



SIGMA

Support for Improvement in Governance and Management

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ASSESSMENT

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¹ In accordance with UN Security Council Resolution 1244/99, since June 1999 Kosovo has been governed by the UN Interim Administration Mission in Kosovo (UNMIK)

DEMOCRACY AND RULE OF LAW

The economic crisis may impact on remittance flows and bilateral donor support. However, this could increase the Commission's opportunities for enhancing the coherence of international efforts to support governance institution-building.

Democracy

Democratic institutions are in place and democracy is developing but it remains to be seen whether the international community can avoid the dynamics of "deresponsibilisation", which characterise Kosovo, and provide space for autonomous democratic institutions (including checks and balances) to mature, and for Kosovans to recognise the State as existing to serve them as citizens. This process would be helped if there were greater transparency in the work of political institutions and if the independent media were to be strengthened.

Tension is still visible in Serb-controlled areas, as was visible during the November 2009 local elections. This makes it difficult to consider Kosovo as a fully fledged and stable democracy. Other problems marred these elections: low turnout, a partial call for a boycott, polling stations that did not open (mainly in Serb-controlled areas) or in which results were cancelled due to irregularities, etc. However, the mechanisms for solving electoral difficulties were reasonably effective in dealing with these different situations.

Decentralisation continues to be implemented as a key policy for democratisation and for promoting better balanced social and economic development, as well as a way of softening ethnic tensions. Building capacity is a big challenge in view of the few resources available.

Rule of Law

The extent to which the public governance system adequately respects the rule of law (i.e. a set of principles that require a separation of powers between the judicial, executive and legislative branches of government, compliance with the law by government, individuals and economic operators, the proper functioning of the judiciary and the consistent application of fair procedures by the administration) remains a source of concern.

The poor quality of legislation is still a common problem. Major reasons for the insufficient quality of legislation include: deficient law-drafting capacity in ministries and administrative bodies; inadequate consultation with regulated communities; excessive ambitions for the legislative agenda; poor translations of European laws and adoption of laws drafted by international consultants from alien contexts, resulting in a system rich in written laws but poor in laws that effectively regulate in accordance with their intended purpose; inadequate attention to implementation issues during drafting; and constrained potential for parliament to scrutinise government proposals adequately. It is necessary to bring overarching rationality to the legal system and the system of production of laws. This is, significantly, an issue where the international community must engage in self-critical reflection.

The governance system is improving but it is still weak. A significant effort has been made in preparing new pieces of legislation, but ownership and capacity for implementing the legal framework remains a problem. Common standards in the organisation and functioning of the administration are not the rule and therefore the administrative decision-making process is confusing and inefficient, leading to legal uncertainty. The functioning of a system of checks and balances over executive power needs to be further developed. These factors, along with the high level of corruption perceived across all sectors, leads to the conclusion that significant efforts are still needed in order to ensure the rule of law in Kosovo.

Constitution

The Constitution of Kosovo provides the necessary guarantees, conditions and directions for ensuring democratic principles and values as well as protection of citizens' rights.

Political institutions and political actors are adjusting their respective roles within the new constitutional framework, but there is still room for improvement. Building legitimacy, credibility and trust is a long and permanent process that requires engagement, capacity, co-operation, transparency and results.

Parliament

Co-operation between the parliament and the government needs to increase in order to ensure coherence of the final drafts and to make the legislative process more efficient. Improved co-operation will also contribute to better monitoring of the implementation of the laws.

The oversight function of the parliament is rather weak. In this regard, more attention must be paid to the reports sent by independent institutions under the parliament.

The Assembly's administrative capacity is insufficient, both in terms of the number of staff and their skills. Some delays in the adoption of the laws and deficiencies in their content are related to the weak support that parliamentarians receive from the services of the Assembly.

Government

A draft Law on Government was prepared but has not yet been adopted. The draft aims to regulate the government's organisation and functioning, its working methods and decision-taking procedures, its co-operation with other institutions established by the Constitution, and the issuing of secondary legislation. Therefore, basic aspects of the governance system remain unregulated. The functioning of the government's meetings lacks predictability and the system is not guaranteed to produce high-quality bills. In spite of this fragility, the co-ordination capacity and the strategic approach have improved at the centre of government level, including for European integration. However, substantive improvements are needed at the ministerial level.

Public Administration

The recently adopted Law on the Civil Service and Law on the Salaries of Civil Servants create better conditions for reinforcing professionalism and stability across the civil service. It will be difficult to change existing political or patronage-based practices, and perhaps even more difficult to deal with the legacy of past staffing practices². The result of the adoption of these laws has been a

² This took place in violation of the UNMIK (legal and administrative) framework for the creation of an effective and impartial civil service (comp.: Reg. No. 2001/36)

large number of prosecution cases related to misconduct, malpractice or crime, leading to severe financial damage to the public treasury. The level of wages for administrative/judicial personnel is too low and carries with it the danger of corruption or other forms of misconduct. This is true for nearly all parts of public services: offices in municipalities or governmental institutions, schools and universities, police and judiciary.

Several pieces of secondary legislation and co-ordination capacity are now needed for the implementation of these laws. For the time being, politicisation, weak professionalism and high turnover are affecting the whole administration. They reduce reform capacity in all areas, and especially in those that play a key role in policy-making and in ensuring efficient management of resources.

The draft Law on the State Administration is a very relevant piece of legislation and will have a strong impact on the overall organisation and functioning of the public administration. Unfortunately, the draft law is still in parliament. Decision-making remains highly concentrated at the top levels of the hierarchy, reducing effectiveness, weakening predictability and hindering improvements in horizontal co-ordination.

Legal and institutional Improvements have been made in the financial management and public procurement areas. Although further improvements are still needed, the main concern is implementation capacity. Developing staff skills should be a priority.

