et al* (2011) 'Progress Report Made in Kosova', p. 12.

¹⁷ European Commission (2012), 'Commission Staff Working Document' p. 5.

Challenges:

1. There e need to further strengthen the Assembly oversight role;
2. Executive responses to Assembly requests are not always adequate, and
3. Even though it is assessed that there is a sufficient number of supporting staff, their organization to support the parliamentary commissions need more efforts.

1.2. Oversight of the approximation and harmonization process of the local legislation with the *Acquis* and the oversight of the implementation of the legislation

Prior to elaborating the oversight process of the approximation and harmonization of the local legislation with the *Acquis*, it is important to provide a brief summary on how the process of the adoption of legislation is regulated by the Assembly.

According to the rules of procedure of the Assembly, the process for the adoption of the legislation by the Assembly is regulated as follows:

A draft law may be submitted to the Assembly by the President, the Government, at least 6 members of the Assembly, Committees of the parliamentary groups and by 10000 voters.¹⁸ After the Assembly receives the draft law, its first hearing is conducted within a deadline of 2 to 4 weeks following its receipt. If it is adopted in the first hearing, then a functional Committee is assigned to lead the revision draft law. The draft law should also go through the standing committees to receive any eventual input. Two weeks following the adoption in principle of a draft law it may be added amendments by the MPs, the committees, the parliamentary groups and by the Government. After it is made sure that the procedures required by the rules of procedure have been passed the functional-reporting Committee presents to the Assembly a report on the adoption of the specific draft law including the eventual input by the other relevant committees.

The second hearing of the draft law starts with the presentation of the report to the functional reporting Committee. After the report is presented, the representatives of the parliamentary committees, the representatives of the parliamentary groups, the representatives of the Government and the MPs are entitled to discuss. To adopt the draft law at a second hearing all amendments are voted on by one, and if in the end all amendments are adopted, the adoption of the draft law ends with the second hearing.¹⁹ If not, then the Assembly, based on the request of the sponsor of the draft law may submit that for a third hearing where the draft law is presented with all its amendments, whereas the amendments that were not adopted are not included in this version of the draft law and it is considered as adopted in the third hearing if it passes as such.²⁰

¹⁸ Assembly of Kosovo (2010), 'Rules of Procedure of the Assembly', Article 54.

¹⁹ Ibid. Article 59.

²⁰ Ibid.

The procedures of the Assembly to exert the legislative functions in relation to the assessment of the compatibility and the harmonization of the national legislation with the *Acquis*, are regulated by the Regulation on Responsibilities and Organization of Work of Assembly Administration, which determine that the Directorate for Legal Standardization and Harmonization as part of the General Directorate for Legal and Procedural Affairs of the Assembly Administration, verifies the compatibility of the draft laws of the country with the *Acquis communautaire*, where at the end of such process this Directorate should present a preliminary report containing the remarks and the recommendations that have been submitted to the parliamentary committees. Following the first adoption of the draft law the European Integration Committee oversees the process of harmonization of any draft law that passes in the Assembly with the *Acquis communautaire*. The rules of procedure of the Assembly also determine that the draft law presented to the Assembly should be accompanied, inter alia, with a declaration and table of compatibility of the draft law at issue with the *Acquis*.²¹ Eventhough foreseen by Regulation on the Work of Assembly, these tables are not yet attached to draft laws proceeded by Government.

Likewise, with regards to the oversight of the application of the legislation, the Parliamentary Committees are authorized to carry out this function in the area they cover. The respective ministries are obligated to report to the relevant committees at least once a year, without a request to do so. Also, the Committees are obligated to study the effective application of the legislation and may also offer recommendations on concrete cases of failure to apply. Based on these activities, the Committees are obligated to report once a year in the plenary sessions of the Assembly, whereas should the relevant Ministry fail to report, or the report is considered incomplete, then the matter goes to a parliamentary session.²²

Although there has been progress with regards to the fulfillment of the oversight function for the approximation and harmonization with the *Acquis*, nevertheless there are still a number of challenges to be overcome.²³ In general, as is the case with other institutions of the country, there has been noted insufficient expertise in the area of legislation harmonization with the *Acquis*.²⁴ The absence of a planning mechanism for the approximation and harmonization of the local legislation with the *Acquis* represents a serious obstacle for the oversight and monitoring of this process by the Assembly.²⁵

²¹ Ibid. Article 54.

²² Ibid. Article 75.

²³ European Commission (2012), 'Commission Staff Working Document' p. 5.

²⁴ Plugtschieva, Meglena (2012), 'Challenges of the Parliamentary Committees in the process of European Integration', p. 6.

²⁵ Vehar, Primoz (2012), 'Strengthening the Legal Approximation Process and Structures in Kosovo', p. 20.

On the other hand, the respective Directorate is faced with an insufficient number of staff members to exert this function.²⁶ The Assembly has still a lot to do to strengthen the General Directorate for Legal and Procedural Affairs in order to improve the exertion of its legislative function.²⁷ Normally, such function should be further strengthened by acquiring the required expertise with regards to the *Acquis*.²⁸ Also, the draft laws submitted by the Government do not contain the comparative tables apparently due to the contradiction between the rules of procedure of the Assembly and that of the Government.²⁹

It seems that the area which has noted the less progress is the monitoring of the implementation of the legislation. Although part of the rules of procedure of the Assembly, this important function is achieved only sporadically. The capacity of the Assembly for effective monitoring remains low, as is illustrated by the fact that in 2010 no report on the monitoring of the legislation in power was approved³⁰, whereas in 2011 there were such reports only for 8 laws.³¹

Strengths:

1. The adequate legal framework for the oversight of the European integration process in general, and that of the approximation and harmonization of the local legislation with the *Acquis* with regards to the Assembly;
2. An increasing number of training Programmes for the staff of the Assembly administration on areas concerning the approximation and harmonization with the *Acquis*.
3. A more pronounced role of the European Integration Committee for broader inclusion of the Assembly in the European integration process in general, especially with regards to the process of approximation and harmonization with the *Acquis*, and
4. Increased efforts to exert the function of monitoring the implementation of the legislation (in 2011 alone, 8 reports focused on the monitoring of the implementation of the legislation were drafted).

Challenges:

1. The absence of a planning mechanism to approximate/harmonize with the *Acquis* on national level;
2. Lack of expertise on the approximation/harmonization process;

²⁶ European Commission (2011), 'Kosovo Progress Report', p. 6.

²⁷ European Commission (2012), 'Commission Staff Working Document' p. 5.

²⁸ Ibid.

²⁹ Ibid. while the rules of procedure of the Assembly requires the presentation of the compatibility table, the rules of procedure of the Government (Article 40 of the WR of the Government emphasizes that the sponsoring authority should provide evidence of reference to the EU legislation).

³⁰ Kosovo Center for Security Studies *et al* (2010) 'Progress Report Made in Kosova', p11.

³¹ Ministry of European Integration (2012), 'Input for the Progress Report K4 2011', p11.

3. Although there has been an increase of staff members for the Assembly who deal with the verification of the process of approximation and harmonization of the local legislation with the *Acquis*, nevertheless the number remains small, and
4. Inclusion of compatibility statements accompanied by compatibility tables by the Government.

1.3. Administrative capacities of the Assembly

The legal basis for the functioning of the Administration of the Assembly is found in the rules of procedure of the Assembly, which grants it a supporting role for the elected bodies of the Assembly.³² On the other hand, based on the rules of procedure, the Chairmanship of the Assembly has adopted the Regulation on the Organization and Responsibilities of the Administration, and its organogram.³³

Based on this legal framework, the Administration of the Assembly functions through the General Directorate of Legal and Procedural Affairs, and that of Administration, which report directly to the General Secretary of the Assembly. The General Directorate of Legal and Procedural Affairs comprised of four Directorates (the Directorate for Plenary and Procedural Affairs, for Committee Support, the Directorate for the Legal Standardization, Approximation and Harmonization, and the Directorate for Legal Research) under the auspices of which function the units and coordinators for specific affairs, while the general Administration Directorate comprises of the directorates and offices handling administrative support affairs.³⁴ Also, under the auspices of the Administration of the Assembly function the Directorates which report directly to the General Secretary, such as: the Directorate for Protocol and International Relations, the Directorate for Media and Public Relations, and the Directorate for Procurement.³⁵

From the onset of its functioning, the Assembly of Kosovo has marked progress in achieving its functions, in particular with regards to proceeding with the legislation as a direct requirement of the political process the country has gone through.³⁶ Also, there has been some progress in implementing procedures for the internal functioning of the institution, including the improvement of the cooperation with the Government with regards to the European integration process.³⁷

³² The Assembly of Kosovo (2010), 'Rules of Procedure of the Assembly', Article 80.

³³ Organisational Chart of the Assembly has been amended by Decision of the Chairmanship of the Assembly on 18 April 2012, establishing the Office of the General Secretary, the Directorate for Procurement and the Directorate for Research, Library and Archive.

³⁴ The Assembly of Kosovo (2012), 'Organogramme of the Administration of the Assembly of Kosovo', p. 1.

³⁵ Ibid.

³⁶ It is worth mentioning that the proceeding with the legislation in a prompt procedure is a result of the implementation of the Constitution of the Republic of Kosovo, and the adoption of the legislation as a result of the European integration process in the recent years.

³⁷ European Commission (2011), 'Kosovo Progress Report', p. 8. for more, please refer to previous Progress Reports.

However, there remain a considerable number of challenges pertaining to the capacities of the Assembly, including the administrative ones, to carry out its functions in an adequate fashion.

Firstly, as has been expressed in the monitoring mechanisms of the European Commission, and many other institutions, the administration of the Assembly too faces challenges concerning the sustainable management of human resources.³⁸ The development of a Development Plan 2032-18 and strengthening in the Office for Planning (in the framework of the Office of the General Secretary) represent positive developments and it is expected that this will result in the development of a sustainable mechanism for planning and regular monitoring of the strategic developmental framework of the Assembly. On the other hand, the regulation of the legal basis for the Administration of the Assembly by adoption of the Law on Civil Servants Status of the Assembly Administration during 2013

What remains challenging is the fact that the budget resources allocated to the Assembly have not increased at all in the last years.³⁹ Additionally, the proportion 1.3 administrative staff per MP seems to have remained the same in the recent years. The proportion of administrative staff per MP is one of the lowest in the region.⁴⁰ Furthermore, the strengthening of the administrative capacities of the Assembly may be limited by the fact that the budget for the Assembly should be approved by the Government, and for this reason it is necessary to find a solution that enables independence of the Assembly in this respect.⁴¹

Strengths:

1. Strategic Developmental Plan has been developed;
2. The Office General Secretary further strengthened, and
3. The technical support for the further development of the administration of the Assembly through pre-membership assistance has been strengthened.

Challenges:

1. Although the strategic developmental framework has been improved, the remaining challenges are related to the regular monitoring of its implementation;
2. The still low number of civil servants in ratio with the MPs (it is estimated that this proportion is 1.3 civil servants per MP), and
3. Independence of the Assembly to allocate its own budget.

³⁸ Initiative for Progress et al (2011) 'Progress Report Made in Kosova', p. 10.

³⁹ Ministry of Finance (2012), 'Medium-Term Framework of Expenditures 2013-15', p. 53.

⁴⁰ National Democratic Institute (2008), 'New Mandate, New Opportunities', p. 41. (This study has found that the budget allocated to the Assembly of Kosovo is 5 times lower than the one for the Assembly of Slovenia, while in the region, only Montenegro has less support staff per MP than Kosovo.

⁴¹ European Commission (2012), 'Commission Staff Working Document' p. 5.

III. EXECUTIVE

1. Policy Coordination and Development

1.1. The legal framework of the development and coordination of policies

The legal framework of the functioning of the process for the coordination and development of policies is based on some legal acts and by-laws⁴², which determine the institutions that bear these, their obligations and responsibilities, as well as the process to be followed.

The main legal acts and by-laws, as well as the main provisions that they contain in relation to the coordination and development of governmental policies are:

The Constitution of the Republic of Kosovo determines that the Government of the Republic of Kosovo is responsible for the application of the laws and state policies and is subjected to the parliamentary control. It also obligates the application of the international law, of the international agreements ratified by the Republic of Kosovo and of the norms that are obligatory from the legal point of view; it determines the right of the Government for legislative initiatives; defines the general principles of the organization and responsibilities of the Government, and the competences of the Government and of the Prime Minister⁴³.

The Law on State Administration of the Republic of Kosovo which determines the institutions and the bodies of the state administration and defines the responsibility of the state administration in the direct application of the law, issuance of the provisions for their application, exertion of the administrative supervision and of other administrative and professional duties.⁴⁴

The Law on the Amendments and Supplementing of the Law No.03/L-048 on the Management of the Public Finances and Responsibilities defines the process and responsibilities of the Government in preparing the Mid-Term Framework of Expenditures (MTEF) and the Budget of Kosovo⁴⁵ which, inter alia, should contain macro economic and fiscal forecasts for the MTEF budget period, which include the main economic indicators and a declaration on the priorities of the government policies aiming to channel

⁴² A summary of the legislation at issue drafted by Legal Office-OPM may be accessed at: <http://www.kryeministri-rks.net>.

⁴³ The Constitution of the Republic of Kosovo, Article 4, Article 16, Article 19, Articles 79-81 and Articles 92-95.

⁴⁴ The Law No. 03/L-189 on the State Administration of the Republic of Kosovo, Articles 1-5.

⁴⁵ In order to determine the Budget of the Republic of Kosovo for the fiscal year, each year the Assembly of Kosovo adopts the Law on the Budget of Kosovo. See Law No. 04/L-079 on the Budget of the Republic of Kosovo for 2012.

the allocation of budget means during the next budget process⁴⁶. This law also obligates the ministries or the proposing authority to submit the new laws or the laws or supplements-amendments together with the statement on the budget and economic impact⁴⁷.

The Law on Legislative Initiatives determines the rules and procedures for legislative initiatives in the Government. The Prime Minister and each minister is entitled to propose draft laws and by-laws, whereas the ministries exercise this right in compliance with the areas of their activities and with the responsibilities stemming from the approved concept papers.

The Law on the Official Gazette of the Republic of Kosovo determines the Official Gazette of the Republic of Kosovo as the only official publication in the Republic of Kosovo where the laws and other acts of the institutions of the Republic of Kosovo are published. This law also regulates the procedures for the publication of the Official Gazette of the Republic of Kosovo as well as the rights, duties and responsibilities of the Office for the Publication of the Official Gazette and of the institutions that publish their acts in the Official Gazette.

The rules of procedure of the Government of the Republic of Kosovo determines the method of work and decision making procedures of the Government of the Republic of Kosovo; the rules and procedures for the drafting of the legislation and recommendations of policies by the Government and the ministries, and the organization of the meetings of the Government and the work of the Ministerial Committees⁴⁸. The Regulation also defines the functions of four main offices under the auspices of the Office of the Prime Minister that have a main role in the policy-making process of the Government: the Government Coordination Secretariat, the Legal Office, the Office for Communications and the Office for Strategic Planning⁴⁹.

Regulation no. 02/2011 on the areas of administrative responsibility of the Office of the Prime Minister and Ministries and Regulation No. 07/2011 on the amendment and supplement of Regulation No. 02/2011 on the areas of administrative responsibility of the Office of the Prime Minister and Ministries determines the composition of the Government in general, the Prime Minister, Deputy Prime Ministers and Ministers as the highest authorities of the State Administration and the Office of the Prime Minister and ministries as the highest authorities of the state administration⁵⁰. The Regulation also defines the responsibilities and competences of the Government in exercising the executive power, including the making of decisions upon the proposals from the highest

⁴⁶ Law No. 03/L-221 on the Amendment and Supplement of the Law No.03/L-048 on the Management of Public Finances and Responsibilities, Articles 5-8.

⁴⁷ Ibid. Article 9.

⁴⁸ Regulation No. 09/2011 on the Work of the Government of the Republic of Kosovo, Article 1.

⁴⁹ Ibid. Article 3.

