



SIGMA

Support for Improvement in Governance and Management

A joint initiative of the OECD and the European Union, principally financed by the EU

KOSOVO

POLICY-MAKING AND CO-ORDINATION

ASSESSMENT MAY 2008

1. Coherence of the Policy-making Framework

The policy-making framework is set out in detail in the government's Rules of Procedure (RoP). The RoP were first adopted in 2004, along with the Rules for the Drafting of Legislation. The two documents were combined into a single document in 2005. The RoP were further revised (and greatly improved) in 2007 [Rules of Procedure of the Government of Kosovo (No. 01/2007)]. The RoP regulate all of the necessary elements of the policy system, and establish that "the Permanent Secretary of the Office of the Prime Minister shall be responsible for ensuring that all work of the government is conducted in strict accordance with this Regulation" (article 2).

A draft "Law on Government" and a draft "Law on the Functions of Ministries" were circulated in draft in 2005, but it became clear that adopting these laws in advance of any final status settlement would be problematic, and the draft laws did not proceed any further. Discussion of the two laws has now resumed.

The Rules of Procedure (RoP) establish a complete and coherent sequential process for the preparation and review of material for government sessions. The 2007 RoP include some very good features, which is not often the case in countries that are at the same stage of development as Kosovo. These features include:

- The RoP establish in some detail the role of the Prime Minister's Office (PMO), and specifically of the Government Co-ordination Secretariat (GCS) within the PMO responsible for managing the system established by the RoP;
- The RoP call for the preparation of concept papers, which are to be approved by the government prior to the drafting of legislation;
- The RoP caution against submission for adoption of foreign legislation that has not been subject to the necessary local filters;
- The RoP specify the contents of the explanatory note and other materials that should accompany documents prepared for government decision, including fiscal impact assessment, regulatory impact assessment, and a statement by the Agency for European Integration regarding compatibility with the EU *acquis*;
- The RoP specify in detail the process for preparing the government annual work programme, comprising a thematic part and a legislative part; and
- The RoP set up a process for monitoring and reporting on the performance of the government in accordance with this work programme.

The main weakness in the Rules of Procedure is the lack of a process for developing a coherent strategic focus for the government's work and for ensuring that the annual programme and the budget actually reflect the policy priorities of the government. The requirements for inter-ministerial consultations and for consultation with civil society might also benefit from clarification and strengthening.

This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union, and they do not necessarily reflect the views of the OECD and its member countries or of the beneficiary countries participating in the Sigma Programme.

The Rules of Procedure (RoP) provide most of the necessary elements for a solid decision-making process, including work planning and monitoring, preparation of proposals by ministries and working groups, provision of supporting information to ministers, and review by the Prime Minister's Office. The legal framework is coherent, but could be improved with additional attention to inter-ministerial and civil society consultations and to the need to set priorities as the basis for annual planning and policy development.

2. Inter-ministerial Consultation on Policy Proposals

The Rules of Procedure (RoP) establish some requirements for inter-ministerial consultations. This is particularly true for the preparation of primary legislation, where first a ministerial working group is established to conduct the necessary steps, including consultations with other ministries, and to prepare a first draft. Once a draft meets the basic requirements, a governmental working group is established, in which the Ministry of Finance and Economy (MFE), the Ministry of Justice, the Office of Legal Support Services and the Government Co-ordination Secretariat (both parts of the PMO) are obligatory members.

The need for consultations with other ministries seems to be recognised, although these consultations are often not performed in sufficient depth or do not include all concerned interests. In fact, the RoP does not appear to specify clearly enough that all interested ministries must be consulted. In the Kosovo RoP, this requirement appears to be rather weak, requiring the proposing ministry to submit “a statement to the effect that the material has been co-ordinated among the responsible ministries or a statement of the reasons why contentious issues have not been co-ordinated” (article 18). This requirement seems to provide the PMO with only weak authority to return an item to the proposing ministry on the grounds of inadequate consultations.

The previous government decided to establish ministerial committees to filter government business prior to the formal government sessions. The Permanent Secretary of the PMO made specific plans to begin the operation of these committees, including plans for the provision of support to their meetings by the PMO. It is now the responsibility of the new government to proceed with the implementation of this important initiative.