Kosovo has had a Law on Administrative Procedures since 2006 but, despite its potential for promoting change, few results have been achieved due to poor implementation.

Implementation of the recommendations of the functional review study continues but at a slow pace. Meanwhile, the review of the current PAR Strategy has been launched.

Judiciary

The judicial system is at an early stage of development and relies largely on international support (mainly from EULEX). The backlog of cases is still large, the specific preparation of judges is insufficient, premises and equipment are not good enough, co-ordination with the police is problematic, and ruling enforcement is a matter for concern.

Efforts are being made to improve the situation but the extent of the problem requires additional capacity, time and resources, all of which are difficult to obtain in adequate quantity. The entire judicial system, a crucial element for economic development and the protection of citizens' rights, needs to gain credibility and respect. Therefore, politicisation and corruption must be reduced and the overall quality of the justice system and of laws should be improved.

EULEX's activities are positive but they demonstrate that the capacity and credibility of the local structures are at a rather low level.

Anti-corruption Policy

A better understanding is developing of the negative impact of systemic corruption on trust in political institutions and the judiciary, on the business environment, and on citizens' equal treatment. New legislation has been adopted and various strategies and approaches for preventing and fighting corruption are being tried. However, practical results are disappointing, leaving the impression that the rule of law will be difficult to achieve, and this situation will continue to undermine the relationship that should exist between citizens and the State in a democratic polity.

Better legislation, ethical governance, a transparent and functional administration, an efficient judicial system and better enforcement capacity are the key directions for change.

CIVIL SERVICE AND ADMINISTRATIVE LAW

Main Developments since the Last Assessment

A considerable amount of work has been done on drafting new pieces of legislation in the areas of civil service and administrative law, but the adoption of new legislation by the Assembly has slowed down. The government has prepared and approved a package of laws that are fundamental to the functioning of the state, including the draft Law on the Government, the draft Law on the State Administration, the draft Law on the Civil Service, and the draft Law on the Salaries of Civil Servants. The last two draft laws were approved by the Assembly on 13 May 2010. Even if a final assessment of these laws is not yet possible, this approval is a positive step towards building a civil service system in Kosovo.

The PAR Strategy (2007-2011) has so far been poorly implemented. A review carried out in February 2010 showed that only 15% of the planned activities have been fully implemented and that for 28% implementation has not yet started. Poor co-ordination mechanisms, inconsistent political leadership and insufficient commitment are the main factors influencing this low implementation rate. A review of the Strategy has already been launched.

Other horizontal strategies and action plans derived from the PAR Strategy have been approved: the e-Government Strategy, the Anti-Corruption Strategy, the Strategy for Human Rights Protection, the Public Finance Management Action Plan, etc. Co-ordination of all of these strategies will be needed, and adequate resources should be provided for their implementation.

The new Ombudsperson was finally appointed in 2009, putting an end to a very long period during which an acting Ombudsperson was performing this function pertaining to the control of the administration.

The Department for the Management of Public Administration Reform and European Integration was created within the Ministry of Public Administration (MPA). This department is the central institution for managing, co-ordinating and reporting on progress in the implementation of public administration reform.

The 2009 municipal elections showed that politicisation and patronage are still prevalent. In cases where mayors were replaced, almost all of the directors in municipalities were subsequently replaced.

Main Characteristics

Kosovo is still trying to adopt a coherent legal framework. A large portion of the existing framework is still composed of the old Yugoslav law and UNMIK regulations, and this framework is not implemented homogeneously across Kosovo. In addition, it is disturbing to note that very important pieces of legislation regulating the organisation and functioning of the government and of the administration are still lacking. As a result, the governance system remains weak.

The way in which some pieces of legislation are discussed in parliament is problematic due to a lack of co-ordination within the government. For instance, the draft Law on the Civil Service (LCS)

submitted by the government was subjected to more than 200 amendments (two amendments per article on average). As a result, the risk of inconsistency is high. Delays in publishing new legislation constitute another worrying issue.

The declaration of independence changed Kosovo's institutional landscape. The sovereign authorities acquired more competencies and largely replaced the authority of UNMIK. However, UNMIK is still performing some functions, especially with regard to foreign relations and international judicial co-operation. EULEX also has a number of competencies related to the rule of law. Some important investigations of corruption have been led by EULEX prosecutors and judges.

The Law on Administrative Procedures (adopted in 2006) has been poorly disseminated and implemented. In addition, a law on administrative disputes is lacking.

The professionalism of the public service³ is in general rather low, and problems related to politicisation, patronage, lack of adequate skills, corruption and high turnover persist. In spite of the high level of unemployment, the public administration has encountered serious difficulties in attracting and retaining skilled staff, which is mainly due to the low level of salaries. To address this issue, the government has launched the "Brain Fund" initiative, which aims to attract qualified professionals to crucial positions. The salaries offered can represent 3-4 times the normal salaries for such positions. A total of 150 positions is expected to benefit from this scheme, the cost of which has been estimated at around 1.1 million EUR. Although this initiative shows a remarkable effort on the part of the government, there are nevertheless concerns regarding the fairness of recruitment – the increased risk of patronage and politicisation – and the short-term sustainability of the scheme. Systemic solutions (i.e. good career prospects and salary systems) are always preferable, as they have the potential to motivate a larger group of public servants.

The "Young Cell Scheme" is another attempt to attract skilled people to the administration. To date almost 130 candidates for participation in this scheme have studied for master degrees in EU Member States. The chosen candidates are required to work for a determined period of time in the public administration, mainly on EU-related matters. However, difficulties in retaining these young professionals in the civil service persist.

The employment system established by the new LCS should contribute to increasing attractiveness and reducing turnover in the civil service. The previous system, in which the length of staff contracts was limited to a maximum of three years without transparent conditions for renewal, has been replaced by a career system of open-ended appointments.