⁵⁰ Regulation No. 02/2011 on the areas of administrative responsibility of the Office of the Prime Minister and of the Ministries, Article 1, 2, 3 and 15.

authorities of the state administration; the issuance of legal acts or regulations that are necessary for the application of the laws; discussion of problems or other issues that it considers important in the framework of its competences; the right to initiate the drafting of draft laws and to propose policies concerning the respective ministries⁵¹.

Regulation No. 01/2011 on the Departments for European Integration and Coordinating of Policies in the Framework of the Ministries determines the functioning, duties, responsibilities and the status of the Departments for European Integration and Coordination of Policies in the framework of the Ministries. DEICP coordinate the process of the European integration; the process of the strategic planning and development of policies; the foreign assistance; assist and coordinate the process of drafting and improving the policies and proposals; assist in developing the capacities of the respective ministry, in the framework of initiating reforms and assessing their impact, and assist in improving the process of consultation with the parties⁵².

Furthermore, based on the rules of procedure of the Government 09/2011 instructions have been produced to assist the respective institutions in applying the provisions of the regulation and a smooth process of policy making. Since September last year, the Government and the General Secretary of the OPM have issued a considerable number of such instructions:

- Administrative Instruction No. 02/2012 on the procedures, criteria and methodology for the preparation and adoption of strategic documents and their implementation plans;
- Instruction on the process of public consultation No. 062/2011
- Instruction on the drafting of concept papers and explanatory memoranda;
- Instruction on the drafting and monitoring of the Annual Work Plan of the Government;
- Instruction on the drafting of the Annual Work Report of the Government, and
- Instruction on the monitoring of the application of the Government Decisions.

1.2. Institutional framework of the policy development and coordination

The Office of the Prime Minister is the main institution responsible to carry out the process of policy coordination and strategic planning, including the aspects of development and monitoring of the application of the laws and policies of the Government⁵³.

In the framework of the OPM there are four offices that are the key players in the process

⁵¹ Ibid. Article 4 and 5.

⁵² Regulation No. 01/2011 on the Departments for European Integration and Policy Coordination under the auspices of the Ministries Articles 1-5.

⁵³ Regulation No. 02/2011 on the areas of administrative responsibilities of the Office of the Prime Minister and the Ministries, Article 16

of coordination and development of governmental policies⁵⁴:

- The Government Coordination Secretariat which ensures that the policy coordination and monitoring process serves the function of decision making. The number of civil servants in the GCS is 12 and in the recent years there has been no turnover of staff, which has notably contributed to the smooth operation of the work on the organization of the Government meetings, strengthening of the policy coordination processes and planning of the work.
- Office for Strategic Planning⁵⁵ which ensures that the Prime Minister and the Government in general receive appropriate advice in relation to the Government's strategic priorities and how to meet these priorities. Ever since its establishment in 2010 the Office has had five civil servants, but this year there has been turnover of the staff and now it has only two staff members. The new staff recruitment process has been finalized by recruiting two additional officials.
- The Legal Office which ensures the coordination of the work on the drafting of legislation, harmonization and approximation of the new laws with the Constitution and the existing legislation. The office has eleven civil servants and in the last two years there has been no staff turnover.
- The Office for Public Communication which plans and coordinates the governmental communication and ensures that the general public is informed about the work of the Government⁵⁶. The office has seven civil servants and in the recent years there has been no staff turnover.

Of special importance for these processes is the role and close collaboration between:

- The Ministry of Finance to ensure that the availability of monies is taken into consideration during the decision making at the Government, and to ensure that MTEF and the budget support the priorities of the Government.⁵⁷
- The Ministry of European Integration in particular to ensure the application of the strategic framework for European integration. The Ministry has hired 54 civil servants, of whom 33 are daily involved in EI process issues.⁵⁸
- The line Ministries whose main priority is to formulate sectoral policies of the government in relation to their mandate, and to execute and review the same⁵⁹.

⁵⁴ Draft Regulation on the Organizational Structure of the Office of the Prime Minister, which aims to determine the internal organization of the Office of the Prime Minister and of the other state administration authorities under its supervision is ongoing.

⁵⁵ Operationalization of the Office for Strategic Planning was made based on the Government decision 03/92.

⁵⁶ This office exerts its functions and responsibilities of the Office based on Regulation No. 03/2011 on the service of communication of the government with the public, Article 5, p. 5-8.

⁵⁷ Regulation No. 02/2011 on the areas of administrative responsibility of the Office of the Prime Minister and Ministries, Annex 2, p.14-15 . In addition to this Regulation the MF exerts its function also based on the legislation in power which regulates the relations in the financial, tax and customs areas.

⁵⁸ Responses in the questionnaire on the Feasibility Study for the Stabilization and Association Agreement, p. 37, para. V.

⁵⁹ Regulation No. 02/2011 on the areas of administrative responsibility of the Office of the Prime Minister and the Ministries, Article 17 (3).

In addition to the abovementioned institutions, other mechanisms that play a role in the process of coordination and development of policies are:

- The Council of General Secretaries, which in addition to preparing the agenda for the next meeting of the Government, is also obligated to review the concept papers and explanatory memoranda. In particular, this Council plays an important role in reviewing matters over which there may be disagreements between the ministries. The Council also reviews the regular reports on the implementation of the annual work plan of the government and other reports for which the need for coordinated action by the ministries has been identified, such as the European Commission Progress Report.
- Departments for European Integration and Coordination of Policies of the Ministries established in April 2011⁶⁰. The primary responsibility of these departments is to coordinate the European integration process; the strategic planning process and the development of policies and to give their contribution in the process of drafting and improving policies and proposals. These departments also serve as focal points for the collaboration between the MEI, MF, CGS and SPO to coordinate sectoral policies in relation to the European integration, these being requirements that stem from the development and monitoring of the APEP, annual work plan and report of the Government, and to ensure their harmonization with the MTEF and other strategic documents.
- The Council of Directors of Legal Departments of the Ministries⁶¹ comprises of directors of the legal departments of all ministries, and serves as a mechanism to coordinate and maintain, draft and apply the legislation.
- The Steering Group for Strategic Planning⁶² will work to advance the institutional structures that are responsible for the coordination of developing key strategic documents, their harmonization and relation with the budget, as well as to strengthen the coordination of key planning processes in the Government.
- The National Council for the Economic Development of Kosovo⁶³, which, inter alia, is obligated to coordinate and monitor in the political level the action plan for the implementation of the economic development vision for Kosovo.
- The Commission for Public Investment, which should ensure the relation between the strategic planning and the budget⁶⁴.
- Within the Government of Kosovo there exist around 29 Executive Agencies⁶⁵. Their status is regulated by the Law on the State Administration. These agencies are subject to a specific ministry or, in special cases, to the OPM. They carry out non-ministerial work, in particular duties of the preparatory, advisory or reviewing nature, as well as other administrative duties in order to relieve the respective ministry of routine duties which require a high level of specialization⁶⁶.

⁶⁰ Recommendation on the establishment of these departments has been emphasized in the report of FRIDOM, the functional review of the policy management systems, p. 40-42 (4.2).

⁶¹ Regulation No. 09/2011 of the Work of the Government of the Republic of Kosovo, Article 42 (3). This Council functions based on Regulation No. 01/2012 on the Council of Directors of Legal Departments

⁶² See the Decision of the Government 05/83 dated 11/7/2012.

⁶³ See Decision of the Government 02/67 dated 21/03/21012.

⁶⁴ Responses to the questionnaire on the Feasibility Study on the Stabilization and Association Agreement, p.26, p.(IV).

⁶⁵ This note was made on 30/03/2012.

⁶⁶ Law No. 03/L-189 on the State Administration, Article 23, p. 6.

1.3. Policy Documents

The Government Programme is a key document which determines the direction and development of Governmental policies and represents a good opportunity to create the basis for the MTEF policies. This document is of a political nature and comprises the plans and commitments of the political subjects that won the general elections. However, to ensure coherence and compatibility with the legal and strategic framework, this document is verified by the relevant institutions such as SPO, MF and MIE⁶⁷.

The Government is obligated to issue a statement of priorities to serve as basis of policies to prepare the Mid-Term Framework of Expenses, Budget and Annual Plan of the Government. These priorities are reviewed, confirmed or amended by the Government before the process of drafting the Medium Term Expenditure Framework every year⁶⁸.

The Medium Term Expenditure Framework is the main tool through which the Government determines its fiscal strategy and serves as the key document for policy planning in Kosovo. The fiscal strategy includes the planning on revenues and expenses for the next three years; the limits of expenses for all budget organizations are determined on ground of the priorities of the Government.⁶⁹ The MF leads the process of preparing the MTEF and the Budget of Kosovo. The preparation of the budget goes through three stages (formulation, approval and implementation), and is prepared based on the budget circulars that issued for each budget organization and contain instruction on how to prepare the Budget of Kosovo⁷⁰. In order to determine the Budget of the Republic of Kosovo for the fiscal year the Assembly of Kosovo adopts each year the Law on the Budget of Kosovo.

The mid-term priorities 2013-2015 are mainly based on the Programme of the Government for 2011-2014, The Vision and Priorities for the Economic Development 2011-2014 approved in April 2011⁷¹, which were drafted on the principles of respecting the free market economy⁷². The Vision and Priorities for Economic Development serve as a document of policies that emphasizes the policies and key priorities of different sectors pertaining to the economic development. The Plan of Action for the Economic Vision for Kosovo (2011-2014) has been prepared based on this document. This Plan consists of a document of objectives and concrete commitment based also on the achievements to date and is part of the planning framework within the main mid-term strategic documents, including the Programme of the Government 2011-2014, the Medium Term

⁶⁷ Ibid. p. 21.

⁶⁸ Regulation No. 09/2011 of the Work of the Government of the Republic of Kosovo, Article 46, p 20-21.

⁶⁹ Law No. 03/L-221 on Amending and Supplementing of the Law No.03/L-048 on the Management and Responsibilities of Public Finances, Article 5, p. 2-3.

⁷⁰ Law No.03/L-048 on the Management and Responsibilities of the Public Finances, Article 29, p. 21; Law No. 03/L-221 Amending and Supplementing the Law No.03/L-048 on the Management and Responsibilities of Public Finances, Articles 7-8, p. 3-4.

⁷¹ Government Decision No. 01/10.

⁷² Medium Term Expenditure Framework 2013-2015, p7.

Expenditure Framework 2012-2014, the Action Plan for the European Partnership, and other sectoral and inter-sectoral documents of the Government⁷³.

The Action Plan for the Stabilization and Association Agreement is the main policy document regarding the European integration aspects. It is a mid-term planning document that addresses the short-term challenges and priorities (1-2 years) and mid-term ones (3-4 years) identified by the Strategy for Expansion and by the Feasibility Study. The Plan contains activities that intend to solve the challenges identified in the EC progress reports, the dialogue mechanisms for the Stabilization-association Process, and other inter-institutional structures of Kosovo⁷⁴. In 2010 MEI has launched the electronic system for monitoring and reporting on the implementation of concrete actions in the framework of EPAP on the part of institutions that are bearers of the actions. The system will be used further, including the monitoring of the implementation of recommendations stemming from the Dialogue for the Stabilization-Association Process⁷⁵ and seems to be exploring the possibility of adapting that to the advanced process of European integration after the eventual commencement of the SAA negotiations.

The Annual Work Plan of the Government is the key document for the implementation of concrete activities which aim to implement mid-term priorities of the Government. The AWPG is prepared based on the annual statement of priorities of the Government, of the current MTEF, APEP and the annual budget process. It is approved every end of the year and contains legislative and non-legislative activities⁷⁶. The legislative activities are summarized in a separate annex (the Legislative Programmeme) and are part of the annual work plan of the Government⁷⁷. The AWPG comprises of two parts: A and B. Part A contains activities that are directly related to the strategic priorities of the Government (annual statement of the priorities of the Government), while part P contains priorities and activities of individual ministries. The Monitoring of the AWPG (Parts A and B) is achieved through quarterly reporting observing the following main criteria: the criteria for the assessment of the status of implementation of AWPG, the criteria for the assessment of completion of timeframes foreseen for the AWPG, the criteria for the assessment of the quality of the reports submitted by the ministries and the timely delivery of the report. Each criterion contains three other sub-criteria⁷⁸.

The strategic documents⁷⁹ are ministry documents that identify, assess and make rec-

⁷³ Action Plan of the Economic Vision of Kosovo 2011-2014, July, 2011, p. 5.

⁷⁴ Answers to the questionnaire on the Feasibility Study for the Stabilization Association Agreement, p. 26.

⁷⁵ Government, Action Plan of the European Partnership 2012, p. 6.

⁷⁶ Regulation No. 09/2011 on the Work of the Government of the Republic of Kosovo, Article 47 (1,2) p. 21.

⁷⁷ Ibid. Article 47 (3), p.21. See more on the legislative Programmeme the part 'Legislation'.

⁷⁸ For more see the Instruction on the drafting and monitoring of annual work plan of the Government No. Rep. 2354, dated 14/11/2011, pps. 7-8.

⁷⁹ AI No. 02/2012 on procedures, criteria and methodology for preparation and approval of the strategic plans and their implementation, Articles 2,3,4,5,6, p. 1-6 . Note: the Instruction may not be applicable for some specific strategic documents such as APEP, MTEF and strategic documents on institutional development.

ommendations within their scope of work and responsibilities, a group of policies and actions to achieve a priority or specific national goal, for a period no shorter than three years. SPOs in collaboration with the ministries and other institutions may propose the drafting of sectoral and inter-sectoral strategies. The annual strategy plan that is prepared for the following calendar year should be finalized before the preparation of the AWPG and the strategies foreseen in the plan should be included in the AWPG. The SPO is responsible for the coordination of the work on preparing the annual work plan of strategic documents and monitoring the implementation of the drafting of strategic documents on regular basis. 43 strategic documents are foreseen to be drafted for 2012.

1.4. Implementation of the policy development and coordination process

The requirement for the strengthening of capacities to coordinate the governing, the clear definition of the central and local authorities to ensure consistency in the implementation of policies has been included in the APEP 2012⁸⁰ and is the first objective of SPAR (2010-2013)⁸¹. The new rules of procedure of the Government (No. 09/2011) is the main instrument that enables in practice the function of the policy coordination and development. The new regulation has strengthened the provisions pertaining to the policy process and policy analysis, the mandate of line ministries and central institutions in the policy development process and the conditions for external and internal consultation while preparing the proposals that will be submitted to the Government for approval. The Regulation came into effect in September 2011, with the exception of provisions regulating the issue of concept papers and explanatory memoranda which came into effect in January 2012.

The coordination of policies (including their development and analysis)⁸²: The process of policy development has been restricted until lately to the preparation of legislation regardless of the policy options or their impact. The problems with the policy development process have been a result of several factors, including the lack of legal provisions that require the conducting of a policy analysis and provisions on the responsibilities of central authorities, the undefined roles and responsibilities of the central authorities involved in the policy development process and the lack of capacities for analyzing the policies of line ministries and central agencies.

The provisions of the new rules of procedure of the Government describe clearly the policy process and determine the roles and responsibilities of line ministries and central institutions, and define the requirements for policy analysis. An explicit requirement of the regulation is the usage of concept papers and new requirements for the assessment of the financial impact. This process enables the Government to review different options of policies and their consequences with the purpose of achieving the adequate decision

⁸⁰ EPAP 2012, para.18, p.36.

⁸¹ SPAR 2010-2013, Objective 1 on Policy Management p. 7.

⁸² Regulation No. 09/2011 on the Work of the Government of the Republic of Kosovo, Articles 7, 28, 29, 31,35 and 48.

making. Following the approval of the AWPG, the General Secretary of the OPM issues a list that identifies the items of the Work Plan for which a concept paper should be drafted⁸³.

The line ministries are responsible for conducting policy analysis and preparing policy proposals (concept papers and legislative and non-legislative proposals). They are also under the obligation to submit the FAV to the MF as part of the inter-ministerial consultation process should the cost of the proposal exceed the level set by the MF. Furthermore, they are also responsible for developing the consultation process in cases when the proposal affects the responsibilities and competences of a ministry or any other governmental institution.