The procedures for inter-ministerial consultation need to establish more clearly a requirement to consult all ministries that are potentially concerned on both concept papers and legal drafts. In parallel, the Government Co-ordination Secretariat of the PMO should be given more explicit authority to ensure that consultations are broad and effective. Ministries should be encouraged to improve the consultative process and, in addition to legislative matters, carry out consultations on substantive policy issues during the preparation of concept papers.

Ministerial committees with the tasks of filtering government business have not yet been set up..

3. Work Planning

Kosovo has an adequate work-planning system in place, covering:

- The immediate agenda of the government;
- The government's annual programme, including a legislative part and a thematic part; and
- Capacity to forecast and monitor government business on a three-monthly basis, as the government's annual work programme is divided into quarters.

According to the RoP, the thematic part of the annual programme should be “a statement of the policy priorities for the period of the programme, to be presented to the government in concept papers”. The legislative part of the annual programme “should be drafted as a legislative strategy derived from those policy priorities proposed in the thematic part of the programme which are required to be implemented by legislation”. As set out in the RoP, the responsibility for preparing the legislative part of the annual plan rests with the Office of Legal Support Services (within the PMO), and the responsibility for the thematic part is with the Government Co-ordination Secretariat (also in the PMO). Importantly, the RoP specify that “the Government Co-ordination Secretariat shall co-ordinate the preparation of the work programme and forward the thematic and legislative parts and any confidential annexes to the government for approval” (article 67).

This system is working quite well in practice. The process of annual planning started in 2005. A unified format for the work plans of all ministries was approved by the Prime Minister and introduced for the first

time in 2006. A conscious effort was made to identify lessons from the 2006 cycle, and there is evidence that these lessons informed the 2007 cycle. In 2007, planning and reporting started earlier, the format was refined, and ministries appointed focal points for the process. Compliance with deadlines for submission was nearly perfect. This represents significant progress in just three years, although there remains room for improvement in terms of the quality of inputs provided by ministries. The format is not always used consistently, and there are no systematic attempts to compare inputs between ministries or with other priorities, such as European integration priorities and the government's political programme. The alignment of annual plans to broader priorities is left to each ministry. However, the Government Co-ordination Secretariat (GCS) is aware of these deficiencies, and intends to continue to improve the implementation of the process defined by the Rules of Procedure.

The annual programme is monitored on a quarterly basis by the GCS, although the output does not appear to have been put to practical use (e.g. reporting to ministers). The GCS also prepares an annual report to parliament on the performance of the government in accordance with this programme, but this report is long and detailed and designed essentially for public presentation purposes.

The approach to government work planning is good, and there is continuing progress on implementing this approach, including drawing and sharing lessons from the previous planning cycle and making necessary adjustments to the process. There is no central mechanism to ensure that the work programme fits broader strategies. Instead, responsibility for this fit is left to individual ministers. Monitoring mechanisms do not appear to yield products that are used by ministers.

4. Dispute-resolution Mechanisms

The main mechanism for dispute resolution prior to the government session is the weekly meeting of all permanent secretaries, chaired by the Permanent Secretary of the PMO. This meeting provides co-ordination of government activities through agenda planning and discussion of current issues. The meeting is often useful in resolving differences between ministries. However, given the weakness of inter-ministerial consultations and the absence of ministerial committees, the dispute resolution provided by this meeting is not sufficient.

The mechanisms for resolving disagreements prior to the government session are not sufficient.

5. Central Co-ordination Capacity

The Prime Minister's Office (PMO) is the central administrative body with the legal authority to:

- Ensure that rules concerning the preparation of materials for the government are enforced;
- Provide logistical support to the Prime Minister and to government meetings (and to ministerial committees – and their chairmen – once established);
- Ensure the recording and circulation of government decisions;
- Monitor the implementation of government decisions.

