



Monitoring Report:

The Principles of Public Administration

KOSOVO*

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LIST OF ABBREVIATIONS AND ACRONYMS

CAO	chief administrative officer
CFO	chief financial officer
CD	Concept Document
CoG	centre of government
CHU	Central Harmonisation Unit
COSO	Committee of Sponsoring Organizations
CPA	Central Procurement Agency
DP	Declaration of Priorities
EC	European Commission
EI	European integration
ERP	Economic Reform Programme
EU	European Union
FMC	financial management and control
GAWP	Government Annual Work Plan (or Programme)
GCS	Government Co- ordination Secretariat
GIZ	German Agency for International Development (<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i>)
IA	internal audit
IT	information technology
KFMIS	Kosovo financial management information system
KIPA	Kosovo Institute of Public Administration
LO	Legislative Office
LPFMA	Law on Public Financial Management and Accountability
MAFRD	Ministry of Agriculture, Forestry and Rural Development
MED	Ministry of Economic Development
MEI	Ministry of European Integration
MoF	Ministry of Finance
MPA	Ministry of Public Administration
MTEF	Medium- term Economic Framework
NDS	National Development Strategy
NPISAA	National Programme for Implementation of the Stabilisation and Association Agreement
OAG	Office of the Auditor General
OPM	Office of the Prime Minister
PCO	Public Communication Office
PFM	public financial management

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List of Abbreviations and Acronyms

PIFC	public internal financial control
PMUPE	Policy and Monitoring Unit of Public Enterprises
POE	publicly owned enterprises
PPL	Public Procurement Law
PPP	public- private partnership
PPRC	Public Procurement Regulatory Commission
PRB	Procurement Review Body
RoP	rules of procedure
SGSP	Steering Group for Strategic Planning
SPC	Strategic Planning Committee
SPO	Strategic Planning Office

INTRODUCTION

Following the comprehensive *Baseline Measurement Reports*¹ prepared by SIGMA in May 2015 for all European Union Enlargement countries against *The Principles of Public Administration*², SIGMA has continued to monitor the progress of public administration reform. The focus of the specific topics within the Principles for assessment by SIGMA in 2016 was selected in co- operation with the European Commission.

This report covers three Principles for the policy development and co- ordination area and four Principles for the public financial management (PFM) area:

- The first chapter focuses on the policy- making system and centre of government (CoG) institutions to analyse whether policy planning is harmonised and institutions are performing all critical functions.
- The PFM chapter analyses the design and implementation of the national financial management and control (FMC) policy and the legislative framework and institutional set- up for procurement functions and the procurement review system.

A more focused analysis is relevant for both areas. The SIGMA 2015 *Baseline Measurement Report* noted problems in co- operation between CoG institutions and a lack of policy- planning and implementation capacities. The recent mid- term planning documents adopted by the Government (including the National Development Strategy) also noted these issues. FMC has also been identified as a challenging area. A new public internal financial control Strategy has been in place for nearly a year and systematic progress was anticipated from a technical assistance project in this area. This report provides some insight as to whether expectations have been fulfilled to date. Finally, a systematic review of the public procurement area was carried out with a specific focus on the capabilities of the Procurement Review Body and the Central Procurement Agency, and the degree to which policies are implemented and procedures are followed in practice.

The report covers the period from May 2015 to April 2016, highlighting the main developments, providing updated values for the indicators relevant to the Principles analysed, and providing both short- and medium- term recommendations for reforms.

¹ SIGMA (2015), [Baseline Measurement Reports](#), OECD Publishing, Paris.

² SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris.

A large teal folder graphic with a light blue tab on the left side. The text "Policy Development and Co- ordination" is centered on the folder.

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and Co- ordination

POLICY DEVELOPMENT AND CO- ORDINATION

1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015- APRIL 2016

1.1. State of play

All of the functions of a well- organised, consistent and competent policy- making system remain in place within the Office of the Prime Minister (OPM), the Ministry of Finance (MoF) and the Ministry of European Integration (MEI), but not all of them are being implemented at the expected level. The biggest challenges remain with the co-ordination of the policy content of proposals for Government decision. Even though the capacities of the OPM's Strategic Planning Office (SPO) have increased and there was better co- ordination within the OPM leading up to the adoption of the National Development Strategy (NDS) 2016- 2021³, the SPO is still not able to ensure quality control before the approval of sectoral strategies.

The alignment between medium- term policy- planning documents has improved, but it is not comprehensive. The National Programme for Implementation of the Stabilisation and Association Agreement (NPISAA)⁴, adopted in 2015, was prepared by the MEI without the involvement of the centre of government (CoG) bodies in their horizontal responsibilities and is only partially aligned with the Government's Annual Work Plan (GAWP)⁵. The Government Co- ordination Secretariat (GCS) is in charge of the process of preparing the GAWP and has ensured co- operation within the OPM through the establishment of Technical Review Teams for reviewing proposals from line ministries. However, the GAWP is prepared with a bottom- up approach, and the review of the GCS does not ensure that the number of activities included in the plan corresponds to the implementation capacities of the ministries. This, alongside the lack of emphasis on the budgetary impacts of policies during the planning stage, results in unrealistic plans and a large backlog in the adoption of strategies, concept documents and laws. The majority of sectoral strategies include systematic information about expenditure needs, but the sources of funding are not always included.

Monitoring of the Government's performance against the central planning documents is in place. However, due to the lack of proper targets and indicators, the monitoring focuses on the activities implemented, not on the outcomes.

1.2. Main developments

Kosovo signed the Stabilisation and Association Agreement with the European Union (EU) on 27 October 2015. As a consequence, it has adopted its first medium- term plan for European integration (EI) activities, the NPISAA.

The adoption of the NDS, which contains the most important strategic commitments and foresees the monitoring of their implementation, is an important step towards a comprehensive medium- term planning system.

The Strategy for Improving Policy Planning and Coordination in Kosovo⁶ was also approved.

The co- operation between CoG institutions was enhanced during the preparation of the 2016 GAWP and the NDS⁷. GAWP Technical Review Teams created within the CoG institutions provided consolidated comments to line ministries on their 2016 GAWP contributions.

³ The NDS was adopted by the Government on 20 January 2016.

⁴ The NPISAA was adopted by the Assembly on 10 March 2016.

⁵ The GAWP for 2016 was adopted on 30 December 2015.

⁶ The Strategy for Improving Policy Planning and Co- ordination in Kosovo was adopted on 3 May 2015.

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The Strategic Planning Committee (SPC), chaired by the Prime Minister and composed of the Deputy Prime Minister(s), the Minister of Finance, the Minister of European Integration and the Minister of Trade and Industry as permanent members⁸, was established in early 2016⁹.

The Government adopted the new methodology for Budget Impact Assessment on 6 May 2015¹⁰.

⁷ Comments provided to the Ministry of Trade and Industry (MTI), the Ministry of Public Administration (MPA), the Ministry of Internal Affairs (MIA) and the Ministry of the Environment and Spatial Planning (MESP) were reviewed during the assessment.

⁸ Other ministers can participate in meetings of the SPC, depending on the subject of discussions.

⁹ Government Decision No 02/70 on the establishment of the SPC of 15 January 2016.

¹⁰ Administrative Instruction No. 03/2015 on Budget Impact Assessment for New Government Initiatives of 6 May 2015.

2. ANALYSIS

This analysis covers three Principles for the policy development and co- ordination area grouped under two key requirements. It includes a short analysis of the indicators of the Principles and a systematic analysis of the functioning of the CoG, policy planning and monitoring.

Key requirements¹¹: Centre of government institutions fulfil all functions critical to a well- organised, consistent and competent policy making system and Policy planning is harmonised, aligned with the Government’s financial circumstances and ensures the Government is able to achieve its objectives.

Indicator values

The functioning of the CoG is examined through one qualitative indicator that covers nine critical functions, as defined in *The Principles of Public Administration*. This indicator analyses the establishment of the functions and how they are implemented. The harmonisation of policy planning is measured through five indicators, which cover the annual implementation backlog of planned commitments; the annual backlog in developing sectoral strategies; the link between funds estimated in sectoral strategies and those taken up in the Medium- term Economic Framework (MTEF); the completeness of financial estimates; and the extent to which achieved outcomes are reported.

In Kosovo, the key CoG functions are established, but co- ordination of the policy content of proposals for Government decision is not adequately carried out. However, an improvement since SIGMA’s last assessment is that most of the reviewed sectoral strategies included information about expenditure needs. Despite this, alignment between sectoral strategies and the MTEF has deteriorated, as the MTEF does not include detailed planning of key objectives across sectors. Reporting on key Government central planning documents still focuses on outputs and does not provide information on the outcomes achieved. The quantitative backlog indicators show improvement compared to 2014, but the recurring substantial backlog of planned commitments and of sectoral strategies under development indicates that not all planning and implementation challenges have been effectively tackled.

	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
Qualitative	1	Proportion of critical CoG functions that are fulfilled by the institutions.	2014	4	2015	4
	3	Completeness of financial estimates in sector strategies ¹² .	2014	1	2015	2
	5	Extent to which reporting provides information on the outcomes achieved.	2014	3	2015	2

¹¹ SIGMA (2014), *The Principles of Public Administration*, OECD Publishing, Paris, p. 21 and 24.

¹² A sample of five recently adopted sectoral strategies is used.

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Quantitative	3	Annual implementation backlog of planned commitments in the central planning document(s).	2014	48.5%	2015	26%
	3	Annual backlog in developing sectoral strategies.	2014	67%	2015	48%
	3	Ratio between total funds estimated in the sectoral strategies and total funding identified for the corresponding sectors within the MTBF ¹³ .	2014	20%	2015	0%

Analysis of Principles

Principle 1: Centre of government institutions fulfil all functions critical to a well- organised, consistent and competent policy making system.

The mandates for the nine critical functions of the CoG have been assigned by the Regulation of the Rules and Procedure of the Government¹⁴ (RoP) and the regulations on internal organisations¹⁵ to the GCS, the Legislative Office (LO), the SPO, the MoF, the MEI and the Public Communication Office (PCO) at the OPM.

Preparation of the Government's sessions is carried out by the GCS, which reviews submitted material and circulates it to the relevant offices within the OPM. Ten per cent of the items submitted to the GCS for inclusion in the Government's agenda were returned to line ministries because they did not conform to the set rules, compared to 25% in 2014¹⁶.

The LO is responsible for ensuring the legal conformity of legislative proposals. Standards for the drafting of normative acts are in place¹⁷, and the LO provides comments on proposals submitted for review¹⁸.

The GCS co- ordinates the preparation and approval of the GAWP in co- operation with the MoF, the MEI, the LO and the SPO. The GCS regularly issues guidelines for the preparation of the GAWP, setting out the timetable for the process and requirements for the content of proposals¹⁹. The Steering Group for Strategic Planning (SGSP)²⁰ – a co-ordinating body comprised of officials from the SPO, GCS, LO, MEI

¹³ The ratio is calculated as a percentage (0% being minimum and 100% being maximum), illustrating the differences in planned funding in the last five strategies adopted and the MTEF. The value of the indicator is the average of the five cases. If it is not possible to make the calculation due to a lack of financial data in the MTEF and/or in all or some sectoral strategies, the ratio is determined as 0%. This was the case for 2015.

¹⁴ Regulation No. 09/2011, Official Gazette No. 15 of 12 September 2011.

¹⁵ Regulation No. 16/2013 on the Organisational Structure of the OPM; Regulation No. 32/2012 on the Internal Organisation and Systematisation of Jobs in the MEI; Regulation No. 44/2013 on the Internal Organisation and Systematisation of Jobs in the MoF.

¹⁶ Based on figures provided by the OPM from the fourth quarters of 2014 and 2015, respectively.

¹⁷ Administrative Instruction No. 03/2013 on Standards for the Drafting of Normative Acts, adopted by the Government on 16 May 2013.

¹⁸ Confirmed during interviews carried out at the OPM.

¹⁹ Guidelines on Drafting and Monitoring the Annual Government Work Plan, prepared annually by the GCS.

²⁰ Government Decision No. 05/83 on the Establishment of the SGSP of 11 July 2012.

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and MoF – reviews the draft GAWP prior to its adoption by the Government. The 2016 GAWP was prepared with a more integrated approach compared with the previous plans. Based on a proposal from the GCS in 2015, Technical Review Teams were established for each line ministry, comprised of the relevant officials of CoG bodies who cover the particular line ministry. The teams provided co-ordinated feedback on GAWP contributions to the line ministries, to ensure the coherence and consistency of central planning documents²¹.