The Coordination Secretariat of the Government has the leading coordination role in the process of the creation of policies and monitoring of their implementation by the ministries. The CSG supports the ministries and the governmental institutions in this process; it coordinates the process of identifying the policy issues that require the drafting of concept papers; reviews the concept papers and explanatory memoranda to ensure whether they are complete and whether the analysis is qualitative; assists in resolving differences between the ministries, either when preparations for policy initiatives are under way, or during their implementation; makes all preparations for the Government meeting and advises the Prime Minister and the Government on issues to be submitted to the Government for approval.

During the policy process the Legal Office reviews the policy proposals to ensure compatibility with the Constitution and the legal acts in effect. It also reviews the draft laws to ensure their content is in compliance with the approved policies based on the respective concept paper.

The Office for Strategic Planning reviews the list of proposed concept papers from the viewpoint of addressing the Government priorities and reviews these concept papers containing important proposals in support of the Government strategic priorities.

The Ministry of Finances reviews the concept paper list from the viewpoint of their potential influence on the MTEF and budget; it provides methodological support for the ministries to assess the financial impact; reviews the assessment of financial impact for the policy proposals (concept papers, draft laws, and other acts submitted to the Government for approval) and issues its statement.

The Ministry of European Integration provides support to the line ministries in the policy process with regards to the requirements of the EU and *Acquis communautaire* and donor coordination; reviews the list of the proposed concept papers from the viewpoint of meeting the APEP priorities; reviews the concept papers and explanatory memoranda when the proposals are linked with the APEP activities, or when they have implications for the donor coordination.

⁸³ Ibid. Article 48 (7), p.22.

The new rules of procedure of the Government foresees the establishment of the ministerial committees⁸⁴, to serve as mechanisms to discuss and filter issues under their competences, and has also strengthened the role of the Council of General Secretaries to find joint solutions before holding the Government meetings. The Regulation has also strengthened conditions for internal and external consultation during the preparation of proposals to be submitted to the Government for approval. The inter-ministerial consultation takes place during the policy development process when the proposal affects the responsibilities of several ministries. The external consultation should take place during the policy development process and the legislation drafting process. The consultation result should be incorporated as a separate section in the concept paper and the explanatory memorandum⁸⁵.

In general, the legal and institutional framework on which the policy implementation system has been created in the Government provides good grounds for the functioning of the main policy making aspects. This is opinion is also shared by SIGMA, which emphasizes the fact that Kosovo has achieved such progress only within several years.⁸⁶

The legal framework is almost complete. This framework will be further supplemented by the Law on the Government, which should regulate existing practices. The draft at issue has passed the first hearing at the Assembly and is awaiting its adoption.⁸⁷

Approval of the new Regulation on the Work of the Government has been of special importance, as it has improved and consolidated the necessary elements of the policy making procedures and has clearly defined the role and responsibilities of the OPM and of other institutions involved in these processes, and has also enabled the line ministries to be effective participants in the coordination arrangements.

To assist the implementation of the OPM regulation, namely the CSG, LD and SPO have issued the majority of necessary instruction, apart from the instruction to be issued by the MF on determining the formal for the assessment of the financial impact, data to be included and the procedures to be respected before it is submitted to the Government meeting.

Additionally, work should be done on the complete implementation of the WRG, especially of the new provisions concerning the concept papers and explanatory memoranda, the assessment of the financial impact, inter-ministerial consultation and observance of deadlines for submitting the materials to the OPM.⁸⁸

⁸⁴ Regulation No. 09/2011 on the Work of the Government of the Republic of Kosovo, Article 51

⁸⁵ Ibid. Articles 7 and 32.

⁸⁶ SIGMA, Assessment, Kosovo, Policy-Making and Co-ordination 2012, p

⁸⁷ Answers in the questionnaire on the Feasibility Study for the Stabilization Association Agreement, p. 20.

⁸⁸ On 31 May and 21 September of this year CSG met with counterparts from DEICPs and LDs of ministries to discuss about problems and other issues concerning the implementation of the new rules of procedure of the Government. The drafter of this report attended both meetings, as at that time she was engaged with the DFID project to support the OPM. Parts of this report from the meeting have been used for purposes of this report and have been included in pp. 19-21.

The piloting of the implementation of provisions for drafting concept papers and explanatory memoranda commenced with some ministries since November 2011. In the course of this process the CSG and specific ministries have come across some difficulties and they continue to be present although the current provisions are in effect. The work about the drafting of concept papers cannot be perceived as team work and it might be that this work is left to one person alone. There is an absence of appropriate support from the GS or the political cabinets. There exists no proper collaboration between the departments within the ministries. In particular, the DEICPs are not involved adequately in the process. Although the DEICPs have been established in the majority of ministries in compliance with the Regulation on the establishment of these departments, they lacked proper support. They do not have the necessary capacities or staff to meet all requests coming from the MEI, MF, SPO and CSG and the role of these departments is not completely clear.

One of the identified main obstacles in this respect is the lack of personnel with professional skills to develop and analyze the policies. In general, the level of capacities for the development of policies and drafting of legislation is poor⁸⁹. Also, it may be that the ministries are asked to quickly draft legal acts to observe requirements stemming from the EI agenda, and this does not allow them sufficient time to prepare the concept papers.

With the exception of some cases⁹⁰, the inter-ministerial consultation process and public consultations when drafting the concept papers, explanatory memoranda, legal acts and by-laws, strategic plans for the ministries and sectoral strategies, leaves a lot of room for improvement⁹¹. From January 2012, 101 materials have been proposed for inclusion in the agenda of the Government, while for preliminary consultation (according to Article 7 and 32 of the Regulation) only 22 have been submitted to the CSG.

Article 52 of the WRG has created the legal basis for the establishment of ministerial Committees that will review and filter specific issues before they are put forward for the Government meeting. However, these committees have not been established and there is now in place the practice of creating various inter-ministerial coordination bodies to deal with specific governmental duties, e.g. the Inter-Ministerial Council for PAR or the Council for Public Enterprises⁹². The Council of general Secretaries is also in charge of reviewing all materials to be discussed in the next meeting of the Government, including the concept papers. The Council of General Secretaries has reviewed only one or two concept papers in 2012, and only this year they have started to review the reports prepared by the CSG to monitor the implementation of the Work Plan of the Government.

⁸⁹ Ibid. p. 33. The same assessment is emphasized in the reports of SIGMA for year 2010 p.3. and year 2011 p. 27.

⁹⁰ For example the LD of OPM has conducted preliminary consultations and public consultations for the majority of legal draft acts prepared by this office..

⁹¹ SIGMA, Assessment, Kosovo, Policy-Making and Co-ordination 2012, f(33),p.(V).

⁹² SIGMA, Assessment, Kosovo, Policy-Making and Co-ordination 2012, f(33),p.(VI, VII).

The existing procedures of policy financial assessment are not being observed appropriately or adequately by the ministries. There are instances when the Government approves the plans and submits those to the Assembly even when they receive a negative opinion from the MF. The MF should have more resources to conduct analytical reviews of implications of budget calculations and new legislation⁹³. This would support the ministries and would also influence on the respect for the opinions that the MF is obligated to provide⁹⁴.

Strategic planning⁹⁵ - The different planning and budget processes as mentioned above are a responsibility of various governmental bodies such as the MF, OPM and MEI and there has been no formal mechanism to coordinate all these processes. To meet the strategic planning process the Government should have a true strategic planning system. This consists in strengthening the coordination structures in the framework of the ministries, advancing coordination between the respective institutions, clarifying the procedures and criteria for drafting strategic documents and harmonization between those⁹⁶. In the past, the priorities determined in the MTEF were mainly of a general nature. The inclusion of general priorities in the MTEF have granted the ministries a general orientation during the allocation of monies for the priorities of the Government; however, on the other hand, it has limited the ability of the Government to obtain adequate financing for the key priority actions that have considerable cost, actions that need to be undertaken to implement the Government priorities. The efficiency of MTEF in allocation of budget means based on the Government priorities should have been improved. Therefore, in the recent years there have been reforms that have improved the mid-term and short-term planning process including MTEF, APEP and AWPG. Steps have been undertaken in the framework of these processes to identify and analyze the Government priorities that should serve as orientation marks for these planning processes. Likewise, these processes shall enable MTEF to take into consideration the cost for the implementation of the key priorities and to determine the adequate boundaries of the expenses.

The process of preparing and approving the Government priorities is led by the Strategic Planning office in close collaboration with MF, MEI, CSG and the PM cabinet. The MF should provide advice on grounds of experience and MTEF restrictions, and provide analytical advice in relation to the macro-economic policies. MEI should contribute based on requirements from the DSAP, while the CSG provides advice in relation to the last year's achievements, based on PVPQ monitoring reports. SPO should also ensure that the Government priorities are reflected in the key planning and budget documents (such as MTEF and the budget, APEP, and all other key planning documents of the Government).

⁹³ Ibid. f(22), p.(III).

⁹⁴ Ibid. f(33),p.(III).

⁹⁵ Regulation No. 09/2011 on Work of the Government of the Republic of Kosovo, Articles 7, pps. 4-5; Articles 18, pps. 8-9; Articles 46, 47, 48 and 49, pps. 20-22.

⁹⁶ OPM Strategic Development Plan 2011-2014, p.6, p.(III).

In this respect, the SPO collaborates with the MF to prepare the priority part of the MTEF and to strengthen the policy component in the sectoral strategy part of the MTEF. MF leads the MTEF and budget preparation process in general. The MEI collaborates closely with the MF to ensure co-financing of APEP in MTEF and Budget, and ensure that the APEP includes only such activities that are supported by financing.

In the framework of the ministry support for the preparation of other strategic documents SPO and DEICPs are responsible for facilitating and coordinating the development of strategic documents in the sectoral and national level, and to develop the system of monitoring their implementation⁹⁷. The line ministries should ensure compliance between the SPO before submitting a strategic document for approval by the Government.

Regarding the strategic planning, in the recent years there have been some reforms that have improved the mid-term and short-term planning process including MTEF, Budget, APEP and AWPG. Strengthened cooperation between the institutions that bear these processes: OPM, MF and MEI, has resulted in the implementation of an integrated calendar for the drafting of these planning documents of the Government in 2011. APEP was approved for the first time in December 2011, thus to precede the following year⁹⁸.

In the framework of reformation processes concrete steps have been undertaken to identify the Government priorities that should serve as focal points for the planning processes, and for the strengthening and their further integration. SPO, as the main coordinator in this process, in close collaboration with the MF. SPO has led the drafting of the Statement of Priorities of the Government for the period of 2013-2015 and has contributed in the sectoral part of the MTEF priorities, as well as in the harmonization of the Statement of Priorities with the Economic Development Policy Platform. It should be emphasized that the Action Plan for the Economic Development Vision has helped create a basic framework to determine the priorities in several areas of economic policies. This plan could be expanded to include other areas such as health, education etc., that would help the mid-term planning and the prioritization of Government activities⁹⁹.

The Leading Group for Strategic Planning was established in July 2012¹⁰⁰ as a formal mechanism to coordinate and advance the processes of strategic planning, including the adoption of the strategic planning calendar, the determination of mid-term priorities and the development of key strategic and planning documents in the Government.

In order to unify the planning process and drafting of strategic documents, the Government has approved the AI on procedures, Criteria, and Methodology for the preparation and Approval of Strategic Documents, and another instruction to help line ministries implement this instruction is under way. The SPO, in collaboration with the line min-

⁹⁷ Answers in the questionnaire on the Feasibility Study for the Stabilization Association Agreement, p. 21.

⁹⁸ Ibid. p.32.

⁹⁹ SIGMA, Assessment, Kosovo, Policy-Making and Co-ordination 2012, p. 34.

¹⁰⁰ This group is foreseen also by the APEP to be established in 2012, p. 36, activity 18.1 and in the reviewed strategy of PAR (2010-2013) dated 15/09/2010, p. 6, objective 1: management of policies.

istries has prepared the Annual Plan of Strategic Documents for 2012, which has been reviewed and approved by the Government in August 2012 and contains 43 strategic documents to be prepared this year¹⁰¹. The SPO has also reviewed the registry of strategic documents that are applicable and their number is 63. Although the coordination process has decreased the number of strategic documents compared to the previous years¹⁰², their number still remains highly ambitious¹⁰³. The Government has not prepared any long-term national strategy that would offer its strategic framework for the development of sectoral policies and budget planning. On the other hand, the line ministries do not have sufficient capacities to make the proper planning of drafting sectoral strategies and their inclusion under a strategic framework. With regards to the monitoring of the achievement of strategies there is no set system, rather, the ministries report individually.

1.5. Planning of implementation (annual work plan and report of the Government and the monitoring of Government decisions)¹⁰⁴

Annual Work Plan is the main planning document for all Government activities on annual basis, and serves to transform mid-term Government priorities, as determined in the key mid-term planning documents, into concrete actions that are implemented during the one-year period. The relation between Government priorities, mid-term planning in the Annual Work Plan is achieved through the process of formulating and approving the Mid-Term Government Priorities with the possibility of changing these priorities once a year before the drafting of MTEF and annual budget. AWPG is also related to other strategic planning documents (e.g. SPAR).

CSG manages and coordinates the preparation of AWPG in close collaboration with the line ministry, SPO, LD, MF and MEI and ensures harmonization between main planning documents in the Government from the initial stage of commencing the drafting of ministry annual plans.

SKP ensures that the Government priorities are reflected in the AWPG reviewing Part A of AWPG (activities in the function of implementing the Government priorities). LD manages the preparation of the Legislative Programme and cooperates with the SPO to review the submissions from the ministries from the viewpoint of the legislative Programme. MEI collaborates with the SPO to ensure that the main activities of APEP are reflected in the AWPG and MF to ensure that all activities are financed by KB or by funds committed by the donors.

¹⁰¹ The database of all strategic documents may be found in the official webpage of the Prime Minister.

¹⁰² For example in 2010 there were at least 90 strategic documents.

¹⁰³ For example MIA has planned nine strategic documents for 2012, all to be approved by the K2.

¹⁰⁴ Ibid. Articles 46-48, p. 20-22.

Monitoring of the AWPG implementation is also carried out by the SPO. The monitoring is conducted on quarterly basis. The SPO received and reviews the reports from the line ministries and gives instructions about corrections and improvements. Ministry reports contain data that relate to the implementation of each activities, namely timeframes, a description of the problems that have obstructed the implementation, and recommendations for correction. The consolidated annual report of implementation is drafted based on quarterly reports. On quarterly basis the SPO also monitors the implementation of Government decision to assess the impact of their implementation in meeting the Government objectives and to identify problematic issues that obstruct their implementation¹⁰⁵.

The procedures for the preparation and organization of Government meetings, the preparation of the annual work plan and the monitoring of its implementation, the monitoring of implementation of Government decisions, and the reporting, are already in place and are functional. Currently, the focus of the planning is on the strategic priorities, whereas the monitoring of the implementation is focused on concrete achievements. These developments are gradually leading to the consistency between the APEP, MTEF and AWPG and other relevant strategic documents.

CSG oversees the implementation of these processes in the framework of its work through the information stemming from the database used by the round table to prepare Government meetings, and by the databases for the preparation and monitoring of the AWPG and Government decisions, that are used by the roundtable for economic policies and the one for social policies within the CSG.

The work on the advancement of the planning and monitoring systems in the aspect of the information technology has commenced this year. In this respect, the CSG is working on the design of the electronic system for the inter-ministerial coordination system and the organization of Government meetings. It is also working on preparing an electronic database (Internet based) to monitor the implementation of the annual work plan and the decisions of the Government, that will enable the ministries to report directly through the system, to render precise the workflow and the information shall be organized in a better structured fashion. This will render the process easier and more transparent. The system does not contain the performance indicators, but enables the base to enter such data in a near future.

