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ASSESSMENT

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DEMOCRACY AND THE RULE OF LAW

Democracy

The main challenge for Kosovo is to reach a sustainable perspective for economic growth. Three years after having declared independence, poverty affects 45% of the population and almost an equal amount of the population is unemployed. These are basic challenges for consolidating democracy and the rule of law.

Democratic institutions exist but their performance is impeded by several internal and external constraints.

The dispute between Kosovo and Serbia over North Kosovo continues while direct negotiations over this and other matters between the two sides began on 8 March 2011. This is a visible consequence of both the ruling of the International Court of Justice (ICJ) recognising that the unilateral declaration of independence of 17 February 2008 did not violate general international law and of the resolution of the United Nations General Assembly (9 September 2010) requesting these direct negotiations. Meanwhile, political, judicial, security and administrative institutions overlap and dispute democratic legitimacy. The integration of minority communities has not progressed since the last parliamentary election. In fact, following a Serbian call for a boycott, turnout in the majority Serb areas was only around 1%.

International recognition of Kosovo is increasing but is much slower than expected by the Kosovo authorities. Presently, only 75 countries have recognised Kosovo as an independent state, which is a barrier for Kosovo to act as a full member in the international arena, to join several international organisations and to sign certain relevant international agreements.

In addition, political disputes on electoral issues during the parliamentary and presidential elections show that a fully fledged and stable democracy is still developing. International presence and the role of international institutions, even in some constitutional institutions, confirm this conclusion.

As a result of problems related to the presidential election – which was ruled as unconstitutional by the Constitutional Court for procedural reasons – amendments will be made to the Constitution. Then new legislative and presidential elections will be held, meaning that Kosovo will once again face political instability, the length of which will be determined by the agenda for reviewing the Constitution. A commission for constitutional changes and a commission for electoral system reform have been created.

Decentralisation is assumed to play an important role in deepening and consolidating democracy. Decentralisation is progressing but building up the rather weak capacity of self-governments remains. The process of decentralising power, administration and resources while at the same time building central and local institutions and adopting a comprehensive and coherent legal framework in a context of tight resources, creates special difficulties and increases risks and vulnerability.

Rule of law

Progress has been slow in terms of improving the rule of law. The limited extent to which the public governance system puts the rule of law into practice remains a serious matter of concern.¹

The legal framework and related institutional setup are being completed, including legislation aimed at increasing the independence and capacity of the judiciary. However, there is a perceived implementation gap that is substantial. Four main reasons for this are: *i)* poor ownership; *ii)* lack of quantitative and qualitative resources; *iii)* poor attention and political will; *iv)* deficiencies in policy making (including the absence of regulatory impact analysis and lack of effective monitoring). Adopting laws that are poorly implemented and implementable put the rule of law at risk.

The independence of the judiciary is being built but the slow pace and its functioning is of concern. Citizens do not trust on the impartiality and capacity of the judicial system. It is important to note that besides its role in protecting individual and human rights, an efficient judiciary is a basic condition for investment and economic development.

The absence of visible results in fighting corruption also has a negative effect on the image of Kosovo institutions, including EULEX. Some interesting initiatives have not produced any visible results, which is de-motivating even for those that are deeply engaged in changing the impunity environment.

The overall quality of the legislation remains a problem. The legislative agenda is too ambitious and the necessary quality assessments and effective consultation have been neglected. As a consequence, frequent amendments are introduced adding complexity and uncertainty to the legal system.

The main problems to be tackled for improving the business climate are: corruption, inadequate rule of law, high taxes, excessive bureaucracy and insecurity. According to the World Bank "Doing Business Report 2010",² Kosovo ranks 119 out of 183 countries.

³Therefore, although rule of law principles are being embedded in the legislation and the institutional setup is almost complete, more progress must be made in terms of practice. Decisive action is needed for moving from the current "non-punishing environment" towards a system in which the rule of law prevails.

Constitution

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

¹ The rule of law includes, for the purpose of this report, a set of principles such as:

1. The separation of powers between the judicial, executive and legislative branches of government,
2. Compliance with the law by government and the proper functioning of the judiciary, and
3. The consistent application of fair procedures by the administration.

² www.doingbusiness.org/~media/FPDKM/Doing%20Business/Documents/Annual-Reports/English/DB11-FullReport.pdf.

However, some problems were identified during the recent presidential election and the Prime Minister announced that the Constitution will be amended in order to prevent similar problems in the future. The announcement made by the Prime Minister on 27 April 2011 that the commission for constitutional changes “will include the entire political spectrum” and that the objective is to aim “for a democratic Kosovo, for rule of law and an affirmative respect for communities” is a positive step in this direction.

This opportunity should be used for solving other issues aimed at improving the governance system (for instance, the overlapping role of the Independent Oversight Board and of the Ministry of Public Administration).

Parliament

The Constitution provides enough power to the Assembly enabling it to perform its legislative, oversight and representative functions. However, the parliament has clearly been dominated by the government and co-operation between both institutions is not the rule.

The composition of the new Assembly changed following the recent legislative elections and there is hope that the new political parties will positively contribute to changing the functioning of the parliament, in particular by reinforcing its oversight function.

The Assembly benefits from different international support programmes aimed at increasing its administrative capacity and modernising its functioning. Some progress has been made but this continues to be an area where further progress is necessary, mainly in order to ameliorate the quality of legal drafts and to increase the participation of the civil society.

Government

Although a law on government is necessary for increasing transparency and improving the overall quality of the organisation and functioning of the government, one still has not yet been adopted.

On the other hand, the newly adopted rules of procedure of government are a positive development. The co-ordination mechanisms and planning capacities within the Prime Minister’s Office are also being improved. The same is true for the co-ordination of the EU integration process. However, line ministries’ professional capacity for policy making and implementation is still insufficient and action is required to address this problem.

Public administration

It is expected that when implemented, and if it is done properly, the “Law on Civil Service” and the “Law on Civil Service Salaries” will contribute to creating a professional and stable civil service. For the time being, the necessary secondary legislation is still being drafted. An implementation plan, strong political and administrative co-ordination capacity, and training are needed for changing the current prevailing politicisation and weak professionalism. The introduced system of general secretaries may also help to increase and depoliticise management capacity. The process of selecting and appointing general secretaries will create the opportunity for assessing the government’s commitment to professionalism in the civil service.

The Ministry of Public Administration must be more visible, capable and active regarding Public Administration Reform (PAR). The implementation of the PAR Strategy is, in spite of its weaknesses, a challenge for modernising Kosovo's administration and for reinforcing the leading role of the MPA in this field. For this purpose, training should serve the PAR objectives. Meeting the needs of the citizens and improving the administrative environment for business should be a priority for administrative modernisation.

The adopted "Law on the State Administration" also provides a good reference for clarifying the organisation and functioning of the public administration. Its implementation should be articulated with the insistence in implementing the Law on Administrative Procedures which was adopted in 2006 but poorly implemented. Development of administrative justice is another priority for complementing these reforms.

The political decision of increasing public employees' salaries by 50% is inconsistent with the current budgetary difficulties and raises concerns regarding the reliability of public expenditure policy. Furthermore, uncertainty regarding public revenues is very high in Kosovo since it largely relies on international budget support and the sale of state assets (privatisation), an area in which political disagreements have been voiced.

The legal framework and the institutional setup related to financial management and control are almost complete and in line with the required international standards. However, the implementation gap is considerable and therefore international assistance should continue.

