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ASSESSMENT

KOSOVO*

APRIL 2013

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

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ASSESSMENT PRIORITIES

Kosovo is at a crucial stage of the European Integration process and implementing its governance reforms. In October 2012, the European Commission (EC) published the Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo and complementary Staff Working Document¹. The Feasibility Study set benchmarks to be met prior to starting the Stabilisation and Association Agreement (SAA) negotiations and identified priority areas of reform for complying with the SAA obligations.

In agreement with the EC, SIGMA's 2013 assessment of Kosovo concentrates mainly on the areas highlighted in the Feasibility Study as benchmarks or medium-term reform priorities. Emphasis is also placed on areas having a significant impact on the performance of the Government (such as sustainable management of expenditure and consolidation of the public procurement system), and areas having a strong influence on the Government's capacity to progress in the SAA process (such as policy development capacity and functioning of European integration co-ordination structures). In addition, it was agreed that the focus should be on areas where actual reform is either being implemented or planned.

Against this background, SIGMA's 2013 assessment of Kosovo concentrates on five priority areas:

- [Policy Making and Co-ordination](#)
- [Public Expenditure Management](#)
- [Co-ordination, Implementation and Priorities of the Public Administration Reform](#)
- [Civil Service, Human Resource Management in the Public Sector and Administrative law](#)
- [Public Procurement](#)

In each selected assessment area, the general state of play and recent developments are briefly analysed. An overall assessment is followed by detailed analysis in the specific priority areas.

The assessment of **policy making and co-ordination** analyses the capacities of both the Government and the Assembly. The analysis of Government capacities concentrates on the pre-conditions for implementing the ambitious EU reform agenda and on the alignment of actual capacities and structures of ministries, with a view to successfully undertaking the SAA process. The main focus is therefore on policy planning, policy development in ministries, and European integration structures. The analysis of the Assembly's capacities focuses on the key challenges highlighted in the Feasibility Study, namely oversight of the Executive, and legislative and European integration capacities.

The assessment of **public expenditure management** focuses mainly on medium-term budgetary planning procedures and capacities and fiscal sustainability issues. Both areas are crucial for planning reforms under the SAA and for ensuring their implementation. In recent years the public finances of Kosovo have been characterised by large revenue and expenditure hikes and by the use of several one-time revenue sources. The assessment analyses how those trends are influencing fiscal sustainability and whether the procedures enable the minimisation of potential risks.

Improving Kosovo's poor record of **implementation of the public administration** reform agenda is highlighted as one of the key medium-term challenges in meeting the SAA obligations. The analysis of co-ordination, implementation and priority setting of public administration reform (PAR) emphasises the capacity to co-ordinate PAR and to set PAR objectives. In addition, the assessment examines the coherence of the PAR strategy with the Government's overall priorities and its implementation record.

The assessment of the **civil service, human resources management and administrative law** analyses the progress of the Government in meeting short-term benchmarks for starting SAA negotiations and its progress

¹ Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo* COM(2012) 602final and Commission Staff Working Document accompanying the document "Commission Communication on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo*" SWD(2012) 339 final/2.

in creating pre-conditions for sustainable public administration through the development of the legal administrative framework and the reinforcement of independent oversight institutions.

The overall legal framework for **public procurement** has been developed in Kosovo, while the institutional set-up is still fragmented and corruption risks remain high. The public procurement assessment mainly analyses the progress made in developing conditions for joint and central procurement and the administrative capacity for procurement.

Where possible, the assessment follows relevant parts of the SIGMA baselines. As the 2013 assessments are tailor made for country priorities, not all areas are covered by SIGMA's baselines. For example, an analytical framework was developed for PAR co-ordination and implementation assessment, in consultation with the EC and national administration. Assessment of the public procurement and public expenditure management areas builds on the principles of SIGMA's baselines in specific areas agreed with the EC.

POLICY MAKING AND CO-ORDINATION

**KOSOVO
APRIL 2013**

1. State of play and main developments since the last assessment

1.1. State of play

Executive

The legal framework for government decision making, policy planning and co-ordination is broadly in place and does not require substantial changes in the coming years. Key laws and the Government Rules of Procedure, adopted in 2011, are in line with European practices, hence they are very ambitious compared with the existing capacities of Kosovo's administration in terms of what is expected from policy co-ordination bodies and ministries. The legal framework needed for embedding transposition of the *acquis* into law-drafting and policy making practices is not yet in place. The legal requirements are supported by detailed instructions with regard to policy development, planning and reporting.

Adherence to relevant procedures by the Office of the Prime Minister (OPM) has led to a stage of maturity where procedures are followed by stakeholders. A clear institutional set-up has been created in both the OPM and the Ministry of European Integration (MEI) and for interministerial consultations. Responsibilities within the OPM and the roles of ministries are clear and respected, a positive change compared with the state of play a couple of years ago. The overall set-up and structure of the central co-ordinating institutions therefore provide a basic level of preparedness for coping with the increasing workload derived from the European integration process.

However, the ability within ministries to plan ahead and to include implementation costs in forward planning as well as the capacity to scrutinise draft proposals within the centre of government (CoG), i.e. OPM, MEI and Ministry of Finance (MoF), remain as a challenges. There are backlogs due to overburdening and unrealistic planning. The overall planning of the work of the Government, interministerial consultation mechanisms and policy development in ministries still have a rather technical nature.

Ministries have in general launched structures to deal with European integration co-ordination, strategic planning and policy development. The capacity of these units to deliver is hampered by a lack of status and, more importantly, due to a shortage of staff or the lack of skills and expertise. Some promising champions, such as the Ministry of Trade and Industry (MTI), are emerging already.

Legislature

The policy making capacity of the Assembly of the Republic of Kosovo continues to be challenged by the following problems: a legal system that is still in the process of maturation and a strict institutional separation between the Government and the Assembly, which makes effective executive-legislative co-operation especially demanding. The basic political and administrative structures of the Assembly are in place, in particular rules and regulations, and processes at political and administrative levels to plan the Assembly's work and carry out its main functions. Law making continues to dominate the parliamentary timetable, while executive scrutiny and oversight take second place.

As regards EU integration, the Standing Committee for European Integration has been given extensive responsibilities under the Assembly's rules of procedure, with a special focus on the review and supervision of "the process of harmonisation of laws enacted by the assembly with the legislation of the European Union". Nevertheless, there is no comprehensive legal framework governing the powers and responsibilities of the Assembly in the EU integration process, and the Committee's role is geared towards review and co-ordination, rather than the introduction and formulation of initiatives or detailed legislative scrutiny and amendment.

1.2. Main developments since the last assessment

Executive

The main focus of the Government has been on gradual implementation of the Rules of Procedure and creation of pre-conditions for the upcoming SAA process.

Progress has been made in imposing new policy development and interministerial consultation principles. Due to changed principles, implementation of the Rules of Procedure has led to a short-term backlash on interministerial discussions. However, progress has been made in putting in place the system of concept papers preceding draft laws and policy decisions. Relevant guidelines were adopted in March 2012. In 2012, a total of 47 concept papers were developed by ministries. Ministries have also started to follow new requirements for interministerial consultations.

Steps have been taken to consolidate the strategic planning system and better align planning with the capacities of individual ministries and with the available budget. More concretely, interministerial co-ordination between the CoG institutions has been improved by formalising already existing co-operation with the creation of the Steering Group for Strategic Planning in June 2012 aiming, among other goals, to develop a more precise and coherent Statement of Priorities, which will also include sectorial policy priorities. The Strategic Planning Office (SPO) of the OPM has worked bilaterally with ministries to consolidate sectorial strategies, leading to 7 sectorial strategies in the Annual Plan for Strategic Documents for 2013.

Some progress has been made to establish a normative framework to support legal harmonisation, which includes steps to implement tables of concordance. The adoption of relevant acts is planned before summer 2013. Guidance materials for ministries are under development, and the MEI has started a gradual build-up of its capacities to provide support to ministries.

The adoption of an SAA Action Plan for 2013² and of a Government decision in February 2012, establishing the structures required to fulfil the tasks connected with the SAA process, is of structural importance. Although the new system slightly overlaps with the existing framework, the overall logic of the new structure is sound and MEI leadership is well established.

Legislature

In 2012 there was an increase in the number of parliamentary questions (160 compared to 124 in 2011). No progress has been made concerning other scrutiny and oversight instruments. The number of interpellations remained the same and the volume of law implementation reviews declined.

As regards the Assembly administration, some progress has been made in filling the 180 budgeted positions available to the Assembly (in March 2013, 169 positions had been filled and there were six ongoing recruitment processes). The Assembly continues to be hampered by its lack of autonomy with respect to the Ministry of Public Administration (MPA) and the MoF in decisions on staff requirements, recruitment and deployment. A specific legal framework to regulate the status of Assembly officials is still not in place.

² Action Plan on negotiation of the Stabilisation and Association Agreement, adopted by the Government in December 2012.

2. Analysis

Executive

Kosovo's ability to implement its ambitious EU reform agenda and to align the legislative and policy development agenda with the capacities of ministries requires well-functioning policy co-ordination and planning system with clear legal requirements, proper institutional arrangements and functional capacities at CoG and in ministries. Recognising the relevance of stated needs, the Government has set the development of an integrated strategic planning system as one of its objectives under the Action Plan for Stabilisation and Association Agreement (APSAA).

2.1. Horizontal procedures and institutional set-up for planning and co-ordinating the work of the Government

The main elements of the legal framework include: the Law on Budget³; the Law on State Administration⁴ and the Regulation of Rules and Procedure of the Government⁵; the Regulation of the Organisational Structure of the MEI⁶ and the Decision of the establishment of Ministerial Committees for EI process⁷; the Regulation on departments for European integration and policy co-ordination⁸ and the Decision establishing the SAA-related co-ordination structures. The legal framework specifies the responsibilities of the OPM, provides sufficient authority to assume these responsibilities, and creates a framework for co-ordinating activities between key institutions at the centre of government, namely the OPM, the MEI and the MoF. Clear requirements exist for linking policy planning with annual and medium-term financial planning. Therefore, no significant changes are needed in the legal framework in the coming years.

Guidance materials are provided by the OPM and the MEI to support the preparation and monitoring of the Government Annual Work Programme (GAWP) and the key Action Plan for European Integration, as well as the development of sectorial strategies⁹.

Regarding the overall European integration (EI) co-ordination architecture, Kosovo has set up both legislative and structural frameworks. The MEI provides political and administrative leadership for all EI-related processes and it has the necessary legal powers, which fit into the overall architecture of the system. The Government decision assigning to the MEI a leading role in the SAA process (the Minister as the chief negotiator and head of the ministerial group, with the MEI as secretariat), is a sign of the MEI's recognised position within the process.

The legal framework clearly divides the responsibilities between the OPM, the MEI and the MoF. The internal structure of the OPM is clear and enables it to undertake all key functions of policy planning and co-ordination. In the interviews for this assessment, all counterparts confirmed that informal co-operation and information exchange between the three structures is smooth. The composition of the Steering Group for Strategic Planning, established in June 2013, is adequate and the definition of its functions sufficient to ensure a harmonised and efficient strategic planning system¹⁰. The functions of the Group include ensuring coherence of key strategic documents of the Government, taking into consideration European integration process

³ Law No. 04/L-165 on Budget of the Republic of Kosovo for the year 2013 (13.12.2012).