In spite of the abovementioned achievements, an analysis of the CSG on the implementation of the AWPG for the period of April-June 2012 indicates that the planning and reporting capacities of the ministries still need to be strengthened in order to achieve the right level of realization of planned activities. For example, the reporting does not focus sufficiently on the main achievements, and in general, the ministries plan the conduct of these activities in the period of K1-K4. This planning disables the CSG from making an

¹⁰⁵ For more see the Instruction on the monitoring of the implementation of Government decision, No. Rep. 2395.

accurate assessment of the realization of activities for the respective period and grants the ministries the opportunity to postpone realization of activities in the following periods of time.

Strengths:

1. Adequate legal framework for the development and coordination of policies and for the strategic planning;
2. Institutional framework for the coordination of policies and strategic planning is under way, and
3. Coordination and cooperation between the key bearers of the policy coordination and strategic planning is under way.

Challenges:

1. Absence of a long-term planning mechanism at the national level still needs to be developed;
2. Policy development still is not adequately distributed throughout the sectors;
3. In general, the level of capacities and skills to develop the policies remains poor;
4. Relation of policies with the budget is still in the initial stages: MTEF and the budget not necessarily follow the strategic and legal framework in the country.
5. Aspects of monitoring of implementation of the strategic framework which does not receive proper importance in all levels, and
6. There are still obstacles in the ministerial level with regards to the proper planning and implementation of the Annual Work Plan.

2. The legislative process

2.1. The legal framework and the framework of legislation development policies

The legal acts listed in the first part of this report are also the general main basis on which the legislation in Kosovo is developed. Other basic acts and bylaws for the drafting of the legislation in addition to those are:

- Regulation No. 01/2012 on the Council of Directors of Legal Departments
- Administrative Instruction No. 14/2008 on Drafting the Draft Laws and Other By-Laws
- Administrative Instruction No. 13/2007 on the Organization and Activity of the legal Services in the Executive Branch-Government of Kosovo
- Instruction on the review of by-laws approved by the Government and the ministries
- Instruction on the inclusion of by-laws of ministries in the by-laws register book
- Instruction on writing legal opinions
- 10 basic principles of legal drafting provided by the EU Council.

The Legal Office under the auspices of the OPM is the main governmental institution that coordinates the process of legislation drafting and reviews all draft laws that Government submits to the Assembly. It plays the role of a chaperon of the legal system in Kosovo. During this process the LD collaborates with the legal departments of the line ministries, the CSG, SPO, MF and MEI. The LD also provides professional advice on drafting of the legislation and checks the quality of the legislation. In addition to the draft laws, the LD coordinates and reviews the by-laws that are approved by the Government¹⁰⁶.

The new rules of procedure of the Government have created the basis for the establishment of the Council of Directors of the Legal Departments of all ministries. The Council serves as a mechanism to coordinate and maintain, draft and apply the legislation¹⁰⁷.

The main document for the planning of the legislation drafting is the Legislative Programme of the Government which is part of the AWPG, but is also based on and related to the main plans and Programmes of the government, such as the Governing Programme, MTEF, Budget, APEP and WPEVK. The legislative Programme for 2012 envisages the approval of 108 draft laws by the Government¹⁰⁸. The LD of OPM in cooperation with the legal departments of the line ministries monitors the implementation of the legislative Programme and prepares quarterly reports. The implementation monitoring is also conducted through the monitoring systems of the AWPG and APEP.

2.2. Implementation of the legislative process

The approval of the new rules of procedure of the Government has established new rules for the legislation drafting process requiring that the development of policies (drafting of the concept papers and of explanatory memoranda) be an essential precondition for the drafting of the laws. The process of drafting the legal acts should commence only after the Government has approved the concept paper¹⁰⁹. After that, it is the responsibility of the proposing authority to commence with the procedures to draft the legal draft in compliance with the procedures and standards for the drafting of the legislation determined by the Government and the OPM¹¹⁰. Following the completion of the drafting of the initial draft and completing the respective documentation¹¹¹, the entire material goes for review to the GS and the minister who grants permission for proceeding further and further review of the legal draft with the LD of the OPM. If the proposing authority deems it necessary, it may ask for the opinion of the Council of Directors on various legal matters and obtain the opinion of the Council¹¹². While delivering the legal draft for

¹⁰⁶ Regulation No. 09/2011 on the Work of the Government of the Republic of Kosovo, Article 42 (1,2), p 19.

¹⁰⁷ Ibid. Article 42 (3).

¹⁰⁸ Legislative Programmeme of the Republic of Kosovo.

¹⁰⁹ Ibid. Article 38 (5).

¹¹⁰ Ibid. Article 39.

¹¹¹ Ibid. Article 40.

¹¹² Ibid. Article 42 (4).

review to the meeting of the Government the legal department of the respective ministry shall submit the explanatory memorandum and the other relevant documents foreseen by the WRG and the LMPF¹¹³. The legal act approved by the Government is submitted to the Assembly for review and adoption.

The LD is continuing to work on supplementing the legal framework for drafting the basic legislation based on requirements deriving from the WRG. A number of legal acts are in the process of being finalized: the draft regulation on the governmental legal service, the draft regulation on the standards for the legislation drafting in the Government, the draft instruction on preparing and monitoring the legislative Programme, the draft instruction on issuing the statement of compatibility for normative acts, the draft instruction on the engagement of external experts in legislation drafting, the draft instruction on written notice on the activities and status of the normative act. The LD plans to also draft a manual on legislation drafting. Preliminary consultation and consultations with the public have already taken place for the largest part of these drafts. The LD has also published on the website of the PMO the list of laws in effect, of the by-laws approved by the Government, the registry of by-laws in effect and of the draft by-laws. In the framework of the work on the oversight of the legislation drafting process the LD and LDs of the ministries have created a good collaboration network, and the establishment of the Legal Council has strengthened further his collaboration.

The new rules of procedure of the Government has strengthened the status of the Legislative Programme in relation to the AWPG and envisaged it as part of it. Additionally, the preparation of the legislative plan should be coordinated with the preparation of AWPG to eliminate double work on the part of ministries. The legislative Programme for 2012 approved in January had initially envisaged 86 draft laws and seemed to be more doable than the one from the previous year¹¹⁴. However, in the meantime the Programme was amended and supplemented eight times and now, the number of draft laws to be prepared for this year is 108.

The drafting of policies and analyzing of different policy options (as concept papers and explanatory memoranda) prior to commencing the draft of a legal act is the most pronounced requirement of the new rules of procedure of the Government. The main goal is to eschew the practice up to now of preparing legal acts without a preliminary review of policies that such acts should represent. Although the relevant provisions of the WRG came into effect in January this year, progress is very slow and they are not being implemented in the appropriate level by the line ministries. Likewise, the political pressure to make laws within right timeframes and the reasoning that this does not provide sufficient time to develop policies is still present¹¹⁵. The low capacity for developing policies and legislation in the ministries continues to be a significant issue. All these shortcomings obstruct the progress of consultation processes provided for in the WRG¹¹⁶.

¹¹³ Summary of the legislation on the policy and legislation drafting process, p. 21.

¹¹⁴ SIGMA, Assessment, Kosovo, Policy-Making and Co-ordination 2012, p. 31.

¹¹⁵ Ibid. p. 35.

¹¹⁶ Ibid. p. 33.

The process for the assessment of the legislation implementation is not coordinated and so far, the Government has failed to issue any specific instruction to assist this process. The assessment of the legislation implementation is made through monitoring systems of the AWPB and APEP. There are divisions under the auspices of the LDs of the ministries that are in charge of drafting and monitoring legislation and policies in the framework of their scope of work. The minister report at least once a year to the relevant parliamentary committees on the implementation of laws¹¹⁷. The assessment of the implementation of specific laws has been mainly carried out by local NGOs and some international institutions. The process of legislation drafting continues to be postponed by inertia because neither policy making, nor implementation are indicators of success¹¹⁸.

Strengths:

1. Legal framework for the development of legislation is about to be completed;
2. The establishment of the council of Directors of Legal Departments;

Challenges:

1. New legislation or the amendments to the one in power do not always follow policies;
2. The capacities of line institutions still remain poor in terms of legislation development;
3. Partial implementation of the rules of procedure of the Government;
4. Absence of systematic monitoring of the legislation implementation in general.

3. Management of the European integration process

3.1. Legal framework and the framework of policies for the process of the European Integration

The legal basis for the functioning of institutions and the process of European coordination, apart from the documents listed in the first part, are:

- Decision of the Government of the Republic of Kosovo no. 6/121 on the establishment of the Ministry of European Integration;
- Regulation no. 07/2010 on the Organizational Structure of the Ministry of European Integration;
- Regulation No. 04/2011 on the Coordination of Donors and
- Regulation No. 02/2011 on the Establishment of the Departments for European Integration and Coordination of Policies.

¹¹⁷ Answers in the questionnaire on the Feasibility Study for the Stabilization Association Agreement, p. 25.

¹¹⁸ KIPRED, A series of political analysis, Work # 4: "Laws without policies - unusable, inapplicable and in vain", p.(5).

The main policies for European integration of the country are based on the European Integration Plan 2008-2010, the Action Plan for European Partnership and the Action Plan for the Stabilization and Association Agreement and other relevant EU documents¹¹⁹.

3.2. Institutional framework of the European integration process

The Central coordinating institution which manages, coordinates and monitors the process of the European integration is the Ministry of European Integration. The main scope of MEI is to coordinate the drafting, monitoring and assessment of the integration policies, the assessment of the stability of the local legislation with the EU one, the coordination of the financial aid, informing the public and increasing of capacities for this process.

While as mentioned above, the Departments for European Integration and Coordination of Policies, which are responsible for coordinating the sectoral policies in relation to the European integration and foreign assistance for the relevant sectors were established under the auspices of the line ministries in April 2011.

In addition to the mentioned institutions the Government has established other inter-institutional structure on European affairs:

The Ministerial Council for European Integration, which is chaired by the Prime Minister and comprises of the political level of the government with the purpose of instructing and monitoring the activities planned in the framework of the DSAP.

The Working Committee on European Integration, chaired by the Minister of European Integration and comprises of the General Secretaries of the ministries and the heads of state bodies who, within their responsibilities ensure collaboration of the ministries and other state bodies on matters related to the integration of the RK in the EU.

In July 2008, the Government decided to establish the Executive Committees for European Integration¹²⁰

- Executive Committee on Internal Market;
- Executive Committee on Innovation and Social Cohesion;
- Executive Committee on Governance;
- Executive Committee on Economy, Financial Control and Statistics;
- Executive Committee on Agriculture and Fishery;

¹¹⁹ The EU Progress Report for Kosovo 2011, the Expansion Strategy 2011-2012, implementing Decision of the Committee dated 27.06.2011 on the adoption of the Millenia Indicative Planning Document (MIPD) 2011-2013 for Kosovo*, Conclusions of the accompanying mechanism of SAP, Conclusions of the EU Council on Expansion and SAP (<http://www.mei-ks.net/?pageç1,23> accessed on 1 October 2102).

¹²⁰ For more see Decisions of the Government no. 04/59-10/59.

- Executive Committee on Trade, Industry and Tax, and
- Executive Committee on Infrastructure.

The duties of these committees are to coordinate activities in the EI process in their area and to report to the EIC, to supervise the drafting and implementation of APEP, to supervise the preparation of reports for the Progress Report, to coordinate the preparation of DSAP meetings, and to implement conclusions, coordinate preparation and monitoring of IPA in their area and resolve disagreements between the ministries and other bodies for the fulfillment of these activities.

Six other sub-committees comprising of EC and Government staff have been established to manage the DSAP. These sub-committees meet annually to discuss progress in the relevant areas and to plan future actions. Additionally, the plenary session of the DSAP is held annually with participants from the political level.

In March 2012 with the initiative of the President of the RK, the first meeting of the National Council for the EI, comprising of all relevant players involved in the EI processing Kosovo was held. Its purpose is to mobilize these players to reach the consensus on the EI process priorities. During the process Kosovo should address many challenges and the decision making on a variety of complex matters shall not be easy. There have been instances when the constitution of a country should have changed to meet the European standards and for sure these kinds of decisions should have a broad political and social consensus¹²¹. The inauguration of the Council occurred at the moment when the European Commission launched officially the feasibility study as a step that precedes the opening of negotiations for the signing of the Stabilization and Association Agreement (SAA). Following this meeting the MEI and the Parliamentary Committee on EI organized the meeting of the Task Force with representatives of the Assembly, Government, Judiciary, Civil Society and Donors. This meeting resulted in the establishment of seven thematic round tables with representatives of the mentioned institutions to achieve the consensus for the long-term priorities of the state for the EI, which are expected to be transformed into the National Strategy of Kosovo for EI¹²².

MEI is responsible for coordinating the foreign assistance at the level of the Republic of Kosovo. Under the auspices of the Ministry there is the Office for the Coordination of EU Assistance, which was established in February 2012. With the establishment of this Office, the function of the assistance coordination was taken away from the Operational Departments, and now this function is concentrated in the mentioned Office.

¹²¹ NACEL, National Council for European Integration, Policy Brief no. 3 March 2012, p. 8.

¹²² Answers to the questionnaire on the Feasibility Study for the Stabilization and Association Agreement, p. 28.

3.3. Implementation in practice of the coordination of the European integration process: advantages and challenges

The institutional infrastructure for the management of the EI process is now functional and the coordination of work in the framework of the EI process obligations has had a positive effect. The general development of the MEI capacities and the well-coordinated activities have influenced on improving the quality of developing and monitoring the Action Plan for European Partnership: e.g. while the ACEP 2009 was approved only in August 2009, APEP 2012 was approved in December 2011. Likewise, using the “output” indicators in 2011 notably improved the monitoring of the implementation of the mentioned document. Furthermore, the development of the MEI capacities is noted in terms of drafting the input for the Progress Report, which since 2010 has gradually gone through amelioration in terms of the quality and accuracy of the information involved, and the observance of the EU reporting criteria. There has also been notable improvement with regards to the management of the annual meetings of the DSAP and monitoring of the conclusions from those meetings.¹²³ In addition, the management of the inter-institutional structures for European integration has marked success, in particular in relation to the improvement of the participation and general organization. An important indicator for the increasing capacity of EI structures is the qualitative preparation within a very short time of the responses for the CE Questionnaire on the Feasibility Study.¹²⁴

While MEI is in a good position with regards to the coordination of the DSAP framework, there still remains a number of challenges in this area. Firstly, the APEP (transformed into APSAA) requires more work to include the outcome indicators. The limited expertise of MEI and line ministries with regards to the *Acquis* shall render difficult the transformation of APSAA into an accompanying mechanism of approximation with the *Acquis*. Furthermore, another challenge is the adequate management of the negotiation process and implementation of the Stabilization and Association Agreement.¹²⁵

On the other hand, improvement has been noted with regards to the development of capacities for coordinating foreign assistance, in particular IPA funds. Since 2010, MEI has gradually developed its capacities in terms of the project management cycle through a series of systematic training sessions. The establishment of Office for Coordination of EU Assistance is expected to further influence on the improvement in this area, and it is worth mentioning in particular the highly significant role of MEI in preparing the IPA Programme for 2012 and 2013.

In spite of the progress marked, MEI has not had an opportunity to mark the same level

¹²³ From this year, such conclusions have been integrated in the system of monitoring and reporting (software database under MEI management), which improves the possibility of regular monitoring of their implementation.

¹²⁴ For more details see ‘Commission Staff Working Document’ 2012, p. 6.

¹²⁵ See the section below on the approximation of the local legislation with the *Acquis* for more detail.

of progress in this area as it has with the policy coordination¹²⁶, inter alia, also due to the lack of and turnover of staff (only in 2010-2012 MEI managed to develop stability in terms of staff numbers), the complexity of Programmemeing and the inadequate level of functional positions of LD within the line institutions. In general, a mid-term challenge would remain the development of capacities for the development of sectoral frameworks, for the Programmemeing, monitoring, and assessment of the assistance (under IPA II), and the transition to the multi-year Programme. A long-term challenge remains the development of a decentralized management system of this instrument.