The co-ordinated planning process has not ensured that the GAWP is fully aligned with NPISAA or is in line with the administration's capacities and financial circumstances (see also analysis under Principle 3). The SPC was established in early 2016 as the co-ordination forum at the political level to oversee and guide the planning and prioritisation process²². The Strategy for Improving Policy Planning and Coordination envisages that the SPC will lead the integrated planning process, including determination of strategic priorities of the Government and review of the GAWP before its submission for adoption.

The GCS, in co-operation with the SPO, is responsible for co-ordinating the policy content of proposals for Government decision. The GCS is responsible for the quality control of the Concept Documents (CDs), while the SPO reviews strategic documents to ensure their compliance with the strategic priorities of the Government. Guidelines are available for the preparation and content of both the CDs²³ and the strategies²⁴, but they are not fully adhered to in practice, and the GCS and the SPO do not supervise the process effectively. The SPO lacks the capacity to perform the quality control function before the approval of sectoral strategies (see further analysis under Principle 3). The GCS provides opinions on CDs, but when the analysis shows serious shortcomings in the description of options or in the costing of options (including the preferred option), it does not halt the decision-making process in order to ensure that these are rectified²⁵. In 2015, SIGMA recommended the enhancement of co-operation between the OPM departments and MoF on policy analysis, but the SPO has lacked the capacity to consistently provide comments on CDs²⁶ and CoG institutions, led by the GCS, still only provide co-ordinated feedback at the final review stage of CDs²⁷. This, together with the large number of planned CDs²⁸, creates another challenge for the co-ordination of policy content and for unified policy guidance.

The process for ensuring that the proposed policies are affordable is in place, and the Budget Department of the MoF is responsible for overseeing co-ordination of public sector resource planning. In May 2015, the Government adopted an Administrative Instruction on Budget Impact Assessment²⁹, which replaced the previous inconsistent instructions. According to the Kosovo administration, the new costing method is applied routinely. For example, the MoF's opinions regarding the costs of policy proposals are referred to by the GCS when suggesting items to be included in the Government's agenda³⁰. However, the current approach to scrutiny with regards to Budget Impact Assessment is not systematically applied. The opinions of the MoF focus on whether the budget is available or not. Even

²¹ Based on, among others, the integrated comments provided by the CoG institutions on the 2016 GAWP contribution by the MTI, the MPA, the MIA and the MESP.

²² The Committee was established through the re-organisation of two existing committees: the Fiscal and Budget Affairs Committee and the Public Investment Committee.

²³ Guidelines on Drafting CDs and Explanatory Notes, adopted on 19 March 2012.

²⁴ Administrative Instruction No. 02/2012 on the Procedures, Criteria and Methodology for the Preparation and Approval of Strategy Documents and Plans for their Implementation; Manual for Preparation of Sectoral Strategies of June 2013.

²⁵ Assessment based on the review of the GCS opinions on the CDs on 1) Social Housing, 2) Protection from Air Pollution, and 3) Registration and Records of the Unemployed and Job Seekers.

²⁶ According to the 2015 SPO Activity Report, they provided an opinion on 3 CDs of the 24 that were adopted in 2015.

²⁷ As foreseen by Article 35 of the RoP.

²⁸ For 2016, the list of planned CDs contains 76 items. For 2015, 52 were planned.

²⁹ Administrative Instruction No. 03/2015 on Budget Impact Assessment for New Government Initiatives.

³⁰ See also the GCS opinion on the CD on the Legalisation of Weapons and Surrendering Small Arms and Light Weapons of 30 October 2015.

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though it is one of the responsibilities of the MoF according to the Administrative Instruction on Budget Impact Assessment, it does not assess whether the budget estimates provided by line ministries are sound or if all fiscal impacts have been properly assessed³¹.

According to the RoP, the PCO is in charge of co-ordinating the Government's communication activities. In practice, however, its role is limited to providing access to information. The Government Spokesperson, selected from amongst the serving ministers, covers communication at the political level. Kosovo lacks a co-ordinated approach to communication. The RoP foresees the development of a long-term communication calendar, but it has not been prepared³². There is no clear focus on communication during the policy development process. CDs do not routinely set out how new policies are to be communicated to the public, even though this information should be included³³. The PCO's role as co-ordinator of the Government's communications has not been fully addressed in documents that describe the policy-development process. For example, the PCO's role is not acknowledged in the Manual on the Preparation of Documents for Decision Making.

The GCS is responsible for monitoring the Government's performance against its plans. The progress achieved against the goals of the GAWP is regularly monitored through quarterly and annual reports. The GCS also provides guidance to ministries on how to report on GAWP implementation³⁴. The annual report is published on the Government's website³⁵. The reports focus on the outputs and not on the outcomes and impacts of the Government's activities (see analysis under Principle 5).

Relations between the Government, the President's Office and the Parliament are managed by one person at the OPM, which is the minimum requirement. The RoP regulate the submission of materials from the Government to the Parliament and the representation of ministries at Assembly sessions. There are no additional written procedures for communication, and there is no co-ordinated schedule for meetings with the representatives of the Parliament or the President's Office. In 2015, the GCS organised meetings with the Parliament's Secretariat and staff from the President's Office, but systematic day-to-day working relations and communication have not been established³⁶.

The MEI is responsible for co-ordinating EI affairs, including ensuring that proposed policies are in alignment with EU integration priorities. It led the preparation of the NPISAA and provided guidance for line ministries³⁷. The MEI is responsible for co-ordinating the reporting on the implementation of EI-related activities and has issued guidelines to support the process³⁸.

³¹ Finding based on the MoF opinions on the following CDs and budget impact assessments for strategies: 1) Concept Document on Public Property; 2) Concept Document on the Regulation of Private International Law; 3) Concept Document on the Draft Law on Amending and Supplementing Law No. 03 / L-141 for the Administration of Seized or Confiscated Assets; 4) the Strategy for the Prevention of Violent Extremism and Radicalisation Leading to Terrorism 2015- 2020; 5) the Road Safety Strategy and Action Plan; and 6) the National Strategy Against Human Trafficking in Kosovo.

³² Article 7, paragraph 1.6.

³³ See RoP Article 29, paragraph 5.10. Assessment based on the review of the CD on Regulating the Private Security Services, the CD on Cadastre Issues and the CD on the Issue of Treatment of Constructions without Permit. The first two described public consultation activities under the heading "Communication", and the third concluded that "Changes to the law should be communicated through extensive public outreach, information on the Ministry web site, traditional and social media, and through the municipalities and other interested organizations", without specifying the details of the public outreach.

³⁴ Guidelines on Drafting and Monitoring the Annual Government Work Plan, prepared annually by the GCS.

³⁵ http://www.kryeministri-ks.net/repository/docs/Raporti_Vjetor_i_Punes_se_Qeverise_2015_anglisht.pdf

³⁶ Interviews with the representatives of the GCS held in February 2016.

³⁷ Distributed among line ministries and CoG bodies on 13 May 2015. The guidelines described the structure of the NPISAA, the responsible units who should provide input into the plan and with whom to co-ordinate the input, the timetable for its preparation, and how to report on the preparation of the plan and its implementation.

³⁸ E- mail with guidelines circulated among ministries and CoG bodies on 3 April 2015.

Eight of the nine CoG critical functions defined by the Principles are established and implemented daily at the minimum level expected³⁹. Challenges remain with the co-ordination of the policy content of proposals for Government decision. The value for the indicator on the proportion of critical CoG functions that are fulfilled by the institutions is 4.

The basic CoG functions critical to a well-organised, consistent and competent policy-making system are established. However, implementation challenges remain in several functions, most notably in co-ordinating the policy content of proposals for government decision, co-ordinating preparation and approval of the Government's work programme, and ensuring that policies are affordable.

Principle 3: Harmonised medium-term policy planning, with clear whole-of-government objectives, exists and is aligned with the financial circumstances of the Government; sector policies meet the Government objectives and are consistent with the medium-term budgetary framework.

Kosovo's medium-term policy-planning framework is comprised of six documents. The Medium-term Declaration of Priorities of the Government (DP) provides the overall policy framework set by the Government and is based on the same five pillars⁴⁰ as the Government Programme for 2015-2018. The DP is reviewed annually before the start of the MTEF process, which provides the budgetary outlook for the next three years⁴¹. The NPISAA provides the medium-term planning framework for EI. The NDS was prepared under the leading role of the SPO as the umbrella for all national strategies. It lists Kosovo's strategic priorities for ensuring economic growth, as well as social inclusion and cohesion⁴². However, it does not include any interventions or strategic priorities for modernising health care, which is one of the five priorities in the Government Programme 2015-2018. The Economic Reform Programme (ERP) is prepared by the SPO in co-operation with the Macroeconomics Unit of the MoF. While the NDS deals with national policies on a wider level, the ERP aims to focus on policies dealing with enhancing competitiveness and to harmonise them under a common budgetary framework. Eighty five per cent of the reform measures listed in the ERP are included in the NDS as well⁴³. The DP, MTEF, NPISAA, NDS and ERP have a medium-term planning dimension and, together with individual strategies, provide the basis for developing the GAWP. The Guidelines on Drafting and Monitoring the Annual Government Work Plan for 2016 lists them as the main sources for priority objectives and activities for line ministries.

The GAWP's role is to provide a list of concrete actions needed to achieve implementation of the medium-term priorities of the Government, their deadlines and the bodies responsible for their implementation⁴⁴. Section A of the plan concentrates on activities under the five strategic priority areas⁴⁵, and section B encompasses all other activities of ministries⁴⁶. The Legislative Plan and the List of Strategies provide a summary overview of the GAWP commitments, with the focus on legislation and strategies to be adopted. The list of planned CDs, prepared during the finalisation of the GAWP and approved within 15 days of its adoption, includes all CDs to be developed⁴⁷.

³⁹ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p. 21.

⁴⁰ 1) Economic Development, Employment and Social Welfare; 2) Rule of Law; 3) Education, Science, Culture and Youth Development; 4) European Agenda and Foreign Policy; 5) Modern Health.

⁴¹ RoP, Article 46, paragraph 1.

⁴² These were the underlying principles for selecting the priorities to be included (p. 5 of the NDS).

⁴³ Of the 20 reform measures listed in the ERP, 17 are included in the NDS. The three ERP measures not referenced in the NDS are reform measures 15 (business-academia co-operation), 18 (public employment services) and 19 (opportunities for training and employment).

⁴⁴ RoP, Article 47.

⁴⁵ 177 items in the 2015 GAWP; the same five priority pillars introduced by the Government Programme 2015-2018 and mentioned in the DP and the MTEF.

⁴⁶ 502 items in the 2015 GAWP.

⁴⁷ RoP, Article 48, paragraph 7.

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The RoP state that there should be a high level of co- ordination between the CoG bodies during the preparation of the GAWP⁴⁸. This is also supported by the guidelines issued by the GCS⁴⁹ and through the involvement of the SGSP⁵⁰. The main function of the SGSP is to co-ordinate planning and to harmonise budget and policy planning, including in the area of EI. However, neither the existing process nor the guidelines have been able to ensure that the GAWP is realistic, is fully aligned with other medium- term policy planning documents, or is in line with the administration's capacities and financial circumstances.

The lack of alignment is most apparent with the NPISAA. The preparation of the NPISAA was co-ordinated by the MEI, and the CoG institutions were only involved within the limits of their sectoral responsibilities. The LO was involved in areas such as Electoral Reform, Human Rights and Protection of Minorities, The Legal Framework for Aligning Kosovo's Legislation with the EU *acquis*, and the Ombudsperson⁵¹. The GCS and the SPO were not involved in the preparation process of the plan because they do not have sectoral responsibilities. Even though the guidelines issued by the MEI emphasised the importance of consistency between the NPISAA and other planning documents (specifically mentioning the Legislative Plan), and the draft NPISAA was submitted for consultation before approval in the same way as any other item on the Government's agenda, the NPISAA has not been aligned with the GAWP. Only 58% of the NPISAA activities for 2016 are included in the 2016 GAWP, according to the GCS. Twenty- three of the draft laws which, according to the NPISAA, should be prepared in 2016 are not reflected in the Legislative Plan of the GAWP.

The 2015 GAWP includes only 10 items of secondary legislation, even though it should include all relevant secondary legislation to be adopted in addition to the primary legislation⁵². Several commitments from the ERP are not listed in the Legislative Plan, the overview of Strategies nor the list of CDs that should be adopted in 2016. Examples of ERP items not referenced in the GAWP- based documents include the CD on Public Property, the Innovation Strategy, and the development of a legislative framework for teacher licensing. This makes it more difficult to ensure realistic planning in line with the administration's capacities and available resources.