The changes in the public procurement legislation that were introduced by the end of 2010 are an unexpected step backwards. The Assembly neglected the previous consultation process and all the technical work performed by a specific working group. In addition, the law that was adopted is not in line with the necessary standards, in spite of improvements in some areas. In a sector in which exposure to corruption is very high, the legal system must be improved and institutional capacities strengthened. Effective consultation with stakeholders is necessary for these purposes.

Judiciary

Some improvements have been achieved to the legal framework but in general the judiciary is still far from being reliable. Its independence, integrity, skills and overall capacity are quite often questioned by citizens and investors. The judicial system continues, therefore, to be a crucial area for improvement.

EULEX is trying to comply with its responsibilities in helping to increase the capacities of local judges and prosecutors and to tackle high-level corruption and organised crime. Ensuring co-operation with the Serbian authorities is another one of EULEX's roles, which is especially relevant in relation to North Kosovo. However, besides difficulties related to insufficient international co-operation, there are also claims of weak co-operation from the government. As a consequence, meagre results have been achieved and confidence of citizens is at stake.

Anti-corruption

Some limited progress was made in preventing and fighting corruption and organised crime. Improvements were made to the related legal framework and in reinforcing institutional capacity and internal co-operation. However, the lack of results in an environment that is widely reported as a paradise for corruption, organised crime, human trafficking and smuggling shows that much more needs

to be done in terms of the overall strategy, co-ordination, skills, resources and commitment. The risk for “state capture” is very high in Kosovo and it seems clear that isolated and sectoral efforts are not enough: a comprehensive and systematic approach is necessary. Ethics need to be progressively embedded in the national culture and tackling corruption should be a personal commitment of every citizen, especially those that have political and administrative responsibilities in the country. In this field, the capacity of the judiciary is of utmost importance. In addition, political, administrative and judicial transparency and accountability must be enhanced in order to allow effective social control.

Recommendations

In order to contribute to improving democracy and the rule of law in Kosovo, EU support should focus on the following:

1. Strengthening the role and capacity of the parliament both at political and administrative level.
2. Enhancing the role of the EU as a strategic partner for state-building by taking advantage of the phasing out of other international donors. This will also be an opportunity for reinforcing the overall consistency of the legal and institutional framework. Assistance may be oriented to strengthen local capacities and for building consensus about reforms. The funds for technical assistance and budget support should, in the medium term, become a part of a single strategic framework.
3. Ensuring the public procurement legal framework better complies with the EU requirements and strengthening the organisational and operational capacities of the institutions in charge of managing it as well as the capacities in each budget organisation. The concessions/PPP Law should also be amended in order to make it consistent with the EU law and the relevant provisions of the Public Procurement Law.
4. Reinforcing the capacities of line ministries for policy analysis, law-drafting and public consultation by developing a sound policy on better regulation. The overall quality of the regulation will not improve if laws are drafted without previous and accurate policy analysis.
5. Implementing legislation and activities aimed at establishing a merit-based civil service system and at improving the transparency and performance of the administration, especially in areas with a direct impact on the citizens’ rights and on the business climate. Delegation of power must be stimulated as a crucial tool for increasing the performance of the public administration.
6. Accelerating and consolidating reforms of the judicial system, including administrative justice.

CIVIL SERVICE AND ADMINISTRATIVE LAW

Main Developments since the Last Assessment (May 2010)

The end of 2010 and the beginning of 2011 in Kosovo were characterised by a degree of uncertainty and by the suspension of activities related to public administration reform due to the very long electoral process, which started in November 2010 and concluded only in February 2011 with the creation of the new government.

Kosovo is in the process of adopting several pieces of legislation aimed at building a comprehensive and coherent administrative legal framework. In spite of some weaknesses and delays, this legislation constitutes a fundamental step forward, and the objective has been partially achieved.

Parliament finally adopted the budget for 2011 (published on 1 April 2011). During the electoral campaign, the Prime Minister promised an up to 50% increase in salaries for all public employees. The IMF, the World Bank and the International Civilian Office (ICO) publicly voiced their concerns about this promise. Despite these opinions, the Prime Minister assured the trade unions that he would honour his promise.

The Law on State Administration was adopted in September 2010. This law sets out the levels and types of institutions and bodies of state administration and the rules for the organisation, functions and obligations of the various levels of state institutions and for the interaction between them. According to this law the responsibility of the state is foreseen in the event of damages to private persons caused by the actions of the public administration. This law provides a sound basis for modeling the state administration in Kosovo and for establishing order in an environment that was previously unregulated.

Another law that has been approved is the Law on Administrative Conflicts (September 2010), which regulates the procedure for judicial appeals against administrative acts. According to this law, a judicial appeal can only be lodged after the administrative examination of the case and only for final administrative acts. The body responsible for the resolution of the judicial appeal is the Supreme Court of Kosovo. The law does not create an administrative court system, but it ensures the full jurisdiction of the courts and proper judicial review of administrative acts. It is too early to assess the quality of the system, and its implementation should be closely monitored.

The Law on Access to Public Documents (October 2010) and the Law on Protection of Personal Data (April 2010) have also been adopted. The new Law on Access to Public Documents addresses several of the identified weaknesses of the previous law adopted in 2003, but its implementation has just started. The Ombudsperson is the entity in charge of ensuring the right of access to public information. The new Law on Protection of Personal Data also constitutes a good step forward. An independent agency – the National Agency for the Protection of Personal Data, headed by a supervisory council – monitors the implementation of the law. The lack of effective administrative capacity and of sufficient political will to

ensure the proper implementation of the law are matters for concern. Training and public information campaigns concerning both of these laws are necessary.

In May 2010 parliament approved the Law on Civil Service and the Law on Salaries in the Civil Service. These laws have provided the basic conditions for a stable, unified and professional civil service – comprised of about 15,000 civil servants – and have replaced the previous dysfunctional system based on three-year contracts with a career-based system. The implementation of these two laws has not yet started because the legal framework has not been fully completed by secondary legislation, a task that is being undertaken by the Ministry of Public Administration (MPA). The new legislation was foreseen to be implemented as from January 2011. However, in spite of the work that has already been done, this objective was not reached due to the insufficient capacity of the MPA and the early elections. Supporting and monitoring the implementation of the new civil service system are of fundamental importance now. These tasks are to be performed mainly by the MPA, but in view of its weak capacity external support will be necessary. Another challenge will be to regulate the statutes of relevant groups of public employees (teachers, health sector employees, police, etc.). In this regard, previous concerns regarding the capacity of the MPA are still valid.

General Secretaries will now be appointed by a special commission¹ following selection from a pool of senior managerial and managerial positions. Provided that professional competence matters rather than political affiliation, such appointments could be an opportunity to curb the high politicisation of the civil service. For this purpose, the implementation of the new system should be closely monitored. For the time being, all officials in these positions are still “acting officials”.

Parliament also approved the Law on the Independent Oversight Board (IOB), which entered into force in September 2010. The IOB is an independent body accountable to parliament dealing with civil servants’ complaints and monitoring the implementation of civil service legislation. As mentioned in previous assessments, the IOB is mainly a copy of a solution transposed from other legal systems, advocated by some donors but unfit for Kosovo’s administrative legal framework. It overlaps with the competences of the MPA, cannot play the role of an independent court, and its effectiveness is limited.

A new PAR Strategy (2010-2013) was adopted in September 2010, and a corresponding Action Plan is being drafted. The new Strategy represents an improvement compared to the previous strategy, but several weaknesses have been indicated. Unfortunately, the Strategy was suddenly adopted while the consultation process was still taking place, and relevant final recommendations² were therefore not taken into consideration.