The established DEICPs in a little more than a year seem to dedicate most of their work of the EI process. With regards to their inclusion in the policy coordination this varies from ministry to ministry. This depends on the professional skills of the officials working within these departments and also on the fact that some ministries have special departments for policy coordination. In general, these departments have a broad mandate and the number of employees is small to conduct all their duties. However, it should be emphasized that their activities depend largely on the functioning of the entire ministry¹²⁷.

3.4. Approximation of Kosovo legislation with the EU legislation

Kosovo has no contractual relations with the EU as it has not yet signed the Stabilization and Association Agreement (SAA). Nevertheless, the Kosovo institutions have voluntarily and unilaterally committed to and from their establishment are in the so-called 'voluntarily-obligatory stage' of the process for the approximation of the local legislation with the *Acquis*¹²⁸.

The procedure to approximate the Kosovo legislation with the EU legislation and the institutions responsible for this process in the framework of the responsibilities of the Government have been determined by the rules of procedure of the Government of Kosovo¹²⁹, the Decision of the Government for the scope of MEI no. 6/121 2010, Regulation No.07/2010 on the Organizational Structure of the Ministry of European Integration¹³⁰ and the AI No.13/2007 on the Organization and Legal Activity in the Branch of the Executive-Government of Kosovo¹³¹.

¹²⁶ For more information on the role of MIE in the inclusion of EI priorities in the general planning and maintaining of the work of the Government see the section "Coordination and Development of Policies".

¹²⁷ Andrej Engelman "Strengthening of the European Integration Process and Structures", GIZ, May 2012, p.18.

¹²⁸ Sabiha Shala and Emrush Ujkani, "The role of the Committee for Europeain Integration in the process of approximation of the Kosovo legislation with the "Acquis", NACEL, Prishtinë, 12 October 2012, p.I.3.2 p. 20.

¹²⁹ Regulation No. 09/2011 on the Work of the Government of the Republic of Kosovo Article 7 (1.2,1.5) p.4; Article 30 (2.4, 2.6) p.14; Article 35 (1,3,6) p. 16; Article 36 (1.4) p. 17; Article 39 (1.1, 1.2) p. 18; Article 40 (1.4) p.18.

¹³⁰ Regulation No.07/2010 on the Organizational Structure of the Ministry of European Integration Article 8 (5) p.15.

¹³¹ AI No. 13/2007 on the Organization and Legal Activity of the Executive Branch-Government of Kosovo Article 3. p. 4, Article 4, p. 7, Article 8 p.7 and Article 11 pp. 15-16.

The responsible institutions are the Legal Department of the MEI, LD of the OPM and the proposing authority (the authority which is responsible for the procedures of drafting the initial project in compliance with the principles and standards of drafting of the legislation determined by the Government and the OPM). With regards to the LD of the OPM, the Government and the Assembly are discussing about the possibility that the MEI function on controlling the approximation of the local legislation with the EU one be transferred to this office; however it is not yet clear what the role of the MEI in this process would remain to be¹³².

The Legal Department of the MEI is responsible for the coordination and general management of the approximation of the local legislation with the EU one, while the LD of the OPM is responsible for ensuring the compatibility of all legal draft acts with the legal system and the Constitution of Kosovo.

LDs of the line ministries are mainly responsible for approximating the legislation with the *Acquis*. To help this process it has been foreseen that the LDs should each have a senior legal officer on EU legislation¹³³. The work on the approximation commences in the initial stages of preparing the legal draft act. During the stage of preparing the legal draft act the LD prepares a “list of evidence of European Legislation Resources” and is obligated to consult with all relevant bodies, including the MEI. MEI LD is obligated to assist the line ministry by providing concrete recommendations. Upon completion of the drafting of the legal draft act it is again submitted to the MEI LD to review and analyze the content with the EU *Acquis*. Should the compatibility be established the MEI issues a Compatibility with the EU Legislation Statement and Opinion. The legal draft act is submitted for adoption to the Government and should be accompanied by an explanatory memorandum, which in addition to other elements should contain the Compatibility with the EU Legislation Statement and Opinion.

The process of approximation of the legislation still has many gaps and a lot of work to make the process advance.

The absence of a Plan for the Approximation with the *Acquis* renders difficult the genuine coordination of the approximation process, or the division of duties between the respective institutions. This has influenced so that the cooperation between the MEI and LD of the PM and the line ministries be not at the right level. There is a doubling of competences between the MEI LD and OPM LD. The EU *Acquis* is transported into the existing legal order and there is no reason for two different institutions to check twice¹³⁴.

The mere process of approximation has several shortcomings. The draft that is submit-

¹³² Sabiha Shala and Emrush Ujkani “The role of the Committee for European Integration in the process of approximation of the Kosovo legislation with the”, NACEL, Prishtinë, 12 October 2012, p. 13.

¹³³ Ibid. Article 8 p. 11. See also APEP for 2012, p.17.

¹³⁴ Primož Vehar “Strengthening the Legal Approximation Process and Structures in Kosovo”, October 2012, p. 13.

ted by the ministry to the LD of MEI contains only the list of the European legislation resources and does not contain the table of compatibility that compares the draft law with the EU directives or vice-a-versa. These requirements are not foreseen in the WRG, but are included in the EPAP¹³⁵, which makes it very difficult for the LD of MEI to verify the level of approximation and harmonization, or the reason for harmonization. The “opinion” which is provided is very formal and without any substantial content. The legal draft acts that should be adopted by the Government are checked only in certain cases while those from the ministries are not checked at all¹³⁶.

The capacity of the civil servants dealing with the approximation of the legislation in the ministries continues to remain low from the quantitative and qualitative aspect. The majority of civil servants in the line ministries do not have sufficient knowledge of the *Acquis* in their policy area or of the official languages of the EU¹³⁷. The majority of ministries, especially those covering areas for which there exists a large number of directives and European legislation to be transposed did not hire officials who should have provided professional assistance to their colleagues within the LDs¹³⁸. Anyhow, an obstacle in doing the job comes from the absence of an organized process for the translation of the EU legislation in the official languages of the country.

Strengths:

1. The process for the planning and monitoring in the framework of the DSAP in an advanced level, and
2. Capacities for the IPA Programme have been strengthened.

Challenges:

1. Development of stable structures for the management of SAA process;
2. Improvement of line institutional capacities for the European integration;
3. Improvement of capacities and mechanisms in relation to the Programmement of the pre-accession assistance, in particular in relation to the strategic framework required by IPA II.
4. The absence of a long-term mechanism for approximation with the *Acquis*;
5. Restricted expertise in all levels to deal with the process of approximation with the *Acquis*, and
6. Absence of relevant mechanisms to put in place a platform for the translation of *Acquis*.

¹³⁵ See APEP for 2012, p. 17.2.

¹³⁶ For more details see Primož Vehar “Strengthening the Legal Approximation Process and Structures in Kosovo”, October 2012, p. 13-14.

¹³⁷ Andrej Engelman “Strengthening of the European Integration Process and Structures”, GIZ, May 2012, p. 5.

¹³⁸ Sabiha Shala and Emrush Ujkani “The role of the European Integration Committee in the process of the approximation of the Kosovo legislation with the *Acquis*”, NACEL, Prishtinë, 12 October 2012, p. 14.

4. Implementation of functional reviews

In 2008-2009, with DFID support, the institutions of the Government of Kosovo went through the functional review process. The project engaged for this work in the beginning of 2009 produced reports on the vertical functional review (19 institutions, including all ministries) and the ones of horizontal review (for 12 areas¹³⁹). These reports were presented, discussed and adopted by the Inter-Ministerial Managing Committee for the Public Administration Reform¹⁴⁰. Thanks to the recommendations from the functional reviews the ministries had to draft their mid-term strategic development plans which shall include also the action plans. These plans should be approved by the ICPAR and the Government. The short-term priorities of these plans should be included in the annual work plan of the ministry and dependant institutions.

To date, fifteen SDPs have been drafted and approved: the Ministry of Internal Affairs (2009-2013), the Ministry of Public Administration (2009-2013), the Ministry of Administration and Local Power (2009-2013), the Ministry of Infrastructure (2010-2014), the Ministry of Returns and Communities (2011-2013), the Kosovo Institute for Public Administration (I2010-2014), the Ministry of Environment and Spatial Planning (2010-2014), the Ministry of Finance, the Office of the Prime Minister (2011-2014), the Ministry of Economic Development, the Ministry of Justice (2011-2015), the Ministry of Culture, Youth and Sports (2011-2014), the Ministry of Labor and Social Welfare, the Ministry of Diaspora and Ministry of Trade and Industry.

The continuation of the implementation of the recommendations from the institutional review is an action planned in the APEP in 2012 and this includes the drafting and approval of SDPs, as well as the reporting on their implementation. The main mechanism to monitor the implementation of the SDPs is the Department for the Management of the Reform in the Public Administration (DMRPA) within the Ministry of Public Administration¹⁴¹. However, even where approved, the implementation of these plans is not monitored on systematic basis. The cycle for drafting all reports on the implementation of the Strategic Development Plans is not yet over. Following the completion of drafting they will be sent to the ICPAR for review¹⁴².

Strengths:

1. A considerable number of Strategic Development Plans of line institutions has been drafted.

¹³⁹ For more see Functional Review and Institutional Organization of the Ministries, <http://map.rks-gov.net/sq/page.aspx?idç73>.

¹⁴⁰ The Committee was established by Government decision 04/22, 30 May 2008 on the rules of the functioning and competences of the inter-ministerial committee for the reform in the public administration and ministerial working groups for the functional review of the institutions. For more on the approval of the reports see: MPA, Annual Report 2010, pp. 33-35.

¹⁴¹ Ibid. decision no. 965/11.

¹⁴² This information was obtained from PARMD on 9/10/2012.

Challenges:

1. Limited capacities of MPA to monitor this process, and
2. Limited collaboration by the LMs to assist with the process of monitoring the implementation of functional reviews.

5. Management of Public Administration Reform

Currently, the strategic framework on public administration reform consists on the Public Administration Reform Strategy, adopted in 2010. The document resulted from a PARS 2007 revision, and contains 12 objectives aiming at an enhanced situation in the following fields:

1. Policy management;
2. Legal drafting;
3. Ethics and transparency;
4. Communication with citizens;
5. Budget planning;
6. Budget execution;
7. Internal control and auditing;
8. Public procurement;
9. Public Administration re-organization;
10. Human Resources Development and Management;
11. Rationalization of Electronic Administrative Processes, and
12. Electronic government.

Considering that most of the areas covered by the PARS are of a horizontal nature, it was decided that inter-institutional coordination mechanisms are created. Thus, in July 2012, the Government issued the decision on the establishment of the relevant structures. In accordance with the mentioned decision, a Inter-Ministerial Committee on PAR, comprised of the Deputy Prime Minister, Minister of Public Administration, Minister of Finances, Minister of European Integration and Minister of Local Government Administration, has been made operational with a view to providing policy and strategic guidance to the process of reform. In addition, in 2009, the Government decided upon the establishment of the Department on Public Administration Reform Management and European Integration (later the function of European integration was transferred to the Department on Policy Coordination and European Integration), whose responsibility is to support the inter-institutional mechanisms with a view to planning, monitoring and evaluation of progress in PAR.

The Working Group on PAR, chaired by the OPM General Secretary was formed for managing PAR at a technical level. General Secretaries of MPA, MoF, MLGA and MEI are members of the mentioned group, as well as the coordinators of the working sub-groups. The group's role is to ensure the implementation of the Inter-Ministerial Committee, identify the implementing challenges as well as to define priorities and budget as deemed necessary for implementation of the PAR Action Plan. Also, 12 working sub-

groups, chaired by the relevant coordinators have been established, reflecting the 12 objectives as contained in the PAR Strategy.

Strengths:

1. The strategic framework on PAR completed;

Challenges:

1. Insufficient cooperation between the relevant institutions;
2. Working sub-groups not meeting regularly;
3. Insufficient and inadequate reporting on the implementation of activities as contained in PAR Strategy an Action Plan, and
4. Insufficient number of staff at PARMD.

IV. CIVIL SERVICE REFORM

1. Civil Service Legal Framework

The current law on civil service designates a civil servant as a “person employed to exercise public administrative authority...who participates in making and implementation of policies”.¹⁴³ The 2010 Civil Service Law enshrines the principles of “legality, non-discrimination, effectiveness and efficiency, accountability, impartiality and professionalism, transparency, and the principle of equal opportunities for women and ethnic minorities”.¹⁴⁴

For the first time, the 2010 civil service law introduced a hierarchical system within the civil service, introducing four categories of positions within the civil service. The highest level of civil service is the “senior management level” which includes general secretaries (formerly, permanent secretaries) of an institution or chief executive officers (CEOs) of executive agencies; the second highest level is the “management level” which includes heads of departments or agency directors; the third level is the “professional level” which includes senior officers and administrative advisers; and, the lowest level of civil service is “technical-administrative level”.¹⁴⁵

Each position differs in regards to the duties, responsibilities and required qualifications, which makes manifest in the appointments of senior-managerial levels and managerial levels. In regards to career development, the 2010 legislation recognizes two civil service models, career-based and position-based models. The 2010 legislation applies an open-ended mandate for career-based positions and a maximum two-year mandate for non-career positions (after which the specific objective is accomplished or the position is refilled by a career-based civil servant position).¹⁴⁶

1.1. Recruitment

Civil Servants are recruited based on the Regulation 02/2010 on the Procedures for Recruitment in the Civil Service, deriving from the Law on Civil Service. The regulation defines a complete set of rules and procedures on the recruitment of civil servants, be it at the the local or central level.

According to the mentioned legislation, a normal recruitment process for a civil servant develops as in the following:

¹⁴³ Law on the Civil Service, No. 03/L-149. (2010). Article 2, para. 1.

¹⁴⁴ Korenica, Fisnik, Dren Doli, and Artan Rugova. (2011). “The Past and Present: A Note on the Civil Service of Kosovo: Discussing its Design, Independence and Management.” *International Journal of Public Administration*, 34: 344, 2011.

¹⁴⁵ Law on the Civil Service, No.01/L - 149. (2012). Article 23, para. 1.

¹⁴⁶ Law on the Civil Service, No. 03/L - 149. (2012). Article 12, para. 1.

1. A request to initiate the procedures for recruitment by the recruiting institution;
2. Assessment and approval of the request by MPA;
3. Publication of the vacancy announcement;
4. Application assessment, identification and selection of applicants.

According to the legislation in force, the procedure of recruitment is initiated by the relevant institution, based on its needs as pointed out in the relevant institutions' human management plans (required by article 18 of Civil Service Law) and after providing the necessary proof of the availability of financial planning for the new or vacant positions.

The relevant personnel unit in the recruiting institution, upon authorization by the Department on Civil Service Administration in MPA, carries out competition procedures for selection of the candidates for a specific position. This is ensured through the publication of the vacant or newly created position in the national media outlets, in the official languages. The published vacancy announcement should include all details as per the position, and should clearly state that applications from both genders and non-majority communities are encouraged to apply. The recruitment of career and non-career civil servants is possible after the candidates have undergone a written and verbal test.

According to article 7 of the Law on Civil Service, ad hoc Selection Committees for Civil Service (SCCS) are established by the institution that carries out the selection procedures. Such a committee is composed of members holding higher positions than the vacant one (one of them may be of the same position), members from non-majority communities, and from both genders. Such committees carry out selection procedures for career and non-career positions. In case such a committee cannot be established, then the relevant personnel manager is to prepare a written statement stating the reasons why such establishment was not possible.

The personnel unit manager of the recruiting institution proposes the members of the SCCS, while the highest administrative officer decides on its composition of five members. The committee is responsible to manage the assessment, short-listing, selection timeline, applying the needed tests, assessing the results and proposing the final list of the successful candidates, which is then sent for approval to the highest administrative officer in the institution. All communication with the selected candidates is done in written, while the recruiting institution is obliged to publish the results of the recruitment procedure on its official web-page.

Article 42 of the Regulation on Recruitment, defines the right to complaints by the applicants in a selection procedure for a civil service position. The claims and contests are to be addressed to the Committee on Claims and Complaints Resolution.