The cost and funding sources for all activities must be included in the GAWP, according to the guidelines issued by the GCS. However, in the 2016 GAWP practices vary greatly between ministries when it comes to costing items. For example, the Ministry of Foreign Affairs lists no costing information at all and the MoF lists the expected costs for only a few items, while the Ministry of Local Government Administration has all items costed. This hampers realistic evaluation of the affordability of adopted policy plans and leads to problems with implementing the adopted plans. Quarterly reports on the implementation of the 2015 GAWP show lack of budget as one of the main reasons why ministries are not able to achieve the set goals⁵³.

⁴⁸ Article 48, paragraph 1. The GCS co-ordinates the preparation of the GAWP in close co- operation with the MoF, the MEI, the LO and the SPO.

⁴⁹ Guidelines on Drafting and Monitoring the Annual Government Work Plan are annually prepared and circulated among line ministries and CoG bodies. The guidelines foresee a consultation process with the line ministries and the GCS to ensure the higher quality of proposals and the plan. They also provide guidance on the content of the proposals from the line ministries and the structure of the plan, including the obligation to refer to the connection with the European agenda on any activity with such a connection to ensure alignment with the EI plans.

⁵⁰ Government Decision No. 05/83 on the Establishment of the Steering Group for Strategic Planning of 11 July 2012. The group is led by the political adviser to the Prime Minister and assembles key officials from the OPM (directors of three key departments), the MoF (directors of the Budget and the Macroeconomic Departments), the MEI (Director of the EU Assistance Co- ordination Department) and the MPA (Director of the Department for Public Administration Reform Management). According to the guidelines for the preparation of the GAWP, the SGSP reviews the draft GAWP before its submission to the Government for approval.

⁵¹ According to the Institutional division of responsibilities for the preparation of the National Programme for the Adoption of the EU Acquis prepared by the MEI.

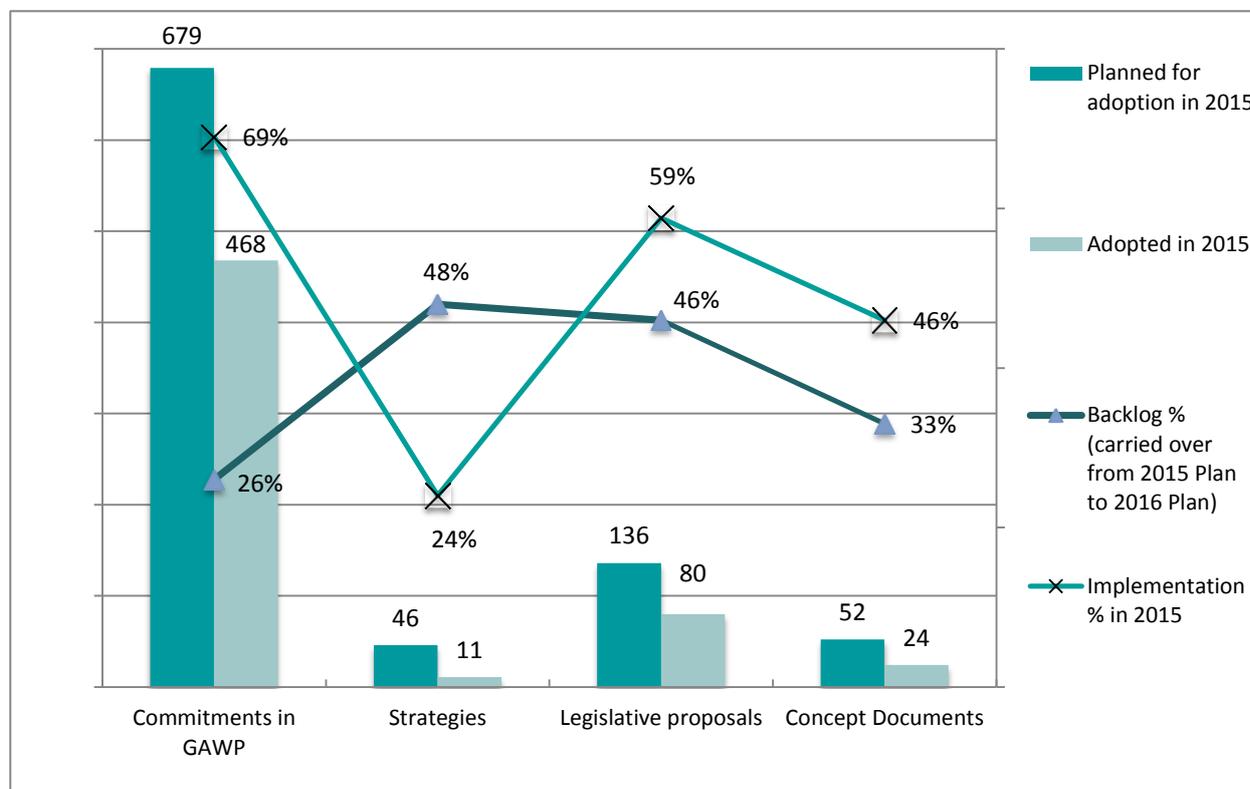
⁵² Regulation No. 13/2013 on Government Legal Service, Article 7, paragraph 3.

⁵³ The 4th Quarter Report on the 2015 GAWP states that the following activities could not be implemented due to a lack of budget: 1) Development and Expansion of Functions of Electronic Services at the TAK; 2) Implementation of Capital

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Compared to 2014, there is a slight decrease in the backlog in commitments planned in the GAWP and in developing sectoral strategies, but the backlog is still high (Figure 1). The overall implementation rate for GAWP activities in 2015 was 69%. It was 69.5% for the strategic priorities (section A of the GAWP), indicating that the implementation rate is not affected by prioritisation by the Government.

Figure 1. Implementation of policy commitments and plans in 2015



Source: Office of the Prime Minister.

The co-ordination of the GCS, its co- operation with other CoG bodies involved in the process, and the functioning of the SPSG do not currently ensure that the GAWP is in line with capacities and available resources, and this is an important factor behind the backlog and the implementation rate. The GCS reviews the contributions that ministries provide for the GAWP, but the RoP does not grant the GCS the authority to exclude items when it deems the planning unrealistic. The line ministries are thus effectively planning the Government’s activities and not the CoG. However, according to the GCS, it has been able to exclude some items from the list of CDs and include others which it has seen as relevant. Therefore, even within the current regulatory framework, the GCS should be able to co-ordinate the preparation of more realistic plans.

Figure 2 shows trends for the development of strategic documents from 2012 to 2015. There were 67 strategic plans in force at the end of 2015⁵⁴. There was a slight decrease in the backlog in developing sectoral strategies when compared to 2014, but the OPM has not been able to ensure that the annual backlog does not exceed the 20% recommended by SIGMA in 2015. For 2016, Kosovo plans the adoption of 41 strategic documents. The 2015 SIGMA *Baseline Measurement Report*⁵⁵ recommended

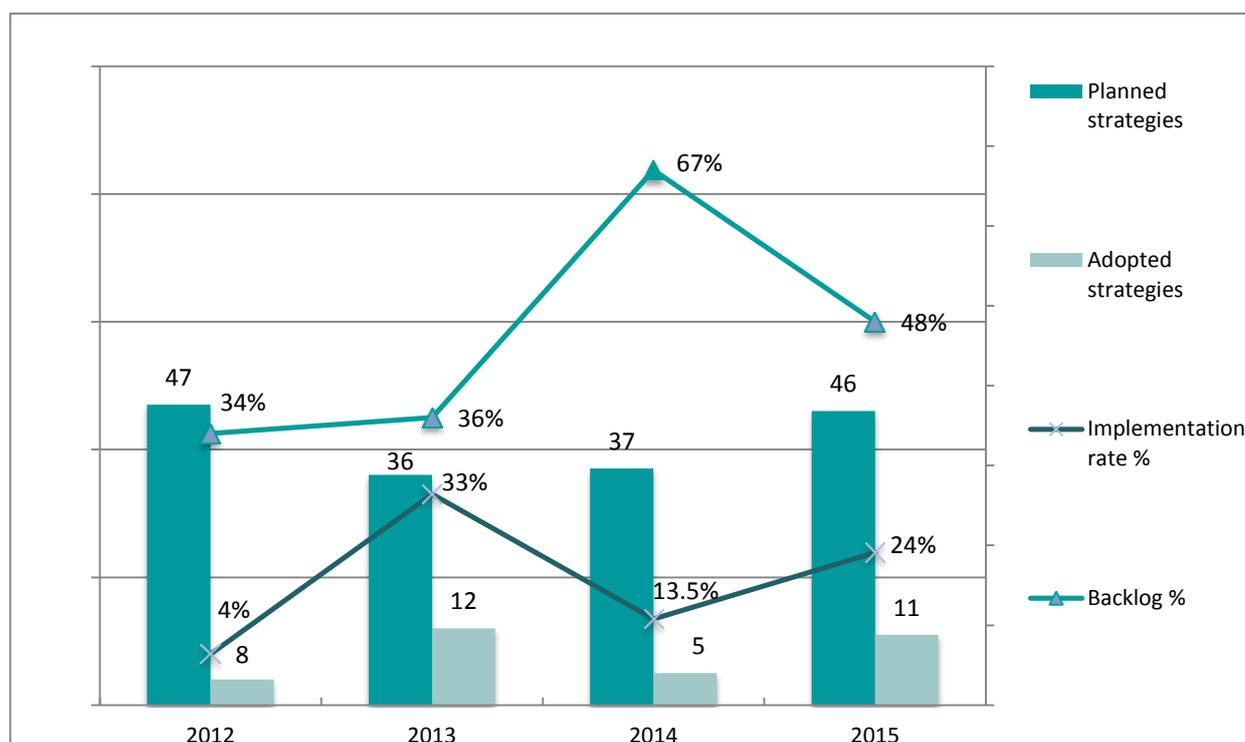
Projects in the Area of IT Infrastructure; 3) Development of the Database for the Management of Housing Requests at the Central and Local Level; 4) Implementation of new Pension schemes; 5) 3 conferences programmed with human rights activists; 6) Support of Farmers; 7) Project for Electronic VAT Bills; and 8) Construction of Power Plant Kosova e Re (New Kosovo).

⁵⁴ Overview of Applicable Strategies for Kosovo 2016.

⁵⁵ SIGMA (2015), [Baseline Measurement Report: The Principles of Public Administration, Kosovo](#), OECD Publishing, Paris.

including only sectoral strategies in the annual plan of strategic documents, and the SPO listed this as the first criterion when asking for submissions to the Plan from line ministries⁵⁶. However, the process for deciding whether a strategy is sectoral does not yet work properly, as the Annual Plan of Strategic Documents for 2016 contains several strategies that do not cover the policy field in full. Examples are the Strategy on Advancing of Agri-food Enterprises, the Strategy on Non-timber Forest Products, the Strategy for Women in ITC and the Strategy in the Field of Forensic Medicine.

Figure 2. Overview of planning, adoption and backlog of strategic documents, 2012-2015



Source: Office of the Prime Minister.

The RoP and further detailed instructions are in place to guide the strategy development process, including financial estimates of the plans⁵⁷. In addition, Kosovo adopted the Strategy for Improving Policy Planning and Coordination in Kosovo in 2015 in order to establish the Integrated Planning System. The Strategy provides a set of operating principles and supporting structures to ensure that government planning and monitoring takes place in an efficient, integrated and harmonised way⁵⁸. The aims of the Strategy include a decrease in the number of sectoral strategies to 20 from 25 and the establishment of the SPC to enable earlier engagement of the political level in the planning process. It also foresees the establishment of the Integrated Planning Calendar, which would harmonise the preparation of all central planning documents (NDS, MTEF, GAWP, NPISAA), as recommended by SIGMA in the 2015 *Baseline Measurement Report*. However, implementation of several actions for improving the planning architecture is already behind schedule⁵⁹.

⁵⁶ According to the 7 December 2015 letter from the SPO to line ministries about the Draft Annual Plan for Strategic Documents for 2016.

⁵⁷ Administrative Instruction No. 02/2012 on the Procedures, Criteria and Methodology for the Preparation and Approval of Strategy Documents and Plans for their Implementation; Manual for the Preparation of Sectoral Strategies of June 2013.

⁵⁸ Strategy for Improving Policy Planning and Co- ordination in Kosovo, p. 5.