The PMO has become a stronger organisation over the past four years. The creation of the Government Co-ordination Secretariat (GCS) has progressively increased the PMO's capacity for co-ordination beyond the provision of mere logistical support (which it also provides). The quality of preparations for the weekly government meeting has improved. Through its support to the government sessions, the GCS ensures that policy submissions and other items for decision by the government comply with set procedures, deadlines, and standards of quality, and that ministers have the information they need to make decisions that have been well thought through. Considerable progress has been made in this regard, although the GCS needs to develop further capacity and authority to return to the proposing ministries any submissions that do not meet the quality standards.

The GCS has developed good working relations with most of the ministries, and works co-operatively with the Ministry of Finance and Economy (MFE) on linking policy priorities and the budget. It is seen by ministries as a source of information and advice on procedural matters and tactical management of issues, although not on the substance of policy formulation. The GCS has taken over and revitalised the quarterly monitoring of the work of ministries, has recently compiled the government's work programme, and has compiled the government's first annual report to the Assembly. All of these systems are best described as

being “under development”, but they are fundamentally sound and their quality and usefulness are steadily improving.

The Office of Legal Support Services (OLSS) also performs an important co-ordination role, co-operating closely with the GCS in both the annual planning process and the enforcement of the rules regarding the preparation of material for the government. The OLSS is the main focus for legal expertise within the government. In practice, it works as a legislative secretariat, revising and controlling the quality of drafts produced by ministries and drafting some legislation itself.

The Prime Minister’s Office (PMO) has the legal underpinnings, organisational structure, staff, and working methods that allow it to play a significant central co-ordination role in the policy management system in Kosovo. It is critical for Kosovo to maintain the recent achievements of the PMO, such as the establishment and strengthening of the Government Co-ordination Secretariat (GCS), and to continue to build on these achievements in the coming years.

6. Central Capacity to Advise on Policy and Strategic Matters

The main source of advice to the Prime Minister is provided by his political advisers. Prime ministers in Kosovo tend to have a fairly substantial cabinet, varying in size between 10 to 20 political advisers, depending on the prime minister. Under previous governments, poor co-ordination of the work of political advisers has seriously impaired their effectiveness. On the civil service side, the capacity of the PMO to provide policy and strategic advice to the Prime Minister and the government is limited.

The Permanent Secretary of the PMO has been planning to create a modest strategic capacity by adding a “Strategic Desk” of two or three staff to the Government Co-ordination Secretariat (GCS). The main function of this desk would not be to invent new processes (and still less a new strategy), but rather to clarify overall priorities by bringing together the existing main strategic documents, including:

- Medium-Term Economic Framework;
- Kosovo Development and Strategy Plan;
- Government four-year political programme; and
- European integration agenda.

The main challenge would then be to ensure linkages between the strategic priorities and concrete operational documents and activities, in particular:

- Annual budget process;
- Ministries’ annual strategy statements prepared as part of the budget round;
- Government’s annual work plan; and
- Weekly decisions of the government.

Plans to establish this strategic desk have been developed, and the staff allotment was included in the PMO budget for 2008. However, at the time of writing (March 2008), the desk has not yet been established.

In terms of ongoing policy advice, it should be noted that the staff in the “policy desks” in the GCS are busy mostly with providing logistical support for government sessions, ensuring that material is complete, and annual planning and monitoring. They are not yet able to provide the Prime Minister and the government with advice related to the substance of policy.

Capacity to provide advice on policy and strategic matters needs to be developed within the PMO.

7. Co-ordination of European Affairs

The system for managing and co-ordinating European integration activities in Kosovo is at an early stage of development. At the moment, there is a small Agency for European Integration (AEI) that is relatively underdeveloped given the stage of preparation for accession that Kosovo has reached. There are European integration focal points in ministries, which are small and weak. All new legislation or amendments to existing legislation require a “Statement of Compatibility with EU Legislation” from the Agency for European Integration. Now that the status of Kosovo has been resolved, the government will need to move

quickly to establish a fuller system for managing and co-ordinating European integration at both political and administrative levels.

Capacity to manage European integration is not sufficient and its development would need to be a priority in the immediate future.