On the other hand the senior civil servant management is recruited based on the Regulation 06/2010 on Procedures of Appointment in Senior Management in Civil Service. The mandates awarded through such recruitment are valid for three years, with a possibility of renewal.

The appointment of senior management in civil service is regulated by the Law on Civil Service, and the Regulation 06/2010 on Procedures for Appointments to Senior Management Positions in the Civil Service. Article 5 establishes that the Council of Senior Management Positions is responsible to strategically guide the process of appointments of senior management positions. More specifically, the Council is responsible to develop job descriptions for senior management positions, ensure that the recruiting methods are successful in attracting suitable candidates and ensure the integrity of the recruitment and selections procedures. Article 7 points out that the Prime Minister shall appoint the seven members of the Council, as in the following:

- One Deputy Prime Minister;
- One Minister responsible for public administration;
- One Minister responsible for finance;
- One Minister from communities;
- Three other members from among the ranks of general secretaries or equivalent positions.

The institution where the vacancy has arisen, proposes to MPA the initiation of procedures for appointment of the senior civil service manager. Based on this, MPA publishes the vacancy and creates Criteria Assessment Commission (composed of three general secretaries, one faculty teacher and one member from civil society). Upon completion of the selection procedure the Minister of Public Administration sends the details of three candidates short-listed by the Commission to the relevant institution for approval. For governmental institutions, the Minister of Public Administration proposes to Government for approval the candidate preferred by the institution, which is appointed by the Government to the relevant position for a three year term.

In order to ensure the proper implementation of recruitment procedures as contained in civil service legislation, the Civil Service Independent Oversight Board participates as an observer in the meetings of the Commission and Government sessions whenever appointments in senior management positions are discussed and decided upon.

On the other hand, the middle management (Department Directors) is recruited based on Regulation 02/2010 on Procedures on Recruitment in Civil Service, on a permanent basis.

In addition, those appointed in political positions, are not subject to the described recruitment procedures (cabinet advisors and the supporting staff), while in the local level, municipal directors are politically appointed by the mayors.

In accordance with article 14 of the Law on Civil Service, public officials cannot be appointed through executive decisions in positions, which by law are reserved to civil servants. On the other hand, the Law on Civil Servants, prohibits civil servants from holding political positions, while they are holding civil service positions. In case such civil servants seek election in local or national elections, they have to suspend their civil service position, until such time as their politically obtained mandate is complete.

Moreover, the mentioned law determines that civil servants, while allowed to be part of political parties, they however cannot hold leading positions and cannot be actively engaged in them.

As regards the strengths in the process of recruitment of civil servants, the fact that the new legislation involves measures that would allow for more adequate merit based recruitment is a positive legislation. Although there is no systematic reporting on the implementation of the mentioned legislation, no problems were reported by the respective institutions in its implementation.

On the other hand, one of the chief challenges in the area remains the possibility for politicization of the civil service allowed by the CS legislation (especially in relation to senior management positions).¹⁴⁷ Also, as yet another challenge in the area remains the decentralized recruitment procedures, which results in difficulties with regards to monitoring the even implementation of such procedures by all institutions concerned.¹⁴⁸ Moreover, although adequately aiming at a unified regulation of civil service at all power branches and all levels, the existing legislation causes difficulties when it comes to recruitment based on special needs by various institutions.¹⁴⁹

1.2. Disciplinary Measures

As regards disciplinary measures against civil servants, chapter VIII of the Law 03/L-149 regulates this area, while the Regulation 04/2011 on Disciplinary Procedures in Civil Service sets forth specific provisions in this regard, as does the Regulation 05/2011 on Procedures of Claims and Complaints Resolution. The Regulation 04/2011 defines violations of the civil servants into minor and serious ones. Minor violations have mainly to do with failure to unjustified absence from work and disregard to working hours, while the serious violations are defined as: violation of Code of Conduct; fraud; theft; counterfeit of official documents; violence; discrimination; abuse of official position; giving false statements; conflict of interest; misuse of public funds; hindering others to perform official duties; concealment of facts and evidence or official records when required for official purposes; disclosure of confidential information and sexual harassment.

While minor violations are punished through verbal and written reprimands (which are attached to the civil servant's file) the disciplinary measures for serious violations in accordance with the article 8 of the Regulation 04/2011, are as in the following:

- Preventive suspension for three months;
- Suspension of duties and withholding of 1/3 of salary;

¹⁴⁷ This is one of the main findings in the discussion material on Civil Service Reform presented by STE Mr. Dren Doli (please refer to the section on Recruitment of Senior Civil Service Management).

¹⁴⁸ Meyer-Sahling, Jan Hinrik, 'Civil Service Professionalisation in the Western Balkans', Sigma Paper No 48, page 33.

¹⁴⁹ Meeting of the PA TRT, 'Civil Service Reform', 21-22 December 2012..

- Forced transfer to another position with similar duties and ban of promotion for 5 years by the disciplinary commission;
- Termination of contract of employment in civil service by the disciplinary commission, without damaging or reducing the right to retirement, and
- Early retirement for civil servants, who have two years to go before their normal retirement.

In accordance with article 9 of the Regulation 04/2011, Civil service institutions shall establish their disciplinary commissions, composed of three officials selected by the senior manager (two of them for a 2 year term, while the third is chosen on a case to case basis). According to article 13 of the mentioned Regulation, the Commission is responsible to:

- Examine the evidence presented in relation to a report on a serious violation;
- Decide based on such evidence if the violation is committed, and
- Decide on the penalty to be adopted.

According to article 16 of the regulation, the civil servant involved in such decisions, is entitled to present his/her appeal to the Commission for Claims and Appeals, within 30 days after the decision of the Disciplinary Commission.

The Civil Service Independent Oversight Board serves as the second degree body in handling the disciplinary cases as per the Law 03/L-192 on Independent Oversight Board for Civil Service.

On the other hand the disciplinary measures for the senior management are regulated by Regulation 06/2012, of the Law on Civil Service. Chapter VII of this Regulation stipulates that such measures may be initiated by the Minister to whom the senior manager is responsible, the Prime Minister or the Council on Senior Management Positions, on the grounds of professional incompetence or misconduct or after being convicted of a criminal offence and sentenced to serve a prison term of six (6) months or more. The Regulation defines misconduct as a violation as defined by the Law on Civil Service. A special disciplinary commission composed of one of the Deputy Prime Ministers, Minister of Public Administration and a Minister coming from communities and two General Secretaries, established by a Government decision, is to be created with the view to dealing with alleged violations by any of the senior manager staff.

The disciplinary measures for senior management utilized under article 15 of Regulation 06/2012, are as in the following:

- Suspension with pay for having committed a violation;
- Suspension with pay if remanded to police or judicial custody for a period longer than 48 hours, in case of an alleged criminal offence, and
- Dismissal.

However, the Regulation specifies that all provisions applying for civil servants shall analogously apply to disciplinary measures for senior civil servants.

As may be seen from the above, the current legislation on civil service by and large adequately regulates in a detailed fashion a number of issues pertaining to disciplinary measures in civil service. However, a difficulty presented is that the mentioned legislation does not include the disciplinary measure of demotion.¹⁵⁰ Moreover, in the area of disciplinary measures in civil service, the development of a new Code of Conduct for Civil Service remains also a challenge, which unlike the current one should involve a much more detailed account of civil servants' conduct related issues. In addition, the establishment of an inspection mechanism for public administration is expected to address the difficulties in relation to the overall implementation of civil service legislation, but especially with regards to disciplinary measures.

1.3. Performance appraisal for civil servants

Performance appraisal for civil servants is carried out based on the Law on Civil Service and the Regulation No. 19/2012 on Civil Servants' Performance Appraisal. Each institution conducts performance appraisals to evaluate work performance and improve the quality and capacity of the civil service.¹⁵¹ Such an appraisal should be done based on the existence of an individual work plan for the civil servant being appraised, while such a plan should be in line with the strategic and legal frameworks of the relevant institution. These evaluations determine whether civil servants need additional training, should be considered for a promotion, are capable of carry out temporary or international positions, or should be considered for dismissal.¹⁵² Five sets of 'grades' are used to evaluate the performance and professionalism of civil servants during the appraisal timeframe (such timeframe is usually annual).¹⁵³ The mentioned regulation determines the limitations in the appraisal levels as in the following: no more than 5% of those undergoing appraisal may be evaluated 'excellent'; no more than 15% as 'very good' and no more than 30% evaluated as 'good'.

The performance appraisal is also meant to be utilized as a means to identification of individual training needs. Based on these, a training needs plan is then forwarded to MPA, who is then responsible to consider its inclusion into the master training plan.

As regards the positive developments in the area, the new legislation seems to present an adequate framework for an effective implementation of performance appraisal, consisting in concrete procedures regulating most of the aspects in the area.

On the other hand, the main challenge in the area seems to consist in the underdeveloped policy planning system, which in turn adds to difficulties in appraising the perfor-

¹⁵⁰ Meeting of the PA TRT, 'Civil Service Reform', 21-22 December 2012.

¹⁵¹ Law on the Civil Service of the Republic of Kosovo, No. 03/L-149. (2010). Art 33, para. 1.

¹⁵² Law on the Civil Service of the Republic of Kosovo, No. 03/L-149. (2010). Art 34, para. 1.

¹⁵³ Regulation 19/2012 on Performance Appraisal, defines the following grades: excellent (4.5-5), very good (3.5-4.5), good (2.5-3.5), sufficient (1.5-2.5) and poor (1-1.5), Art 7.2.

mance of civil servants.¹⁵⁴ Moreover, up to now, performance appraisal has only been linked to training needs assessment but not to career development and reward management for civil service. In addition, the new legislation has set quota as per the performance grading for civil servants (i.e. no more than 5% of civil servants can be appraised as 'excellent'), which may have a negative effect in their motivation.¹⁵⁵

1.4. Promotion within Civil Service

The civil service legislation defines the promotion within civil service under the principles of merit-based career development and promotion on competitive basis.

A civil servant in Kosovo may be promoted via two channels. First, a civil servant may be promoted to a higher functional category; second, a civil servant may be promoted to a higher grade within the same functional category.¹⁵⁶ Any career civil servant may be promoted and promotions are supposed to be based on the legislation in force. If a civil service position is vacant, the relevant personnel unit is to develop an announcement for the members of the unit with the vacant position. In cases that no more than 3 persons apply, the vacancy is announced to the whole institution. As soon as such a procedure is complete, the rest of the civil servants recruitment procedures are valid (please refer to the section on civil service recruitment for a detailed account on such procedures.¹⁵⁷

As regards the transfer of civil servants, such an act is either taken as a result of the disciplinary measures (please refer to the section on disciplinary measures for a detailed account of this) or as a result of wider policy oriented reforms.

A positive development in the area is that the new legislation allows for combination of promotion and recruitment procedures, while also a link has been established between promotion and pay. However, although the existing legislation regulates the civil service to a large extent, the fact that politicisation is allowed in the highest ranks of civil service may cause difficulties in the effective implementation of a merit based promotion.¹⁵⁸

1.5. Salaries of Civil Servants

As regards regulation of salaries in the civil service, the Law on Civil Servants' Salaries was adopted in 2010, which has provided a solid basis for strengthening the system of salaries, career development, and job classification. The whole set of secondary legislation implementing the Law on Salaries for Civil Servants is to enter into force during 2013.

¹⁵⁴ Meeting of the PA TRT, 'Civil Service Reform', 21-22 December 2012.

¹⁵⁵ Meyer-Sahling, Jan Hinrik, 'Civil Service Professionalisation in the Western Balkans', Sigma Paper No 48, p. 52.

¹⁵⁶ Law on the Civil Service, No. 03/L-149. (2010). Article 26, para. 1.

¹⁵⁷ Regulation 21/2012 on Promotion of Civil Servants' Career Promotion.

¹⁵⁸ Please refer to the section on recruitment of civil servants on how the legislation regulates the recruitment.

In its regulation of salaries the Law defines that a civil servant is awarded the basic salary as well as the additional allowances. Moreover, the Law determines the salary grade positions (14) for all civil service functional categories.¹⁵⁹ Some of the salary grades (1, 2, 3 and 14) have 5 salary steps, while the rest, each have 12 salary steps.

In order for the Government to approve the grading system, the relevant institution should first classify its positions into the mentioned grades, in line with legislation in force. After such a classification is reflected onto the organizational structure of the relevant institution, and after approval from MPA and MoF is received, the classification is then sent to Government for adoption. Progress in grades is subject to promotion, while progress in steps is subject to performance appraisal.¹⁶⁰

The Law on Salaries of Civil Servants also regulates the additional pays on basic salary, such as allowances for overtime, specific conditions or market conditions.¹⁶¹

As can be seen, the legislation on civil servants salaries determines a well articulated legal framework on salaries, allowances, and salary categorization. However, delays in its enactment as well as a delayed budgetary planning have caused serious challenges in the implementation of the mentioned legislation. Although the existing legislation allows for the adequate link between salaries and performance appraisal, ensuring an effective performance appraisal system will play a detrimental role in achieving the wanted results. Based on independent assessment, it is considered that up to 50% of civil servants' pay consists in allowances above the basic salary, which in turn might add to the difficulties in implementing the new legislation. Moreover, the fact that the former legislation allowed for managerial discretion in setting the allowances for civil servants is also a serious obstacle to the implementation of the new legislation.¹⁶²

Strengths:

1. The process of adoption of Civil Service legislation is complete: Law on Civil Service and Law on Civil Servants' Salaries as well as the whole set of secondary legislation have been adopted by the end of 2012.
2. The strengths of this legal framework consist in the provision of a unified system regulating all aspects for a proper functioning of the civil service, including:
 - The determining of basic principles for the functioning of the civil service (professionalism, independence and impartiality);
 - Regulation of recruitment, promotion, performance appraisal and disci-

¹⁵⁹ Please refer to Law 03/L-147 on Salaries for Civil Servants, Article 6 for a detailed account on such grades.

¹⁶⁰ Please refer to Law 03/L-147 on Salaries for Civil Servants, Articles 10 and 11 for a detailed account on progress in grades and steps.

¹⁶¹ Please refer to Law 03/L-147 on Salaries for Civil Servants, Chapter III for a detailed view on the additional pay for civil servants.

¹⁶² Meyer-Sahling, Jan Hinrik, 'Civil Service Professionalisation in the Western Balkans', Sigma Paper No 48, page 57.

- plinary measures;
 - Regulation of classification of jobs, grading and allowances;
 - Definition of the status of the civil servants as distinct to the rest of the employees of the public administration;
 - The adopted legislation regulates civil service in all prower branches in a unified fashion;
 - The inclusion of the career civil servant, the legislation in force promotes the career development;
3. Adoption of the legislation on Independent Oversight Board as well as legislation on public administration;
 4. A number of awareness raising activities with regards to the content and obligations under the new legislation have been undertaken.

Challenges:

1. The implementation of the new legal framework on civil service has been impeded by the delayed adoption of the implementing legislation;
2. Insufficient planning in the process of implementing the civil services legislation;
3. The capacities to monitor the implantation of the legislation on civil service and for application of sanctions for non-implementation remain under-developed;
4. As regards the contents of te civil service legislation, the following are the identified main challenges:
 - The legislation at hand allows for politicization of the civil service, mainly through the way it regulates the recruitment into the senior management positions;
 - The current legislation not always takes account for the different needs faced by the different recruiting institutions (especially in the judiciary);
 - As regards recruitment, the new legislation does not define the need for a centralized recruitment mechanisms;
 - The promotion of the career development may be hampered by the space allowed for political influence in the selection procedures for senior management positions;

2. The institutional framework for the implementation of civil service legislation

The institutional framework in charge of implementing the civil service legislation consists in a broad set of institutions involved. Thus, the responsibility for general policy orientation on civil service lies with the Government, while the Ministry of Public Administration is responsible to monitor the implementation of the policies in the area. The ministry is also responsible to propose the pay policies for civil service, but also to coordinate the training and capacity bilding actions in the area. The Ministry also drafts sub-legal acts relating to the civil service, proposes these acts to the government for approval, and enacts them. The MPA also builds the civil service registry, maintains

and administers the registry, ensures that the registry stands as a unified system which includes the civil service payroll database and the pension and insurance database, and ensures that civil servants have access to their personal files.¹⁶³

Although a number of initiatives have been undertaken by the Government, the institutional framework for the oversight of the implementation of the civil service legislation remains uncompleted. MPA reports annually to the Government on the implementation of the civil service legislation, but there is no regular reporting mechanism in place between MPA and line institutions. Moreover, MPA is at the nascent phase of developing the function of public administration inspection, which in turn would serve as a significant tool in ensuring the effective monitoring of civil service legislation.