⁵⁹ The NDS was adopted four months later than planned. The SPC was established six months later than planned. The following activities remain to be implemented at the time of completing the assessment: approval of criteria for consolidation of sectoral strategies by the SPC (initial deadline September 2015), review of the guidelines for

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The consolidation of the strategic planning system remains a challenge. The SPO is responsible for co- ordinating the strategic planning process but⁶⁰, in 2015, it focused on the preparation of the NDS and lacked the capacity to provide guidance (including training) or perform the quality control function on sectoral strategies. The strategies are prepared by the ministries without following the procedures and content standards set out in the instructions. There are numerous examples of this. The Strategy on Local Self- Government 2016- 2026 does not include expenditure needs or the sources of funding, and although it foresees monitoring and evaluation, it does not provide any indicators or targets to measure the impact of the intended activities. The Multimodal Transport Sector Strategy and Action Plan 2015- 2025 is based on a report from a technical support project finalised in 2009⁶¹, and it describes different scenarios for the development of the transport sector but does not make a choice between them and simply concludes that the implementation of the described scenarios depends on the budget available and political preferences. The Quality Assurance Strategy for Pre- University Education in Kosovo 2016- 2020 was prepared by the Ministry of Education, Science and Technology (MEST) without the involvement of the SPO representative, even though this is required according to the regulation⁶².

The SPO is responsible for ensuring that a proposed strategy does not conflict with or duplicate the existing or proposed strategies of other ministries⁶³. However, several adopted or planned strategies cover similar or even the same areas, thereby creating the possibility for conflict and duplication⁶⁴. The alignment of the strategies with the MTEF is not ensured, even though it is obligatory⁶⁵. The alignment situation has deteriorated since last year, as the MTEF for 2016-2018 was adopted without the detailed data for budget organisations and so includes expenditures only at an aggregate level.

The completeness of financial estimates in sectoral strategies slightly improved from 2014 to 2015, with most of the reviewed strategies including information about expenditure needs, but it is important to note that all of the strategies reviewed were developed with the involvement of donors⁶⁶. The value of this indicator was 1 in 2015, but based on a sample of the five most recently adopted strategies for 2015, the value is 2⁶⁷.

preparation of new sectoral strategies by the SPO (initial deadline September 2015) and approval of the NDS Implementation Roadmap by the SPC (initial deadline 2015).

⁶⁰ RoP, Article 3, paragraph 1.15.

⁶¹ “Technical support to the Ministry of Transport and Communications to continue the development of a transport strategy multi- modal and action plan”.

⁶² Administrative Instruction No. 02/2012, Article 7.

⁶³ According to Article 5 of the Administrative Instruction No 02/2012.

⁶⁴ Kosovo has a separate National Action Plan for Renewable Energy 2013- 2020; a separate Energy Strategy of Kosovo 2009- 2018; separate strategies for environment, air quality, waste management; and several strategies in the field of education and fight against terrorism, to name only a few examples. In addition to the recently adopted Kosovo IT Strategy, the 2016 plan for new strategies includes the Strategy for Women in ITC.

⁶⁵ Administrative Instruction No. 02/2012, Article 10.

⁶⁶ The Quality Assurance Strategy for Pre-University Education in Kosovo 2016-2020 was prepared as a part of the Twinning Project “Support to the Implementation of the Strategic Plan of Education Sector in Kosovo from 2011 to 2016”. The Strategy on Modernisation of Public Administration 2015–2020, was supported by local and international experts funded by the OECD/SIGMA. The Multimodal Transport Sector Strategy and Action Plan 2015- 2025 was prepared as a part of the “Technical support to the Ministry of Transport and Communications to continue the development of a transport strategy multi- modal and action plan”. The Strategy on Local Self- Government 2016- 2026 was prepared with the involvement of the representatives of the World Bank, the German Agency for International Development (GIZ), the United Nations Program for Development, and the U.S. Agency for International Development as observers. Development of the Strategy on Information Technology was supported by GIZ and the Norwegian Ministry of Foreign Affairs.

⁶⁷ The value is based on the analysis of the following strategies: 1) Strategy on Modernisation of Public Administration 2015 – 2020, 2) Multimodal Transport Sector Strategy and Action Plan 2015- 2025, 3) Quality Assurance Strategy for Pre- University Education in Kosovo 2016- 2020, 4) Strategy on Local Self- Government 2016- 2026, and 5) Strategy on Information Technology.

The medium-term planning system is in place with mostly aligned but often unrealistic medium-term planning documents, resulting in high backlogs and low implementation rates. The preparation of the NPISAA was not properly co-ordinated between the CoG bodies and is therefore only partially aligned with the GAWP. The SPO does not perform quality control on sectoral strategies and alignment between sectoral strategies and the MTEF is not ensured, as the latter provides only aggregate-level, medium-term financial direction.

Principle 5: Regular monitoring of the Government's performance enables public scrutiny and ensures that the Government is able to achieve its objectives.

The legal framework establishes the system for monitoring the Government's performance⁶⁸. Monitoring of the implementation of central planning documents (the annual Budget, the GAWP and the NPISAA) is annual, and the reports are publicly available⁶⁹.

The monitoring of the implementation of the GAWP requires ministries to transmit data to the GCS on a quarterly basis, indicating the extent to which each activity has been achieved, specifying whether the deadlines have been met and providing an assessment of the problems encountered during implementation supplemented with recommendations for remedial action. A similar process should apply to the monitoring of the legislative programme's implementation, which is co-ordinated by the LO⁷⁰. Quarterly reports are discussed at the meetings of the General Secretaries of ministries but are not published⁷¹. The annual report is published on the website of the Government⁷².

Both the quarterly and annual reports focus on outputs. The part of the annual report on the implementation of the strategic priorities of the Government contains some information on the outcomes achieved (for example, on the increase in tax income and the increase of foreign investments), but due to the lack of good indicators and performance targets in the GAWP, the impacts of most of the activities are not monitored or systematically evaluated⁷³. The unpublished quarterly reports provide detailed statistical data on the number and proportion of implemented activities for each ministry, as well as a general overview of the main reasons why 31% of the activities were not carried out. However, this level of detail is missing from the published annual report. The section of the report on individual ministries includes very detailed descriptions of the implemented activities without analysing the implementation of the respective plan. In addition, the report does not cover the entire Government, as it lacks information regarding the achievements of four line ministries⁷⁴.

The Government's annual report for 2015 does not include a coherent overview of the execution of the legislative programme. Information about draft laws approved by the Government and submitted to the Parliament is placed under different sections of the published report. It is not clear if the approved drafts were included in the legislative programme nor which acts from the programme were not approved. A separate, publicly available implementation report on the legislative programme does not

⁶⁸ RoP, Article 48, paragraphs 2, 5 and 6, and Article 74, regarding reporting on GAWP and the Legislative Plan. For reporting on strategies, Administrative Instruction No. 02/2012 on the Procedures, Criteria and Methodology for the Preparation and Approval of Strategy Documents and Plans for their Implementation, Article 16. For the Budget report, the Law on Public Financial Management and Accountability, Articles 45 and 46.

⁶⁹ The Budget report is available on the website of the MoF: <http://mf.rks-gov.net/page.aspx?id=2,1> Implementation reports on EI-related activities are available at the MEI website <http://www.mei-ks.net/sq/inputi-per-raportin-e-progresit>. The Annual Government Report for 2015 is available at http://www.kryeministri-ks.net/repository/docs/Raporti_Vjetor_i_Punes_se_Qeverise_2015_anglisht.pdf

⁷⁰ Regulation No. 01/2012 for the Board of Directors of the Legal Department of 29 February 2012. For the purpose of monitoring the implementation of this programme, ministries follow the Guidelines for the Design of the Annual Report of the Work of the Government, Articles/pp. 255- 259, and the Guidelines for Monitoring the Implementation of Government Decisions, Articles/pp. 261- 265.

⁷¹ RoP, Article 55.

⁷² www.kryeministri-ks.net/repository/docs/Raporti_Vjetor_i_Punes_se_Qeverise_2015_anglisht.pdf

⁷³ Assessment based on the Annual Government Report for 2015. Measurement indicators in GAWP also include "adoption of the decision" and "preparation of the draft".

⁷⁴ The Ministry of Justice, the MEST, the Ministry of Labour and Social Welfare, and the Ministry of Health.

exist. Overall, monitoring of the Government's performance does not reach its full potential as a management tool or an accountability tool.

Kosovo's biannual input into the annual EC Progress Report was used to monitor the implementation of EI- related activities prior to the adoption of the NPISAA. The reporting on the achievements that the Government committed to in the NPISAA is separate from the reporting on the GAWP. As only 58% of the activities from NPISAA for 2016 are included in the 2016 GAWP, coherent monitoring of the NPISAA commitments is not possible, at least for 2016. In addition, ministries are burdened by double reporting requirements on the items that are listed under both the GAWP and the NPISAA.

Detailed reporting on the implementation of sectoral strategies remains rare. Even though ministries are obliged to monitor the implementation of the strategies, and the SPO may require reports on the implementation of strategy documents that relate to the priorities of the Government⁷⁵, there is no requirement to compile regular implementation reports and submit them to the Government nor are sectoral strategies systematically subject to evaluation. To illustrate the current lack of reporting on strategies, the progress on the implementation of the Better Regulation Strategy remains unclear⁷⁶, as no progress reports have been produced. Based on interviews held in February 2016, the only progress made in 2015 was training a limited number of government officials on providing training on Regulatory Impact Assessment, whereas the Better Regulation Strategy, for example, commits the Government to reducing inspections by 20% by 2015 and 40% by 2020, and to reduce administrative burdens by 20% in 2020, based on the Standard Cost Model approach. Since evidence-based policy making is part of the NDS⁷⁷, reporting on at least a part of the Better Regulation Strategy should start in 2016⁷⁸, more than a year after the Strategy's adoption.

There is no comprehensive report on the outcomes of the Government's activities. The GAWP report focuses only on outputs. Implementation of sectoral strategies is not systematically monitored even at the level of outputs. The value for the indicator of the extent to which reporting provides information on the outcomes achieved is 2. The situation has not deteriorated since 2014, even if the value assigned by SIGMA was 3. The difference in values comes from the fact that this year only publicly available documents are included in the analysis.

The Government does not have a well- functioning system to regularly monitor its performance and attainment of stated policy objectives, as the annual planning documents generally are not outcome- oriented and lack good indicators and targets. The annual report is not consistent and lacks a coherent overview of the implementation of the legislative programme. There is no regular monitoring of the implementation of sectoral strategies.

⁷⁵ Administrative Instruction No. 02/2012, Article 16.

⁷⁶ A Strategy under the responsibility of the LO in the OPM.

⁷⁷ NDS priority #11 on "Encouraging evidence- based policy making".

⁷⁸ Reporting on the NDS should start in 2016 and is to be integrated into the reporting on the GAWP. However, the NDS does not list annual commitments for each priority, which makes it difficult to assess whether the activities should be taken up in 2016 or later. Some of the 2016 GAWP activities refer to the NDS in general but not to the specific measure or NDS activity. This puts at risk the possibility of effectively monitoring and evaluating the impact of the NDS together with GAWP monitoring.

Key recommendations

Short- term (1- 2 years)

- 1) The OPM should improve its competencies and enhance co-operation among key departments and with the MoF on policy analysis. CoG bodies under the co-ordination of the GCS should provide effective guidance and apply more rigorous quality control to all policy proposals submitted to the Government.
- 2) The OPM should strengthen the SPO's capacities so it fulfils its existing responsibilities in co-ordinating the strategic planning process. The SPO should increase scrutiny of the development of sectoral strategies by steering the planning of strategies, ensuring alignment between strategies and alignment of strategies with central planning documents. The SPO should also promote the use of performance indicators during the development of sectoral strategies to enable outcome-level reporting.
- 3) The OPM should reduce the number of strategies carried over to the next year by improving planning and ensuring that only sectoral strategies are included in the annual plan of strategic documents.
- 4) The GCS, in co- operation with all CoG bodies, should assess whether the activities proposed by the line ministries for the GAWP can be implemented during the intended timeframes and with the available resources. Activities which do not meet the criteria should be excluded. The SGSP should fulfil its role in ensuring that the GAWP is realistic, includes all the Government activities foreseen by the medium- term plans (in particular the NDS and the ERP) and takes into account the implementation costs of planned commitments.
- 5) Under the co-ordination of the SGSP and using the Departments of European Integration and Policy Co-ordination in ministries, the OPM, MEI and MoF should harmonise the development process of the GAWP, MTEF and NPISAA. The CoG institutions should ensure the alignment of the plans in order to have a coherent overview for the Government on the implementation of activities and achievement of objectives.
- 6) Under the co-ordination of the SGSP, the OPM and MEI should harmonise (and, if possible, merge) the monitoring of implementation of the GAWP and NPISAA.
- 7) The publicly available annual report of the Government should provide a clear and concise overview of how the Government was able to implement its annual plan, including the legislative programme.
- 8) The OPM should improve the approach to communicating the Government's messages by implementing the functions envisaged in existing regulations, including the preparation of the Government's communication calendar. The requirement that policy proposals should include a communication plan should be followed in practice.
- 9) The Budget Department of the MoF should deepen its scrutiny of Budget Impact Assessments. The Ministry should not just assess whether expenditures are within budget but should also cover issues such as the cost- effectiveness and efficiency of policy and legislative proposals.