⁴ Law No.03/L – 189 on the State Administration of the Republic of Kosovo of 16 September 2010.

⁵ Regulation on Rules and Procedures of the Republic of Kosovo, No 09/2011.

⁶ Regulation No. 07/2010 on the Organisational Structure of the Ministry of European integration.

⁷ Government Decision No. 6/121 on the establishment of Ministerial Committee for European integration process, Executive Committee for European integration, Sectoral Executive Committees.

⁸ Government Regulation No. 01/2011 on departments for European integration and policy coordination in the ministries.

⁹ 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 on drafting the Annual Government Work Report from 11.11.2011.

¹⁰ Government Decision no. 05/83 on the Establishment of the Steering Group for Strategic Planning, 11/07/2012.

priorities, harmonising budget and policy planning, ensuring realistic planning and streamlining foreign aid with Government priorities.

Clear legal requirements for planning and co-ordinating the work of the Government have been further developed in recent years, are now in place and follow the common practice of EU countries. Responsibilities of the OPM are clear. The MEI's overall role in co-ordinating European integration is clear and undisputed, which provides a good base for the development of more specific functions, such as the legislative scrutiny and harmonisation that the SAA process requires.

2.2. Capacities for policy planning and co-ordination at the centre of the Government

Coherence of key strategic documents and assurance of their link to the budget

Guiding the development of the Statement of Priorities and its application in the Medium-Term Expenditure Framework (MTEF) and GAWP development processes was a challenge for the Strategic Planning Office (SPO) of the OPM, mainly due to vacant positions. The SPO was strengthened in 2013 by two additional staff. The process of developing the Statement of Priorities has been changed in order to move from macro-level priorities to sectorial-level priorities and to link priorities with the development of sectorial strategies and medium-term budgetary ceilings. The stated efforts, if successful, are steps in the right direction and will strengthen the priority-setting and implementation capacities of the Government, including in the SAA process, and enable the more efficient use of scarce resources. Analysis of the coherence of key strategic documents – MTEF and GAWP - demonstrates that the situation has improved already in 2013, with both documents being more coherent in 2013 compared with 2012. Their structure and priority objectives follow the structure of the Programme of the Government and are largely consistent. The planning of coherent sectorial measures has improved but can evolve further. While remarkably improved, compared with 2012, the integration of EI priority measures into other key strategic documents can be further enhanced.

Table 1. Coherence of key strategic documents¹¹

	MTEF	GAWP	MTEF	GAWP	
	2012-2014	2012	2013-2015	2013	
Overall structure: ¹²	<i>consistent</i>		<i>consistent</i>		Coherence between the documents
priorities section	<i>consistent</i>		<i>consistent</i>		
sectorial sections	<i>partly consistent</i>		<i>partly consistent</i>		
Priority objectives ¹³	<i>largely consistent</i>		<i>largely consistent</i>		
Measures/activities	<i>slightly consistent</i>		<i>partly consistent</i>		Coherence with EPAP/ APSAA
Priority objectives	<i>partly</i>	<i>slightly</i>	<i>largely</i>	<i>largely</i>	
Priority measures	<i>partly</i>	<i>slightly</i>	<i>partly</i>	<i>partly</i>	
EI priorities clearly dominating	<i>not</i>	<i>not</i>	<i>partly</i>	<i>largely</i>	
Measures/activities	<i>partly</i>	<i>slightly</i>	<i>partly</i>	<i>partly</i>	

Source: Key strategic documents of the Government¹⁴ and expert analyses

¹¹ In order to analyse coherence of the documents structure, objectives and measures of MTEF and GAWP were compared. In order to analyse coherence of the MTEF and GAWP with the European Partnership Action Plan 2012 (EPAP) and Action Plan for Stabilisation and Association Agreement 2013 (APSAA) inclusion of EPAP/APSAA objectives, priority measures and sectorial measures in MTEF and GAWP assessed.

¹² When the structure of the documents in the section of priorities and in sectorial sectors was the same, documents were assessed as consistent. When the difference was not more than one heading under each priority area (in the case of sectorial sections, priority objectives and measures) documents were assessed as largely consistent. When up to three headings differed, documents were considered partly consistent. When the difference was greater, documents were considered slightly consistent.

¹³ See categorisation above.

¹⁴ Medium-Term Expenditure Framework 2012-2014; Medium-Term Expenditure Framework 2013-2015; Government Annual Work Plan 2012; Government Annual Work Plan 2013; European Partnership Action Plan 2012; Action Plan of the Stabilisation and Association Agreement.

An analysis of the documents demonstrates that the quality of planning implementation of Government's priorities still varies between individual ministries, so overall planning quality depends on ministerial capacities. Tackling the planning of work in policy areas that fall under several ministries is still challenging for the administration.

Development and monitoring capacity for the implementation of key strategic documents

The analysis of 2012 working practices and the study of key strategic documents demonstrate that both the OPM and the MEI have capacity to guide the development process of the GAWP 2013 and the APSAA respectively. The process for the development of these documents is streamlined in terms of timing. Both documents were adopted at the last Government session of 2012.

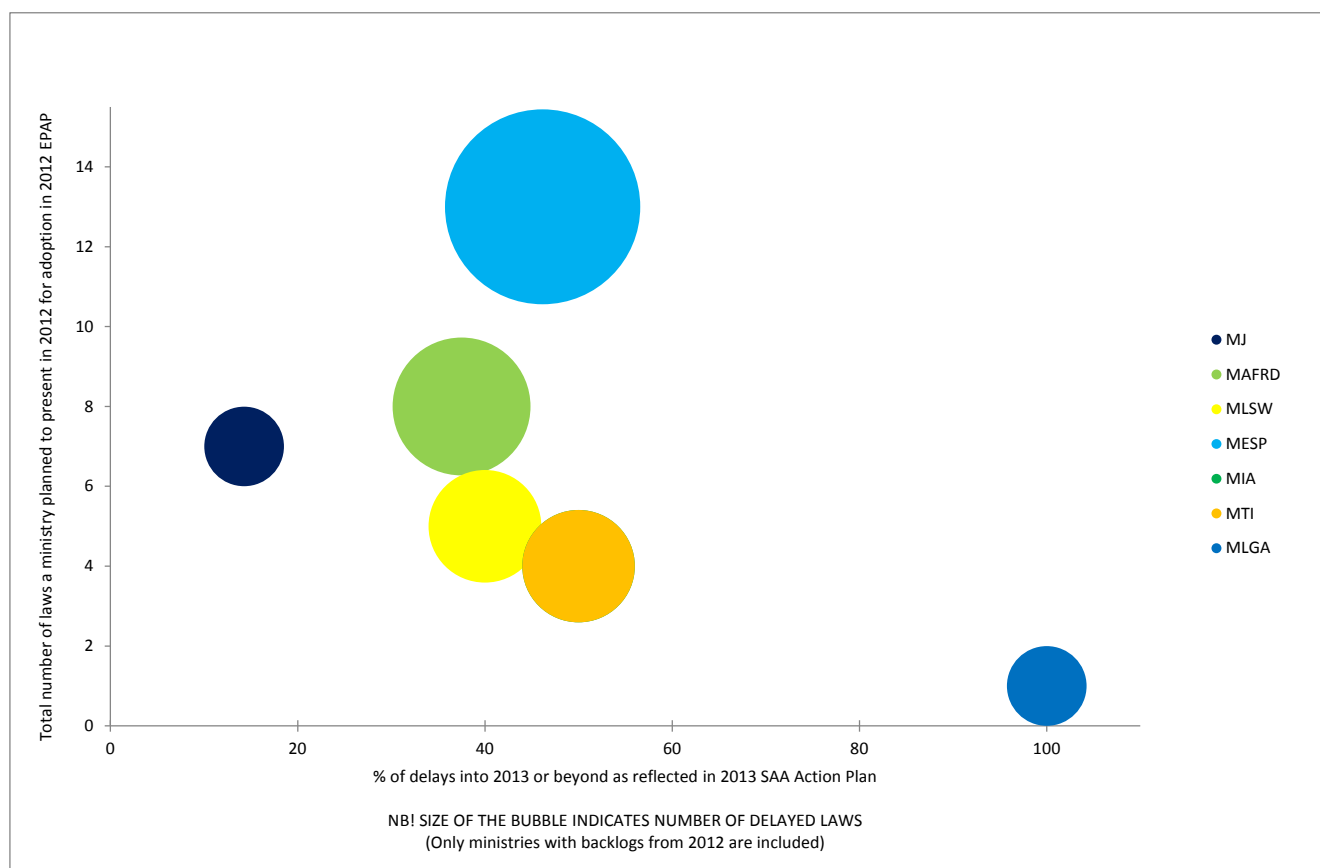
The OPM and the MEI have the authority to require that ministries submit their plans in line with priorities, and they can set the agenda for ministries. The system formally has mechanisms that require prudent planning in terms of setting achievable deadlines, creating links with budgetary resources to ensure implementation, and foreseeing and planning for other possible impacts. Nevertheless, the analysis of the documents and working practices demonstrates that the capacity to deliver those functions and to prioritise the various obligations remains a challenge, in case of both EI-related processes and policy making in general.

Evidence obtained from interviews indicates that for some EI-related obligations ministries feel considerable pressure from the centre (MEI, OPM) towards more ambitious deadlines and feel bound to accept those deadlines, which may be clearly undeliverable from the start. Comparative analyses of the 2012 European Partnership Action Plan (EPAP) with the 2013 APSAA indicates that, on average, 36% of primary legislation that was planned for adoption in the EPAP was delayed and subsequently incorporated into the 2013 APSAA with renewed deadlines. This is not a bad average. However, ministries that have more than an average number of primary law-drafting duties are overburdened. They also tend to be the ministries with more postponed deadlines, such as the Ministry of Infrastructure (MI), the Ministry of Labour and Social Welfare (MLSW), the Ministry of Agriculture, Forestry and Rural Development (MAFRD), and the Ministry of Environment and Spatial Planning (MESp) – see also Figure 1 below.

At the same time, specific tasks within the EPAP and APSAA, as well as in the GAWP, are usually formed bottom-up, with little scrutiny or prioritisation from the centre (although more with EI matters, due to the EC's Progress Reports). The OPM and the MEI should in essence impose more stringent criteria in order to focus on the most important tasks and scale the workload down to more manageable levels, bearing in mind the limited resources (budgetary resources included) and the capacity in ministries.