The development of sound human resources management policies in the civil service lies with the MPA and Personnel Units in the line institutions. However, so far their focus (also because of the insufficient number of staff and other resources) has remained on the technical aspects of HRM, like the maintenance of salaries lists, rather than the development of an adequate HRM approach.¹⁶⁴

Currently, the management of human resources is based on the legislation in force and the Strategy on Public Administration Reform, while there is no individual policy mechanism for HRM, and the capacities of line institutions to apply the mentioned approach remain low. In addition, the function of HRM generally remains under the administration departments, and as such distant to the policy oriented decision-making, which in turn results in un-coordinated policy planning and HRM, and this then adds to the difficulties in the policy implementation, in general.

Strengths:

1. The current legislation defines the institutional responsibilities for the implementation of civil service legislation as in the following:
 - The Government guides the policy development on civil service;
 - MPA develops and monitors civil service policies and proposes civil service pay policies to the Government;
 - MPA coordinates the training and capacity building policies;
 - Each institution has its own personnel unit, responsible for HRM;
3. As of 2012, MPA has started preparing annual reports on the state of play as regards the implementation of civil service legislation;
4. The civil service legislation allows for an adequate basis for the development of sound human resources management within civil service.

¹⁶³ Law on the Civil Service of the Republic of Kosovo, No. 03/L-149. (2010), Arti. 8.

¹⁶⁴ Please refer to FRIDOM report 'Functional review of systems and capacities on Human Resources Management', for a more detailed account.

Challenges:

1. MPA faces considerable challenges as regards the administrative capacities to plan and monitor the implementation of the civil service legislation;
2. MPA is faced with low capacities to ensure a civil service management system based on sound HRM approach;
3. The personnel units in line institution need further strengthening;
4. The difficulties in developing an effective policy planning function add to the difficulties in developing sound human resources management policies.

3. Training of Civil Servants

The policy and legal framework on civil service training and capacity building consists in the Training Strategy 2011-13 and its Action Plan as well as the legislation defining the functioning of the Kosovar Institute of Public Administration.¹⁶⁵

The mentioned strategy, adopted by the Government aims at supporting the implementation of the public administration reforms as well as the European integration efforts of the country. The strategy limits itself in only planning objectives for horizontal training.¹⁶⁶

In line with its general objectives, the Strategy sets three strategic objectives dealing with capacity building in public management and administration; capacity building of civil service to deal with the European integration requirements, as well as capacity building with regards to strengthening the effectiveness and quality of training delivery capacities.¹⁶⁷ Under each of the objectives, a more concrete set of measures and activities have been designed.¹⁶⁸

As KIPA still functions under legislation adopted by UNMIK, the Government in in the process of developing the relevant law, which is expected to replace the current legislation. The draft-law on KIPA in its current form, seeks to regulate the responsibilities and the structure of KIPA, while it also foresees the self-financing as a possibility by providing services to natural and legal persons. Moreover, unlike the current legislation, the draft-law also regulates in more detail the capacity building target groups, the development of training plans and hiring of trainers. The most substantial change included in the draft legislation, are the provisions allowing for the transformation of KIPA into a high education institute on public administration.¹⁶⁹

¹⁶⁵ While awaiting the adoption of the relevant law, the Institute still functions under the AI No 2003/25 on the Implementation of the UNMIK Regulation 2001/19 on the Executive Branch of PISG. The draft-Law on KIPA has already been approved by the government and is awaiting adoption by the Assembly.

¹⁶⁶ Civil Service Training Strategy 2011-13, page 2.

¹⁶⁷ The vertical training remains under the responsibility of individual institutions. Most of such training is planned through the Strategic Development Plans as part of the functional reviews conducted in 2008-

¹⁶⁸ Please refer to Civil Service Training Strategy and its Action Plan, for a detailed account on its contents.

¹⁶⁹ Draft-Law on KIPA, as adopted by the Government.

The challenges in the area of civil service training consist mainly in problems with KIPA's low number of staff and budget (KIPA's budget was around €400,000 in 2003, while it has been reduced to around €165,000 in 2011).¹⁷⁰ This in turn has also resulted in the relatively low number of training provided to the civil servants.¹⁷¹ Finally, the main obstacles in developing a sustainable system for capacity building within the civil service, consist in the level of education on the part of civil servants, considering that no more than 60% hold a bachelor or a higher degree.¹⁷²

Strengths:

1. The draft-Law on KIPA is at a final stage of adoption;
2. The adoption of the training strategy sets allows for a good basis in developing the capacity to train within civil service;
3. KIPA develops the Training Action Plan, based on training needs assessment provided by the line institutions and based on the analysis of the governmental strategic documents;
4. Although faced with staffing and budgetary constraints, KIPA has manifested a proactive approach in implementing the training action plans for civil service,
5. A project aiming at ensuring the necessary work premises for KIPA is in process.

Challenges:

1. In general, the training needs assessment by line institutions is not sufficiently linked to the policy framework in place;
2. KIPA faces serious budgetary and staffing constraints;
3. KIPA faces difficulties in developing and maintaining the necessary trainers' networks;
4. Relatively low number of participants in KIPA organized training (especially with regards to senior management), and
5. Difficult coordination of training provided by external assistance projects.

4. Oversight of the implementation of the civil service legislation

The Assembly is responsible for adopting laws related to the civil service and civil service reform. Also, the Assembly employs civil servants and maintains the corresponding Personnel Unit which oversees the human resources management of the Assembly's civil service personnel. What's more, the Assembly is authorized to oversee the work of the government and to demand reporting on any issues under Government's responsibility.

¹⁷⁰ Group for Legal and Political Studies, 2011, 'For a professional public administration: an orientation towards strengthening of civil service professional education in Kosovo', Policy analysis 03/2011, p. 8.

¹⁷¹ Ibid. page 9. According to the information provided through this analysis, during 2003-11 around 11,000 civil servants were trained (out of a total of around 21,000). However, one should bear in mind that these statistics do not include the information on vertical training for which there is no available information on such training beneficiaries or the funds spent.

¹⁷² Ibid. page 10.

ities.¹⁷³ However, arguably the Assembly’s largest responsibility relating to civil service is their role in appointing the members of the Independent Oversight Board (IOB). The IOB is tasked with reviewing the appeals of civil servants relating to employment decisions. Via the appointment of Board members and legislation, the Assembly has the opportunity to check and balance political influence over/in the civil service system.

As an autonomous body that is responsible only to the Assembly and reports annually to the Assembly, the IOB’s seven members are elected by the Assembly (upon the recommendations of the Ad Hoc Committee) for a five-year term with the possibility of extension.¹⁷⁴ The IOB is a body that reviews and decides upon the appeals of civil servants. The IOB has “three main functions: first, it supervises and reports to the Assembly on the implementation of the civil service law; second, it decides the legality of appointments to senior managerial positions and evaluates whether the latter have been in compliance with the law on civil service; and third, it decides upon civil servants (and/or unsuccessful applications) appeals of the decisions of the employing institutions”.¹⁷⁵

The table below¹⁷⁶ displays the number of appeals between 2008 and 2011 that were submitted to the IOB from 11 randomly-selected ministries (CL) and 11 randomly-selected municipalities (LL).

		DG				SP				TAP			
Year		08	09	10	11	08	09	10	11	08	09	10	11
CL	No	11	11	5	11	1	1	0	2	0	0	0	3
LL	No	11	8	2	6	0	0	0	0	0	0	1	4

¹⁷³ Constitution of the Republic of Kosovo. (2008). Art. 65, para 9.

¹⁷⁴ Law on Independence Oversight Board for Civil Service of Kosovo. No. 03/L-192. (2010). Art. 7, para. 1. It should be noted that there are different practices of the composition of similar bodies in the neighboring countries. In Slovenia, three different appellate commissions review the appeals of the civil servants: a) the appellate commission of the government, b) the appellate commission of other state bodies, and, c) the appellate commission of the representatives of municipalities. The institutions within which these commissions work make the appointments. See Civil Servants Act, Official Gazette of Slovenia, No. 020-05/98-20/8, Arts. 35 and 36. Moreover, a similar pattern is also utilized in Serbia. Two appeals commissions exist, namely, a) the Judicial Appeals Commission, and b) the Appeals Commission of the government, see for more: Law on Civil Servants Official Gazette Of RS, No. 79/05, Art. 151.

¹⁷⁵ Korenica, Fisnik, Dren Doli, and Artan Rugova. (2011). “The Past and Present: A Note on the Civil Service of Kosovo: Discussing its Design, Independence and Management.” *International Journal of Public Administration*, 34: p. 353 in reference to the Law on Independent Oversight Board for civil Service of Kosovo, No. 03/L-192. (2010). Art. 10, para. 1, sub-para. 1, 2 and 3.

¹⁷⁶ Group for Legal and Political Studies Analysis No. 02/2012. “On the defence of professionalism of bureaucrats: A discussion upon the protection mechanisms of civil service in Kosovo.”

		TEC				NEC				CPC			
Year		08	09	10	11	08	09	10	11	08	09	10	11
CL	No	46	22	10	27	6	7	1	11	16	9	19	21
Year		08	09	10	11	08	09	10	11	08	09	10	11
LL	No	22	14	19	21	32	6	5	6	40	29	22	28

Legend	
(Unilateral) Termination of the employment contract	TEC
Non Renewal/Non-continuation of the employment contract	NEC
Challenge the procedures followed during the public competition call	CPC
Demotion in grade and title	DG
Suspension from the position within civil service	SP
Transfer to another position	TAP

Table 2 [explaining the number of civil servant's appeals against the decisions of central and local level authorities (11 central and 11 local level institutions)].

The results in the table reveal that decisions related to recruitment (CPC) and dismissal (TEC, NEC) were most likely to be appealed. There were also relatively high levels of appeal related to demotions.

However, even when the Board rules in favour of civil servants' appeals, there is no mechanism to ensure the implementation of the Board's decision. There is no legal mechanism in the Law on Civil Service that requires institutions to implement the decision of the Board properly of in a timely fashion. The only mechanism that attempts to safeguard the decisions of the Board is the notification of the Assembly and Government about organizations that are not implementing Board decisions.¹⁷⁷ The following table identifies the decisions of the board in contrast to the number of decisions implemented by public authorities.

		DA			DR			DPR		
Year		09	10	11	09	10	11	09	10	11
IQ	No	16	20	40	15	24	15	3	8	10
Year		09	10	11	09	10	11	09	10	11
IL	No	18	43	31	7	36	46	3	11	3

¹⁷⁷ Group for Legal and Political Studies Analysis No. 02/2012. "On the defence of professionalism of bureaucrats: A discussion upon the protection mechanisms of civil service in Kosovo."

		W			DI			DNI		
Year		09	10	11	09	10	11	09	10	11
IQ	No	0	0	1	7	15	40	10	7	8
IL	No	0	0	1	3	30	24	23	24	18

Legend	
Decisions that approve/reaffirm the right of the individual and annul the decisions of public authorities	DA
Decisions that reject the complaints as inadmissible DR	DR
Decisions that reject the complaints as procedurally inadmissible	DPR
Withdrawal of complaints	W
Number of decisions implemented by public authorities	DI
Number of unimplemented decisions	DNI

Table 5 (explaining the number of decisions by the Independent Oversight Board from 2009-2011).

The table above analyses complaints submitted to the Board between 2009 and 2011 from 11 randomly-selected ministries and 11 randomly-selected municipalities. As the table reveals, the number of appeals that have been approved in favour of the civil servant have increased, and in almost each instant have been higher than the number of appeals that have been rejected in favour of the employing authorities. However, despite the success of the IOB in assessing, processing and requesting appeals, the number of cases wherein the Board’s decision has been implemented as compared to the number where the Board’s decision has not been implemented is quite high.

According to the law, the Board’s decisions constitute a final administrative verdict – subject only to the Supreme Court’s review, and the civil servants may challenge the decision of the IOB by making an appeal to the Supreme Court of Kosovo, therefore utilizing the administrative conflict procedure.¹⁷⁸

Although there has been progress in the development of the legal framework for the functioning of the IOB, there remain a number of challenges, including the lack of a mechanism enabling the sanctioning of the Board’s decisions, insufficient budgetary and human resources. In addition, the challenges in the functioning of the IOB, also have to do with developing the awareness raising activities.¹⁷⁹

¹⁷⁸ This is a standard recommended by Venice Commission. See for more: European Commission for Democracy Through Law (Venice Commission) ‘Comments on the Draft Civil Service Law of the Republic of Armenia’. CDL (2001) 25, Strasbourg, 2 March 2001, on the basis of comments by Kaarlo Tuori.

¹⁷⁹ Meeting of the PA TRT, ‘Civil Service Reform’, 21-22 December 2012. According to MTEF 2013-15, the IOB budget for 2012 is 217,000 euro, and there is a staff of 25.

Strengths:

1. The legal framework for the functioning of the Independent Oversight Board is complete;
2. The trends of the implementation of the Board's decisions is improving;

Challenges:

1. No mechanism to ensure the implementation of the Board's decisions;
2. The IOB's financial unsustainability impedes its independence;
3. Limited financial and human resources for the functioning of IOB;
4. Although a number of awareness raising activities on the functioning of the IOB have been undertaken, such a number remains low.

V. DECENTRALIZATION IN KOSOVO

1. Legal framework

The first steps towards a decentralization process were taken back in 2003, under the auspices of UNMIK. The framework document on the reform of self-governance and the 2005 UNMIK decision for the creation of Pilot Municipal Units (PMU), formed the basis over which the process took its form.

The decentralization afterwards became part of the status settlement efforts. Upon the adoption of the Kosovo Constitution (embedding in it the Ahtisaari Plan principles on decentralization) Kosovo adopted the Law on Local Self-government, Law on Municipal Boundaries and the Law on Local Government Finances.

The Law on Local Self Government has expanded the areas where municipalities may exert executive and extended competences, and together with the Law on Municipal Boundaries form the basis for legal regulation of decentralization and the local government in Kosovo. These laws were drafted based on the principle of subsidiarity and are harmonized with the principles as contained in the European Charter on Local Self-Government and its protocols, Framework Convention for the Protection of National Minorities, European Charter for Regional and Minority Languages as well as in the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.

As soon as the legal basis was established, Kosovo started preparations to establish the new municipalities, while overall work on the implementation of decentralization intensified. In April 2008, the government established the Inter-ministerial Group on Decentralization, which took the responsibility to coordinate the policy and actions with a view to the establishment of the new municipalities as part of the decentralization in Kosovo.¹⁸⁰ The process was closely monitored and facilitated by the ICO. As part of the implementation of the decentralization, Municipal Preparatory Teams were created, who were in charge of preparing the establishment of new municipalities, planned to be created after the 2009 local elections.

In order to plan and monitor the whole process a Decentralization Action Plan was adopted by the Government in 2008. The plan consisted in four objectives, whereby it aimed at the local governance legal framework reform, establishment of the new municipalities, transfer of competences and resources and the development of the relevant capacities.

After the 2009 local elections all of the newly planned municipalities but northern Mitrovica, were created and their functionalization commenced soon after. The opening

¹⁸⁰ MLGA, Progress report on Implementation of Decentralization in the Republic of Kosovo, August 2012. Prishtina.

of the Administrative Office in Northern Mitrovica has marked the completion of the institutional setup as part of the decentralization.