Medium- term (3- 5 years)

- 10) The OPM should launch a Government reporting system on the implementation of sectoral strategies. Regular reporting on strategies should be gradually introduced, initially on selected strategies at the SPO's request or on the initiative of the ministry who prepared the strategy. At a later stage, the systematic mid- term and final evaluation of the implementation of strategies should become obligatory.
- 11) The OPM, together with the MoF, should create a mechanism for reporting on the GAWP and MTEF policy outcomes by establishing targets and performance indicators during the planning process. The measurement indicators used in the GAWP should enable the assessment of the impacts of implemented policies, not just the outputs of activities.



PUBLIC FINANCIAL MANAGEMENT

1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015- APRIL 2016

1.1. State of play

The main elements required for an effective framework of financial management and control (FMC) are in place, including the Law on Public Financial Management and Accountability (LPFMA)⁷⁹, subsidiary legislation and extensive procedures (such as a manual for FMC). A Strategy is in place for public internal financial control (PIFC) development for the period 2015–2019⁸⁰, together with an Action Plan.

The situation with implementation of FMC among public organisations is less advanced. Weaknesses persist in all aspects of FMC, although formal accountability procedures are established in most ministries (for example, heads of department are the authorising officers for their respective budgets). Risk management requires the most development. Ministry of Finance (MoF) surveys of progress in budget organisations refer to a lack of real understanding of FMC requirements. These surveys are currently based on self-assessments, and there is little validation of the information provided, which suggests that progress is likely to be worse than reported. The MoF does not carry out systematic quality reviews of FMC in individual public organisations, although three pilot reviews of individual organisations were carried out in 2015. There is some delegation of budgets within ministries, but more work is required on implementation of managerial accountability.

The legal framework for public procurement, which covers utilities, concessions, public- private partnerships (PPPs) and remedies, is largely aligned with the European Union (EU) *acquis communautaire* on public procurement, including some provisions of the 2014 EU Directives on public procurement. However, the legal framework does not include primary legislation on defence procurement, although it envisages preparation and adoption of related secondary legislation. The 2016 amendment of the Public Procurement Law (PPL) removed a clause on preferential treatment for domestic bidders, which was in conflict with the basic principles of the EU *acquis*. The Public Procurement Regulatory Commission (PPRC) has updated around 80%⁸¹ of the secondary legislation in line with the 2016 amendment of the PPL.

The institutional set- up is in place, with clear allocation of competences but with problems in exercising the functions and duties allocated to the bodies concerned. Until new appointments were made in March 2016, the Procurement Review Body (PRB) was lacking three members out of five and neither the Central Procurement Agency (CPA) nor the PPP Department have the full number of staff members.

1.2. Main developments

The new PIFC Strategy was adopted by the Government in April 2015, supported by an Action Plan which includes a number of relevant activities to promote FMC development among public organisations. The implementation of the Action Plan has seen a slow start, with around half of the activities implemented that were planned for 2015 in relation to FMC. There are tangible plans in the form of drafts for new legislation to overcome deficiencies in the current arrangements (for example, the lack of a framework for management of irregularities or limited support for managerial accountability) and bring together all requirements of PIFC, but this was not approved in 2015 as

⁷⁹ Law No. 3 / L- 048 on PFM and Accountability of 13 March 2008, with subsequent amendments.

⁸⁰ MoF (2015), PIFC Strategy 2015–2019.

⁸¹ As reported by the PPRC in an e- mail to SIGMA on 27 April 2016.

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anticipated. The related Concept Document (CD) for the development of the new legislation has been approved by the Government⁸².

The Central Harmonisation Unit's (CHU) annual report on progress in the implementation of PIFC, which includes FMC and internal audit (IA), is presented each year to the Government and the Assembly. For the first time, in 2015, the Assembly Committee for Oversight of Public Finances issued recommendations that support the CHU in its implementation of PIFC.

The MoF's Treasury Division has upgraded the software underpinning their Kosovo financial management information system (KFMIS). There has been some degradation of performance with the KFMIS in the short term and difficulties with reporting directly from the system. However, the new version provides better facilities for exporting data to other software packages to facilitate the preparation of financial management information to suit the budget organisations' needs.

On 21 January 2016, the PPL was amended with the following effects⁸³, among others:

- A provision on preferential treatment for domestic bidders was removed (addressing the medium- term recommendation in SIGMA's 2015 *Baseline Measurement Report*).
- As of January 2016, when the Chairman of the PRB resigned from his position, the PRB had only two active board members, with the effect that the PRB was no longer able to review cases with a value higher than EUR 50 000.
- The validity of all procurement officers' certificates will expire on 31 December 2016⁸⁴, which means that the PPRC will have to retrain and recertify all officers during 2016.

Most of the new and updated secondary legislation required for the implementation of the amended PPL had not been issued by the PPRC when the amended PPL came into force on 1 March 2016.

Although announced for 2015, it was only in February 2016 that the PPRC selected six contracting authorities for the pilot phase of an e- procurement project. E- procurement became mandatory for the CPA on 1 April 2016⁸⁵.

Despite the recommendation in SIGMA's 2015 *Baseline Measurement Report*, the EU Directive on defence procurement has not been transposed. However, the 2016 amendments to the PPL envisage the adoption by the Government of a regulation on procurement for defence and security purposes⁸⁶. The Strategy for the longer- term development of the public procurement system has not yet been adopted. There are no improvements in the reporting on public procurement proceedings or the comprehensiveness and accessibility of information available to contracting authorities, economic operators and other parties.

⁸² MoF concept paper (2016), Improving the Legal Framework for PIFC System.

⁸³ Law No. 05/L- 068 on amending and supplementing Law No. 04/L- 042 on Public Procurement, amended and supplemented with Law No. 04/L- 237, Official Gazette No. 1/2016, 6 January 2016, <http://gzk.rks-gov.net/ActDetail.aspx?ActID=11332>

⁸⁴ Law No. 05/L- 068, Article 11.

⁸⁵ Law No. 05/L- 068, Article 67; Government Decision No. 12/79 of 15 March 2016.

⁸⁶ Law No. 05/L- 068, Article 3.

2. ANALYSIS

This analysis covers four Principles for the public financial management area, grouped under two key requirements. It includes a short analysis of the indicators of the Principles and a systematic analysis of the current situation and developments since the last assessment.

Key requirement⁸⁷: National financial management and control policy is in line with the requirements of Chapter 32 of European Union accession negotiations and is systematically implemented throughout the public sector.

Indicator values

The functioning of FMC is examined through one qualitative indicator, covering ten critical elements of an effective framework, complemented by two quantitative indicators to analyse to what extent basic conditions for FMC are in place. There is a third quantitative indicator within the SIGMA Principles framework for which data is not available in the case of Kosovo. The values for the second and third indicators in the table below are the same, as all organisations with alignment between management and budget structures also ensure regular financial information is provided to the managers.

The operational framework for the development of FMC is largely in place, with limited changes over the past year resulting in the same indicator value. Basic administrative preconditions for enabling the development of accountability in financial management have remained largely the same, although the two indicator values have changed slightly.

⁸⁷ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p. 87.

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	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
Qualitative	6	Extent to which the operational framework for FMC is complete, in place and applied.	2014	3	2015	3
Quantitative	7	Share of first-level budget organisations where budget structure is aligned with the organisational structure.	2014	93% ⁸⁸	2015	81% ⁸⁹
	7	Share of first-level budget organisations where delegated budget holders below minister or secretary-general level receive at least monthly information on financial commitments and spending against the Budget within their part of the Budget.	2014	93%	2015	81%
	7	Wastefulness of Government spending (The World Economic Forum).	2014	Not available ⁹⁰	2015	Not available ⁹¹

Analysis of Principles

Principle 6: The operational framework for financial management and control defines responsibilities and powers, and its application by the budget organisations is consistent with the legislation governing public financial management and public administration in general.

The operational framework for FMC consists of legislation⁹², secondary legislation and more detailed procedural guidance (for example, a manual for FMC)⁹³. This framework applies to ministries, agencies and municipalities, but not to publicly owned enterprises (POEs). The five elements of the Committee of Sponsoring Organisations of the Treadway Commission (COSO) are mentioned in Treasury Regulations⁹⁴ and explained in more detail in the FMC manual.

⁸⁸ Data calculated and provided to SIGMA by the MoF in March 2015.

⁸⁹ Data collected and calculated by SIGMA based on the 2016 annual budget and the organisational structures of the central government institutions in March 2016. In the 2016 assessment, SIGMA analysed further sources of information to verify the indicator.

⁹⁰ Kosovo is not included in the annual *World Economic Forum Global Competitiveness Report*.

⁹¹ Ditto.

⁹² Law No. 3/L-048 on Public Financial Management and Accountability of 13 March 2008, with subsequent amendments.

⁹³ MoF (2011), FMC Procedure Manual, developed with assistance from the previous EU technical assistance project.

⁹⁴ MoF, Treasury Financial Rule 01/2010, FMC of 30 July 2010.

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POEs are subject to separate specific legislation⁹⁵ and also to the general accounting and reporting requirements of joint stock companies⁹⁶. The specific legislation does not include a requirement for FMC to be implemented or mention COSO principles. However, all POEs are required to introduce audit committees whose duties include verification of the proper function of internal controls and reporting to the Board⁹⁷.

The overall administrative framework is not fully harmonised with current PIFC requirements. For example, there is inconsistency in roles and responsibilities compared to FMC requirements (discussed below). The COSO Internal Control Integrated Framework has changed since the framework in Kosovo was set up. There are plans to address these and other issues through new PIFC legislation, which is still at the concept stage⁹⁸, but which is planned to replace separate legislation covering FMC and IA.

The framework for managerial accountability is not fully in place. Most of the central government organisations have alignment between management and budget structures. In these cases, operational managers are regularly informed of the financial progress. Responsibilities are defined for a range of roles, including head of budget organisation, chief administrative officer (CAO)⁹⁹, authorising officer, certifying officer and chief financial officer (CFO). There is also a legal structure for the delegation of functions from the CAO¹⁰⁰ and for the delegation of budgets¹⁰¹. However, the current structure does not ensure effective FMC. The head of the organisation is responsible for policy implementation, but the CAO is responsible for signing financial statements, which show the resources used for policy implementation. Certifying officers are responsible for detailed checking against contracts and other documentation, but this happens late in the payment process – after sign-off by authorising officers – and they are frequently at a junior level, which, in practice means that they are not always in a position to challenge the decisions taken. The MoF has agreed to improve the current position with the planned PIFC Law, which will have, for example, clearer provisions for delegation of power and reporting to higher levels of authority¹⁰².

The MoF continues to use several separate information technology (IT) systems to manage the overall budget process: the budget development management system, the public investment planning system, KFMIS, the payroll information system, e- procurement and e- assets. These IT systems are not appropriately linked (for example, the e- assets and assets modules in KFMIS are not integrated with the other PFM software), increasing the workload and the risk of error with multiple manual insertions of data. In 2015, the MoF Treasury Department upgraded the software which underpins KFMIS. The increased computer resource requirements of the new software caused some degradation of performance, and there are problems in reporting directly from the system. However, the new version provides better facilities for data to be exported, in a range of formats, to other software, such as Excel. This facilitates the analysis and preparation of financial management information to suit the budget organisations' needs. The new PIFC Strategy refers to improvement, design and integration of IT applications to provide adequate internal control in PFM, but it does not itemise the steps needed or prioritise them (the Action Plan says that work will be undertaken in phases, depending on resources). The Strategy does not refer to the need to provide improved management information, such as bringing in performance information, to support managerial accountability. No information is given on

⁹⁵ Law No. 3/L- 087 on POEs of 15 June 2008.

⁹⁶ Law No. 04/L- 014 on Accounting, Financial Reporting and Audit of 29 June 2011, which requires companies to comply with International Financial Reporting Standards and, for large companies with consolidated accounts, also EU Directive 78/660/EEC.

⁹⁷ Law No. 3/L- 087 on POEs, Article 25.2(e) of 15 June 2008.

⁹⁸ MoF (2016), Concept Paper for Improving the Legal Framework for PIFC System, 2016.

⁹⁹ Secretary general or mayor of a municipality.

¹⁰⁰ Law No 3/L-048 on PFM and Accountability, Article 10.2(c). of 13 March 2008

¹⁰¹ MoF, Treasury Financial Rule 01/2010, Article 7, Key Participants in the Accountability Chain.

¹⁰² MoF (2016), Concept Paper for Improving the Legal Framework for PIFC System, Section 2, the description and definition of the main issue/problem.

the nature of the changes required or the timing. Furthermore, there is no centralised IT management to facilitate whatever changes are needed.