8. Involvement of the Government in Budget Decisions

The budget process in Kosovo begins in March with the Budget Circular addressed to all ministries, which is followed by bilateral meetings between the Ministry of Finance and Economy (MFE) and all ministries. In late summer, the MFE holds “hearings” with each ministry, attended also by the PMO and parliament. A Draft Budget is then distributed to all concerned and submitted to the government for discussion. The government meeting to discuss and agree on the budget is a special meeting, lasting a full day, and the meeting does make changes in the proposed draft, including changes in allocations among ministries.

It is worth noting that experimentation is continuing in terms of the way in which the government is involved collectively in the budget process. For example, a one-day retreat for the government was held in 2006 to discuss the budget, but this event was not repeated in 2007.

Procedures for the involvement of the government in the budget process are generally appropriate.

9. Impact Assessment

In Kosovo, the Rules of Procedure (RoP) require that legislative drafts (including amendments) submitted to the government for decision should be supported by fiscal impact assessment to determine budgetary costs. There are no specific requirements to assess economic, social and environmental impacts of legislation.

On the other hand, with respect to concept papers (which are required by the RoP prior to the preparation of primary legislation), the requirement is broader: “documents relating to policy proposals in individual areas, including concept papers, [should explain] the problems being addressed, the principles being applied, the impacts, benefits, disadvantages and any other implications....”

In theory, these are good requirements, which reflect the attention being given to establishing a policy-development process that would provide ministers with the information base required for sound decision-making. In practice, however, there is a long way to go. At present, ministries are not yet capable of preparing the fiscal impact assessment forms at the required level. Accordingly, all fiscal impact assessments are prepared by the Ministry of Finance and Economy. Items without fiscal impact assessment are routinely returned to ministries by the Government Co-ordination Secretariat (GCS). Concept papers are prepared very rarely, despite the fact that they are listed in the thematic part of the government’s annual programme.

The regulatory impact assessment requirements are also not leading to useful results at the present time. The format is not sufficiently adjusted to local requirements and capabilities.

The RoP requirements for fiscal impact assessments and for concept papers prior to the drafting of legislation provide a good basis for policy-development practices in Kosovo. Implementation of these requirements is proving difficult, but this is to be expected. Persistence over the coming years and increased capacities in ministries and in the GCS are necessary to enable the government to fully implement these useful requirements.

10. Better Regulation

Kosovo does not have an elaborated policy for the application of principles of better regulation.

It is worth noting, however, that the Rules of Procedure (RoP) do require that a statement of regulatory impact assessment be included with every piece of legislation going to the government. In addition, the Rules of Procedure (article 36, Basic Principles) specify that “everyone engaged in the drafting or reviewing of a draft primary and secondary law, or amendment shall, at every stage of drafting, act with professional diligence in order to ensure that such item [among other things] does not create unnecessary, redundant, inefficient, wasteful or overreaching bureaucratic or administrative structures, procedures, provisions, requirements, or barriers”. There does not appear to be much attention given to this requirement in practice.

Kosovo does not have a policy on better regulation, but the Rules of Procedure (RoP) require that attention be given to some of the principles of better regulation.

11. Transparency, Consultation and Communication with the Public

Public consultations:

The Rules of Procedure (RoP) in Kosovo pay surprisingly little attention to the need to consult the public on the development of policy and legislation, and they do not create an obligation to consult as part of the preparation process. In practice too, there does not appear to be a well-developed appreciation of the need to consult. There is no requirement to include a report on public consultations with an item submitted to the government for decision, and accordingly no empowerment of the PMO to return an item to the proposing ministry due to the lack of consultation. The NGO structure that normally facilitates consultation is still underdeveloped.

Procedures for informing the public concerning the work of the government:

The Rules of Procedure (RoP) in Kosovo recognise the need for the government to keep the public informed of its work, and set up a very good framework for fulfilling this requirement in a balanced way. Articles 91-93 establish the principles: "The work of the government shall be public. The public nature of the work of the government shall be ensured, as a rule, through press conferences and various electronic publications on the web page. Journalists and other representatives of the public shall not, as a rule, attend sessions of the government. The Spokesperson of the government and the Prime Minister's Information Office shall ensure the public nature of the work of the government." These principles create a wise balance between openness to the public on the one hand and the government's need for open and honest discussions in its weekly sessions on the other. Unfortunately, since January 2008 the government has allowed the TV services to attend its meetings, a practice that is not conducive to frank discussions.