A general strategy for training of the civil service as well as a methodology for training needs’ assessment were drafted during the period under review.

¹ The commission (Criteria Assessment Commission) as established by the Law on Civil Service comprises 3 general secretaries, 1 university professor from the relevant area and 1 member of the civil society (art. 15, 2 of the LCS).

² Recommendations were made on the following topics: lack of a selective approach oriented to action and implementation; too many objectives; the objectives are not oriented towards stakeholders’ needs since they are rather instrumental to vision and pledges; the definition of the objectives and sub objectives is too broad and generic; the actions that will follow the approval of the new PAR are not identified; result indicators and financial resources that will finance PAR are not mentioned.

Main Characteristics

While waiting for the implementation of the new LCS, the lack of professionalism, patronage and politicisation remain characteristics of the civil service system. Motivation is low, skills are insufficient and much more needs to be done for implementing a service-oriented administrative culture. Managerial capacities and delegation of power from the top level are other problems to be addressed.

One main characteristic is the heavy dependence on international assistance, in terms of both expertise and funds. The adoption of a new legal framework is a major challenge considering the locally available expertise, and the risk is high that various pieces of legislation could follow different international models. Special attention should be paid to donor co-ordination, consistency of the legal framework, implementation capacities, and impact analysis.

Implementation of the legal framework is another worrying issue. Administrative capacity remains low, and political engagement to change the situation is not sufficiently visible, wide and persistent. The administrative culture is still based on power rather than on service to the citizens, and procedures are very formalistic. Even when the legislation exists – the Law on General Administrative Procedures, for instance – poor attention is given to its implementation. The governance system therefore remains at a very critical stage.

As the MPA is dealing with many other issues (statistics, census, government buildings, IT affairs, etc.), it cannot devote itself entirely to PAR and civil service reform. The Department for Civil Service Administration (DCSA) is striving to increase its capacity, but it is still far from having the required skills and resources needed to efficiently play its role as the central policy and management capacity. The same is valid for the KIPA, the training school for public administration (its premises were even sold at the end of 2010 and so it must find new premises).

At the same time, in spite of the DSCA's efforts in networking with the HRM units which exist in institutions employing civil servants (article 7 of the LCS), such units have, in general, no resources and skills for being a relevant partner for the MPA and for promoting change in their sectors.

Extending the administration to the northern part of Kosovo is still an objective to be reached. For the time being, the situation has not visibly evolved since the last assessment. As a consequence, the problems indicated in previous assessments in relation to the representation of minorities remain, in spite of the efforts that have been made to improve the situation.

Increasing salaries is one means of improving professionalism and increasing the attractiveness of the civil service. It must be noted, however, that populist policies as those announced in the course of past electoral campaign are not the best way of reinforcing the civil service. In a context of extensive unemployment, they may even contribute to ruining the reputation of politicians and civil servants. For the time being and since the new law on salaries has not yet been implemented, the unfair use of unregulated alternative means of compensation is still in use.

A reliable HRM information system is lacking, and the available information on human resources is therefore not sufficiently accurate to support proper and coherent civil service policy and management. Based on the adopted legislation, the MPA and the Ministry of Finance will be able improve the quality of the control of staffing in public services. The current system based on a dual control by the MPA and by

the MoF (through the budget) is quite efficient in terms of controlling numbers, but does not constitute a quality HRM tool.

The legal framework for public expenditure management and control is being completed following international standards. Regarding public procurement legislation, the basic requirements are established but amendments introduced in 2010 worsened the previous legal framework. Amendments will be necessary in order to improve the current situation.

Reform Capacity

Reform capacity in Kosovo continues to be largely dependent on international support (for guidance, expertise and funding). The MPA is trying to increase its role in leading reform in areas such as the civil service and the modernisation, organisation and functioning of the administration, but its capacity is rather limited. Furthermore, the MPA also has functions that have no relation to PAR (the census, for instance). In addition, the roles of the IOB (Independent Oversight Board) and of the MPA are partially overlapping. As a consequence, resources are split and the overall responsibility of the MPA as the central management capacity is weakened.

General Secretaries may contribute to making change happen in the public administration, in areas such as organisation, HRM, financial management, service-orientation and responsiveness. However, some fundamental conditions must be fulfilled, including merit-based recruitment, protection against unfair dismissal, training, and effective power.

The implementation and sustainability of reforms are therefore matters for serious concern. The high dependence on external aid and expertise may jeopardise the efforts being made for creating a coherent legal system, in line with the prevailing legal tradition in Kosovo and that can be easily understood, implemented and assessed by the administration and the courts of Kosovo

In spite of the good will of some political and administrative actors, they lack support for moving further and more quickly. Local think-tanks are also showing the capacity and interest in becoming part of the process, but their call for participation in reforms is only rarely followed. All political institutions should clearly engage themselves in the reform process, and they should stimulate and welcome the participation of civil society in this process.

A better dynamic for change is necessary. Implementing civil service reform and designing other reforms aimed at increasing transparency and openness of public services (e.g.: the law on general administrative procedures) and at improving the quality of delivery of public services to citizens and companies, could create momentum and impetus.

Recommendations

- The MPA must complete the legislation related to the new civil service system;
- The MPA should prepare an action plan for the implementation of legislation related to the civil service and the organisation of the administration, including reinforcing the capacity of the DCSA;
- Considering the key role of general secretaries in making PAR effective, the government as a whole must pay special attention to their selection and appointment;

- Power must be delegated to the general secretaries and to all managerial levels as well;
- The MPA should launch an intensive training programme to support the reform of the civil service, with priority being given to managers and HRM units;
- The MPA must prepare a programme for full implementation of the Law on General Administrative Procedures and design and co-ordinate the implementation of a programme of administrative simplification addressing basic needs of the citizens and entrepreneurs;
- An efficient administrative justice should also be developed.
- In order to raise the effectiveness of its activity, the government should review the allocation of responsibilities to the MPA for avoiding diverting its attention and resources to other functions.

INTEGRITY

Main Developments since the Last Assessment (May 2010)

Promoting integrity and fighting corruption continue to be extremely challenging issues in Kosovo but progress has been very slow, in spite of the intense legislative activity in this domain. For the time being, the overall results of the system for preventing and fighting corruption, especially at high level, have been disappointing. As a local report has emphasised, Kosovo is a “non-punishing environment”¹.

Following the adoption by the Assembly of a Strategy and Action Plan on Anti-Corruption (2009), an ambitious programme for completing and improving the legal framework was initiated. In addition, the new Public Administration Reform Strategy adopted by the government in September 2010 includes a chapter on anti-corruption measures in the public administration. A plan for its implementation is currently being drafted. Many of the conclusions of the functional review of the anti-corruption system (2009) were taken into consideration during the preparation of the new PAR Strategy. The new government established in February 2011 has also designated the fight against corruption as a political priority. Moreover, this government does not include among its members any high officials who are under EULEX investigation.

The implementation of the Law on Declaration, Origin and Verification of the Property and Gifts of Senior Officials (adopted on 11 February 2010) has revealed some weaknesses in the law and capacity problems for its proper implementation. For the first time, the Kosovo Anti-Corruption Agency (ACA) has published on its website the declared assets of high public officials. Several fines have been imposed on those officials who did not comply with the law, but control continues to be procedural rather than substantive. The careless completion of forms – even by some of the highest political actors, the insufficient disclosure and investigation of the origin of assets, and the lack of effective punishment (the law does not foresee criminal charges, for instance) are the main problems in this area. ACA’s capacity is increasing, but the expertise of its staff is still inadequate, and databases do not exist.