The MPA's Department for Civil Service Administration (DCSA) is the central management unit responsible for drafting civil service and training policies, preparing legislation, and supporting and monitoring its implementation. The DCSA's very weak capacity in terms of power, tools, staff, qualifications and political support is very problematic. The position of director has been vacant for more than six months, and the recruitment procedure for this position has been postponed and repeated three times. KIPA, the Training Institute for Public Administration, also has very limited capacity.

Despite efforts to implement measures aimed at reaching a better balanced representation of minorities, the hiring of representatives of the Serbian minority remains problematic. Problems related to salaries, job security, safety and ethnic pressures are presented as the main reasons for this situation.

³ Kosovo has 70,070 civil servants, of whom 28,972 are in central-level institutions and 41,108 at municipal level.

The Senior Public Appointments Committee (SPAC) has not met during the past two years due to an insufficient quorum. Therefore, appointment procedures and disciplinary actions regarding senior public servants have not been implemented. Almost all top civil servants have been appointed to their positions as “acting” officials, which is an unsustainable situation. The new LCS introduces a new system, but it needs to be made operational.

The Independent Oversight Board (IOB), under parliament, is in charge of dealing with civil servants’ complaints and monitoring the implementation of civil service legislation. However, the IOB lacks the support of parliament, has a reduced enforcement capacity, and part of its activity overlaps with that of the MPA.

An HRM information system is under construction in the MPA. For the time being, information on human resources policy and management is of very poor quality.

Reform Capacity

Kosovo has weak capacity for designing and implementing reforms and is still heavily reliant on international support. Kosovo is still in a transition phase in which its main priorities are to obtain full international recognition, put in place new institutions, adopt new legislation and extend the administration across the whole territory. At the same time, Kosovo is facing serious economic and social problems. Therefore, public administration reform is not a major priority, even if some statements claim otherwise. The high level of politicisation – which also means low professionalism – of the public service considerably reduces reform capacity.

The already adopted and the foreseen new pieces of legislation on the organisation and functioning of the public administration provide a good basis for Kosovo’s future reform efforts. Preparing the necessary secondary regulations and ensuring their consistent and co-ordinated implementation should be the next priorities. For this purpose, clear political support and improved administrative capacity are needed. Increasing the visibility and role of the MPA in general, and strengthening the competencies of the DCSA in particular, should also be considered as priorities. In parallel, a considerable amount of training must be delivered.

INTEGRITY

Main Developments since the Last Assessment

In terms of strategy and legislation, some improvements have been made in promoting integrity and fighting corruption in Kosovo. The Strategy on Anti-Corruption and its Action Plan were adopted by the Assembly on 12 October 2009, and a new Law on the Declaration and Origin of Property was adopted on 11 February 2010 and is now being implemented. The implementation of the Strategy will be monitored by the Kosovo Anti-Corruption Agency (ACA). The ACA focuses mainly on the prevention of corruption and is quite ambitious in terms of the areas to be covered. It also identifies institutions, determines specific actions to be taken, sets deadlines and develops indicators. As for its budget, the ACA reveals sources but not costs.

Furthermore, several draft laws in this area have been prepared and are now in the Assembly for discussion and approval. These draft laws include the draft Law Amending the Law on Preventing Conflict of Interests in Exercising Public Functions, the draft Law on Financing of Political Parties, the draft Law Amending the Law on Anti-Corruption, the draft Law on Courts, and the draft Law on Parliamentary Investigation. Other draft laws, including those focusing on whistle-blowing and protection of witnesses, the Public Prosecutor's Office, and payment transactions, as well as amendments to the Law on Access to Official Documents are part of the legislative strategy for 2010.

Regarding the institutional side, the ACA is fully staffed and its powers have been slightly reinforced on matters such as the declaration of assets, registration of gifts, and conflict of interest. The creation of a special Prosecutorial Task Force targeting corruption and crime and composed of local and international prosecutors and specialised police officers is the subject of discussions between EULEX and the government.

A functional review of the anti-corruption system was carried out and a set of recommendations was delivered to the government. Identified weaknesses include overlapping and poor co-operation between the various institutions (ACA, Public Prosecutor's Office, Office of Good Governance, Anti-Corruption Council, Police) and a weak enforcement capacity.

Largely due to EULEX support, efforts are being made to tackle corruption at higher levels. The raid on the Ministry of Transport at the end of April 2010 is the most recent example in the area of tender procedures, where the risk of corruption is typically high.

Main Characteristics

The political, economic and social weaknesses affecting the whole governance system – which have been identified in various reports – also have a deep impact on the integrity system.

Although developments regarding new legislation could be considered as positive steps and could raise expectations, much of this legislation is still in draft form or at an early stage of implementation. Furthermore, the overall quality of some drafts needs to be reviewed – the draft Law on Financing of Political Parties, for example, has been criticised for insufficiently addressing the problem. Another example is the draft Law on Government, where post-employment restrictions are not foreseen.

Therefore, the main characteristics of the governance system – an incomplete legal framework; institutions that lack credibility, have unclear roles and lack co-ordination; weak enforcement mechanisms; lack of transparency in decision-making; a perception of generalised corruption in political institutions, the judiciary and the public administration; an unprofessional public service, with poorly qualified staff, financial problems and poor salaries – all combine to create an environment in which the rule of law is fragile and staff turnover is high.

Although legislation is improving, dissuasion mechanisms are being reinforced and implementation is showing interesting results, controls are more formal than substantive. For example, although an asset declaration was submitted by 98.5% of the officials concerned (politicians and top civil servants) and a declaration of gifts is compulsory, control of the content of asset declarations remains underdeveloped. Only six gift declarations have been made by government institutions, which seems unrealistic.