In addition, the MEI has under-exploited its existing tools available to incorporate Kosovo EI commitments into national working practices, act as a watchdog and quality controller of the *acquis* transposition and give valuable feedback to ministries on the matter. The evidence rests on only a few examples of randomly selected and translated legal opinions prepared by the MEI and thus is not exhaustive, but the analysed opinions concentrated on formalities rather than on content. One ministry demonstrated the case by highlighting that it had to redraft and resubmit one-quarter of all legislative acts in 2012, which previously had been given the green light from the MEI via its legal opinions, as it later emerged that in reality these acts failed to transpose directives they were supposed to do. Also, the MEI concentrated only on the text of law itself, not addressing possible problems regarding achieving the aims of the *acquis*. Thus the MEI's capacity to give meaningful feedback remains a challenge. In this respect, the recent decision of the MEI to assign members of staff in the relevant departments as contact points for each ministry and to co-ordinate activities between the MEI and relevant ministry merits approval.

Figure 1. Backlog of European Integration-related primary acts (from 2012 to 2013 and beyond)



Sources: European Partnership Action Plan 2012, Action Plan for Stabilisation and Association Agreement 2013, and expert analyses

Monitoring of the implementation of key strategic documents is regular, has a quarterly rhythm and provides an overview of the general implementation record of each ministry. The analysis of implementation reports of the GAWP and EPAP demonstrate the technical nature of the GAWP reporting¹⁵, which concentrates on taking stock of delivered items. The EPAP reporting also provides an overview of implemented activities and does not go into the real implementation or achievement of objectives. In the current stage of maturity of the system this level of reporting is sufficient and meets the general expectations of the European Commission and the Government, although it creates additional administrative burdens with parallel reporting requirements from the OPM and the MEI.

Consolidation of the strategic planning system and compliance of planning and actual capacities

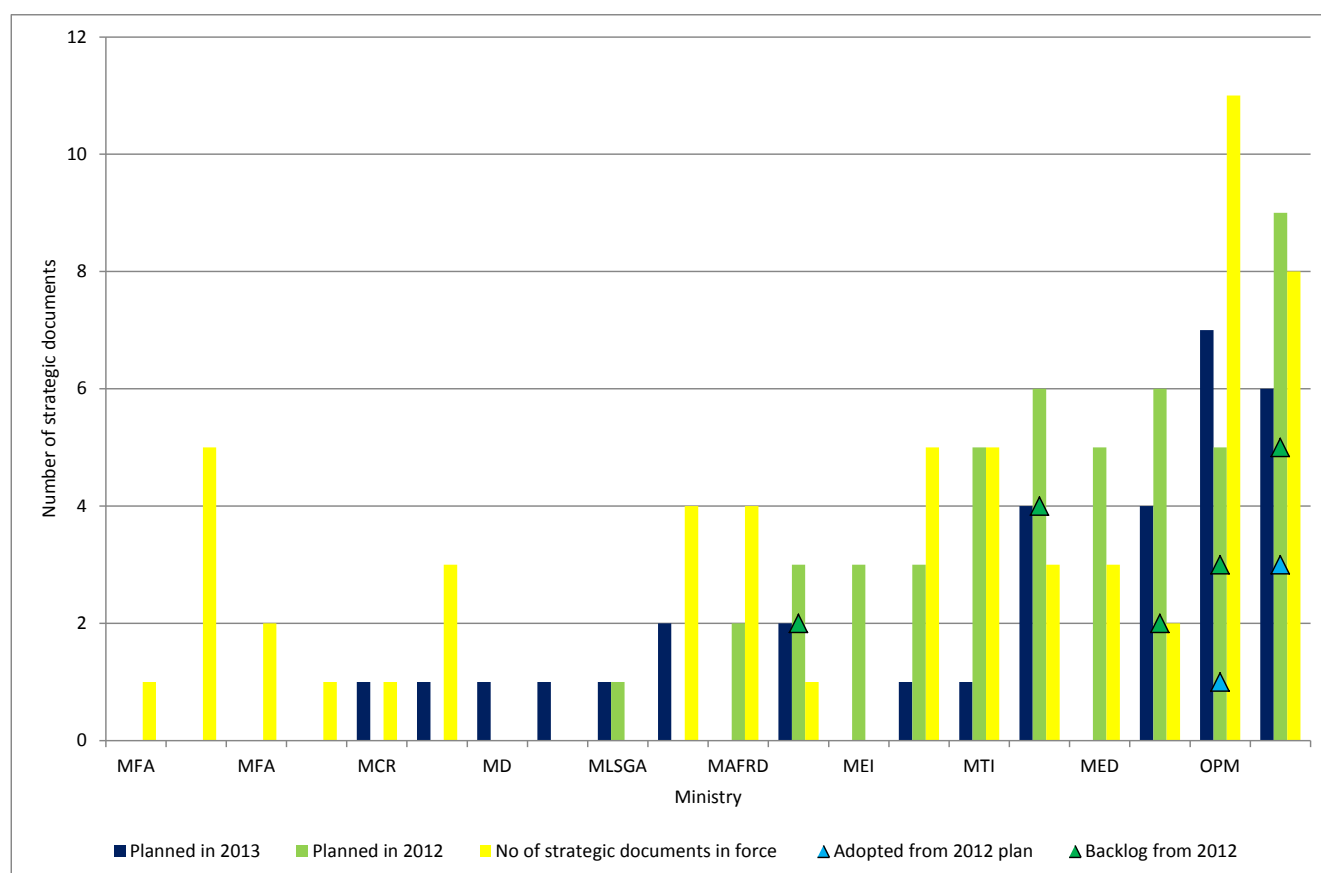
Consolidation of the strategic planning system is one of the key elements for achieving an integrated planning system. The SPO therefore has set it as one of the central objectives of the APSAA and the GAWP. In February 2013, 59 strategic documents were in force. Of these, 44 can be considered as strategies and 5 have the characteristics of sectorial strategies, covering the policy field in full¹⁶. In the plan for strategic documents in 2013, 7 sectorial strategies are anticipated, most of which are in priority policy fields like private sector development, health care, security and local governance. Of these planned strategies, 3 will cover a new time period for existing sectorial strategies and 4 will cover new policy areas.

¹⁵ Analysis of implementing the Annual Plan of the Work of the Government, 1st, 2nd and 3rd quarter of 2012, submitted by the Coordination Secretariat of the Government of the OPM to the Council of the General Secretaries.

¹⁶ List of strategic documents in force provided by the SPO of the OPM, concrete numbers derived from expert analysis of stated list.

The state of play is still fragmented, with a huge tendency for unrealistic planning and visible bottom-up pressure leading to unrealistic plans that have not been prioritised. A total of 48 strategic documents¹⁷ were planned for adoption in 2012¹⁸, but 34% were carried over to 2013 owing to a backlog. Overall, 36 strategies are planned for 2013¹⁹, far too many for a consolidated planning system, especially as the implementation record of the annual plan is very low. In 2012 only 8% of the strategic documents foreseen were adopted by the Government, showing unrealistic planning, but clearly demonstrating the efforts of the SPO to guide ministries towards wider sectorial strategies and decrease the number of fragmented policy documents.

Figure 2. Strategy development, backlog and planning implementation record



Sources: Annual Plans for Strategic Documents 2012/2013 and Strategic Planning Office of the Office of the Prime Minister

The OPM and MEI have capacity to co-ordinate development of key strategic documents and provide basic level reporting and monitoring mechanism. Coherence of the GAWP, MTEF and EPAP/APSAA has improved in 2013 compared with 2012. Consolidation of a strategic planning system is at the beginning of a long improvement process, with some positive trends in 2013. However, development of realistic plans and capacity of timely implementation remains a great challenge for the Government. Both European integration and the strategy development agenda have a considerable backlog due to a strong tendency towards unrealistic planning, which does not match the capacities and resources of ministries.

¹⁷ Strategic documents are defined as multi-annual policy documents aiming to set policy objectives and key measures for their fulfilment.

¹⁸ Annual Plan for Strategic Documents for 2012 (annexed to the Government Annual Work Plan) and Annual Plan for Strategic Documents for 2012 as amended by Government Decision no. 05/85 of 1 August 2012.

¹⁹ Annual Plan for Strategic Documents for 2013 (annexed to the Government Annual Work Plan).

2.3. Interministerial co-ordination and policy development in ministries

Interministerial co-ordination of European integration

The co-ordination system is well equipped to set enforceable deadlines and to monitor and report on the progress made. Within the Executive, specialised interministerial structures – the Working Group for EI, Executive Committees and, to an extent, the Ministerial Council itself – function mainly as reporting and information exchange mechanisms on the progress of commitments. In the opinion of interviewees from selected ministries and the MEI, both administrative and political interministerial structures provide little input into the policy or decision making process, so they are not functioning yet as platforms for problem-solving or weighting and choosing policy options. This pattern is also followed in the other interministerial forums established for more specific tasks, although there is some evidence from interviews indicating that in a few concrete cases these forums (e.g. Trade Council, Working Group for EI) have also been used as decision making and problem-solving bodies. However, at present the main bulk of decisions are made and problems solved through bilateral contacts, usually at the level of ministers or secretary generals.

The establishment of separate SAA-related interministerial co-ordination mechanisms on top of the already existing structures was, in part, a necessity, as the previous mechanisms were less specific and also would have fragmented some key SAA-related tasks (especially in the areas under the supervision of the MTI). The newly adopted system provides clearer lines of command. However, adoption of the new structure has created overlaps with existing structures in the policy areas covered by the SAA and in relation to political co-ordination. In time, when SAA structures have become operational, the system will need to be better aligned, by adapting the “old” system to the “new” system to streamline the overall architecture.

Policy co-ordination and development capacities in ministries

Within ministries, specialised departments were created, under Government Regulation no. 01/2011, to serve as a nucleus for EI coordination and policy planning (DEIPC). The departments should (in accordance with their founding regulation) co-ordinate the relevant ministry’s EI process, strategic planning and policy development, and co-ordinate external assistance provided to ministry. The list of their duties and responsibilities, which includes 14 specific tasks, also obliges them to ensure consistency of the various plans (including the mid-term budgetary plan) internally and externally with EU standards, and to co-operate with their legal department to ensure that all legislative drafts fully correspond with the EU *acquis*. As these departments were set up by a central order and are still relatively new, it is not unusual that their actual profile and their ability to fulfil these tasks currently vary considerably.

In some cases, such as in the MTI, the DEIPC has been able to partly fulfil the tasks of a policy co-ordination unit, leading the preparation of horizontal strategies (for example, merging the existing 11 strategies into a single private sector development strategy adopted by the Government on 27 March 2013) and co-ordinating the preparation of the Ministry’s annual plans (including budgetary plans).