Kosovo does not have management and control systems for EU funds as the European Commission currently undertakes the necessary tendering, contracting and payments.

The new PIFC Strategy for 2015- 2019 builds on progress made to date but emphasises actions to improve FMC rather than the already improved IA¹⁰³. For FMC, the objectives of the Strategy focus on managerial accountability and risk management. There is an extensive range of proposed actions to support the plan, the majority of which involve the CHU, but these also include actions for other parts of the MoF, as well as the Ministry of Public Administration (MPA) (for example, defining roles) and the Ministry of Economic Development (MED) (for example, involving POEs). A significant number of the actions proposed in the new plan for 2015 were dependent upon the planned new PIFC Law, and its delay has restricted implementation of the new Strategy during the year. Three activities out of nine planned for 2015 were completed, while most of the remaining activities included tangible steps to start the work. Most of the activities were carried out with active support from the EU- funded technical assistance project, which ended in April 2016.

The MoF set up a CHU for PIFC in accordance with an amendment to the LPFMA¹⁰⁴. The amendment defines the roles and responsibilities of two CHUs for FMC and IA. For FMC, these include drafting secondary legislation for signature by the Minister of Finance and monitoring implementation of regulations on the basis of annual reports received from budget organisations. The two CHUs were merged in the end of 2014 but retain specific staff dedicated to FMC and to IA. FMC training, such as risk management, is now provided by the Kosovo Institute of Public Administration (KIPA), along with other professional and technical training programmes for public servants.

Legislation underpinning the CHU requires it to prepare an annual report on progress regarding PIFC implementation¹⁰⁵. This is submitted to the Government and then considered by the Assembly Committee for Oversight of Public Finances before being reported to the Assembly itself. In 2015, for the first time, the Committee, on behalf of the Assembly, issued recommendations that support the CHU in its implementation of PIFC. However, for FMC, these required action by the CHU rather than by individual budget organisations, such as the CHU developing a plan for completion of questionnaires, rather than specific institutions completing their questionnaires.

There is no financial inspection regime.

Taking into account these weaknesses, the value for the indicator on the operational framework for FMC remains 3.

The overall framework for FMC is largely in place, but the CHU has identified deficiencies, and it needs to be harmonised with other legislation, as well as reflect changes in the COSO Integrated Framework. The administrative framework for managerial accountability is established but is not fully in place throughout central government organisation.

¹⁰³ MoF (2015), PIFC Strategy 2015–2019.

¹⁰⁴ Law No 04/L- 194, Article 6 on Amending and Supplementing Law No. 03/L- 048 on Public Financial Management and Accountability, amended and supplemented with By- laws No. 03/L- 221 and No. 04/L- 116 of 12 July 2013.

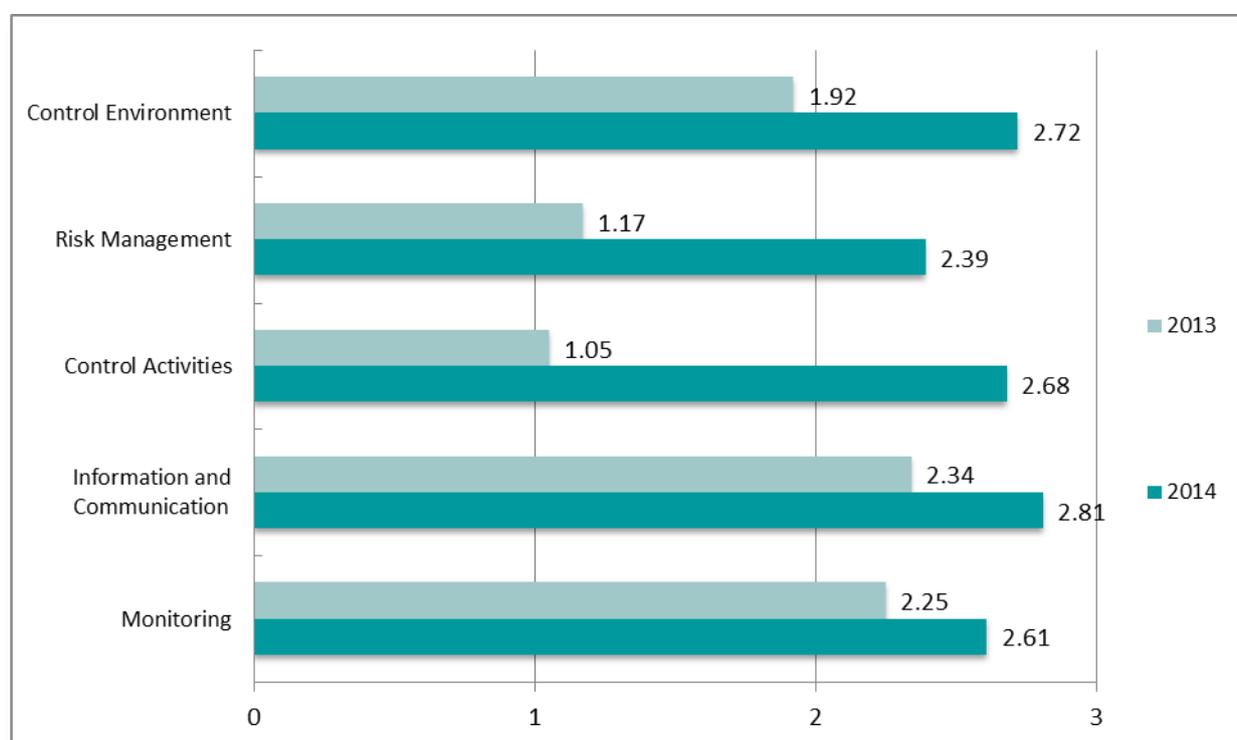
¹⁰⁵ MoF (2015), Annual Report on the Functioning of the PIFC System in the Public Sector Kosovo 2014, March 2015.

Principle 7: Each public organisation implements financial management and control in line with the overall financial management and control policy documents.

Implementation of FMC within budget organisations continues to lag behind development of the overall framework. The CHU annual report on FMC implementation in budget organisations (see Principle 6 above) refers to a lack of understanding of FMC requirements and a particular lack of progress with risk management.

The CHU annual report is largely derived from a questionnaire- based self-assessment survey of progress with the implementation of FMC (and IA) each year. The extensive questionnaire includes 114 questions, some requiring progress to be graded and others requiring yes/no responses, and is based on the elements of the COSO framework that form the basis of Kosovo’s national FMC requirements. Completion of the survey is mandatory for budget organisations, yet, while the figure has improved over time, only 83% of central government organisations and 66% of municipalities completed the survey in 2014 (Figure 3).

Figure 3. Average of responses to the key areas in the 2013 and 2014 FMC questionnaires



Note: 1 being a situation when the specific aspect of FMC is yet to be applied in a budget organisation, 2 partial implementation and 3 being complete implementation.

Source: Ministry of Finance, Public Internal Financial Control annual report, 2013 and 2014.

The MoF Annual Report 2013 expressed the concern that budget organisations did not fully understand FMC concepts and managerial accountability. Against this background, and noting the steep increases in self-assessment grading without significant changes in the system, it is unlikely that a self-assessment provides a rational and challenging view of progress with FMC. To counter this risk, the CHU has carried out discussions with three budget organisations to validate their self-assessments for 2014, but this still leaves uncertainty about the accuracy of both the self-grading information provided by the majority of budget organisations and the relative grading among organisations.

In accordance with legal requirements, organisations required to implement FMC have appointed a CFO. However, this role is limited to maintaining the financial records at budget-user level rather than developing the effectiveness of the system of internal control. In addition, the detailed nature of the annual budget and various other reporting requirements lead to an increased workload that keeps the

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focus of financial management on annual budget execution, limiting development of more strategic financial management.

Some first- level organisations have delegated budgets to line managers, but not all. The Ministry of Health has delegated budgets to heads of division, but the Ministry of Agriculture, Forestry and Rural Development (MAFRD) has not undertaken such delegation. The Ministry of Education, Science and Technology (MEST) currently has centralised budgets without delegation.

All budget organisations have access to financial management information from KFMIS. Each of the organisations above provides extensive financial information to management about detailed transactions and performance against budget and cash allocation. This is regardless of whether there is delegation of budgets. In some cases, information is provided on a daily basis and to the highest levels of management, reflecting the need for organisations to remain within strict budgets and cash allocations. The MEST uses spreadsheets to sort information downloaded from KFMIS by objective to match its plans and structure. Overall, copious information is provided, but none of the reports analysed by SIGMA link resources used with the achievement of targets or other objectives.

Second- level agencies are also required to implement FMC, but their position is less clear. In addition to 89 first-level budget users, the MoF survey includes 18 of the largest second- level organisations, such as the tax and customs administrations. However, a summary of agencies linked to ministries prepared by the Office of the Auditor General (OAG) shows 68 organisations (including those 18 in the CHU survey). Clarity as to their position is also hampered by a split in responsibility, with many agencies answering directly to the relevant minister, while the CAO¹⁰⁶ is tasked with the implementation of FMC without direct delegated authority for this in the related agencies. There is a general lack of clarity on the status and structure of agencies, with different arrangements for reporting and producing annual financial statements (the OAG found that only 22 of the 68 identified agencies produce annual financial statements)¹⁰⁷. In 2014, there were 30 organisations, excluding ministries and constitutional bodies, reporting directly to the Parliament or the Prime Minister. This high number of independent agencies is likely to reduce the ownership of senior civil servants within ministries over these respective policy areas.

There are different governance arrangements for the 17 central and 43 local POEs. Technically, all are joint stock companies and subject to specific legislation. For the central POEs, the Government's shareholder rights are exercised through the Policy and Monitoring Unit of Public Enterprises (PMUPE) in the MED. There are currently no links between POEs and the line ministries in whose sectors they operate, limiting co- operation on the provision of public services. The PMUPE prepares annual reports summarising POE performance for consideration and action by the Government. The last report considered by the Government related to 2012, while subsequent reports are still published as drafts. The analysis of POE financial performance does not include normally accepted benchmarks, such as return on capital employed. For local POEs, shareholder rights are exercised through municipal shareholder commissions which report on performance to the municipal assembly annually.

Budgets are allocated by the MoF Budget Department for line ministries and other budget organisations, as required by the Government. There was no obvious linkage between the Government's stated priorities¹⁰⁸ and the Ministry's plans reflected in budgets allocated. For example, programmes in the MAFRD are both short-and medium-term priorities, yet the Ministry reports budget reductions in the medium term. The allocated budgets are not linked to a tailored plan of action matching the level of resources provided to support accountability and monitoring. Without that tailored plan and clear deliverables, it is not possible to track the value for money in the provision of public services, which is a key element of managerial accountability.

¹⁰⁶ MoF, Treasury Financial Rule 01/2010 FMC, Article 2 of 30 July 2010, Definition of Accountable Officer (also referred to as CAO, Secretary General or mayor in a municipality).

¹⁰⁷ OAG, list of autonomous/executive agencies.

¹⁰⁸ Strategic Priorities of Government, GAWP for 2015.

Budget organisations have internal rules and procedures, but these are still evolving in compliance with FMC requirements. Ministries have mentioned additional internal controls being introduced to meet FMC requirements, and authorisation for payment is still often required from the CAO without any financial thresholds¹⁰⁹. Together with limited delegation, this indicates that there is still some way to go in adopting the managerial accountability concept, which usually involves more direct responsibility and discretion for managers. However, the level of control does provide an audit trail of key financial decisions.

FMC implementation in budget organisations lags behind the development of the overall framework. There is a good level of formal budget delegation, supported by management information, but the accountability lines with independent agencies and POEs operating within the areas of ministries are not supporting clear ownership of the policy area of the ministry in many cases.

Key recommendations

Short- term (1- 2 years)

- 1) The MoF should start regular reviews on FMC in individual budget organisations to carry out more detailed follow- up of its questionnaire, gathering evidence and practical lessons directly from public institutions on a sample basis to provide greater insight into the findings and guidance for wider implementation of FMC.
- 2) The MoF should clarify, simplify and, where necessary, restructure roles and responsibilities in financial management for heads of budget organisations, CAOs, authorising officers, certifying officers and CFOs to ensure effective FMC.
- 3) The MoF should analyse existing practices in budget management, human resource management and other areas that determine managerial responsibilities in the public sector, and, in advance of adopting the planned PIFC Law, identify provisions of the PIFC regulation that need to be aligned with other national regulations.
- 4) The MoF should monitor the effectiveness of the financial management training programme for relevant public sector employees currently being run by the KIPA.
- 5) The MoF should define more precisely the IT changes that are needed to support the further development of FMC.