The ACA is trying to be more active and visible in exercising its preventive role and in raising awareness, but its staff is insufficiently qualified. Salaries have also been mentioned as a reason for the problematic turnover rate of the Agency. In 2009, 53 cases of alleged corruption by judges were referred to the ACA; after an initial analysis, 17 of these cases were transmitted to the Prosecutor's Office. A total of 14 cases regarding prosecutors were referred to the ACA, two of which were transmitted to the Prosecutor's Office. With regard to government institutions, 34 cases were reported, and 17 were transmitted to the Prosecutor's Office. At the time of writing, the ACA had not received any feedback on these cases. However, the chief prosecutor announced during a public roundtable held in November 2009 that about 50 judges and prosecutors were being investigated and were waiting to be judged.

The role of parliament in promoting integrity is still weak. No parliamentary inquiries were launched during the past year.

The funding of political parties and electoral campaigns remains a sensitive and almost unregulated issue. However, it should be mentioned that, for the November 2009 municipal elections, the Central Elections Commission issued an Electoral Rule (12/2009) setting spending limits and financial disclosure procedures. Based on these rules, a total amount of 179,770 EUR in fines was imposed on political parties and individual candidates.

Politicisation of the public administration and the judiciary has continued. Despite attempts to improve the selection system, EULEX has reported concerns about the independence of judges. A number of issues have been criticised: rules for appointing and dismissing judges (for example, the final decision remains with the President of Kosovo), political attempts to interfere in court decisions, lack of protection of judges and prosecutors (who are often threatened), and low salaries.

The Ministry of Public Administration has given little attention to the dissemination of the Code of Ethics for civil servants. However, some services, such as tax and customs, are developing internal systems to raise ethical standards.

The Global Integrity Report 2009 places Kosovo in the "weak" category and identifies political financing and civil service regulations as among the most critical issues.

Reform Capacity

The promotion of integrity and the fight against corruption are largely dependent on continued political efforts to keep the issue high on the reform agenda. However, according to the Kosovo Democratic Institute (KDI), "lack of political will and engagement in the fight against corruption by

the institutions still exists". Despite the weak political motivation to tackle this problem, it seems that capacity rather than will is the main problem. More "basic" political goals are being given priority.

Creating trust in public institutions – politicians, the judiciary and the administration – remains the main challenge in building a democratic system on which to base a state that functions in the public interest. Failing to understand this challenge puts in jeopardy all efforts to obtain full international recognition and internal legitimacy. Therefore, transparency, the availability of information, and the quality of public service delivery – including e-government – must be enhanced.

Preventive policies should be encouraged. The existence of a functional public administration largely contributes to curbing corruption. The promotion of integrity, through words and practice, should be the responsibility of every politician or public servant and should be incorporated into each manager's daily duties. Ethics must be disseminated and taught. Provided that the competencies of the ACA do not overlap with those of other institutions and that its staff are properly trained, the Agency can play a relevant role in this area.

Sanctions should be firm and effective. Priority must therefore be given to the following actions: developing capacity and skills in the prosecution and in the courts; increasing the independence of judges; reducing the current backlog of cases to show that justice is effective; and ensuring close co-operation with the police on investigation and enforcement. Measures should be taken to make it obvious that the law matters and that it applies to every citizen.

EULEX and civil society are, and should continue to be, partners in this endeavour. Their contribution to improving standards and reinforcing oversight will help to strengthen Kosovo's public institutions.

PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

Main Developments Since Last Assessment

Some activities were developed in the area of **public expenditure management** (PEM) to address the main weaknesses of the system. A Public Expenditure and Financial Accountability (PEFA) assessment was finalised by the Ministry of Economy and Finance (MEF) with the support of the World Bank in May 2009. Based on the findings of the assessment, the MEF has developed an Action Plan on Public Financial Management Reform, using the platform (or phases of reform) approach. The Action Plan was approved by the Government in November 2009. It does not contain a clear timeline but most of the sub-areas span over 2010 and 2011. It seems that by initiating this action plan, the MEF has taken ownership of the financial management reforms. This would be an important step in the right direction.

A Strategic Planning Office was established within the Prime Minister's Office. It is responsible for identifying government priorities and linking strategic policy with the budget planning. The Agency for Coordination of Development and EU integration has been transformed into a ministry that will also be responsible for donor coordination.

A draft Law on Public Debt is currently going through the Kosovo Assembly's approval procedure. The law will regulate the authority and procedures for borrowing, debt management, and guarantees for central and local governments.

The Management Information System is now also being used by the municipalities. Responsibility for feeding the system with the necessary information lies within each municipality. Ignoring the system is sanctioned by budget restrictions.

The new Law on Civil Service and the Law on Salaries were adopted in May and will soon come into force. An attempt to address the issue of low salaries and brain drain from the public administration has been made through the so called "Brain Fund" established by the Government in 2009 and financed out of the national budget. It aims to financially support particular positions within the civil service. The positions covered are mainly those that deal with strategic planning, policymaking, EU integration, budget planning, etc. To date, 115 positions have been approved under this fund, 33 of which are reserved for the MEF. 30 more are expected to be approved. Around 40% of these positions are vacant and will be filled after an open competition.

With regard to **public internal financial control** (PIFC), a CHU for FMC was recently established under the responsibility of the Treasury in accordance with its 2009 strategy. During 2009, the Department of Treasury and the CHU/IA organised training in KFMIS for all internal auditors. The Treasury has developed a workplan 2010-2013 for further developing administrative instructions on FMC, organising training to increase capacity and awareness, and preparing procedures.

The new Law on Internal Audit (Law No. 03/L-128) was approved by the Assembly in September 2009 and promulgated by the President in October 2009. Under this law, the MEF has adopted administrative instructions that set out criteria and procedures for the temporary licensing of the internal auditors already holding a position in the CHU or an Internal Audit unit when the new law came into effect. The instructions also regulate the establishment and operation of Internal Audit

Units in the public sector. An administrative instruction on the functioning of the Audit Committees is currently being developed. The CHU/IA has developed a system of reporting, with quarterly and annual reports required from budget organisations. The system also requires that the CHU provides similar reports to the Ministry of Finance and Economy, who then on to government.