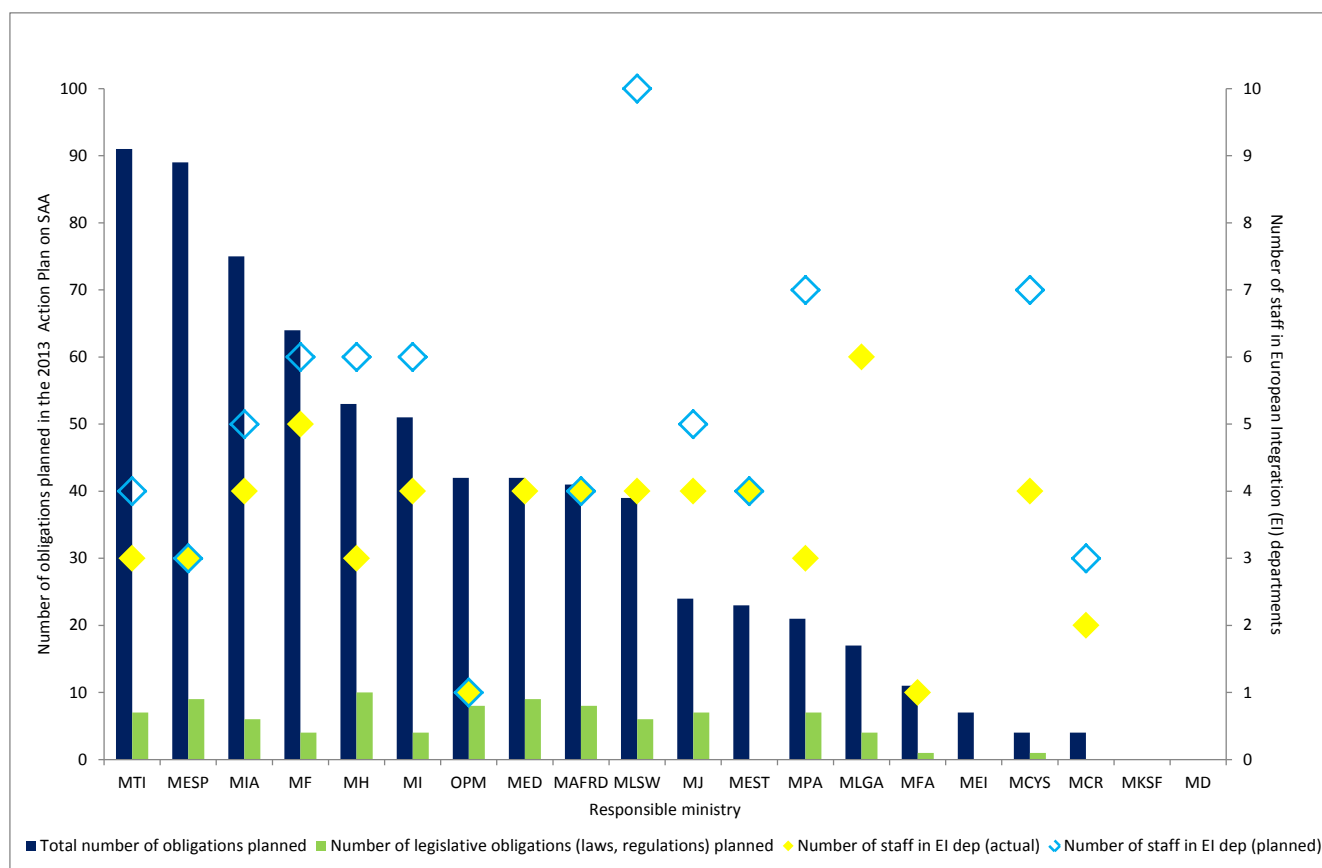
In 2013, preparation of the development strategies of ministries was channelled through DEIPCs by the OPM, a positive step increasing leverage of new structures. However, in most cases they lack an actual presence²⁰ within the ministry’s policy making processes and conduct technical co-ordination activities due to capacity challenges and the space given to them by other departments and the top management of the ministry.

Many DEIPCs are also not fully staffed (average staffing rate at end 2012 was 78%)²¹. Moreover, as neither the actual nor planned staff numbers are based on the number of planned obligations, the analysis summarised above, indicates that the DEIPCs of at least three ministries are more overburdened (in comparison with obligations) than the others. These ministries are the MTI, the MESP and the Ministry of Internal Affairs (MIA).

²⁰ For example, in Kosovo’s 2013 Budget Law, only three ministries (MTI, MF and Ministry of Justice) made note of a separate EI department; the other ministries have submerged the department within the subheading “central administration”.

²¹ Statistics provided by the MEI in December 2012.

Figure 3. **Obligations as foreseen in the 2013 Action Plan for Stabilisation and Association Agreement in comparison with staff numbers**



Sources: Ministry of European Integration; Action Plan for Stabilisation and Association Agreement 2013

Figure 3 above is indicative and does not present a fully comprehensive picture. For example, the obligations of the MAFRD (Ministry of Agriculture, Forestry and Rural Development) are in reality more numerous, as the Veterinary and Food Agency (formally placed under the OPM's structure) has a number of obligations, including legislative and regulatory, that are not covered in the analyses, but where the MAFRD is at least indirectly involved. Nevertheless, the analysis indicates broad trends and gaps. In this regard, the staff of the MoF, the Ministry of Health and the Ministry of Infrastructure also has a considerable number of obligations in comparison with the number of staff members of the DEIPC. It is important to note that the picture does not change if the number of obligations is compared to the overall number of employees in a ministry's central administration or in the offices of ministers. In fact, the contrast between the "overburdened" staff and the remaining staff then becomes even sharper (see Annex). Thus the need to strengthen these ministries is clear. Of course, the capacity of ministries to deliver depends not only on the number of staff but, more crucially, on staff members' profiles, skills and expertise. Unfortunately, there are no substantial studies that analyse this issue (a Twinning Light project to assess the capacities of key structures is to be launched in spring 2013). Indirect evidence through interviews indicates, however, a sizeable gap in skills and knowledge as well as in desired profile. Although some officials were recruited through the Young Cells scheme, and thus have a good educational background and good knowledge of English, all interviewees (MEI, MTI, MIA, MAFARD, OPM) pointed to the lack of language skills and knowledge of EU law as the main shortcomings.

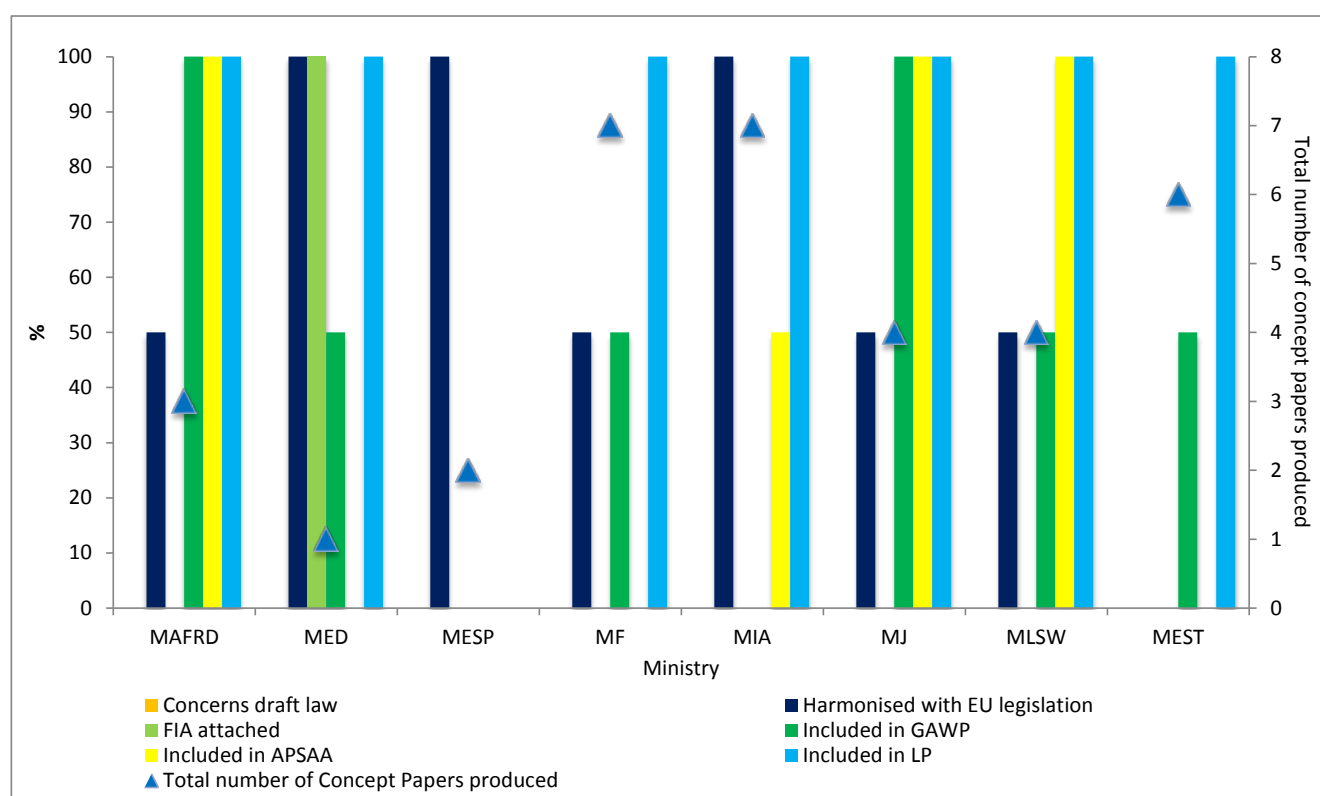
The functional capacity of ministries to successfully fulfil the tasks required by the SAA process depends on their ability to fully implement and make use of the tables of concordance. Although ministries have gradually started to take first steps in using this instrument, it is not yet fully functional for several reasons. First, there is some confusion within ministries regarding the division of labour between the legal departments and the DEIPCs. The new Regulation on Legal Services should provide the necessary clarifications. However, the adoption of this regulation is not foreseen until May 2013. Second, normative standards have not been fully set. The OPM's Legal Office is preparing a draft administrative instruction on standards and techniques for

drafting legislation (adoption also planned in May). Third, due to the limited number of staff in ministries with a good knowledge of English (or any other official EU language), there is a lack of comprehension of the *acquis*.

Forward budgetary planning is another crucial functional capacity for delivering the implementation goals foreseen by the SAA process. For example, in the 2012 EPAP, the MESP had 14 laws to draft with a deadline of 2012²², including the “Law on Kosovo Waters”, “Law on Nuclear Security and Protection from Radiation” and “Amending and Supplementing the Law on Chemicals”. The total financial cost of these 14 laws was estimated at EUR 5 000 [EPAP 2012, page 85]. The reason for such a small sum is that only the cost of drafting the necessary bills (e.g. legal consultation, possible foreign expertise) was planned and thus linked with the budget, not the actual implementation costs. Although costs are generally foreseen in the second phase (after legislation has been promulgated and implementation measures have been drafted), the lack of foresight in the legislative phase has hampered ministries’ capacity to ensure proper funding for implementation. Many interviewees pointed to foreign assistance as the main source of funds, which is used by the more enterprising ministries to ensure coverage of the implementation costs for new legislation. However, this system is not sustainable.

The proper use of concept papers (CP) could be one option for enhancing forward planning in ministries. Concept papers were introduced with the amendments to the Rules of Procedure of the Government as a means of enhancing policy discussions before laws are drafted and of supporting overall policy development for addressing crucial issues.