Other laws that were approved and entered into force during the period under review include the Law Amending the Law on Preventing Conflict of Interests in Exercising Public Functions, the Law on Financing of Political Parties, the Law Amending the Law on Anti-Corruption, the Law on Courts, the Law on Parliamentary Investigation, the Law on Rights and Responsibilities of the Member of the Parliament, the Law on the Public Prosecutor’s Office, the Law on Access to Official Documents, the Law on the Prosecutorial Council, amendments to the Law on General Elections, new Rules of Procedures of the Assembly, and the Law on Administrative Disputes. It is still too early to assess the impact of these laws and the extent to which they address critical areas of the governance system. Effective monitoring mechanisms should be adopted for this purpose.

The legislative strategy for 2011 includes other changes in the related legal framework, such as: adoption of laws on whistle-blowing and protection of witnesses and on payment transactions and of a draft law on the salaries of public officials, as well as amendments to several laws, including the Law on

¹ “Progress Report – *Made in Kosova*”, a joint report prepared by the Kosovo Centre for Security Studies, FOL Movement, Institute of Advanced Studies GAP, Foreign Policy Club (FPC), Kosovo Democratic Institute (KDI) and Balkan Policy Institute (IPOL), October 2010

Prevention of Conflict of Interest, the Public Procurement Law and the Criminal Code. Some of these drafts were already foreseen in 2010, but they were not completed.

A special Prosecutorial Task Force targeting corruption and crime has been created, composed of local and international prosecutors and specialised police officers. The Financial Intelligence Unit has been fully transferred to a Kosovo institution (Ministry of Finance), and a new director was recently appointed. The Agency for the Sequestration of Illegal Property has also been established.

The establishment of the Constitutional Court is a positive step towards reinforcing the rule of law. The decision on the incompatibility of the functions of President of Kosovo and party leader, which led to the resignation of the former president and to early parliamentary elections, is evidence of a new capacity in dealing with sensitive issues, which may also contribute to reinforcing the rule of law.

Main Characteristics

Kosovo is adopting a remarkable set of laws aimed at preventing and fighting corruption and organised crime. At the same time, the institutional set-up is also being established. However, the absence of clear results in this field raises concerns about the capacity for absorbing the legislation, the real commitment in implementing it, and the capability of institutions and staff.

The role of the Assembly in promoting integrity in public life is weak, but some improvements can be expected in the future. In fact, new political parties emerged from the last legislative elections, and the political scene is being reshaped. As a result, there are expectations that the control exercised by the government over the Assembly will be challenged and that parliamentary oversight of the executive will become more effective. In the past year the government has shown very little interest in responding to the Assembly and in following its recommendations. At the same time, members of parliament have also been reluctant to submit motions to the Assembly – not a single motion was submitted in 2010.

An important novelty introduced by the Law on Rights and Duties of the MP is that a deputy cannot at the same time be Prime Minister, deputy prime minister, minister or deputy minister (article 6 of the law). These functions are now incompatible, and the issue of accumulating salaries has therefore been resolved. However, the same law has created some privileges for members of parliament (right to a supplementary pension, for instance) that do not increase public trust in the Assembly. For the time being, the Constitutional Court has decided on a temporary measure to suspend the implementation of these provisions on the basis that they result in irreparable damages and that this suspension is in the public interest.

The legislative process requires further attention from the Assembly. The insufficient quality of legislation opens opportunities for corruption in almost all domains.

The integrity system in Kosovo is still too reliant on the role of the international actors. EULEX is striving to show results, but it seems that doubts about its capacity and role are increasing in Kosovo. Its mandate is unclear and new emerging political parties are also questioning its legitimacy. Among other reasons, the fact that Kosovo cannot be a member of some international networks and organisations fighting against international corruption, organised crime and money-laundering substantially reduces the capacity of EULEX to obtain relevant data and information for criminal prosecution. As a result, in spite of some public initiatives, so far no indictments have been issued.

On the other hand, the judiciary lacks the confidence of citizens, and reforms of the judicial system are too slow. EULEX has reported that the performance of the Kosovo justice system is still showing signs of weakness. Interference at various levels and in a variety of forms has been observed. This interference with the work of the justice system, in both criminal and civil proceedings, has often resulted in practical problems (such as the pre-emptive abstention of local judges and prosecutors to deal with sensitive cases).

The public perception is that political parties are the most corrupt institutions in Kosovo, followed by the judiciary. Public enterprises rank as another critical sector in this regard.

The new Law on Courts may help to improve the situation, but how this law will be implemented remains to be seen, in view of the scarcity of judges and prosecutors, even though the situation has improved in this regard. In an attempt to attract more and better professionals, salaries in the judiciary were largely increased (more than doubled) as from 1 January 2011. In the meantime, the politicisation of the judiciary – and of the public administration – has continued.

The Anti-Corruption Agency (ACA) is a key institution in raising public awareness of corruption in Kosovo and of its negative impact on the administrative, social, economic and political environment. The Agency is tasked with controlling asset declarations and preventing conflicts of interest, and can conduct administrative investigations on its own initiative or following denunciations. For the time being, the ACA it is still adjusting its role within the range of institutions operating in this area, and in particular with the prosecutor's office. In spite of some improvement regarding its capacity, staff turnover and insufficient skills for performing a more substantive control remain weaknesses.

Integrity in the public administration has not shown any progress during the past year. There are some expectations that the implementation of the new Civil Service Law will have a positive impact, but this will largely depend on the capacity for its complete implementation, proper monitoring, depoliticisation of managerial positions, and intensive training. Intentions in this regard have been announced, but progress is not yet visible.

Public procurement remains a critical area in terms of corruption. The legal framework needs to be improved and monitoring capacity must be developed for ensuring fair competition and better protection of public funds.

Due to poor political guidance and commitment, weak institutions, non transparent administration, and a deficient judiciary, coupled with a fragile civil society, the economic crisis and high unemployment, Kosovo remains very permissive to corruption at all levels, meaning that the risk of becoming (or even of actually already being) a “captured state”² is high.

Reform Capacity

The creation and management of a “clean” environment in the political sphere, in the judiciary, in the public administration, and in society as a whole constitute a continuous task involving cultural change, a solid legal framework, a proper and capable institutional set-up, a strong system of checks and balances, media freedom, and an active civil society. In addition, visible results are required in order to build trust and promote changes in behaviour. In almost all of these areas, Kosovo shows serious deficiencies. Tackling such problems requires time, political will, persistency, co-ordination, resources and capacity.

The capacity and commitment of the government in leading and coordinating a comprehensive effort for building an integrity system in Kosovo seems quite weak. The Assembly also does not seem to have a clear understanding of its role in raising the momentum for fighting corruption and in monitoring integrity in the government and in the administration. Therefore, the perception is that to find an actor “championing” that cause, one has to turn to civil society. However, the capacity of civil society organisations in influencing the political agenda is also very reduced.

In spite of some positive signs in terms of legislation – the reality check concerning its quality still has to be undertaken – the fact is that the attention to reform in Kosovo is largely and comprehensibly driven

² In “[Confronting the Challenge of State Capture in Transition Economies](#)”, Hellman and Kaufmann define “state capture as the efforts of firms to shape the laws, policies, and regulations of the state to their own advantage by providing illicit private gains to public officials”.

by the need to fully insert Kosovo in the international scene. Meanwhile, internal political conflicts (early parliamentary elections, problems in local and legislative elections, disputes over the election of the President of Kosovo, etc.) diverted attention from the main priorities established by the government for addressing the social and economic problems of citizens and companies.