Regarding **External Audit**, a Corporate Development Strategy (CDS), a Regularity Audit Manual, a Quality Management Framework and a Performance Audit Guideline have been developed and adopted by the Office of the Auditor General (OAG) during 2009 as a first platform for development. The number of mandatory audits increased to 120 in 2009, due to a rise in the number of state public authorities and other budget-users. In 2009, the OAG carried out 26 audits with its own resources, while 31 audits were contracted out to private audit firms. In total, these 57 audits represented 80% of total expenditure and 95% of total revenue. A comprehensive OAG annual audit report (2009) was produced on time for the first time and was submitted to the Assembly at the end of August. A positive development was the establishment at the end of 2009 of a new Parliamentary Committee on Oversight of Public Finances (COPF) which will have all OAG issues under its responsibility. The COPF has started carrying out public hearings based on reports from the OAG and other institutions.

In 2009 mid-year budget review, the OAG requested funds covering an additional 16 staff. Another 10 posts were approved in the 2010 budget. This means the OAG now has 116 staff, up from 85 a year earlier. 89 are audit staff and 27 support staff. First steps were taken for developing a new improved certification programme for all OAG auditors.

At the end of April 2010, the OAG published its second Performance Report. The first one, published in 2008, paved the way for better budget dialogue between the OAG and the Assembly.

Main Characteristics

The legislation for **Public Expenditure Management** is in place and contains many elements required by international standards and practices. However, in some areas, discrepancies between the legislation and its implementation remain. The financial management and information system is well established but administrative capacity, especially for analysing data, is weak. As a result, these systems are not yet fully used. Strategic planning and policymaking is weak, as are capacities and understanding of the importance to change the situation. The same can be said of the link between existing strategic planning/policy making and budget planning. Coordination between strategic policy, state budget planning and donor assistance is still not successful. Civil service salaries and incentives to retain highly qualified staff are low, leading to high turnover and severe damage to the sustainability of reforms. Furthermore, permanent-secretaries, who are the main managers, are frequently changed.

PIFC is still at an early stage of development. The general understanding of the concept but also ownership within the CHUs needs to be further developed. This will take considerable time, both in FMC and IA. The legal basis has been developed and is increasingly harmonised with EC requirements, but the levels of understanding of the technical concepts and requirements and of the standards of application generally appear to be limited. For FMC, the focus is still on the secure and efficient management of the KFMIS. It can be noted that the Treasury has started releasing its current ex-ante control and that management responsibility is being devolved to budget organisations. While this is, in general, a welcome development, it requires that the competency for exercising the necessary controls in those budget organisations can be guaranteed.

Data show an increase in the number of internal auditors, Audit Units and Audit Committees. The number of established IAUs has risen to 59, and the total number of internal auditors is now 97

at the central level and 35 at the municipal level. The number of Audit Committees has increased to 31. Most of the internal audit units report that they have developed strategic plans and annual audit plans. The CHU's annual report mentions 360 completed audits (300 in 2008) and 2,207 issued recommendations (1,900 in 2008), of which a majority are reported to have been implemented or in the process of being implemented. However, no information on the quality of audits, reports and recommendations is available.

There is a risk that efforts will focus on more advanced concepts (such as risk management or audit committees) and draw attention away from basic requirements, such as compliance with rules and clear segregation of duties, or basic audit skills.

In the area of **External Audit**, audits have increased both in quantity and quality. Reports are now made available on time and have improved in quality with regard to readability, clarity, and alignment with International Auditing Standards. The number of staff positions approved for the OAG and its budget have increased significantly in comparison to last year. The focus in training has switched from theoretical to practical on-the-job training (coaching) and audit staff have acquired an increased understanding and knowledge of audit practice according to international standards. Regarding the OAG's increasing professional capacity, the impact of its work is limited by insufficient attention given to its findings by auditees and Parliament. The OAG does not have the capacity to audit annually the increasing number of mandatory audits. As long as Kosovo is not a member of the UN, the OAG will not be able to become a member of INTOSAI and EUROSAI.

Reform Capacity

The generally low administrative capacity, a high turnover of the most qualified staff and a lack of ownership of reform initiatives are still impeding future developments in all areas of **Public Expenditure Management, PIFC and External Audit**. The "Brain Fund" is an interesting initiative but it will not be seen as providing a substitute for the development of a sustainable civil service system with appropriate salaries and incentives to attract and retain qualified staff for key positions. The approval of the new Law on Civil Service is an important step in this regard. The Public Financial Management Reform Action Plan is an attempt to set up a comprehensive reform agenda, and it also covers PIFC and external audit. It paves the way for further improvement and might also facilitate the co-ordination of the various reforms in a meaningful manner within the context of overall public expenditure management. Its success will largely depend on the development of ownership by Kosovo's authorities of the different reform initiatives. However, managing and monitoring this comprehensive plan risks confiscating the resources needed for the implementation of its elements.

Kosovo's Ministry of Finance and Economy has demonstrated its willingness to continue developing the **PIFC** system. This can be seen in the establishment of the CHU/FMC, the increase in the CHU/IA's capacities, the establishment of Internal Audit Units and Audit Committees, and the development of their strategic plans, and an the increased co-operation between the central level and budget organisations. EC funded technical assistance project is important for the further development of the IA system. The current project's proposals that deal with public expenditure management and PIFC should provide a strong incentive for improvement, ensuring a logical sequencing that focuses on basic requirements rather than advanced arrangements.