Figure 4. Compliance with the requirements for concept papers



Source: Analysis of the concept papers produced in 2012²³

In 2012 the total number of concept papers was 47, prepared by 11 ministries. The largest number of was developed by the MIA and the MF (seven each). In order to understand the way in which policy development

²² The deadline was not met and all of these obligations have been brought forward to the APSAA for 2013, with a deadline of the fourth quarter of 2013.

²³ Two concept papers per ministry were analysed against key documents regarding the policy making process. A view was expressed regarding the content and quality of the analysis against key benchmarks, such as the extent of problem definition, the use of data and the scale of consultation. Three ministries were excluded from the analysis as English translations of their concept papers were not available – the Ministry of Public Administration, the Ministry of Health and the Ministry of Trade and Industry.

happens and how well the newly introduced system is working, a quality assessment of the CPs was conducted. As with any new process, the system is still embryonic and will take time to embed. The analysis demonstrated the varying quality of the concept papers. There are nevertheless consistent issues. Consultation takes place but is often limited to interministerial consultation, and many organisations do not respond as they are apparently ill-equipped to do so. An analysis provided in a concept paper can be fairly superficial, as in most cases financial analysis is not included. When financial analysis was tackled, it focused on whether the proposal was affordable within the current budgetary agreement rather than in terms of the systemic impact, e.g. whether the proposal would impose costs on businesses. The quality of impact assessments is heavily influenced by the poor availability of data and statistics. CPs are for the most part included in the Government's legislative programme, but they are very rarely included in the APSAA or the main text of the GAWP.

Interministerial co-ordination mechanisms and institutional structure for co-ordinating policies and European integration issues in ministries (DEIPCs) are in place, but co-ordination is still technical in nature. Interministerial forums do not function yet as platforms for policy discussions. Increasing the role and capacities of DEIPCs remains a challenge. Key policy development capacity challenges for ministries are the capacity to transpose the *acquis* and to analyse the budgetary impacts of policies. Implementation of the system of concept papers introduced in 2012 has started well whereas the quality of concept papers remains a challenge.

Legislature

2.4. Legal framework and institutional set-up of the Assembly

The Assembly's main regulations are laid down in its detailed rules of procedure²⁴, and some committees have also adopted rules of procedure²⁵. In recent years, the administration has published several helpful operating "manuals" to support parliamentary functions covering, for example, the "Organisation of Work in Parliamentary Committees" (May 2010); "Committee Hearings" (February 2011), "External Expertise in Parliamentary Committees" (October 2011); and "Oversight Functions of Parliamentary Committees" (June 2012).

There is no comprehensive legal framework governing the powers and responsibilities of the Assembly in the EU integration process, and the role of the Committee for European Integration is geared towards review and co-ordination rather than the introduction and formulation of initiatives. It acts as a "main committee" rather than a "functional committee" in the legislative process. As such, it reviews the legislative work of other committees and also considers amendments they propose. Likewise, there is no specific comprehensive legislation in place to regulate the status of parliamentary officials.

The main political structures include: the presidency - the assembly president and five vice-presidents - charged with planning and steering the work of the Assembly; the plenary; four parliamentary standing committees and nine functional committees, which focus in particular on the detailed scrutiny of legislation; and seven parliamentary groups (there are also 12 deputies who do not belong to a group).

These administrative structures are established under the overall responsibility of the Secretary General, with two main departments for legal and procedural issues (including a division for the support of committees, with 36 staff) and for administration. The number of overall staff of the Assembly (169) is small compared to the number of deputies (120). There is still room for improvement in the substantive co-ordination between the division which provides support to the committees and the units for legal harmonization and approximation, and research.

The legislative framework needed for fulfilling policy development and legislative tasks is in place and supported by instructions. Developing a legal framework for European integration and for regulating the

²⁴ Rules of Procedure of the Assembly of the Republic of Kosovo, 29.04.2010.

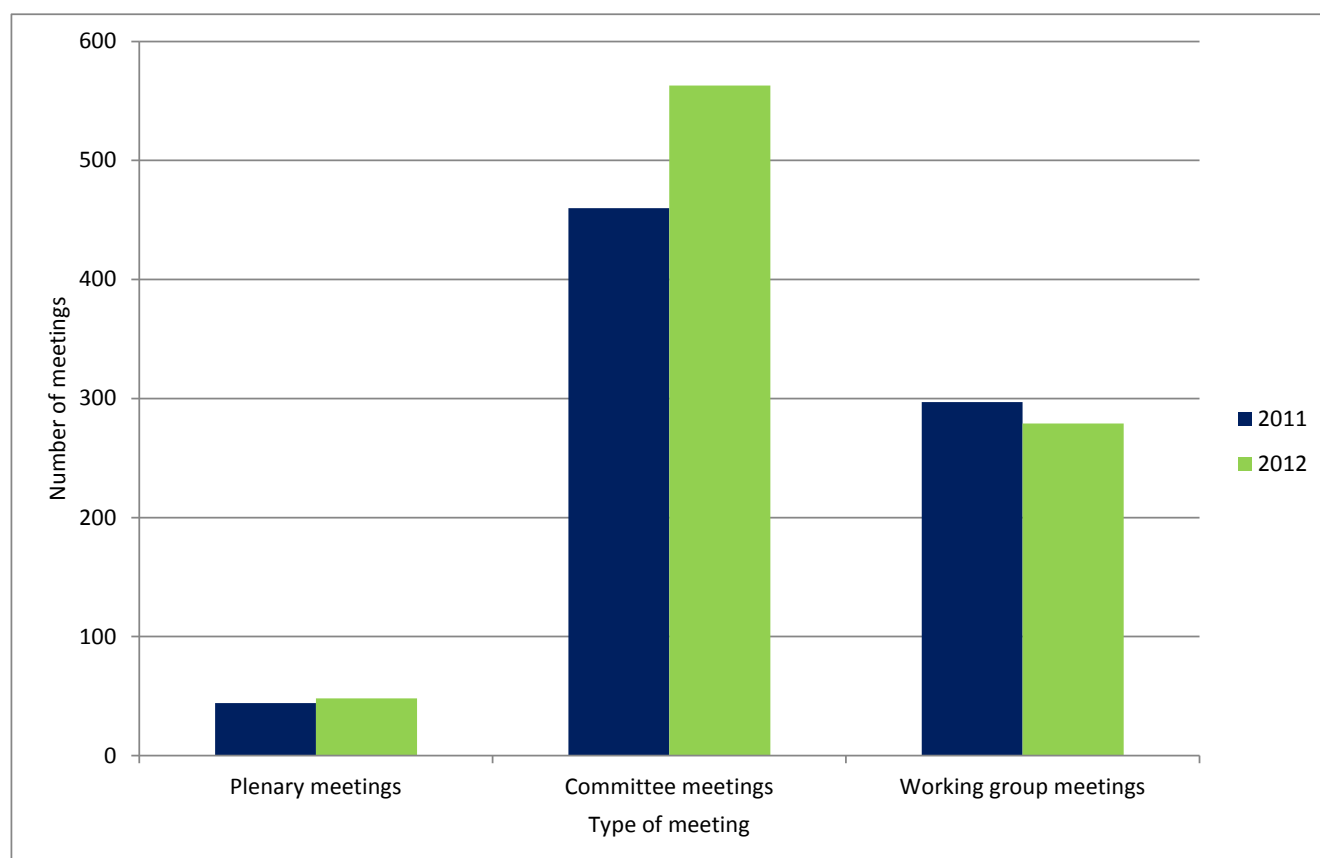
²⁵ See for example Rules of Procedure of the Committee for Budget and Finance of the Assembly of the Republic of Kosovo (Fourth Legislative Period), 25.11.2011.

status of parliamentary officials remains a challenge. The Assembly has developed political and administrative structures that are well-suited, in principle, to ensuring the effective and efficient performance of its main tasks.

2.5. Functional policy capacities of the Assembly

The main processes are in place for ensuring that the Assembly can fulfil its responsibilities of law making, executive scrutiny and oversight, EU integration policy making and ensuring that the procedural rules in force are followed. In particular, the Assembly and committees adopt annual work plans, and the presidency, in collaboration with the heads of the parliamentary groups, draws up agendas for the regular plenary sessions. Parliamentary committees and working groups, established by committees to consider draft laws, meet regularly and frequently. Committees perform control and oversight functions, notably by examining the implementation of selected laws and by reviewing the annual reports of a host of independent agencies. According to the reports of the Ombudsperson there have been improvements on the latter, in particular concerning attention given to the reports by the speaker and committees. Planning, decision making and evaluation procedures in place are designed to ensure that the plenary sessions and committees, notably the Committee for European Integration, are able to monitor and support Kosovo's European integration policy.