The establishment and management of a functional and transparent public administration, served by professional civil servants, is another area that is suffering from the political instability. The legal framework for the civil service still needs to be completed and implemented.

A vicious circle has therefore been installed: there are no effective reforms because the necessary conditions have not been met, and such conditions are not in place due to the lack of effective reforms.

Recommendations

- The reform of the judiciary should be completed and internally and externally monitored. EULEX may consider concentrating its efforts on assessing the internal capacity of Kosovo's judiciary and on assisting its strengthening.
- The government of Kosovo, UNMIK and EULEX must work together on increasing the ability of Kosovo's prosecutorial system to track corruption, human trafficking, organised crime and money-laundering at the international level.
- Political institutions must be more committed and pro-active in promoting integrity and in tackling corruption.
- The implementation of the legislation aimed at increasing professionalism and transparency and integrity in the administration (e.g.: law on civil service; law on general administrative procedures) and in the political life (e.g.: funding of political parties and electoral campaigns; conflict of interests) should be reinforced.
- The quality of the control exercised by the ACA should be improved.
- Public servants must be given training in ethics and in the fight against corruption, especially those working in more risky areas.

PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

Main Developments since the Last Assessment (May 2010)

The new Government of Kosovo that took office in February 2011 has restructured the former Ministry of Economy and Finance, creating two independent ministries. The Ministry of Finance now focuses primarily on public finance management and financial policies.

Due to the November 2010 elections and the delays in forming a new government, the finalisation and adoption of the 2011 annual budget was also considerably delayed, which has had an impact on the overall system for public expenditure management (PEM). The Assembly adopted the budget only on 31 March 2011, which is the last day allowed by the Constitution. The government had sent the draft budget formally to the Assembly on 15 March 2011, which made it virtually impossible for parliament to discuss in detail the budget for 2011. The late approval of the 2011 budget has led to delays and uncertainties with new projects in the public sector. There were delays also in the preparation of the 2012-2014 Medium-Term Expenditure Framework (MTEF) which was, as required by the Law on Public Financial Management and Accountability (LPFMA), adopted by the government and sent to the Assembly by the end of April. This timeframe raises concerns over the quality of the MTEF.

The LPFMA was amended in the summer of 2010, with the objectives of improving its technical and terminological coherence with other laws and strengthening the role of the MTEF by including a requirement for the preparation of a statement of the government's policy priorities. The amendments also clarified the formal functions of the MTEF to review the changes in budget policy over the years, to provide a summary of policy changes since the previous period that had fiscal impacts, and to estimate the own-resource revenues within the overall budget framework.

The Treasury established a debt management unit in 2010 to organise and monitor state loans (including lending to state-owned enterprises) following the adoption of the Law on Debt Management. This department has become operational, with a current staff of three.

With regard to **public internal financial control (PIFC)**, the LPFMA has now been supported by Treasury rules and a full set of instructions for financial management and control, which were partially approved by the Minister of Finance in 2010, although some still only exist as drafts. The introduction of manuals has been accompanied by a series of seminars. With the help of the ongoing technical assistance, a PIFC policy paper was prepared and the government approved it in late April 2011. Despite these rules and manuals, the PIFC policy paper is relatively optimistic in light of the actual practices and capacities in the administration.

The most significant change in the system of budget execution is related to the ex ante control procedures of Treasury payments. The decentralisation process that started at the end of 2009 was completed by the end of 2010. As from 2011 the responsibility for lawful payments is with the budget organisations, and the Treasury exercises only limited controls to ensure that spending is in accordance with the approved budget. To support the transition to decentralised control over payments, the Treasury has set up a help-desk and Treasury monitoring functions, which essentially should be seen together with the unit that acts as the CHU for financial management and control (FMC). The Central Harmonisation Unit (CHU) for internal audit (IA) focused in 2010 on delivering a systematic training and certification programme to almost half of all internal auditors in government organisations.

Regarding **external audit**, the Office of the Auditor General (OAG) has continued to implement its Corporate Development Strategy. The number of staff has increased, and the 2011 budget now allows for 126 staff, an increase of ten posts compared to 2010. The professional capacities within the OAG have continued to improve, and the role of the OAG has become more meaningful for government organisations. Partly as a result of the strengthened accountability lines between the Assembly and the OAG, the Committee for Oversight of Public Finances (established in late 2009) has started to discuss the reports prepared by the OAG. The number of audits has increased, and in 2010 the OAG started to also audit also state owned enterprises.

Main Characteristics

The overall situation concerning the management of public finances in Kosovo raises concerns, as the planned public expenditure considerably exceeds expected revenue (overall budget deficit is estimated to be around 5% of GDP in 2011), and there are significant uncertainties with regard to some of the revenue plans. The recent decisions taken to apply significant increases in public sector salaries worsen the medium term outlook even further, as the share of public wages increases sharply from 7.3% of GDP to around 9% of GDP.

The legislation for public expenditure management (PEM) is in place and contains many elements that are required by international standards and good practice. However, in some areas, discrepancies remain between the relatively strict and detailed legislative framework and its implementation. The financial management information system is well established, but administrative capacity is weak, especially for the analysis of data.

The Ministry of Finance, the Ministry of European Integration, and the Strategic Planning Office within the Prime Minister's Office have started to co-operate for better integration of the government work plan, the European Partnership Action Plan (EPAP) and the MTEF. However, the approach to harmonise these three key strategic plans is still relatively technical and lacks strategic sequencing. This co-operation at the centre is nevertheless to be commended, and it is still evolving.

The capacity to provide macroeconomic and fiscal projections is still fairly basic, but the data is well established in the budget documents. The Ministry of Finance regularly publishes data on the economic and fiscal situation in Kosovo, but the projections prepared for the MTEF and for the annual budget are published only with the documents that are approved by the government. This arrangement does not ensure the independence of macroeconomic and fiscal projections from the goals of the government.

The MTEF itself is a relatively solid document and includes many of the features that are common in international practice, but often the analyses presented in the document are too superficial to influence budgetary decision-making. As an example, the MTEF outlines the main risks for the planned revenue or for larger items of expenditure, such as the construction of a highway to Albania, but it does not indicate the financial consequences if some of these risks materialised. The MTEF also provides some contextual performance information concerning the area of each budget organisation, but this information is still far from being sufficient for reporting on policy outcomes. The 2010 amendments to the LPFMA, if well implemented, could with time improve the consistency of the MTEF with the overall policy agenda of the government.

In Kosovo, the number of first level budget organisations is high (around 50 at the state level and 30 municipalities) and is still changing over the years. The Kosovo Consolidated Budget includes all the main blocks of public spending (including expenditure on pensions and health-care) but as donor funding falls outside the budget, there is room to improve its comprehensiveness. Budget documents are also very detailed, including detailed lists of staff for each budget organisation. This detail has implications on the workload within the Ministry of Finance, and in the long term it may restrict the capacity for strategic planning. The budget is divided into programmes but these follow primarily the administrative structures of

the budget organisations. The budget is executed through a central Treasury single account system. The Treasury system is used by all budget organisations, including municipalities.

Public internal financial control (PIFC) is still at an early stage of development. In principle, a coherent and comprehensive statutory base is in place. The general understanding of the concept of managerial accountability as well as ownership within the Ministry of Finance need to be further developed, more significantly in the area of financial management and control (FMC). The PIFC policy paper was recently approved but the level of understanding of technical concepts and requirements and of standards of application generally appears to be low in most budget organisations. Systemic weaknesses also include a lack of qualified staff and a poor overall control environment.