With the timely delivery of the annual report on the audit of the KCB and the two performance reports for 2009 and 2010 (both published at the end of April), the OAG has clearly shown its dedication to respecting the obligations under the Law on OAG and to the further development of **External Audit**. With its second Annual Performance Report, the OAG has shown its ability to critically analyse its performance and to identify areas with room for improvement. An EC twinning

project with the UK's National Audit Office and peers from the Netherlands and Slovenia started in 2009 to mentor and coach the OAG in the implementation of important parts of the Corporate Development Strategy. The Strategy contains a "step by step" approach for establishing a Kosovo National Audit Office that carries out its mandate in a sustainable way in accordance with internationally recognised auditing standards and good European practices, and that is fully managed by Kosovans. In 2009, the first "platform" (phase of reform) of this approach was established. Improving the relationship with Parliament in order to improve the impact of audit reports is also part of the strategy. The OAG will need substantial external assistance for still some time, but it has proved its capacity to reap maximum benefit of the assistance it receives.

PUBLIC PROCUREMENT

Main Developments Since Last Assessment

The Public Procurement Law n° 2003/17 (PPL) was amended by Law n° 03/L-158, approved by the Assembly of Kosovo on 24 July 2009. This Law introduces amendments relating to the diplomatic overseas missions of Kosovo. Law n° 03/L-090 on Public-Private Partnerships and concessions, approved by the Assembly of Kosovo on 25 June 2009, has replaced Law n° 02/L-044 on the procedures for the award of concessions.

In addition, a working group chaired by a deputy prime minister was set up at the beginning of 2010, with the aim of proposing a draft new law on public procurement in June 2010 as well as amendments to Law n° 03/L090 on Public-Private Partnerships and concessions.

Main Characteristics

Strengths

As underlined in previous SIGMA assessments, the PPL largely incorporates the key mandatory provisions of Directive 2004/18/EC and sets up an overall institutional framework that constitutes, as such, an essential tool for Kosovo's development of a sound procurement system:

- The Public Procurement Regulatory Commission (PPRC) is in charge of establishing detailed implementing rules of the PPL and is responsible for the overall development, operation and supervision of Kosovo's public procurement system,
- The Public Procurement Agency (PPA) is in charge of central and coordinated purchasing,
- The Procurement Review Body (PRB) is responsible for implementing review procedures,
- The Kosovo Institute of Public Administration (KIPA) is in charge of training the public procurement officers.

In addition, the new Law on Public-Private Partnerships and concessions in infrastructures and the procedures for their award also regulates their administration for their whole duration. As such, this law should be very helpful for Kosovo in developing infrastructures.

Lastly, it seems that the economic operators do not question the usefulness of rules relating to the award of public contracts and accept the PPL rather well.

Weaknesses

The PPL is often too complicated, particularly for small value contracts, and sometimes creates bureaucratic constraints for contracting authorities (for instance, the necessity of a prior approval in case of negotiated contracts without publication of a notice). Moreover, it does not allow the public utilities to use the more flexible procedures adapted to commercial undertakings and authorised by Dir. 2004/17/EC.

The new Law on PPP and concessions includes in its scope of application contracts that are probably procurement contracts under the meaning of the European Directives. Moreover, it does

not take into account all the provisions of Dir. 2004/18/CE relating to the works concessions. By contrast, it allows contracting authorities to award concessions without any competitive procedure in cases not foreseen by Dir. 2004/18/EC, and to give a margin of preference the tenderer that made an unsolicited proposal.

The institutional framework also has weaknesses. For example, the KIPA is not really capable of training the procurement officers that Kosovo needs. The PPA is in charge of central purchasing but also of approving requests to continue procedures with less than three responsive tenders or to use the negotiated procedure without previous publication of a notice, which creates confusion between the regulatory functions and the operational ones. In addition, it may happen that the PRB cancels such decisions made by the PPA, or decisions through which the PPRC provides interpretations of the PPL.

Furthermore, the PRB has not yet really established its legitimacy. It has issued many decisions since being set-up in 2008, but, and if even if they are made publicly available, at least in Albanian,, these decisions cannot be really used as a source of information by economic operators or contracting authorities to improve their practice. Indeed, they usually do not explain why the contracting authority acted, or not, in compliance with the Law. They only make statements along the lines of "...therefore, the Contracting Authority has acted in accordance with Art. X" or "The review panel did not consider allegations of the Contracting Authority regarding the expert's statements for the development of this procurement activity as reliable". Thus, this lack of detailed justification, makes the PRB's decisions not fully convincing, even if they are correct.

The main weakness of Kosovo's procurement system lies in the defective implementation of the legislation. This situation may be the result of corruption (the Chairman of the Kosovo Anti-Corruption Agency recently stated that "corruption in Kosovo increased by 34 % in 2009 compared to 2008") but also often of a lack of knowledge and training in procurement. However, it must be mentioned again that the public procurement legislation is often still a relatively new development for economic operators in Kosovo.

Reform Capacity

As mentioned in the previous SIGMA assessment, the main negative characteristics of the public procurement system include the confusion between various legal models, the strict regime for utilities, the inclusion of purchase of electricity, the re-tender procedure if fewer than three tenders are received and, to some extent, the negotiated procedure without publication of a contract notice, the design of the restricted procedure, the certification system and the role of the procurement officers.

In this respect, phase 3 of the project "Reform to Public Procurement System" delivered by Europe Aid⁴, which started on 19 January 2009 and will run for two years, should be helpful. Its aims are to help develop Kosovo's public procurement system, ensure that it is compatible and up-to-date with EU standards, and that it promotes efficiency and transparency in the use of public funds. These aims will be achieved by:

- providing continuous legal advice to the Public Procurement Regulatory Commission (PPRC);
- ensuring that the PPL is up-to-date with EU legislation and its implementation, i.e. in line with the EU Directives;

⁴ Europe Aid/126497/C/SER/KOS

- providing technical assistance to the PPRC and to the Public Review Body (PRB) for implementing the new secondary legislation framework;
- providing advice on management structure and organisational improvement for the PPRC and the PRB; and
- providing assistance to the PPRC and the Kosovo Institute of Public Administration (KIPA) to improve the training and certification framework for public procurement.