Figure 5. Assembly workload 2011-2012

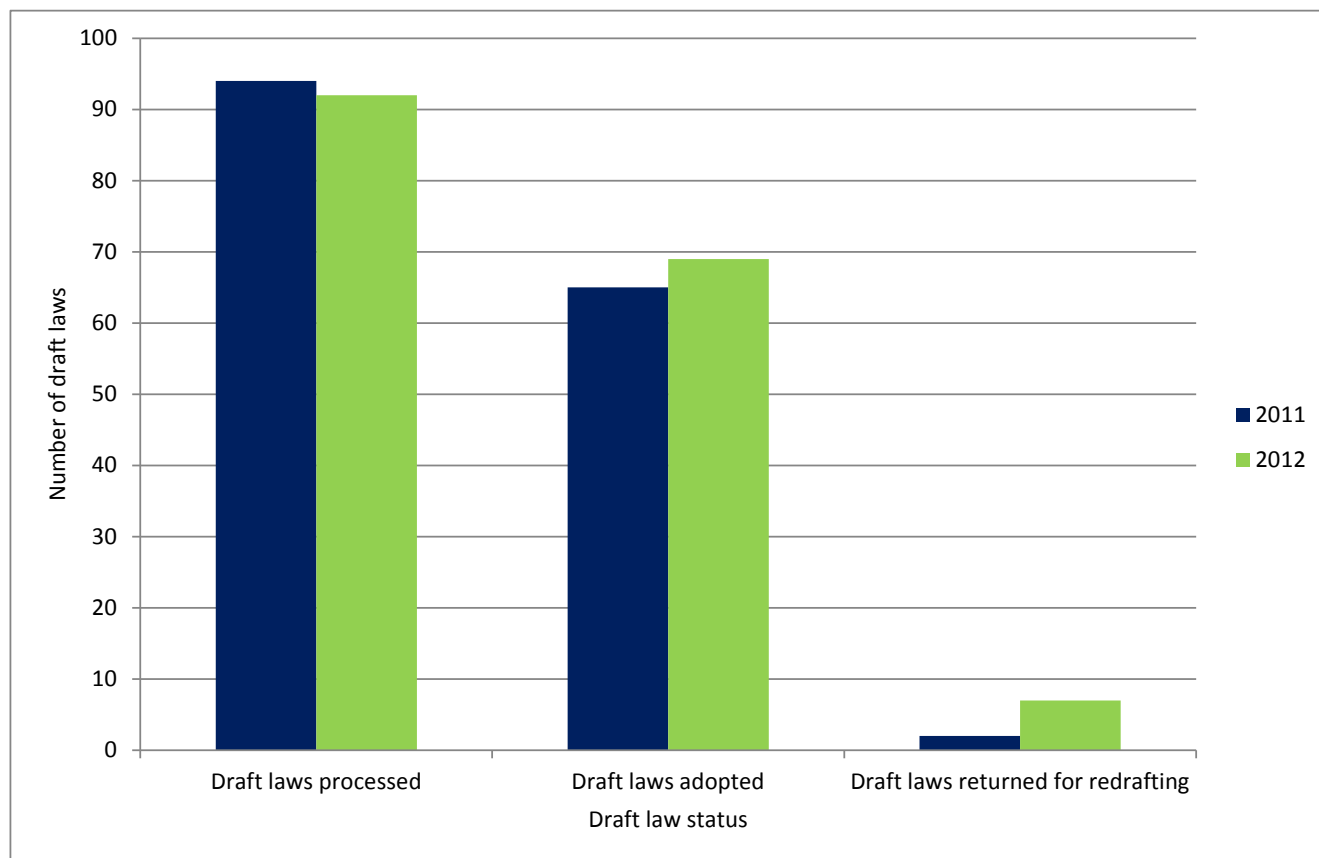


Source: Activity reports of the Assembly of Kosovo, 2011 and 2012

The high number of plenary sessions, committee meetings and working group meetings means that parliamentary support staff, notably staff of the division for committee support, spend a large amount of their time preparing, attending and following-up on meetings during the two annual sessions of the Assembly. At the same time, the four standing committees are also tasked with reviewing all legislative amendments proposed by functional committees. As a consequence, the time available for other tasks, notably the detailed consideration of the reports of independent agencies and the review of the implementation of laws, is very scarce.

This state of affairs is also borne out by figures on the parliamentary workload and output (see Figure 5 above and Figures 6 and 7 below).

Figure 6. Legislative output of the Assembly 2011-2012

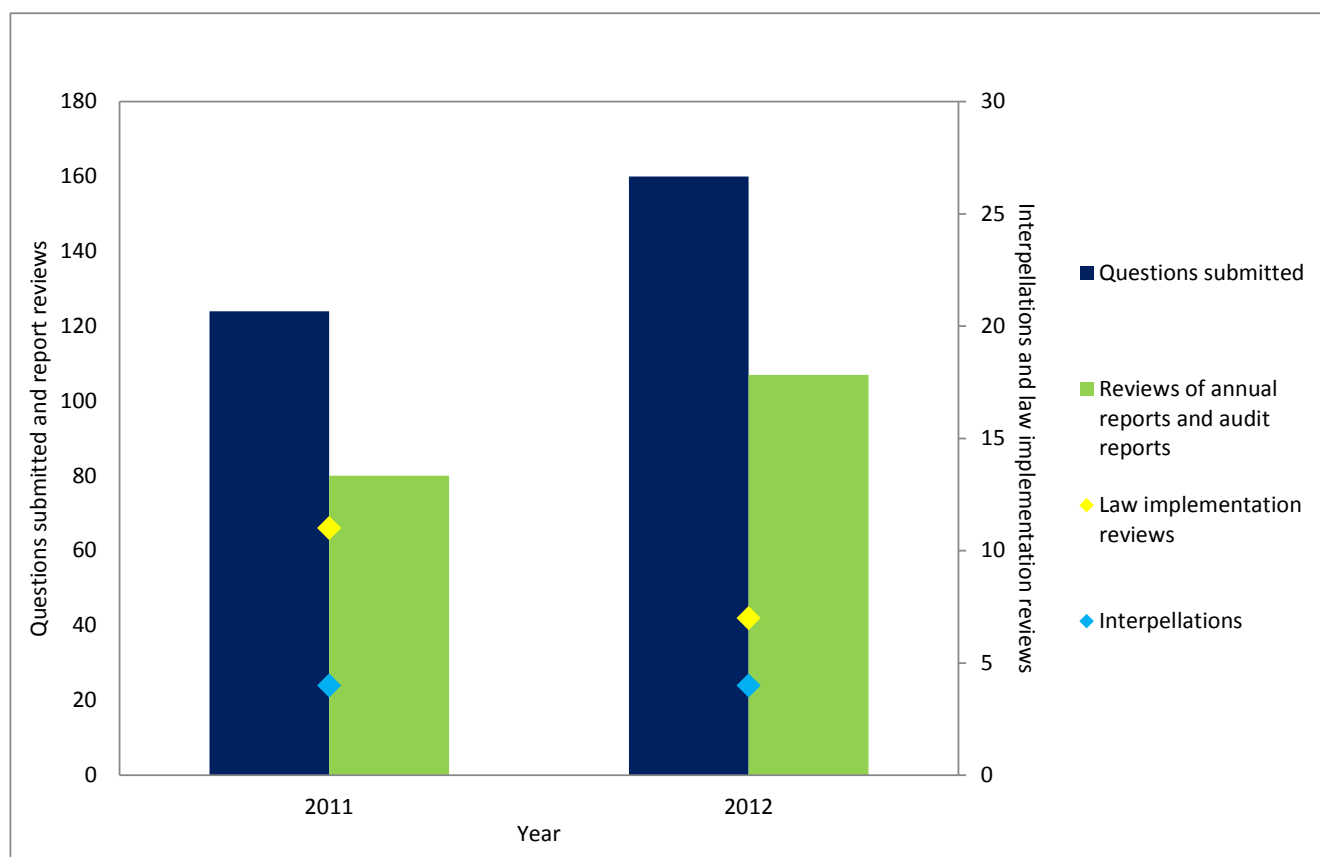


Source: Activity reports of the Assembly of Kosovo, 2011 and 2012

Functional pressures on the main elected office holders in the Assembly – including members of the presidency, party group chairmen and chairmen of the Assembly’s committees, other deputies and the Assembly’s administrative personnel – continue to be very high. Legislative output figures are impressive, but it is worth noting the pressures associated with these outputs. In 2011, 49 draft laws had not been processed within the deadlines foreseen by the Assembly; by the end of 2012, 14 draft laws were awaiting their first reading, also due to the very ambitious legislative agenda.

With regard to activities of scrutiny over the Government, there has been an increase in parliamentary questions and in the conduct of reviews of annual reports and audit reports, but this increase does not constitute a remarkable change in scrutiny capacity. Deputies submitted 124 parliamentary questions to the Government in 2011 and 160 questions in 2012. With very few exceptions, these questions were oral rather than written. Deputies also initiated 4 interpellations in both 2011 and 2012, and they carried out examinations of the implementation of 11 and 7 laws respectively.

Figure 7. Scrutiny output of the Assembly 2011-2012



Source: Activity reports of the Assembly of Kosovo, 2011 and 2012

These figures suggest that the Assembly acts principally as a lawmaker. By contrast, the number of written questions and interpellations is low compared to the number of deputies, as are the examinations of the implementation of laws.

The Committee for European Integration examined the compatibility of all draft laws with the EU *acquis*. The Assembly adopted detailed annual “Parliamentary Action Plans for European Integration”²⁶ as well as regular progress reports on the implementation of these action plans.

Capacity concerns focus less on basic parliamentary structures, rules, regulations and procedures in place, and more on operational issues, including co-operation with the Executive as well as available resources.

Performance of the Executive influences Assembly outcomes. During the Executive (i.e. pre-parliamentary) stages of the law-making process, there is a lack of formal or informal mechanisms for consultation with the Assembly on the substance of legislation. A similar absence of consultation has also been highlighted in relation to the draft budget of the Assembly submitted by the Government. Executive-legislative co-ordination in the planning of work programmes remains a challenge. In particular, no representative of the Government attends the meetings of the presidency of the Assembly, which determine its work programme, even though article 16 of the Assembly’s rules of procedure allow for such participation. Co-ordination only takes place at the level of heads of departments. The technical quality of draft laws submitted by the Government is variable. This variation in quality is a key factor behind the frequently high number of amendments adopted by functional committees. In seven cases in 2012, draft laws were sent back to the Government for re-drafting at the conclusion of the first reading.

The opportunities available to committees to engage with civil society and to consult outside experts are limited. Article 65 of the Assembly’s rules of procedure allows for consultation with concerned interests. As noted above, a manual setting out details of how to organise committee hearings was adopted in 2011.

²⁶ Kosovo Parliamentary Action Plan for European Integration for 2012, 21.12.2011.

Committees conducted 68 public hearings in 2011. In 2012, this number dropped to 37. This decline indicates the time pressures on the legislative process, but also the strains on the organisational capacities of committees. It is also possible to engage external experts, and a manual to aid the use of external expertise in committees was produced in late 2011. Standing committees have an annual budget of EUR 10 000 each to pay for outside expert consultants. The equivalent figure in the case of functional committees is EUR 5 000 each. At least with regards to legislation-intensive committees, these figures are low and committees have therefore repeatedly turned to external donors to finance expert advice.

Capacity concerns are affected by time constraints. A short period of time – only 10 days – is available to the standing committees to consider amendments proposed by functional committees. In the case of a high number of amendments, the standing committees find it difficult to carry out a proper assessment of the budgetary, legal and integration-related aspects of the amendments.

The workload of the Assembly is high, particularly in relation to the number of meetings held. Legislative output remained at a high level and is expected to increase further when the country's European integration effort intensifies. The absorption of committee time, staff time and other organisational resources with legislative business is a challenge, notably in the case of standing committees, which implies that executive scrutiny and oversight are in danger of being relegated to a secondary function. Increased performance on the part of the Government and enhanced co-operation with the Assembly would have a positive impact on the effective functioning of the Assembly.

ANNEX. Obligations in different plans (2012, 2013) compared with the staff numbers of ministries

Note: Different shades of colour are used as gradual indicators from “burdened” (dark red) to “manageable” (dark blue).

Ministry (acronym)	Comparisons (obligations per staff)						
	EPAP 2012 / EI dep	AGWP (Leg) 2012 / EI dep	EPAP(Leg) 2012 / EI dep	SAA 2013 / EI dep	SAA(leg) 2013 / EI dep	SAA 2013 / Cent Admin	SAA 2013 / Office of Min
MTI	25,7	3,0	2,0	30,3	2,3	1,8	11,4
MESP	15,7	3,0	6,0	29,7	3,0	1,4	9,9
MIA	22,0	0,3	1,3	18,8	1,5	1,6	8,3
MF	9,8	1,4	0,6	12,8	0,8	2,1	9,1
MH	10,7	2,0	1,7	17,7	3,3	0,8	6,6
MI	10,5	1,0	1,0	12,8	1,0	1,0	6,4
OPM							
MED	9,5	0,3	0,5	10,5	2,3	0,8	2,5
MAFRD	9,0	2,0	2,0	10,3	2,0	1,0	3,7
MLSW	17,5	0,8	2,3	9,8	1,5	0,6	4,9
MJ	9,8	2,5	2,0	6,0	1,8	0,5	1,5
MEST	13,8	0,8	0,8	5,8	0,0	0,1	2,6
MPA	8,7	1,7	2,3	7,0	2,3	0,3	2,1
MLGA	6,8	0,2	0,5	2,8	0,7	0,1	1,5
MFA	5,0	0,0	0,0	11,0	1,0	0,1	1,1
MEI							
MCYS	1,5	1,8	0,0	1,0	0,3	0,1	0,2
MCR	3,0	0,0	0,0	2,0	0,0	0,0	0,4
MKSF							
MD							

Sources: European Partnership Action Plan 2012, Government Annual Work Programme 2012, Action Plan for Stabilisation and Association Agreement 2013 and the Ministry of European Integration

PUBLIC EXPENDITURE MANAGEMENT

**KOSOVO
APRIL 2013**

1. State of play and main developments since last assessment

1.1. State of play

The fiscal situation in Kosovo continues to be kept under careful scrutiny by the Government, supported by the international community, particularly the IMF. Although the level of public debt in Kosovo stands at the level of 8.4% of GDP, overall government finances have been in a small deficit for the past five years. Despite a relative fluctuation in public revenue, the Government has been able to keep the public deficit within a reasonable margin (2.6% of GDP in 2012, compared to 1.6% in 2011). This situation has been confirmed by the IMF, which has indicated that good progress is being made toward restoring a sustainable fiscal position and sufficient government cash buffers, as well as enhancing the resilience of the financial system²⁷.