For FMC, the focus is on the secure and efficient management of the financial management information system. The new rules and instructions aim to widen the focus to also include good planning and reporting arrangements, but these arrangements are still new to budget organisations and proper links between budgeting and financial controls exist only on paper. The training provided so far to budget organisations is not yet sufficient to guide them equally through the first years of application of the new procedures. The Treasury has also released its current ex ante control, and responsibility over finances has been formally delegated to budget organisations, but it will take years of active coaching and guidance to bring all of these organisations up to the level that is expected by the PIFC concept. This development is commendable and some risks have been managed by sequencing the transition, but further risk management seems inadequate, especially as the technical assistance (TA) project that has supported the process so far ends in the summer of 2011. The CHU for FMC has been established as a unit within the Treasury and has so far been involved mainly in the development of procedures for budget organisations.

The Law on Internal Audit provides a solid legal basis for setting up the internal audit units in Kosovo. Ongoing training programmes are part of a systematic approach that is supported by the current TA project. The number of internal auditors in budget organisations is still small (124 in 2010) but has been steadily increasing. With the support of a TA project, the CHU for IA has been relatively active and has been able to start regularly communicating with internal auditors in budget organisations. This co-operation provides a good basis for further development in the area. However, real progress depends on the ability to change the wider administrative culture towards basic accountability principles.

The Office of the Auditor General (OAG) provides external audit in Kosovo. The legal framework provides the OAG with clear and independent authority to audit public funds. The OAG has a good reputation in Kosovo as an independent institution carrying out financial and compliance audit. Performance audit is gradually being developed. The Office has developed its own training and licensing system in co-operation with a private sector training organisation. The OAG is also taking up audits to analyse the systems created by the government in the area of public expenditure management. The number of mandatory audits is very high for the OAG, however, as according to its law the OAG is required to audit all budget organisations (more than hundred). This may be necessary in the current stage of state-building in Kosovo, but in the longer term the OAG should be able to exercise more discretion on how to carry out its general audit mandate. The current audit mandate may restrict the possibilities of the OAG to carry out audits in the areas of strategic risks. In 2010 the OAG carried out 85 audits, while 23 of these (auditing of municipalities) were contracted out to private auditing firms.

Reform Capacity

The delays in approving the 2011 budget and the resulting narrow time frame, combined with the uncertainties concerning a number of large budget revenue components, such as international budget support and the sale of state assets, will make it difficult to develop the strategic planning and budgetary framework in Kosovo in the immediate future. However, the new Minister of Finance was a deputy minister of finance in the previous government and has therefore been closely involved in the ongoing reforms,

which may be an advantage in terms of securing stronger political support if the current government remains in power.

The Ministry of Finance in Kosovo has demonstrated its willingness to continue to develop the system for public finance management. This willingness can be seen in the establishment of rules and instructions for financial management and control, the increase in capacities to develop internal audit, and the increased staffing of internal audit units. There are signs of sustainability in the development of the internal audit units. Also, the existing professional capabilities in the Budget and Treasury Departments would make it possible to carry out co-ordinated reforms, but as the small number of professionals concerned is burdened with the routine of an excessively detailed and unpredictable budget process, it is virtually impossible to expect the development of significant capacities for change in the administration.

With regard to PIFC, the project that supported the development of internal audit and of financial management and control will end in the summer of 2011. As the new TA project in this area is still in the early planning stages in the European Commission, there will be a gap in technical assistance for nearly a year. Breaks between foreign assistance would normally be healthy, but at the moment in Kosovo in the FMC area, where new rules and instructions have just been introduced, such a gap may take away the momentum in budget organisations to implement the new procedures. The CHU for FMC alone does not have the capacity to fulfil the triggering role that is needed.

In the area of external audit, the OAG has shown a clear commitment to the development of its audit capacities. The twinning project with the UK National Audit Office, including peers from the Netherlands and Slovenia, has supported the OAG in the implementation of important elements of the Corporate Development Strategy, but this project is ending in September 2011. A new project currently under preparation will go forward with assistance to the development of the OAG, but in this case as well there will be almost a year between the two projects. The capacity of the OAG with its current management nevertheless seems sufficient to develop the Office's audit capacities in the meantime, and there is an agreement with the Swedish National Audit Office for a number of bridging activities between the two TA projects. Another element for increasing the professional capacity of the OAG would be the possibility of taking part in the work of INTOSAI and EUROSAI, but this is not a realistic option as long as Kosovo is not a member of the UN. Overall, the sustainability of the existing development plans of the OAG are still dependent on the management recruited by the international community.

Reform capacity in Kosovo continues to be largely dependent on international support. It remains to be seen whether the public administration in Kosovo will be able to adapt to the situation whereby foreign presence will tend to decrease over time.

Recommendations

Over the medium-term, the government needs to further align its current expenditure and other multi-annual commitments with its own regular resource revenues. Broadening its revenue sources should be one of the key objectives. Fiscal rules for conservative fiscal policy should be considered.

The Ministry of Finance, the Ministry of European Integration and the Strategic Planning Office within the Prime Minister's Office should continue their ongoing work to integrate the key planning documents of the government. It is important, however, to start more systematic work to also develop the capacity for multi-annual planning in line ministries and other relevant budget organisations. For this work, the clear designation of leadership and responsibility is needed.

The plan to introduce more performance information in the budget documentation (including the MTEF) is generally welcome, but as long as the more fundamental gaps, such as dependence on temporary revenues, the weak capacity for strategic policy planning and the limited managerial (including financial)

accountability in ministries, are not properly addressed, the plan for using performance information as a central tool in budgeting should be kept as a long-term objective.

The macroeconomic and fiscal projections prepared twice a year by the Ministry of Finance should be made public independently from the budget documents (MTEF and the annual budget) and in advance of the final drafting of these documents.

The Minister of Finance needs to ensure that there is sufficient guidance and support to budget organisations for the implementation of the recently created FMC manual, in particular until mid-2012, when the new TA project starts. Proper implementation of the recent FMC instructions will require close guidance for budget organisations. Any future TA planned in the area of FMC needs to focus primarily on the provision of direct coaching to budget organisations.

The Office of the Auditor General and the CHU for internal audit are both developing their capacities to organise professional training for their auditors by non-governmental and private institutions. It would be worthwhile to seek synergies in the development of permanent training mechanisms for auditors.

PUBLIC PROCUREMENT

Main Developments since the Last Assessment (May 2010)

A major change of the public procurement system in Kosovo was the adoption of a new Public Procurement Law (PPL) n° 03/L-241 by the Assembly of Kosovo on 30 September 2010, which was made effective as from 1 December 2010. This law was prepared as an attempt to align the public procurement legislation more closely with EU law and to remove or at least modify a number of provisions in the previous law that were criticised. However, despite the fact that a number of improvements have been introduced, the new law generally fails to meet, in terms of both coverage and procedure, these original objectives. Interestingly, the draft adopted by the Assembly was not the version prepared by the official working group after a large consultation of stakeholders under the support of the EU project, but another draft, presented only during the readings in the Assembly, without, to SIGMA's understanding, any kind of prior consultation. This unusual feature in the legal reform process led to strong reactions from the European Union Liaison Office. It is still not completely clear why and by whom this draft law was prepared, but it obviously does not represent a comprehensive improvement of the legal system – if not a step back in certain aspects – as compared with the original draft (if that draft had been adopted).