Continued efforts to improve the operational efficiency of the public procurement system are needed to ensure fair competition and professional handling of tenders and to encourage the development of competition in the domestic market. In this context, it is essential that the ongoing discussions relating to a new law do not lead to increasing political influences on procurement activities and limiting the PRB's independence. On the contrary, they should give the Government an opportunity to simplify the legislation, clarify and strengthen the institutional framework and set up an ambitious action plan both for the procurement officers and the economic operators.

PROCUREMENT/CONCESSIONS STATISTICS for 2009ⁱ

A. Number of contracting entitiesⁱⁱ		
Central government		85
Regional and local authorities		29
Other (bodies governed by public law)		6
Utilities		29
Total number of contracting entities		149
B1. Awardedⁱⁱⁱ public contracts/Contracting entities	Total (estimated) value (Mio EURO)	Total number^{iv}
Central government	375,532,079.21	5714
Regional and local authorities	154,317,223.52	5241
Other (bodies governed by public law)	2,922,036.94	79
Utilities	245,382,175.36	3786
Total public contracts awarded	778,153,515.03	14820
B2. Awarded concessions/Contracting entities		
Central Government		
Regional and local authorities		
Other (bodies governed by public law)		
Utilities		
Total concessions awarded		
C1. Awarded public contracts above the EU thresholds^v		
Works ^{vi}	71,768,004.82	8
Services ^{vii}	29,496,959.03	41
Goods ^{viii}	201,280,530.62	185
Mixed contracts	2,946,482.31	6
Total public contracts above the EU thresholds	305,491,976.78	240
C2. Awarded concessions above the EU thresholds		
Works ^{ix}		
Services ^x		
Other		
Total concessions above the EU thresholds		
D. Procurement methods used^{xi} (above the national thresholds^{xii})		
Open procedure	523,387,671.96	648
Restricted procedure	0	0
Negotiated procedure with prior publication of a notice		
Negotiated procedure without prior publication of a notice ^{xiii}	70,426,950.43	35
Other procedures (competitive dialogue, etc)	1,139,193.60	4
D1. Low- value procurement (estimated)		
E. Participation rate (average number of submitted tenders)		
Works		
Services		
Goods		

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

1	Korporata Energjetike e Kosovës	170,308,795.78
2	Ministria e Transportit dhe Postë –Telekomunikacionit	153,870,383.88
3	Ministria e Arsimit Shkencës dhe Teknologjisë	66,751,845.94
4	Posta dhe Telekomunikacioni i Kosovës	30,950,793.81
5	K Prishtinë	26,447,765.50
6	Ministria e Shëndetësisë	18,902,951.59
7	K Skenderaj	17,464,837.56
8	K Prizren	15,329,588.66
9	Ministria e Tregtisë dhe Industrisë	13,514,739.65
10	Policia e Kosovës	11,494,768.88

G. A list of 10 biggest public contracts/concessions awarded and/or advertised in 2009 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

1	Korporata Energjetike Kosovës	Furnizim me energji elektrike për periudhën për 22 shtator 2009 deri 31 mars 2010	24,800,901.10
2	Korporata Energjetike Kosovës	TEKNIKA DISKONTINUALE E TRANSPORTIMIT TË PËRAFËRSISHT 5.5 MILIONË M3 TË MASAVE KOMPakte TË DHEUT, NGA FUSHA E SIBOVCI TË JUGPERËNDIMOR	16,104,000.00
3	Korporata Energjetike Kosovës	Furnizim me energji elektrike emergjente për periudhën nëntor 2009 - dhjetor 2010	13,000,000.00
4	Ministria e Transportit dhe Postë - Telekomunikacionit	Zgjerimi i rrugës nacionale M9 Segmenti Sllatinë - Gjurgjicë lot 2 Sektori C	11,760,439.84
5	Korporata Energjetike Kosovës	FURNIZIM ME: PJESE PËR RIPARIMIN E MAKINAVE TË KOMBINUARA MK-I DHE MK-II TE TCA	10,354,510.62
6	Ministria e Transportit dhe Postë - Telekomunikacionit	Zgjerimi i rrugës nacionale M9 Segmenti Sllatinë Gjurgjicë Lot I sektori B	9,301,986.40
7	Ministria e Arsimit Shkencës dhe Teknologjisë	Blerja e librave prej klasës 1-9, përmes APP-së	9,000,000.00
8	Ministria e Transportit dhe Postë - Telekomunikacionit	Zgjerimi i rrugës nacionale M9 Segmenti Sllatinë - Gjurgjicë Lot 2 Sektori B	8,739,136.21
9	Ministria e Transportit dhe Postë - Telekomunikacionit	Zgjerimi i rrugës nacionale M9 Segmenti Sllatinë - Gjurgjicë Lot 3 Sektori C	8,144,185.00
10	Korporata Energjetike Kosovës	Sistemi I i Qymyrit (E&M)SJP. Riparimi i eskavatorit E-8M-SRs1300	6,555,858.76

ⁱ Statistics should cover contracts awarded in the period 1 January 2009 – 31 December 2009

ⁱⁱ As for 31 December 2009

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

^{iv} Please indicate whether the data include the low value contracts

^v Please indicate whether the data include contracts awarded by the utilities sector

^{vi} above 5.150.000€

^{vii} above 137.000€ for public institutions, 412.000€ for utilities

^{viii} above 137.000€ for public institutions, 412.000€ for utilities

^{ix} above 5.150.000€

^x above 137.000€

^{xi} Both for public contracts and concessions

^{xii} Including contracts above EU thresholds

^{xiii} Including single-source procurement

POLICY-MAKING AND CO-ORDINATION

Main Developments since the Last Assessment

The change of government in Kosovo in early 2008 led to a considerable strengthening of the authority of the position of Prime Minister.