The legal and institutional framework for budget management is in place and does not require significant changes. However, as set out in the analysis below, the practice in implementing the regulation is still often superficial and technical, and financial planning focuses primarily on an annual cycle. In particular, the quality of fiscal analysis by line ministries and other budget beneficiaries remains a concern.

1.2. Main developments since the last assessment

In April 2012, the Medium-Term Expenditure Framework (MTEF) for the period 2013-2015 was published. Compared with the version published the previous year, this MTEF includes narrative material regarding high-level governmental priorities, as well as objectives and associated resources at the level of individual ministries and other budget organisations (BOs). In some cases, the objectives of the previous year have been adjusted considerably. While the top-level prioritisation exercise was centrally directed in 2012, developments are underway to extend this approach on a more inclusive, whole-of-government basis.

In terms of budget execution, the system proved to be fairly resilient and responsive during the course of 2012. In the light of a projected shortfall in planned revenues, the MoF used the in-year reporting and control processes to restrict expenditure outlays and to contain the impact on public finances. Institutional capacity within line ministries, which was noted as a concern in earlier reports, remains a developmental priority.

The 2013 Budget Law was processed on time, as foreseen in the Law on Financial Management and Accountability. Compared to 2012, the 2013 budget includes fewer one-off revenues, such as budget support and grants from international organisations and privatisation receipts.

In line with IMF proposals, the MoF has prepared amendments to the Law on Public Financial Management and Accountability, with a view to establishing legally binding fiscal rules.

2. Analysis

2.1. Public budgeting in Kosovo: overview of main elements

The budgetary system is set out comprehensively in the Law on Public Financial Management and Accountability²⁸ (LPFMA). The law deals with, among other things, the roles of key divisions within the MoF (including the Treasury Department, Budget Department and Economic Policy Department), the management of national revenues and appropriations via the Kosovo Consolidated Fund, the preparation and contents of the MTEF – which is the central document for orienting medium-term resource allocation and planning – and the budgets of municipalities.

²⁷ IMF country report number 345.

²⁸ Law No. 03/L-048 of 2008.

In general terms, the budgetary system and structure are based on the following annual cycle:

- Development of the Statement of Priorities of the Government within the first quarter of the year;
- Presentation of the MTEF in April with a three-year forward-looking time horizon, framed in the context of stated Government priorities and the economic and fiscal outlook;
- Presentation by 1 November of the annual budget for the following year, i.e. the first year of the three-year MTEF horizon;
- Passage of the annual budget by the Assembly in December.

Budget performance within the year is managed under the supervision of the MoF – in particular the Treasury, which authorises disbursements from the Kosovo Consolidated Fund²⁹ in line with pre-established profiles of expenditure, and the Central Budget section, which monitors both expenditures and revenues and has the authority to withhold expenditure if necessary for overall fiscal management.

In parallel, expenditure is channelled to municipalities – which enjoy a considerable degree of autonomy and discretion as to the use of centrally-sourced expenditure – according to a formula (based on 10% of centrally-collected revenues) mandated under the Law on Local Government Finance³⁰ (LLGF). National co-ordination is handled by the Municipal Budget section of the MoF.

Appropriations are subject to ex post audit by the Auditor General, who reports publicly to the Assembly.

The framework covers several of the elements required to comply with EU economic governance requirements, including those of the 2011 Budgetary Frameworks Directive³¹, although certain important elements relating to budgetary sustainability and independent fiscal oversight are underdeveloped, as outlined in the relevant sections below.

Taken as a whole, the above framework provides the potential for a coherent, well co-ordinated approach to planning and implementing the annual and multi-annual budgetary processes, including the timely identification and addressing of challenges that may arise.

2.2. Medium-term budgetary planning

In April 2012, the MTEF for the period 2013-2015 was published. It follows the structure of the MTEF for 2012-2014 published a year earlier, with a clear statement of Government priorities (referencing the Government Programme 2011-2014, the Action Plan of the Economic Vision of Kosovo 2011-2014), followed by a macroeconomic and fiscal analysis, a sectorial expenditure analysis and individual fiches for BOs, setting out objectives and three-year expenditure ceilings.

Compared to the 2011 version, the April 2012 MTEF reiterates, and modifies slightly, the Government priorities and sub-priorities set out a year earlier, although the more important change is the introduction of the BO-specific fiches, where the objectives are presented in a more concise and programmatic manner and, in some cases, are significantly recast. The April 2012-2014 MTEF included detailed tables indicating the sectorial composition of expenditure, with each ministry's capital and operational expenditure ceilings shown within the economic sector to which they relate. These tables, which support the credibility of ex ante planning and prioritisation of spending over the medium term, are omitted from the MTEF 2013-2015.

²⁹ According to the LPMFA "Kosovo Consolidated Budget" means the overall budget of Kosovo for all budget organisations.

³⁰ Law No. 03/L-049 of 2008.

³¹ Council Directive 2011/85/EU of 8 November 2011.

Continuity of the MTEF expenditure ceilings

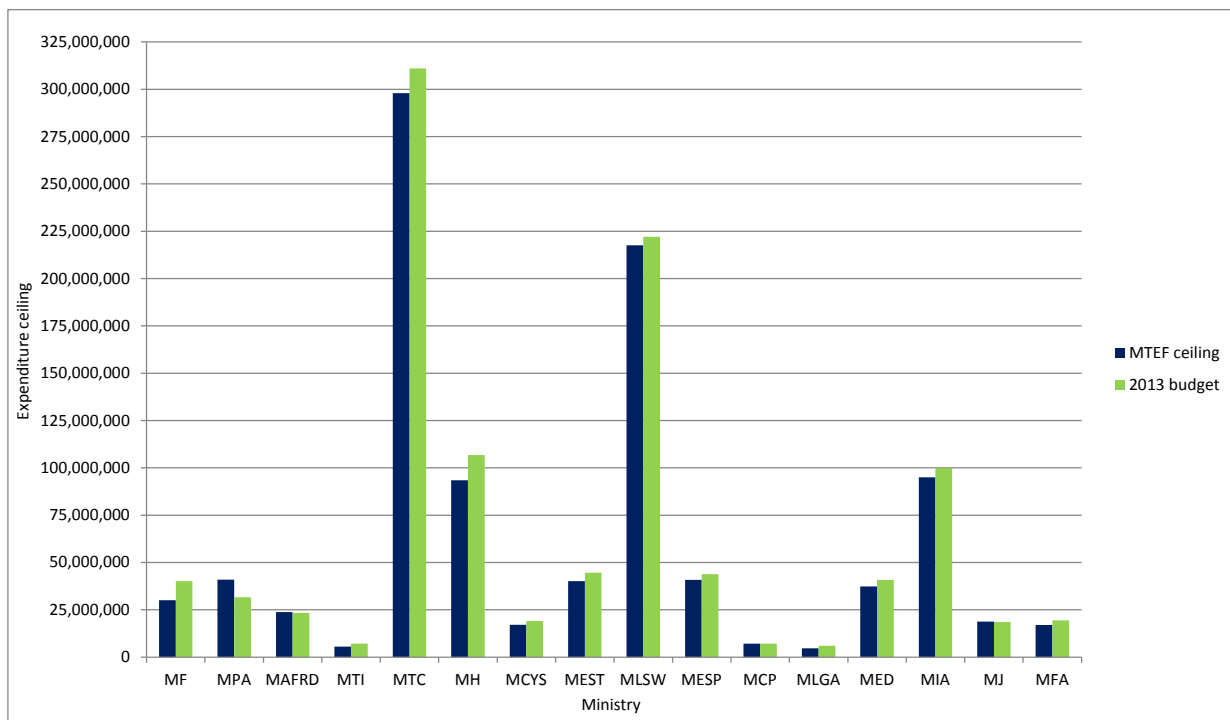
The expenditure ceilings in the MTEF – both the April 2011 and the April 2012 versions – have had some impact, albeit limited, in serving as normative limitations on expenditure growth. Actual 2013 budget allocations for current expenditure are 9.2% higher than planned in the MTEF 2012-2014, compared to 2.6% slippage on capital expenditure; for 2014, the latest ceilings for current and capital expenditure have increased by 12.5% and 15.6% respectively in relation to the MTEF 2012-2014 levels. These increases have occurred against a background of a 0.3% decrease in projected 2014 revenues from the April 2011 forecasts. The pattern of 2012, carried over from 2011, was that of incremental increases to expenditure targets at each stage of the cycle – MTEF and annual budget – building up to more significant deviations over time.

The comparison between the ceilings decided for 2013 in April 2012 within the MTEF and the actual budget allocation for 2013 also reveals that changes occur in both directions. In three ministries the actual 2013 budget allocations have decreased compared to the ceilings announced in April 2012. These changes suggest that there is considerable room for re-negotiations concerning the ceilings that were established within the MTEF and the actual decisions for annual budgets.

While it is not unusual for final budget plans to vary somewhat from the ceilings laid down in previous years, one of the basic aims for MTEFs is to incorporate a degree of fixity and continuity in the multi-annual ceilings. Variations from previously set ceilings should be based on clear and justifiable criteria (such as cyclical variations in unemployment supports, re-prioritisations across policy domains) and reconciled in a transparent way with the previous limits, in reference to those criteria.

This tendency poses risks for macro-fiscal planning. At another level, incremental increases undermine the signalling to line ministries with regard to future resource allocation, potentially weakening their resolve to plan and manage within their fixed ceilings and directing their energies instead to maximising their increment in a “bidding war” with other agencies.

Figure 8. The ceilings of selected ministries for 2013 in the Medium-Term Expenditure Framework 2013-2015 and the actual ceilings in the 2013 budget



Source: Medium-Term Expenditure Framework 2013-2015 and 2013 Budget Law

Strategic, programmatic and performance aspects of the MTEF

In early 2012, as in 2011, the work of setting overall Government priorities for the MTEF 2013-2015 was handled by a high-level co-ordinating committee³² of officials from the MoF, the Prime Minister's Office and the Ministry for European Integration. This exercise involved the identification of core themes and developmental issues from among the wide range of strategic reports previously published across all ministries, derived in turn from the Government Programme 2011-2014.