Medium- term (3- 5 years)

- 6) In co- operation with the MPA, the MoF should analyse existing agencies in terms of structure and reporting arrangements to ensure that, where appropriate, their activities are co- ordinated with those of the parent ministry to aid public service delivery and that there is rigorous monitoring of overall performance and of FMC implementation.
- 7) The MED should ensure effective policy collaboration between POEs and line ministries for the sectors within which they operate.
- 8) In co- operation with the MPA, the MoF should ensure, through close monitoring, that arrangements for delegated authority are put into practice in budget organisations.

¹⁰⁹ Interviews with the sample of ministries visited during the SIGMA fact- finding mission of February 2016.

Key requirement¹¹⁰: Public procurement is regulated by duly enforced policies and procedures that reflect the principles of the Treaty on the functioning of the European Union and the European Union *acquis*, and are supported by suitably competent and adequately resourced institutions.

Indicator values

The key requirement for harmonisation of public procurement regulations with the EU *acquis*, as well as the establishment of corresponding institutional structures and arrangements, is examined through six qualitative indicators. The first two describe the extent to which the legislation is complete and enforced, covering the eight main goals defined in Principle 10 and the openness of policy making and monitoring. The next two indicators concern the development and implementation of the policy framework and the existence and performance of a dedicated institution for central procurement functions. The last two indicators cover the effective monitoring of the public procurement system and the extent to which information about its workings is readily available to all interested parties.

In Kosovo, a legal and institutional framework for public procurement is in place, despite certain gaps in conformity with the *acquis*, especially concerning defence procurement. The strategic framework for the public procurement system has yet to be adopted. Evidence of public consultations on draft regulations in the manner prescribed by law has been found for secondary legislation but not for all amendments to the PPL. Regular reports on public procurement are prepared and published.

	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
Qualitative	10	Extent to which public procurement legislation is complete and enforced.	2014	4	2015	4
	10	Nature and extent of public consultations during the process of developing regulations for public procurement and monitoring their use and appropriateness.	2014	3	2015	2
	11	Extent to which policy framework for public procurement is developed and implemented.	2014	2	2015	2
	11	Extent of coverage by dedicated institutions of the central procurement functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources.	2014	4	2015	2
	11	Comprehensiveness of systems for monitoring and reporting on public procurement proceedings and practices.	2014	3	2015	3

¹¹⁰ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p. 96.

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	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
	11	Clarity, timeliness, comprehensiveness and accessibility of information available to contracting authorities and entities, economic operators and other stakeholders.	2014	3	2015	3

Analysis of Principles

Principle 10: Public procurement regulations (including public- private partnerships and concessions) are aligned with the acquis, include additional areas not covered by the acquis, are harmonised with corresponding regulations in other fields and are duly enforced.

The PPL covers both the classical and utilities sectors, but not all procurement procedures are available to contracting authorities¹¹¹. The provisions on utilities do not make use of all available instruments envisaged in the 2004 Utilities Directive. The PPL regulates areas not covered by the *acquis* (for example, contracts below the EU thresholds) and also regulates the procurement process from the early stages of planning to contract management. On 21 January 2016, a comprehensive amendment of the PPL came into force only 15 days from the date of publication¹¹². The amended PPL abolished Article 60A on the domestic preference system and introduced the competitive procedure with negotiation, the possibility to divide a contract into lots, and the possibility for contracting authorities to ask for additional documentation and information from economic operators during the examination of their tenders. The price quotation procedure became more transparent by introducing mandatory publication of a contract notice. The amended PPL abolished the requirement imposed on contracting authorities to cancel the procurement procedure where fewer than two responsive tenders are received and a new provision was introduced requiring dissatisfied economic operators first to seek a review by the contracting authority. Such submissions of review requests to contracting authorities result in automatic suspension of the award procedure. At five days, the time limit for submission of requests is shorter than required by the Remedies Directives as amended (ten days)¹¹³, whereas the time limit for subsequent appeals to the PRB remains at ten days.

Some provisions of the Defence Directive have been transposed regarding the scope of the rules on defence and security, including exceptions¹¹⁴. This field will be further regulated by the Government¹¹⁵.

¹¹¹ Law No. 04/L- 042 on Public Procurement, as amended.

¹¹² Law No. 05/L- 068 on Amending and Supplementing Law No. 04/L- 042 on Public Procurement, amended and supplemented with Law No. 04/L- 237, Official Gazette No. 1/2016 of 6 January 2016, <http://gzk.rks-gov.net/ActDetail.aspx?ActID=11332>

¹¹³ Directive 89/665/EEC, on the co-ordination of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, Official Journal, L395/33, 21 December 1989;

Directive 92/13/EEC co-ordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, Official Journal L76/14 of 25 February 1992;

Directive 2007/66/EC of 11 December 2007, amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts, Official Journal L335, 20 December 2007.

¹¹⁴ Articles 2, 12 and 13 of the Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the co-ordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC, Official Journal of the EU, L 216 of 20 August 2009, pp. 76-136.

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Some of the amendments, as reported by the PPRC, were inserted in the draft amendments of the PPL late in the adoption process without carrying out a proper analysis of their impact on the system in general or capacities of stakeholders to implement them. In addition, the amended PPL contained some technical omissions and inconsistencies which were spotted only after the amended Law was adopted. These concern, in particular, the lack of provisions regarding the procedure for the appointment of the Board members of the PRB¹¹⁶. To remedy this situation, a new draft amendment to the PPL was submitted to the Assembly¹¹⁷ and was adopted¹¹⁸ on 19 February 2016¹¹⁹.

No updates of the existing secondary legislation as required by the amended PPL had been made when it came into force in January 2016. The PPRC published on its website six drafts of standard forms of contract notices for public consultations only on 12 February 2016¹²⁰, as well as an instruction to contracting authorities to use existing secondary legislation until updates are issued¹²¹. The PPRC issued further drafts of updated standard forms on 3 March and 19 and 27 April 2016¹²².

In addition, the amended PPL envisages that some items of new secondary legislation shall be adopted by the Government and others by the PPRC¹²³, but without specifying any deadlines. The PPRC published three of those items for public consultations on 10 March, 21 March and 1 April 2016.

Concessions and PPPs are regulated under a separate law¹²⁴ that provides a comprehensive legal framework in this area, and a number of operations are in place. However, it requires further alignment with the EU *acquis* in order to transpose the new Concessions Directive¹²⁵.

The regulatory situation leads to a value of 4 for the indicator on the extent to which legislation is complete and enforced.

The PPL obliges the PPRC, the PRB and the CPA to carry out public consultations by providing draft legislation to the public and interested parties in Article 10, paragraph 9. Parties provide comments within 15 days of the drafts being made available. However, no evidence of publication of the draft amendments to the PPL has been found on the PPRC website, only a general invitation to submit comments¹²⁶.

¹¹⁵ Law No. 05/L- 068, Article 3.

¹¹⁶ Law No. 05/L- 068, Article 57.

¹¹⁷ <http://www.kuvendikosoves.org/?cid=2,194,978>

¹¹⁸ Law No. 05/L- 092 on Amending and Supplementing Law No. 04/L-042 on Public Procurement, amended and supplemented with Law No. 04/L- 237 and Law No. 05/L- 068.

¹¹⁹ Official Gazette No. 8 of 1 March 2016, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12172>

¹²⁰ <http://krpp.rks-gov.net/Default.aspx?PID=Home&LID=1&PCID=-1&CtlID=HTMLStatic&CID=PPRCNews&ID=291>

¹²¹ <http://krpp.rks-gov.net/Default.aspx?PID=NewsPub&LID=1&PCID=-1&CtlID=HTMLStatic&CID=PPRCNews&ID=282>

¹²² <http://krpp.rks-gov.net/Default.aspx?PID=NewsPub&LID=1&PCID=-1&CtlID=HTMLStatic&CID=PPRCNews&ID=296>

<http://krpp.rks-gov.net/Default.aspx?PID=NewsPub&LID=1&PCID=-1&CtlID=HTMLStatic&CID=PPRCNews&ID=297>

¹²³ Law No. 05/L-068, Article 3, Regulation on procurement for defence purposes and security; Law No. 05/L- 068, Article 11, Regulation on functioning of public procurement training; Law No. 05/L-068, Article 37, Secondary legislation regarding the Evaluation Commission; Law No. 05/L- 068, Article 39, Sub- act to regulate in detail the determination of abnormally low price; Law No. 05/L-068, Article 65, Secondary legislation on the amount of complaints fee to be paid to the PRB; Law No. 05/L- 068, Article 129, Rules concerning the contracting authorities' use of electronic procurement methods ; Law No. 05/L-068, Article 129, Rules regarding devices for the electronic submission and receipt of tenders and to devices for the electronic receipt of requests to participate.

¹²⁴ Law No. 04/L- 045 on Public- Private Partnerships, Official Gazette No. 26/2011, 25 November 2011, <http://gzk.rks-gov.net/ActDetail.aspx?ActID=2784>; secondary legislation: <http://www.pppkosova.org/?cid=2,85>; standard forms: <http://www.pppkosova.org/?cid=2,104>

¹²⁵ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance, Official Journal, L 94 of 28 March 2014, pp. 1- 64.

¹²⁶ <http://krpp.rks-gov.net/Default.aspx?PID=NewsPub&LID=1&PCID=-1&CtlID=HTMLStatic&CID=PPRCNews&ID=256>

The PPRC systematically publishes drafts of secondary legislation on its website¹²⁷. Comments are considered by the PPRC when finalising the regulations, but no separate reports on the outcomes of the consultations are published. In addition, interviews with the majority of stakeholders concerned indicate that the lack of proper consultations on all the changes introduced in the amended PPL has resulted in difficulties coping with the new requirements.

This last item has resulted in a fall to the value of 2 for the indicator covering the nature and extent of public consultations.

The primary legal framework for public procurement is in place, although with gaps in its conformity with the *acquis*, especially concerning defence procurement. Updating and adoption of secondary legislation necessary for the practical implementation of the primary legislation lags behind. Public consultations are not systematically held in the course of regulatory development. Frequent changes in legislation, combined with the lack of proper prior debate and analysis of legal initiatives, create problems in the application of public procurement regulations.

Principle 11: There is central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently.

The institutional set- up for public procurement- related policy development, implementation and monitoring is in place, but with problems in effectively and efficiently exercising the functions and duties allocated to the bodies concerned. A draft Strategy for Public Procurement 2016- 2021 was published for public consultation on 10 March 2016¹²⁸.

The Strategy on Development of Public- Private Partnerships 2014- 2016¹²⁹ was approved in 2014. It aims at linking PPPs with the general budgetary framework and with priority policy planning and capacity building, increasing communication with the private sector and improving the management of PPP contracts by creating a risk- based monitoring system.

The only other strategy in the field of public procurement is the National Public Procurement Training Strategy that was adopted in 2014, laying down a series of measures aimed at improving the level of professionalism of public procurement officers. However, the training arrangements currently in place do not match the provisions of the Strategy (analysis is below).

This situation leads to a value of 2 for the indicator on the extent to which a policy framework is developed and implemented.

The PPRC, the PRB, the CPA and the PPP Department within the MoF are the main bodies in charge of central public procurement functions. The applicable legislation provides a clear allocation of functions and responsibilities among them, although staff capacity problems persist.

The PPRC is an independent regulatory agency responsible for the overall policy and regulatory development, operation and supervision of the public procurement system, with advisory, monitoring and capacity building functions¹³⁰. The PPRC reports to the National Assembly and has three members on its Board. It has a total of 30 staff in two departments – the Department of Rules, European Integration and Training, and the Department of Monitoring, E- procurement and IT – and an Office of Administration.

¹²⁷ <http://krpp.rks-gov.net/Default.aspx?PID=NewsPub&LID=1&PCID=- 1&CtlID=HTMLStatic&CID=PPRCNews&ID=242;>
<http://krpp.rks-gov.net/Default.aspx?PID=Home&LID=1&PCID=- 1&CtlID=HTMLStatic&CID=PPRCNews&ID=291;>
<http://krpp.rks-gov.net/Default.aspx?PID=Home&LID=1&PCID=- 1&CtlID=HTMLStatic&CID=DraftL>

¹²⁸ <http://krpp.rks-gov.net/Default.aspx?PID=Home&LID=1&PCID=- 1&CtlID=HTMLStatic&CID=PPRCNews&ID=301>

¹²⁹ http://www.kryeministri-ks.net/repository/docs/PUBLIC-PRIVATE_PARTNERSHIP_DEVELOPMENT_STRATEGY_FOR_THE_REPUBLIC_OF_KOSOVO_2014_2016.pdf

¹³⁰ PPL, Articles 86- 88.