2. The implementation of the decentralization

The political side of the decentralization process is clearly reflected in the lack of its implementation in the three municipalities in the north of Kosovo (Zubin Potok, Leposaviç dhe Zveçan) and in the non-establishment of the northern Mitrovica municipality. Although the Government of Kosovo in close cooperation with ICO and other international actors has developed a strategy on the integration of the north, the Serbian elections were still held there. Even though the election results were not recognized by the government or the international community, the actual situation is so that the Serbian parallel structures are still active and the Belgrade influence still tangible. This renders almost impossible every initiative taken by the Kosovan authorities to extend the rule of law, including decentralization in that part of Kosovo.

Except for the uneven implementation of the process throughout Kosovo, another challenge faced while implementing the process of decentralization has been the inadequate quality of services provided by the municipalities.

At the technical level, the most significant progress has been achieved with regards to transfer of own competencies as defined in the self-government legislation. All of the own competencies as well as those delegated and extended (with the exception of northern municipalities) have already been transferred to the municipalities. Nevertheless, a number of challenges remain in the area, as listed below¹⁸¹:

- Municipalities have faced a number of issues with the KPA in using their own property, especially with a view to managing municipal land, which in turn hinders the economic development (own competence).
- Municipal services (own competence): these competencies have already been transferred but have not become fully functional. For example, water management has not yet been transferred to the local level.¹⁸² Moreover, municipalities are not allowed to establish public service enterprises. On the other hand, the waste management competencies have been handed over to municipalities during 2012. As a result of the combination of these and other challenges the rate of satisfaction on the part of citizens has dropped in 2012, compared to the earlier period of time.¹⁸³
- Public education (own competence): the teacher payroll management and school directors appointment has been transferred to municipalities. However, there

¹⁸¹ I.e. the implementation of the decentralization process is one of the few processes assessed as 'excellent' by the European Commission in the 2011 Progress Report.

¹⁸² Kosovar Institute for Local Governance, "Decentralization, a heavy weight to be carried out" 5 July 2011. Prishtina.

¹⁸³ UNDP dhe USAID, 'Kosovo Mosaic 2012', Overview of Perceptions of Public Services and Local Authorities.' December 2012. Prishtina.

is still significant influence on the part of the central institutions over budgeting, capital investments and use of the funds.¹⁸⁴ Despite all challenges in the sector, the citizen perception on the management of education by municipalities has increased significantly, in comparison to 2009.¹⁸⁵

- Social welfare competences have been transferred, but a number of challenges are faced in the management of social services, especially with regards to the training of the relevant social services staff.¹⁸⁶ Nevertheless, the citizens' perception on such services remains almost the same in 2012, compared to 2009.¹⁸⁷
- Public healthcare competences have been transferred, but there are still challenges: the health employees' payroll is managed by municipalities, but the essential medicaments list, still remains under the auspices of the central government. Also, government's role remains strong in budgeting, capital investment planning and use of funds. Moreover, the competences related to the secondary healthcare services have not been transferred, which still remains under discussion between the relevant actors.
- Social assistance payments (delegated competence) has not yet been transferred to the local level, while the same is valid for forest protection.¹⁸⁸

Except for challenges with regards to the transfer of competences to the local level, there have also been cases, when the competences have been transferred from the local level to the central one. Thus, firefighting services have been transferred to the Ministry of Internal Affairs, which has caused concerns for the municipal authorities.

3. Fiscal decentralization

The process of the implementation of the fiscal decentralization faces most serious challenges in the overall decentralization process. The Law on Local Government Finances provides that the municipal financial resources may originate from: a) own resources; b) operational grants; c) grants in relation to the extended competences; d) transfers from delegated competences; e) extraordinary grants; f) financial assistance by the Republic of Serbia and g) municipal loans.¹⁸⁹

As can be seen from the mentioned categories of revenue sources, municipalities are dependent on the on the governmental grants, which make up up to 80 percent of the

¹⁸⁴ Kosovar Institute for Local Governance, "Decentralization, a heavy weight to be carried out" 5 July 2011. Prishtina.

¹⁸⁵ UNDP dhe USAID, 'Kosovo Mosaic 2012', Overview of Perceptions of Public Services and Local Authorities.' December 2012. Prishtina

¹⁸⁶ Kosovar Institute for Local Governance, "Decentralization, a heavy weight to be carried out" 5 July 2011. Prishtina.

¹⁸⁷ UNDP dhe USAID, 'Kosovo Mosaic 2012', Overview of Perceptions of Public Services and Local Authorities.' December 2012. Prishtina

¹⁸⁸ Ibid.

¹⁸⁹ LFPL, Article 7. Please refer to the law on a more detailed account on what different revenues sources mean.

municipal revenues. Own municipal revenues are quite limited, and such revenues are based on property taxation (29 percent), licensing of construction (26 percent), business registration (8 percent), payments in the sectors of health and education (8 percent); civil registration (6 percent), vehicle taxation (5 percent), land transfer taxation (6 percent) and 12 percent miscallenauos.¹⁹⁰

The local governments' property rights should be further clarified, in order for the municipal assets present a significant source for municipal own revenues, and thus play a significant role in the local economic development. The criteria for municipal loans are too strict, while a number of taxes of benefit to municipalities are non-existent (for example, taxes in tourism related activities) or are under the auspices of the central government (income taxes).¹⁹¹ In addition, up until recently, municipalities were in charge of taxing business registration, but as part of the wide trade and business facilitation reforms, such competences have been removed. There are also issued on the way the law defines the public enterprises as owned by the Republic of Kosovo, while the local public enterprises under the ownership of municipalities.¹⁹² Most of such enterprises are faced with an unclear status, whether they are defined as national or local, which in turn hinders the sustainable development at the local level.

4. Institutional strengthening and capacity building

For a sustainable, functional and effective decentralization process, there is a need for efficient human and institutional capacities. The Government of Kosovo has undertaken some strategic steps in establishing the IGD in 2008, which then established the Working Group on Capacity Building and Donor Coordination. This group was responsible to act in the following areas: i) human capacity building; ii) financing of infrastructure projects and iii) donor coordination.¹⁹³

The institutional framework is being implemented also in the new municipalities and so far the borders of all the municipalities have been set in accordance with Law on Administrative Municipal Boundaries. Furthermore, the institutional mechanisms are being established and so far progress is as in the following:

- Municipality of Gračanica: Municipal Assembly established, adoption of the Statute, establishment of the committees for policies, finances and communities, 7 functioning municipal directorates and around 60 civil servants employed;
- Municipality of Ranilug: the Municipal Assembly has been established and the Statute has been approved, 5 municipal directorates are operational and 55 civil servants employed, while the police commander has also been appointed;

¹⁹⁰ Bersant Disha, Shar Kurtishi, Tony Levitas, Improving Municipal Own Source Revenue, Democratic Effective Municipalities Initiative, January 2012, p. 8.

¹⁹¹ Ibid. fq. 4-5.

¹⁹² Law on Public Enterprises, Republic of Kosovo.

¹⁹³ MLGA, Progress report on Implementation of Decentralization in the Republic of Kosovo, August 2012. Prishtina

- Municipality of Klllokot, the Municipal Assembly has been established, the Statute is approved, 5 municipal directorates are functioning and 47 civil servants are employed, while the police commander has been appointed;
- Municipality of Partes, the Municipal Assembly has been established, Statute adopted, 6 directorates are operational, the committees for policies, budget and communities are established, and
- Municipality of Novobrdo: the Municipal Assembly is established, the Statute approved, the committees for policies, budget and communities have been established, 10 functioning municipal directorates, the police commander has been appointed and the Municipal Council for Security issues is functional.¹⁹⁴

It is worth mentioning that MLGA plays a key role in monitoring the functioning of all the municipalities especially the new ones. The monitoring mechanisms have been established and are operational, as is the case with the Division for Monitoring of Municipalities within the MLGA which monitors the work of municipalities, where all the municipal assembly meetings, approval of municipal acts, relation between the municipalities and monitoring bodies as well as the implementation of the applicable legislation, is monitored.¹⁹⁵

MLGA also plays a crucial role in the capacity building of all the municipalities including the new ones. So far, the MLGA in cooperation with Association of Kosovo Municipalities (AKM), and the line ministries and donors has managed to organize trainings for around 80% of municipal officials. Initially, trainings have been held with respect to the transfer of new municipal competencies, then in cooperation with the AKM and the Ministry of Labor and Welfare trainings have been organized for the municipal directors on health and social welfare. Furthermore, in cooperation with DEMI, financed by USAID a number of trainings for the preparatory teams have been organized. OSCE has also assisted the MLGA in training the municipal officials in a number of areas, including: i) management of municipal property; (ii) expropriation and (iii) property tax.¹⁹⁶

The AKM has also offered its assistance in the training of junior municipal officials, organizing 9 training modules for the following areas: i) role of the municipal members; ii) legal framework on local self-government; iii) efficiency of the municipal assembly; iv) the role of position and opposition in the municipal assembly; v) local democracy; vi) civil society role and citizen participation in decision-making. Trainings have been organized also with respect to information technology, and in this regard MLGA has implemented the project "Training services for municipal officials on IT use". This two-phase project has so far trained 398 officials in the first phase and 67 in the second phase.¹⁹⁷

¹⁹⁴ Ibid.

¹⁹⁵ MLGA, Report Functionalization of Municipalities of the Republic of Kosovo, January – June 2012, July 2012.

¹⁹⁶ MLGA, Progress report on Implementation of Decentralization in the Republic of Kosovo, August 2012, Prishtina.

¹⁹⁷ Ibid.

Based on the data received by the relevant divisions for management of human resources, it is understood that as of 2009 there have been many positive developments in this regard, especially in the area of human rights, informative technology as well as budget and finance. However, there are challenges, such as obvious lack of management capacities in building new capacities, there is yet no system on the basis of which the performance of evaluation of human resources will be performed, as well as there is a need for institutional streamlining at the central level to strengthen the municipal capacities, not only in the new municipalities.¹⁹⁸ However strengthening of municipal capacities, based on assessment carried out¹⁹⁹, shows a positive trend of increase by 5.5%. In general, the capacities are of average level which do not guarantee provision of high level services.

Strengths:

1. Establishment of a solid basis for the decentralization through the adoption of the Law on Local Self-Government (LLSG), Law on Administrative Municipal Boundaries (LAMB) and the Law on Local Government Finance (LLGF);
2. The decentralization process is managed by a functional structure as the Ministry of Local Government Administration and the Inter-Ministerial Group on Decentralization;
3. Establishment of new Municipalities (Klllokot, Ranillug, Novobrdo and Gracanica) and the North Mitrovica Administration Office;
4. Transfer of own competencies to the local level;
5. Establishment and functionalization of municipal assemblies, approval of statutes and establishment of directorates in the new municipalities; and
6. Organization of basic training for most of the officials recruited in the new municipalities, including sectorial trainings.

Challenges:

1. The completion of the legislation that has implications for the decentralization process is pending, especially legislation on fiscal decentralization;
2. Inappropriate development and implementation of strategic documents with respect to the exercise of own competencies in the following field:
 - Local economic development;
 - Public health;
 - Urban and rural planning;
 - Environment protection;
 - Welfare issues, etc.
3. Not having decentralization throughout the country;
4. Lack of financial resources for full implementation of own and delegated competencies;
5. Management of municipal public property;
6. Quality of the municipal acts for the implementation of laws and municipal powers;

¹⁹⁸ Interviews with officials within Division on Capacity Building in MLGA. 18 January 2013. Prishtina.

¹⁹⁹ MLGA, Assessment Report on Capacities of Municipalities of the Republic of Kosovo, Prishtina, March 2011.

7. Management of projects and public finances;
8. Insufficient participation of citizens in local decision-making;
9. Efficiency and effectiveness of offering sustainable municipal services;
10. Lack of sustainable inter-municipal cooperation in offering qualitative low cost services, and
11. Lack of adequate human resources within the municipal administration, including the municipalities established through decentralization.

List of Participants in TRT Meetings and Workshops

1	Adea Gashi	Ministry of European Integration
2	Agron Maxhuni	Ministry of Local Government Administration
3	Ahtere Loxha	Assembly
4	Albana Merja	Group for Political and Legal Studies
5	Albert Avdiu	Kosovo Judicial Council
6	Albina Duraku	European Union Office
7	Arben Dubova	Gjilan Municipality
8	Arben Krasniqi	Prime Minister's Office
9	Arben Loshi	Assembly
10	Ardian Arifaj	Kosovar Institute for Policy Research and Development
11	Arjeta Sahiti	Prime Minister's Office
12	Avni Sahiti	Ministry of Local Government Administration
13	Baki Gimolli	Ministry of Justice
14	Bardha Rrustemi	Ministry of Public Administration
15	Behlul Beqaj	Group for Political and Legal Studies
16	Bekim Kodraliu	Organization for Security and Co-operation in Europe
17	Besim Kajtazi	Prime Minister's Office
18	Besim Kamberaj	Ministry of Local Government Administration
19	Besim Murtezani	Ministry of Local Government Administration
20	Besnik Osmani	Ministry of Local Government Administration
21	Blerim Hasani	Ministry of Local Government Administration
22	Blerim Kelmendi	Anti-Corruption Agency
23	Bujar Thaqi	Kosovo Institute on Public Administration
24	Daut Beqiri	Assembly
25	Dren Doli	Group for Political and Legal Studies
26	Drin Haraqia	Ministry of Local Government Administration
27	Driton Selmanaj	Kosovo Democracy Institute
28	Edon Myftari	Prishtina Municipality
29	Emrush Haxhiu	Assembly
30	Engjellushe Morina	GIZ Short-Term Expert
31	Eset Rama	Prime Minister's Office
32	Evis Sulko	World Bank
33	Fadil Mustafa	Ministry of Trade
34	Faton Morina	Institution of Ombudsperson
35	Fatos Mustafa	Ministry of Public Administration
36	Filloreta Bytyci	GIZ Short-Term Expert
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38	Fisnik Korenica	Group for Political and Legal Studies
39	Flakron Sylejmani	Deutsche Gesellschaft für Internationale Zusammenarbeit
40	Florina Duli	Kosovo Stability Initiative
41	Gabriele Becker	Deutsche Gesellschaft für Internationale Zusammenarbeit
42	Ibadete Mehmeti	Ministry of Public Administration
43	Ilire Daija-Buza	General Audit Office
44	Ismet Gashi	Prishtina Municipality
45	Ismet Krasniqi	Assembly
46	Jeton Cana	United States Agency for International Development
47	Kastriot Halili	Ministry of European Integration
48	Krenar Loshi	Organization for Security and Co-operation in Europe
49	Krenar Shala	Kosovar Institute for Policy Research and Development
50	Labinot Smakaj	Ministry of European Integration
51	Lindita Daija	Kosovo Municipal Association
52	Lorik Jakupi	Ministry of European Integration
53	Lulzim Beqiri	Ministry of Justice
54	Malsore Gashi	Ministry of Public Administration
55	Marta Gazideda	United Nations Development Programme
56	Mehdi Geci	Independent Oversight Board
57	Mentor Musa	Ministry of European Integration
58	Mergim Himaj	Ministry of Internal Affairs
59	Mergim Lushtaku	Ministry of Public Administration
60	Milot Krasniqi	Anti-Corruption Agency
61	Mirlinda Bojkaj	Ministry of Public Administration
62	Mirlinda Lushtaku	Prime Minister's Office
63	Muhamet Latifi	Ministry of Public Administration
64	Mursel Ahmeti	North Mitrovica Admin Office
65	Naser Shamolli	Ministry of Public Administration
66	Nazmi Halimi	Ministry of Local Government Administration
67	Nexhat Jashari	Assembly
68	Novitet Nezaj	Ministry of European Integration
69	Petrit Popova	Ministry of Finance
70	Philipp Annawitt	Organization for Security and Co-operation in Europe
71	Rrahmon Zahiti	Ministry of Public Administration
72	Ruzhdi Halili	Prime Minister's Office
73	Safet Beqiri	Assembly
74	Selatin Kllokoqi	Development for Democracy Institute D4D
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76	Selvete Dibrani	Democratic Effective Municipalities Initiative

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