The Public Information Office (PIO) within the PMO is the focal point for providing information on the work of the government. The PIO has become stronger and more effective in the last couple of years, and is now also at the centre of a network of public information offices in all ministries. The PIO holds weekly meetings with the ministries' information officers, and from these meetings a new regulation on government communications has emerged. The PIO also has an annual work plan, which is harmonised with ministry plans. The media is informed regularly following the meetings of the government. The PIO is currently promoting the idea of establishing in Kosovo a media centre and a media commissioner in order to further improve the quality of information available to the public.

Mechanism to make public laws and other decisions (e.g. a state gazette):

There is a Gazette Office, which is part of the Prime Minister's Office. All legal documents must be published in the *Gazette*. The laws published by the *Gazette* are available on the government website (in five languages). However, the *Gazette* is not able to process all laws in a timely manner, and this is becoming a more serious problem as the number of laws passed or planned has greatly increased as a result of the process related to Kosovo's independence. The result is that laws that are in force may not be widely available for a long period of time (a number of years). The *Gazette* already has a large backlog, which is expected to increase unless additional resources can be found to assist the Office.

12. Summary and Next Steps

In just a few years, Kosovo has put in place the foundations for a good system of policy-making and coordination. The main strengths of this system are:

- The Rules of Procedure (RoP) for the management of the policy system are coherent and quite complete, and can promote further development of the mechanisms and procedures supporting the policy system.
- The Prime Minister's Office (PMO) has developed procedures and capacities to provide logistical and some substantive support to the government in terms of preparing the sessions and planning and monitoring the work of the government.

- The annual planning system is adequate and is improving, including co-operation between the PMO and ministries.
- The weekly meeting of permanent secretaries is becoming a more effective planning tool, and has some capacity to resolve conflicts.
- The procedures for providing information to the public are in place, and the public information system is becoming stronger and better co-ordinated across all ministries.
- There is a rudimentary system for fiscal impact assessment and regulatory impact assessment.
- There is commitment at the senior management level within the PMO to continue to strengthen the policy management system, e.g. by establishing strategic capacity within the PMO, and by setting up ministerial committees to filter government business.

The main weaknesses remaining in the system are:

- The PMO is not yet able to assist the government in setting priorities and in ensuring that items reaching the government are fully co-ordinated in terms of their substance.
- There are significant weaknesses in the policy development and legal drafting capacities in ministries. Ministries are generally not able to prepare concept papers, to conduct impact assessment, and to draft legislation at an acceptable level of quality.
- The consultation process, both inter-ministerial and with civil society, needs to be improved.
- The system for leading and managing the European integration process needs to be greatly strengthened, including the strategic involvement of the government, the capacity of the Agency for European Integration, and the competences and capacity of the units in ministries.
- The Gazette Office needs to be given help in order to eliminate the backlog and to keep up with the normative output of the government and parliament.

Next Steps

To ensure that Kosovo continues to benefit from the reform of its policy management system, there are three critical requirements in the immediate and medium terms. The first is to sustain the commitment and leadership of the permanent secretaries, especially the Permanent Secretary of the PMO; the second is to ensure that the achievements to date are maintained in the future, regardless of political change; and the third is to continue to strengthen and deepen the reforms that have already been successfully launched.

In particular, the focus of reform of the policy management system in the next two years should be on:

- Further development of capacities in the PMO, especially the establishment of the Strategic Desk in the Government Co-ordination Secretariat (GCS);
- Improving the capacity in the GCS to provide substantive policy support to the government and to guide ministries towards improving the quality of their concept papers and legislative proposals;
- Strengthening the system for managing European integration;
- Building the capacity of ministries to develop policy, including consultation, analysis, impact assessment, and legal drafting; and
- Establishing inter-ministerial committees to filter government business, to be served by the GCS.