The board of the Public Procurement Regulatory Commission (PPRC) was renewed (Kosovo Assembly Verdict No.03-V-358, of 8 July 2010) and is composed of three members.

One of the five board members of the Procurement Review Body (PRB) resigned. The election of a new member by the Assembly is pending.

Main Characteristics

The legal and institutional frameworks for public procurement in Kosovo – as underlined in previous SIGMA assessments – offer the basic prerequisites for the development of a sound public procurement system.

- The Public Procurement Regulatory Commission (PPRC) is in charge of establishing the detailed implementing rules of the PPL and is responsible for the overall development, operation and supervision of Kosovo's public procurement system. The reporting and statistical system is satisfactory.
- The Public Procurement Agency (PPA) is in charge of central and coordinated purchasing but also of making ex-ante approvals of tender procedures in specific cases.
- 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.

The new PPL largely incorporates the key mandatory provisions of Directive 2004/18/EC and also to a certain extent Directive 2004/17/EC, and it sets up an overall institutional framework that is in line with what is usually required under the European integration process. Moreover, it now includes a section on contract

management (art. 81) which, if implemented correctly, could add a positive feature to the public procurement system. The PPRC has been given the mandate to monitor the implementation of contract management plans and thus has to strengthen follow-up of the procurement activities by the contracting authorities.

Furthermore, the PRB appears to be establishing its legitimacy, according to the improvements observed by a special brief review by SIGMA in 2010. Its original wide competence has been more strictly defined, with the authority to also pursue the investigation of complaints in the case of their withdrawal - for any kind of good or bad reason, such as intimidation. The right to order interim measures is now provided for¹, but the ownership of this new competence is still needed.

Notwithstanding these assets, the factual design and implementation of the institutional and legal frameworks give rise to major concerns. As a general remark, the overall system is too heavy, both legally and institutionally, considering the magnitude of the public procurement market in Kosovo (approximately 800 million EUR), the number and the structure of contracting entities, as well as the average value of contracts. The public procurement market represents approximately 14% of GDP. A few main purchasers, with the Kosovo Energy Corporation (KEC) normally in the lead position, take more than 50% of the total procurement volume. However during 2010, the long term contract for construction of the Morine-Merdare Highway, Street 7 was signed in the value of 660 million EUR, with foreseen value committed 106.9 million EUR for 2010.

The new PPL remains lengthy (178 pages, 134 articles). It is complex, particularly for medium and small-value contracts, and it has maintained the need for prior approval from the Public Procurement Agency (PPA) for the use of the negotiated procedure without publication of a notice or for the non-cancellation of procedures with fewer than two (formerly three) responsive tenders. These requirements create bureaucratic constraints for contracting authorities, without really strengthening competition. Moreover, the law does not allow public utilities to have the free choice of procedures, although some other provisions of the EC Utilities Directive have been introduced, such as the possibility of setting up a qualification system.

Currently, a major problem is the lack of secondary legislation adapted to the new PPL, which was enforced 15 days after publication (whereas the original draft provided for a four-month standstill), i.e. prior to the modification of standard tender dossiers, report formats, various tender forms, and any rules issued under the former law, which ceased to be in force as from 1 December 2010. This situation negatively affects legal certainty and contracting entities' possibilities to conduct procurement procedures. However, public procurement was also in a stalemate during the first quarter of 2011, as the yearly budget was delayed (Law 04/L-001 of 31 March) pending the formation of a government.

The institutional framework has significant weaknesses. The most striking example is that of the Public Procurement Authority, which is in charge of central purchasing as well as of issuing the above-mentioned prior approvals. Actually, these approvals appear to be its main activity, whereas the PPA is only marginally carrying out centralised purchasing, including the setting-up of framework contracts on behalf of contracting entities. However, the majority of the Authority's prior approvals that are challenged are revoked, a competence given to the Procurement Review Body, beyond its review function, on the basis of the former PPL.

The Kosovo Institute of Public Administration (KIPA) and the certification system for public procurement officers lack credibility and need to be both redesigned and improved. However, the new law has systematically taken away from the PPRC all aspects of its work regarding training.

A major problem of principle concerns the function and responsibilities of the Public Procurement Officer. He/she is assigned by the law the sole responsibility to formally make the award decision on behalf of the

¹ PPL art. 131 § 1.2

contracting authority for any contract irrespective of its size, a function which normally does not correspond to his/her competence and authority within the line organisation. This organisation should be changed so that the person with budget responsibility assumes and makes decisions on the basis of a sign-off by the Procurement Officer for all contracts except low-value contracts. This provision was precisely one of the major improvements proposed in the original draft law that were subsequently discarded.

With regard to public-private partnerships (PPPs) and concessions, which are in the remit of an ad hoc unit within the Ministry of Finance (MoF), the 2009 law (03/L-090) is mainly based on the UNCITRAL model's legislative provisions on privately-financed infrastructure projects. It includes in its scope of application contracts that are probably procurement contracts under EU law. Moreover, it does not take into account all of the provisions of Directive 2004/18/CE relating to works concessions. By contrast, the law allows contracting authorities to award concessions without any competitive procedure in cases not foreseen by the EC Directive, and it gives a margin of preference to the tenderer that made an unsolicited proposal.

Corruption and the lack of integrity remain crucial problems, which are constantly denounced by NGOs², including in the area of public procurement. The conclusions and recommendations of General Audit Reports regarding the need for substantial improvement in the handling of procurement in most budget organisations and municipalities are reiterated every year. Such poor management raises questions about the application of the principle of honest, cost-effective and efficient public spending.

Reform Capacity

The process for the adoption of the new PPL in 2010 demonstrated a serious weakness in law-making, with limited respect for the fundamental need to involve the main stakeholders, which has serious consequences on the correct preparation for the application of the PPL by issuing updated secondary legislation and guidance documentation and providing information and training. Moreover, although the main drawbacks of the legal framework have been signalled for years by diverse NGOs and international observers (including SIGMA), it is questionable whether there is a real political will to amend them. However, the Legislative Strategy schedules that the amendments to the 2010 PPL will be submitted on 31 May 2011. External support continues to go on being needed to strengthen capacity for this task.

With regard to concessions and public-private partnerships, the task force unit within the Ministry of Finance appears to be proficient and committed. It is aware of the shortcomings of the current law, which is expected to be amended within the next six months to achieve its alignment with EU law and European good practice.

Recommendations

Phase 3 of the EU project, "Reform of the Public Procurement System"³, which started on 19 January 2009 and would normally have run until mid-2011, provided intensive support for legislative reform, which was appreciated by the management of the PPRC and the PRB, although its work was eventually not taken into consideration, as indicated above. Future technical assistance by the EU needs to be carefully reviewed in the light of the 2010 developments concerning the new PPL.

Continued efforts to improve the operational efficiency of the public procurement system are needed to ensure the professional handling of tenders, encourage the development of competition in the domestic market, and strengthen the procurement function within contracting entities and their mandates.

² See f.i. <http://institutigap.org/repository/docs/KosovarProgressReport.pdf>

³ Europe Aid/126497/C/SER/KOS

For this reason, the following specific recommendations are made.