Government meetings are now convened at short notice, on different days of the week and at different times. This retrograde step hinders the provision of well-prepared, properly co-ordinated materials to the government. In contrast, most governments of EU Member States meet at a fixed day and time each week.

The government has submitted to the Assembly draft laws on the government, the civil service and state administrative bodies. The legislative framework that has been proposed by these draft laws would be clearer, more consistent, more detailed and in line with good European practice.

Policy Co-ordination and the Prime Minister's Office (PMO)

The Prime Minister has created a new Strategic Planning Office (SPO) that answers to his chief of staff. Its remit is to provide a stronger strategic framework for government budgeting; to encourage closer integration between the European Partnership Action Plan (EPAP), Medium-Term Expenditure Framework (MTEF) and government work plan; to advise on the strategic implications of proposals submitted to the government meeting; and to review strategically important issues. The creation of the SPO is a welcome step forward.

The government is revising its Rules of Procedure (RoP), *inter alia* to address the inadequate use of policy concept papers and the confusing impact assessment requirements, to clarify the roles of the Government Co-ordination Secretariat and the Office of Legal Support Services (both within the PMO), and to strengthen the government's annual work planning process.

A revised annual work plan now focuses more closely on the government's strategic priorities. Revised monitoring arrangements focus on concrete achievements. These two developments are leading progressively to greater consistency between the EPAP (which is itself being revised to simplify and clarify priorities), the MTEF, and the government's annual work plan. Although these developments are very positive, they should not be taken too far. A recent proposal to merge the EPAP and the annual work plan appears to be misguided, as these documents serve different purposes (one is a strategic plan, and the other an implementation plan), and the policy areas that they cover are not identical.

Ministries

The system for the appointment of permanent secretaries has effectively ceased to function pending the passage of new civil service legislation. Almost all ministries are led by departmental directors on temporary promotion. This arrangement is of importance to policy co-ordination as the government has decided not to create a system of ministerial committees, and therefore the weekly

meeting of permanent secretaries plays a limited role in inter-ministerial co-ordination of proposals in advance of the government meeting, as is the case in many other countries.

Line ministries still have weak capacities in terms of policy development and law-drafting. A major programme of functional reviews has recently provided generally helpful recommendations related to the strengthening of policy-making capacities in line ministries. Ministries are progressively stabilising their "points of contact" for the annual work plan so that the PMO deals with the same person from one quarter to the next.

Management of European Integration

In September 2008 European integration and donor co-ordination were merged into a single agency, which managed to quickly establish a more centralised, streamlined and proactive approach to these functions. In April 2010 this agency was upgraded to become the Ministry of European Integration (MEI), an indication that the government was taking the integration process more seriously. It remains to be seen how this integration process will operate in practice, since the new full-time minister critically depends on support from the Prime Minister to achieve successful horizontal EI co-ordination.

An Inter-Ministerial Committee for European Integration (ICEI), a Working Committee on European Integration (WCEI), and six working groups responsible for sectoral policies, standardisation and harmonisation have been set up. The working groups cover the following subject areas: governance (political criteria), economy (economic criteria), internal market, innovation, social cohesion, and agriculture and fisheries.

The MEI receives direct day-to-day managerial support under a twinning project. European integration offices have been created in line institutions. These offices need to be further strengthened in terms of managerial development and co-ordination, for which the twinning project has identified a number of support activities.

Main Characteristics

In just a few years, Kosovo has laid the foundations for a good system of policy-making and co-ordination. The government's Rules of Procedure (RoP) for managing the policy system are coherent. The PMO has developed procedures and capacities to provide logistical and some substantive support to the government, including planning and monitoring. The weekly meeting of permanent secretaries provides some co-ordination, and procedures for providing information to the public are in place. There is a rudimentary system for fiscal impact assessment and regulatory impact assessment.

Capacities for policy-making and co-ordination in the PMO, Ministry of Finance and Economy (MFE) and MEI continue to improve, but still need significant development and upgrading. The new SPO is welcome but, with only five budgeted posts, the Office is small for its ambitious remit. Generally, strategic capacities within the government are limited. However, the key agencies – SPO, MFE, MEI, and the Government Co-ordination Secretariat (GCS) – are sensibly stressing the importance of working closely together to maximise the value to be gained from existing structures and processes.

The existing procedures surrounding the government meeting are adequate in principle, but the unpredictable timing of the meetings and the abbreviated time horizons prevent the RoP from being properly implemented. Fiscal impact assessment arrangements, although adequate on paper, are weakly enforced by the MFE.

Significant weaknesses remain in policy development and in law-drafting capacities in ministries, which generally cannot prepare concept papers, conduct impact assessment or draft legislation of an acceptable quality. Consultation processes, both inter-ministerial and (particularly) with civil society, need improvement.

Reform Capacity

The main trends are positive, but this is mainly due to developments at the centre of government, in particular the discernible tendency of the PMO, MFE and MEI to work more closely together. The senior management level within the PMO is committed to continuing the strengthening of policy management, e.g. by establishing strategic capacity within the PMO and by increasing the role of the weekly meeting of permanent secretaries.

Revision of the RoP should clarify the respective roles of the Office of Legal Support Services and the Government Co-ordination Secretariat (both within the PMO), which is of particular importance. The latter in particular should progress from its relatively minimalist role in co-ordinating government business to a proactive role of policy management. This enhanced role of the GCS would be greatly assisted if the government meeting were held on a fixed day every week.

The new system of permanent secretaries should enable them to take a more active role in the co-ordination of policy for the government meeting, but they will require considerable support from the PMO to do so. A prior requirement will be the development of the Ministry of Public Administration's capacity to ensure that the new system of permanent secretaries is successfully inaugurated and managed from the personnel point of view.