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The responsibility to develop and deliver training in the field of public procurement has been assigned to the PPRC according to the provisions of the amended PPL¹³¹. The formal training of procurement officers is complemented by advice provided by the PPRC directly to contracting authorities and economic operators.

The training system lacks co-ordination between the KIPA and the PPRC. The KIPA prepared and submitted to the relevant institutions the training working plan for 2016, according to which 45 days for 100 participants in total are allocated for training in the field of public procurement. However, the plan for 2016 was prepared before the amended PPL entered into force, prescribing that the validity of all existing procurement certificates will expire on 31 December 2016. According to the assessment of the PPRC, approximately 200 procurement officers need training in 2016 to obtain the required procurement certificates. The KIPA is now only responsible for providing training facilities and for co-issuing procurement certificates. During 2015, ten training courses in the field of public procurement took place with 131 participants¹³². However, results at the certification stage are poor¹³³.

E-procurement is in a pilot phase, which started with six contracting authorities in February 2016¹³⁴. The necessary platform is being developed with the assistance of the World Bank under a contract with the MoF. E-procurement became mandatory for the CPA on 1 April 2016. For central government authorities, it will become mandatory on 1 September 2016, and for local authorities on 1 January 2017¹³⁵. So far, few steps have been taken to develop and issue secondary legislation and provide training for all those concerned.

The PRB is an independent administrative body in charge of review procedures and legal remedies in public procurement¹³⁶. It has a Secretariat providing administrative support with a total staff of 20 employed for 23 positions. According to the PPL, the PRB Board should consist of five members, who are elected by the Assembly for one term without the right of re-appointment¹³⁷. As of April 2015, the PRB had only three Board members appointed and was barely functional. As of January 2016, when the Chairman of the PRB resigned from his position, the PRB had only two active Board members, one of them acting as Chairman. According to its internal rules, the PRB then became unable to review cases with a value higher than EUR 50 000. This created delays and backlogs in processing complaints. Out of 592 complaints filed by economic operators with the PRB in 2015, 25 complaints were pending because of the lack of quorum since the operations of the PRB were reduced in 2016 (information gathered from the interview with the PRB).

In the application of the latest PPL amendments,¹³⁸ the Assembly took steps for the establishment of an Independent Selection Body to select members of the PRB¹³⁹, and three new members, including the new President of the PRB, were appointed on 30 March 2016.

Until the PPL was amended, a fee of EUR 500 was required when submitting complaints to the PRB¹⁴⁰, irrespective of the value and type of the procurement concerned. The amended PPL regulated, without providing any guidance for the purpose, that the complaints fee will be set by the PPRC in secondary

¹³¹ Law No. 05/L- 068, Article 11.

¹³² KIPA report for 2015 sent by e- mail after an interview with SIGMA.

¹³³ Opinion expressed by the KIPA in an interview with SIGMA.

¹³⁴ <http://krpp.rks-gov.net/Default.aspx?PID=NewsPub&LID=1&PCID=-1&CtlID=HTMLStatic&CID=PPRCNews&ID=292>

¹³⁵ Law No. 05/L- 068, Article 67; Decision No. 12/79 of 15 March 2016.

¹³⁶ PPL, Articles 98- 99; Law No. 04/L- 045 on Public- Private Partnerships, Official Gazette No. 26/2011, of 25 November 2011 (PPP Law), Article 46.

¹³⁷ Law No. 05/L- 092, Article 3.

¹³⁸ Law No. 05/L- 092 on Amending and Supplementing Law No. 04/L- 042 on Public Procurement, amended and supplemented with Law No. 04/L- 237 and Law No. 05/L- 068.

¹³⁹ <http://www.kuvendikosoves.org/?cid=2,159,6371>

¹⁴⁰ PPL, Article 118.

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legislation¹⁴¹. However, a first set of rules for filing complaints came into force only on 31 March 2016, with an amended version valid as of 26 April 2016¹⁴².

The CPA is the agency established under the MoF responsible for central purchasing¹⁴³. In February 2015, more than three years from the date of its establishment, the Government adopted the list of common items to be procured by the CPA¹⁴⁴, and it started to fulfil its mandate in 2015.

Three framework agreements are in the execution phase¹⁴⁵. Four more were awarded and signed by the CPA in late 2015, but their implementation has been delayed because the MoF did not co-sign the agreements, despite the requirement set forth by the PPL in force at the time¹⁴⁶. The amended PPL no longer requires the co-signature of the Minister¹⁴⁷ for contracts awarded by the CPA; however, this only applies to framework agreements awarded in procedures initiated after the entry into force of the amended PPL. Contract notices for five new framework agreements have been published; however, four of them were cancelled in February 2016¹⁴⁸.

The CPA also carries out procurement on behalf of contracting authorities upon their request or that of the MoF¹⁴⁹. The CPA has done so for 37 contracting authorities. Correspondingly, the CPA has two Directorates – the Directorate of Centralised Procurement and the Directorate of Special Projects—with a total of 12 staff, only four of whom are certified procurement officers.

PPPs, including concessions, are within the remit of the MoF's PPP Department, which drafted the PPP Law and monitors its implementation. Currently, the PPP Department has three employees (out of its full complement of five), supported by three external advisors. During 2015, in co-operation with the KIPA, it delivered eight training sessions with a total of approximately 95 participants¹⁵⁰. The PPP Department reports to and is accountable to the Public Private Partnerships Committee (PPPC). In 2015, the PPPC held nine meetings and approved four PPP projects¹⁵¹.

As described above, the institutional set-up is ineffective and inefficient, particularly given the small size of the administration, the modest volume of procurement and the fact that the public procurement system only has 170 contracting authorities¹⁵². Most public procurement functions are covered by competent institutions, but increased gaps, contradictions and delays in handling roles and responsibilities as well as a growing lack of resources leads SIGMA to reduce the value from 4 to 2 for the indicator on the extent of coverage by dedicated institutions of central procurement functions and of regulations defining their roles, responsibilities, working practices, staffing and resources.

¹⁴¹ Law No. 05/L- 068, Article 65.

¹⁴² Rules for filing complaints:
<https://krpp.rks-gov.net/krpp/PageFiles/File/STRforms2016/English/F03%20Rules%20for%20filing%20complaints.docx>; Article 14 regulates the fees to be paid.

¹⁴³ PPL, Articles 94- 97.

¹⁴⁴ CPA
http://www.kryeministri-ks.net/index.php/2009/03/repository/images/common/docs/proc/repository/docs/449_strategjia.pdf?page=2,32&date=2015-00-00

¹⁴⁵ <http://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=2&PCID=-1&CtlID=ViewNotices&ID=105347>
<http://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=2&PCID=-1&CtlID=ViewNotices&ID=105179>
<http://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=2&PCID=-1&CtlID=ViewNotices&ID=106368>

¹⁴⁶ PPL, Article 26.

¹⁴⁷ Law No. 05/L- 068, Article 12.

¹⁴⁸ <http://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=2&PCID=-1&CtlID=ViewNotices&ID=112885>
<http://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=2&PCID=-1&CtlID=ViewNotices&ID=112772>
<http://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=2&PCID=-1&CtlID=ViewNotices&ID=112773>
<http://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=2&PCID=-1&CtlID=ViewNotices&ID=112774>

¹⁴⁹ PPL, Article 95.

¹⁵⁰ KIPA report for 2015 sent by e-mail after an interview with SIGMA.

¹⁵¹ Information gathered in an interview with the PPP Department.

¹⁵² PPPC, Report on Public Procurement Activities for 2014, p. 16.

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The PPRC monitors procurement and contract management activities and issues corresponding opinions to contracting authorities¹⁵³. During 2015, the PPRC published 35 monitoring reports carried out according to its work plan for *ex post* monitoring¹⁵⁴.

The PPRC checks notices prepared and submitted by contracting authorities for publication and requests contracting authorities to rectify any omissions and mistakes in them¹⁵⁵. Prior to the implementation of the contract, contracting authorities are required to prepare contract management plans¹⁵⁶. Contract implementation is monitored by the PPRC. The PPRC may also decide to monitor procurement activities based on notifications, which the contracting authorities are required by the PPL to submit to the PPRC in specific cases¹⁵⁷.

The Anti-Corruption Agency (ACA) actively monitors public procurement notices published on the PPRC's website and in media publications¹⁵⁸, and examines cases when there are doubts that procurement activities are being prepared or conducted in accordance with the PPL and secondary legislation. The ACA also has the authority to participate in the evaluation of tenders and other phases of procurement procedures in the capacity of an observer, either at the request of contracting authorities or *ex officio*.

Based on reports from the contracting authorities¹⁵⁹, the PPRC prepares and submits an annual report to the Government and to the Assembly¹⁶⁰ by the end of March¹⁶¹. It is available on the web page of the PPRC¹⁶², but the search tools available do not allow analysis of the information and no information on contract amendments is available. The Public Procurement Register required by Article 87 of the PPL has not yet been established. Information on the PPRC's website often lacks clarity and timeliness¹⁶³. Moreover, the PPRC keeps repealed primary and secondary legislation on its website¹⁶⁴.

The PRB prepares and submits annual reports to the Assembly by the end of February. They include a wider range of information than the minimum required by the PPL in Article 121 and are available on the web page of the PRB. All decisions of the PRB are published on its website, which also offers a basic search function¹⁶⁵.

As a result, the indicator covering the comprehensiveness of systems to monitor and report on public procurement obtains a value of 3, and the indicator covering the clarity, timeliness and comprehensiveness of information available also has a value of 3.

¹⁵³ PPL, Articles 81, 87 and 88.

¹⁵⁴ Monitoring reports:
http://krpp.rks-gov.net/Default.aspx?PID=NewsPub&LID=1&PCID=-1&CtlID=HTMLStatic&CID=PPRCComplaints&PPRCMenu_OpenNode=87

¹⁵⁵ PPL, Article 42.

¹⁵⁶ PPL, Article 81; Standard form – Contract management plan.

¹⁵⁷ PPL, Article 32, paragraph 5 (this requirement has been removed by the amended PPL); Article 35, paragraph 1; Article 61, paragraph 5; and Article 62, paragraph 2 (this requirement has been removed by the amended PPL).

¹⁵⁸ PPRC's website:
http://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=2&PCID=-1&CtlID=SearchNotices&ind=1&PPRCMenu_OpenNode=63

¹⁵⁹ Standard form B53 – Annual report for public signed contracts.

¹⁶⁰ PPL, Article 87.

¹⁶¹ Law No. 05/L- 068, Article 49.

¹⁶² PPRC's website:
http://krpp.rks-gov.net/Default.aspx?PID=Home&LID=1&PCID=-1&CtlID=HTMLStatic&CID=PPRCAnnual&PPRCMenu_OpenNode=90

¹⁶³ For example, the latest news in the information section of the PPRC's webpage concerns the adoption of the PPL in 2011, <http://krpp.rks-gov.net/Default.aspx?LID=1>

¹⁶⁴ http://krpp.rks-gov.net/Default.aspx?PID=Legislation&LID=1&PPRCMenu_OpenNode=61

¹⁶⁵ <http://oshp.rks-gov.net/?cid=2,71>

An institutional framework for public procurement is in place but with weaknesses in the performance of the tasks required of it. Some key appointments have not been made, limiting the ability of the authorities to function as required. There is no strategic document covering the development of the public procurement system. Annual reports on public procurement are published. Information is also available on the websites of the authorities but is not always timely or easy to search.

Key recommendations

Short- term (1- 2 years)

- 1) The Government should adopt a strategy for the development of public procurement and an accompanying action plan for implementation of the strategy.
- 2) The PPRC should prepare the legislation that transposes the provisions of the EU Directive on defence procurement and submit it to the Government for adoption.
- 3) The PPRC should prepare and issue remaining items of updated and new secondary legislation required for the implementation of the amended PPL.
- 4) The PPRC should facilitate further development of e- procurement in co- ordination with relevant stakeholders. E- procurement should be made mandatory only after a thorough review of the pilot project phase has been undertaken, training of contracting authorities and economic operators has been provided and all the necessary secondary legislation is put in place.
- 5) The PPRC should update the Training Strategy and take the necessary steps for its full implementation, and should further improve the quality and the coherence of the advice it provides directly to contracting authorities and economic operators.

Medium- term (3- 5 years)

- 6) The PPRC should carry out an in- depth analysis of the 2014 EU Directives to ensure that public procurement legislation is further developed to create an efficient legal framework supportive of concluding and implementing public contracts in a competitive environment.
- 7) The PPRC should improve its system for monitoring and reporting on public procurement proceedings and practices, as well as the comprehensiveness and accessibility of information available to contracting authorities, economic operators and other stakeholders.
- 8) The relevant institutions should put in place mechanisms for more effective co- ordination of key procurement functions.

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