1. On the legislative side, continue efforts, with external support, to ensure better compliance of the PPL with EU requirements and good practice and to secure its solid anchorage among the key stakeholders, including the international community. As there are obviously differing views in this regard (and more success foreseen with parliament than with other parties), these stakeholders should be identified and a dialogue initiated. Further important changes required include the need to abolish the prior approval procedures (would it be in a step by step approach), with the PPA's responsibilities restricted to central purchasing. A number of other questionable provisions need to be addressed, including the lack of efficient simplified procedures for medium and low-value contracts.
2. Encourage the preparation and adoption of amendments to the concessions/PPP law that are consistent with EU law and with the relevant provisions of the PPL.
3. Continue to support the capacity-building of the PRB, especially with regard to decisions on interim measures, and monitor compliance with the clarifications in the law concerning the PRB's functions.
4. Reconsider the system of certification for procurement officers and the role of KIPA, with the objective of developing a professional training system in public procurement.
5. Strengthen the procurement function within contracting entities and abolish the current unacceptable degree of responsibility assigned to public procurement officers.
6. Address urgently (by the PPRC) the lack of secondary legislation and design advisory support to facilitate the application of the law by contracting entities and to increase the understanding of economic operators. There is also an urgent need to simplify implementing rules.
7. Strengthen the organisation of the PPRC by developing experienced procurement practitioners, especially since it has been given the responsibility of monitoring contract management and execution. The PPRC will have to focus on ensuring integrity in this new function. Accordingly, in order to prevent rather than cure the problem, support to project preparation should be part of the PPRC's technical assistance function.

POLICY-MAKING AND CO-ORDINATION

Main Developments since the Last Assessment (May 2010)

The Government of Kosovo has reverted to meeting on a fixed day and time each week. This change has the potential to facilitate the submission to the government of better prepared materials.

A Strategic Planning Office (SPO) was established in early 2010. During the last year it has become fully operational. However its focus has been on making itself more visible in the administration through meetings and other communication, rather than on building its analytical capacity. The SPO has prepared a survey of the main challenges facing the government. It has also contributed, from a strategic standpoint, to the development of the programme of the new government, formed in early 2011, to the annual work plan and to the quarterly monitoring of that work plan.

The SPO, Ministry of Finance (MoF) and Ministry for European Integration (MEI) are working together to prepare a new integrated statement of government policy. The SPO has also drafted a single calendar that integrates the timetable for the development of the annual work plan of the government, the European Partnership Action Plan (EPAP), and the Mid-Term Expenditure Framework (MTEF) with a view to developing an integrated planning system by late 2011.

A new law on government is being drafted with a view to improving co-ordination at the centre of government. New rules of procedure for the preparation and conduct of Government meetings have also been prepared and await approval. A regulation has been made upgrading European integration units in ministries to Departments for European Integration and Policy Co-ordination.

The recommendations of the 2010 functional review of communications have been incorporated into a new regulation on communication now approved by the government.

The new government rules of procedure clarify and strengthen the inter-ministerial consultation requirements, and replace the existing policy concept and impact assessment requirements with a requirement for government approval of a "concept paper" of policy analysis in advance of the drafting of a new legislation, and a requirement for any proposal submitted to the government to be accompanied by an explanatory memorandum of analysis and justification. The OPM has prepared guidance manuals for line ministries on how to do this, and a parallel manual on how to consult the public on policy proposals.

The recommendations of the 2010 functional review of communications have been incorporated into a new regulation on communication. That regulation has now been approved of by the government.

The government has recently (March 2011) also approved a regulation on departments for European Integration (EI) and policy coordination in the ministries. The regulation foresees that each ministry

should have a department for EI and policy co-ordination that will work under the supervision of the respective Secretary General. The departments should be the focal points of policy planning within the ministries, and have the general task of promoting co-operation with stakeholders.

Main Characteristics

In the administration, the main co-ordinator for strategic planning appears to be the newly established Strategic Planning Office (SPO), which answers to the Prime-Minister's chief of staff. Its remit is to provide a stronger strategic framework for government work, encourage closer integration between the European Partnership Action Plan (EPAP), the Medium-Term Expenditure Framework (MTEF) and the government work plan, advise on the strategic implications of proposals submitted to the government meeting, and to review strategically important issues.

In general, the government's strategic capacities are limited. However, the key bodies – SPO, MoF, MEI, and the Government Co-ordination Secretariat (GCS) – are focusing on the importance of working closely together to maximise the benefits to be gained from existing structures and processes.

The overall framework is in place across government for processing policy-making through government. The Rules of Procedure formally regulate all the necessary elements of the policy procedures. Arrangements to achieve the proper functioning of government meetings are in place. The process for preparing and monitoring the annual work plan of the government and linking it to other strategic documents has been revised and is now functional.

Further improvements are, however, still needed and are in prospect with a draft law on government. The new law is needed among other things for the improvement of co-ordination between ministers. It will also clarify policy-making procedures and should assist in the improvement of the overall quality and effectiveness of the functioning of the whole government.

There are arrangements for fiscal impact assessment which are adequate on paper but they are weakly enforced by the Ministry of Finance. Despite formal rules regarding the obligation of providing regulatory impact assessment for every piece of legislation going to the government, there has been little progress in the comprehensive development of tools to improve the quality of legislation such as impact assessment, effective consultation or review of existing or proposed legislation for business burdens.

The legislative agenda is too ambitious (according to the legislative strategy, at least 149 laws are supposed to be adopted in 2011). Parliamentary capacity is weak. Amendments to the laws that have recently been approved are very common and the fact that there are frequent amendments could be an indicator of poor quality legislation. The filtering of issues and formal mechanisms for resolving disputes between ministries could be strengthened, in particular given the weakness of inter-ministerial consultations.

The capacity to review policies, before they are submitted to government and the capacity to prepare policies and draft legislation, is constrained by limited human resources across all ministries. There is also a lack of tradition to think about policy analysis. The quality and appropriateness of legislation remains a source of concern and limits the effective implementation and enforcement of laws. It also creates uncertainty and could be a barrier to investment and the development of existing businesses. Consultation processes both inter-ministerial and with civil society, need improvement.

The system for managing EI activities in Kosovo is still at an early stage of development. Co-ordination work with respect to the EI agenda is within the MEI. There are six working groups of the government responsible for sectoral policies, standardisation and harmonisation. These meet annually with the corresponding six Stabilisation and Association Process Dialogue (SAPD) groups, and they are expected to follow up the conclusions of those meetings. This process has had a positive impact on the revised version of the EPAP, which was approved by the government in March 2011. The revised EPAP is shorter and better focused on key priorities. However, the European integration system, as a whole, lacks dynamism, despite the fact that the agency for EI was promoted to ministry level a year ago. The MEI has so far not shown strong leadership within the administration.

Reform Capacity

There is some leadership from central institutions. The recent improved co-operation between the MoF, MEI and PMO has the potential to be a driver for change. In particular, officials in the prime minister's office who hold some senior positions (notably in the SPO) actively promote reform.

The MEI is supported by a twinning project. The PMO's work on policy planning and co-ordination is supported by a DFID-funded project, which is also piloting the new concept paper and explanatory note arrangements in line ministries. Both the DFID project and the twinning project end in February 2012. The government has not requested a successor EC project to support the MEI.

Added together, these activities show some reform capacity but they are limited and will careful management for them to create sustainable reform potential.

Recommendations

- The capacities of line ministries for policy analysis, law-drafting and public consultation need to be strengthened considerably by government with the co-operation of appropriate national and international bodies. Particular attention should be paid to developing capacities as regards European integration. The MoF, MEI and PMO should vigorously implement the new integrated planning arrangements, with a view to strengthening substantive co-ordination of government policies.
- The MoF should properly enforce the fiscal impact assessment requirements.
- The Prime Minister's communications office should lead the implementation of the functional review of communications and ensure its prompt delivery.
- Priority should be given to the enactment of the revised law on government.