This work resulted with narrative material regarding high-level governmental priorities and strategic objectives, which were complemented by objectives and associated resources at the level of individual ministries or BOs. The BO-level material includes an overview presentation of mission, context (current situation), objectives and activities, together with an allocation of resources in aggregate terms to each activity. This descriptive material is clearly and logically presented and has been significantly streamlined from the previous year's MTEF. Each BO chapter also includes the more formal, tabular presentation of expenditure ceilings on a functional rather than programmatic basis. Since the functional tables form the basis of the budget appropriations, and of subsequent audit by the Auditor General, the programmatic allocations are indicative rather than normative.

In principle, this approach sets the foundation for a coherent strategy-driven approach to resource allocation and is a basic, potentially useful "presentational" approach to performance-type budgeting, with some elements of the more developed "performance-informed" approach. In practice, the alignment between the objectives at the central government level and BO-level objectives is not apparent, and there is little cross-referencing from BO level back to the broader priorities. Understandably, there is no visible linkage between these priorities and budget allocations. In early 2013, the work of preparing top-level priorities is being conducted on a greater whole-of-government basis, with direct input from line ministries on proposed key priorities and strengthened links to BO level objectives.

The programmatic and objective-focused material provided in the 2013 MTEF does not carry through, in any consistent or structured manner, to the 2013 budget document, and there is no indication that the Assembly, in its consideration of specific 2013 allocations, has carried out any structured examination of this strategic narrative material. The usefulness and relevance of including performance-type information in the MTEF are therefore limited; international experience has shown that data that is not used and does not engage parliament soon comes to be seen as a burden on administrators, hindering rather than helping the resource allocation process.

The greater integration of this data into the budgeting process, further ex post reporting on output targets, and improved co-ordination of whole-of-government and cross-sectoral objectives will provide a basis for continued progress toward a modern programmatic model of budgeting. However, realising the potential in this area – as in other aspects of budgetary process reform – will depend on the actual capacities of the Government to implement and internalise these approaches in policy planning.

The fact that an intensive prioritisation exercise is being undertaken again in 2013, so soon after the 2012 effort, reflects the stage of developing a new routine in the Government's planning processes. On the other hand, it indicates weak signalling – which ultimately derives from the political level – with regard to the enduring medium-term priorities for national development. In international terms, it is anomalous for a "medium-term" framework to be revisited and recast extensively on an annual basis. Such an approach is difficult to sustain in the future, for at least two reasons:

- The credibility and operational significance of the multi-annual, forward-looking expenditure ceilings are undermined if these ceilings are (potentially) to be reset each year as priorities are recast.
- The intensive level of managerial input to the co-ordination exercise pre-empts these high-level resources – which are still scarce, particularly in a context where institutional capacity remains at

³² Strategic Planning Steering Group, formalised only after (June 2012) the preparations for the last MTEF.

early stages of development – and this input would be better focused on ensuring the implementation and delivery of ambitious annual and multi-annual objectives.

As concluded in the Policy Making and Co-ordination assessment report by SIGMA, and supported by Nikaj (2013)³³, despite the existence of documents and guidelines, consolidation of the strategic planning system remains the challenge and various strategic documents (for both overall strategies and sectorial or line ministry strategies) do not form yet a systematic basis for budgetary allocation.

The sectorial ceilings established within the MTEF have a useful role in framing the budget discussions but these are still re-negotiated before the annual budget is finalised. A basic structure for priority setting and strategic planning is in place but this does not yet function as an instrument for resource allocation.

2.3. Annual budget and budget implementation

The 2013 budget was published by the Government in October 2012. As indicated under section 2.2.1 above, the budget figures reflect an upward movement of about 3% relative to the MTEF 2013-2014 target for current expenditure, bringing the total upward drift since the previous MTEF to over 9%. (For total spending, including capital spending, the upward drift is less than 2% relative to the MTEF 2013-2015 or 6.5% relative to the previous year's plans.) These increases are not reflected by a similar upward momentum in underlying revenues.

The budget document itself presents a comprehensive volume of information. The macro-fiscal analysis and BO-specific fiches are similar in nature to, and updated from, the MTEF material, and they are supplemented with detailed tables setting out the programme and sub-programme allocations within each BO, across each functional category of spending. Capital expenditure tables list each individual capital project. This information – in particular the micro-detailed capital material – may be of benefit to the MoF in its supervisory role, but it is rare in international practice to include the information in a parliamentary-level document, especially as the Assembly gives its approval on the basis of functional categories of expenditure and not on a project-specific basis. The budgetary material provides no indication of how capital allocations are expected to contribute to the achievement of particular policy or programme objectives. Furthermore, although this very detailed approach is needed in a short to medium term, in a medium to long term it would work against the objectives of the public internal financial control (PIFC) that the Government of Kosovo has established³⁴.

The LPFMA of 2008 includes specified mechanisms for monitoring, controlling and adjusting in-year expenditure, and these mechanisms were used to good effect during 2012. Following the mid-year and 10-month reviews of budgetary figures, it became apparent that revenues were underperforming in relation to budget plans. The MoF took action to limit expenditure disbursements in order to offset the impact on public finances – such as restricting outlays by ministries and proposing some significant one-off revenue-raising measures (notably the sale of the energy distribution network). Overall expenditure for the year came to EUR 1 476 million relative to the budgeted EUR 1 580 million (this includes wages and salaries to the amount of EUR 409 million)³⁵. The overall Government deficit for 2012 has been estimated at 2.6% of GDP compared with the 2012 budget target of 3.5% of GDP.

The LPFMA includes detailed provisions regarding the transfer of individual “appropriations” within a BO's overall budgetary allocation: up to 5% of any appropriation may be transferred to another expenditure without referring to the MoF; the MoF's approval is required for transfers of sums representing between 5% and 15% of an appropriation; and the Government's approval is needed

³³ Nikaj, B. (2013), “Case Study on Kosovo”, *Fiscal Impact Assessment of Structural Reforms: Case Studies in South East Europe*, Center of Excellence in Finance, Ljubljana.

³⁴ Policy Paper on Public Internal Financial Control System of Kosovo, May 2011, available at: <http://mf.rks-gov.net/en-us/departamentet/departamentiithesarit/menaxhimifinanciardhekontrolli.aspx>.

³⁵ Annual Financial Report of the 2012 Budget of Kosovo.

before the MF may authorise transfers of sums amounting to more than 15% and up to 25% of an appropriation. In principle, this approach seems designed to guarantee the maximum of flexibility in ensuring that budgetary funds are fully drawn down in accordance with needs. In practice, the approach risks overburdening the MoF with administrative requests, drawing the ministry into "micro-management" of details that are line ministry-specific. Moreover, the objective of maximising drawdown is not necessarily positive, especially in the absence of a well developed value-for-money framework. A better approach, in line with international experience of MTEFs, would be to concentrate resources on the basis of better forecasting and analysis of needs, coupled with greater flexibility for the (limited) carryover of unused funds – for both current and capital expenditures – to the following year.

The treasury control system is detailed and provides robust safeguards against casual misappropriations in the Kosovo Consolidated Fund. Moreover, once a request has been submitted to the Treasury via the appropriate authorised channels, disbursements can usually be made the same day or the following morning. However, with the multiplicity of steps to be taken within each BO before a request can be submitted (the Commitment Officer, Procurement Officer, Spending Officer, Certifying Officer and Financial Officer all play a role), the efficiency of the system is vulnerable to capacity gaps. This situation may partially account for the low budget execution rate of around 90% in 2011 and previous years (2012 was a different case owing to the MF curtailment of expenditures following the mid-year expenditure report).

In his September 2012 Annual Audit Report, the Auditor General³⁶ noted that, at central government level, PFM processes were generally well developed and that the main shortcomings were in the area of managerial control, with particular difficulties resulting from the gap between procurement requirements and actual practice.

The system of in-year fiscal management has been operational in the last few years. The treasury system provides detailed controls and the MoF has been able to limit public spending in the light of shortfalls in planned revenues. The detailed nature of the annual budget, however, leads to an increased workload that keeps the focus of financial management on annual budget execution and limits the development of more strategic financial management.

2.4. Fiscal sustainability

Both the MTEF 2013-2015 and the 2013 budget contain a detailed and comprehensive analysis of the macroeconomic and fiscal context for Kosovo's public finances, including budgetary forecasts and some discussion of fiscal risks. The analysis includes a sector-specific presentation of expenditure and revenue growth trends over the three-year forecast period. The economic forecasts have remained broadly stable in relation to the April 2011 MTEF, although some new data sources – in particular the results of the 2011 census – have had a marked effect on per capita figures.

Given the quite distinctive composition of Kosovo's revenue and expenditure bases, it is apparent that this type of macroeconomic and fiscal analysis, which is the norm among developed European countries, provides an inadequate basis for proper fiscal sustainability analysis and strategic economic response in Kosovo's case. The most obvious example is the fact that over 75% of Kosovo's tax revenues come from border duties (although this figure includes value-added tax that is collected at the border³⁷), and these revenues are forecast to remain at this high level through to 2015. Given the stated national policies of closer European integration and the more liberalised trading and market access that this entails, border revenues cannot be expected to persist at these levels indefinitely. It is notable that while revenues in 2011 saw a 12% increase on the previous year, revenues in 2012 were disappointing compared with forecasts.

³⁶ 2011 Annual Audit Report of the Auditor General.

³⁷ Annual Financial Report of the 2012 Budget of Kosovo.

Future budgetary costs

As regards expenditure, capital investment is projected to remain at approximately 12% of GDP throughout the projection period. While this figure is very high by international standards (the comparative figure for the EU is approximately 2.5%), the infrastructure deficits in Kosovo are large and diverse, and reconstruction and redevelopment will need to be sustained at high levels into and beyond the medium term. Given the importance of the capital investment programme and of ensuring that resources are directed to best effect, there are apparently capacity gaps in the area of project appraisal and evaluation. For example, the Auditor General has drawn attention to the lack of systematic cost-benefit analysis for major capital projects³⁸.

One potentially important development is the requirement, introduced as part of the Government's Rules of Procedure of 2011 and implemented as from 2012, that all new policy initiatives are to be prepared on a standard basis³⁹. The standard concept paper should specify objectives, policy rationale, strategic linkages and fiscal impact. In parallel, a manual on calculating the fiscal impact of new policies has been put into practice. However, to date the budgetary costings included in concept papers show an inconsistent approach to conducting budgetary impact analysis, and the level of detail and rigour in this respect is not uniformly high⁴⁰. Moreover, the scheduling and handling of concept papers within the budgetary and policy making calendar has not yet matured to the point where the notes can maximise their impact on decision making. SIGMA analysis on the concept papers prepared in 2012 signals that in most cases the required financial estimations were not included⁴¹. In cases where fiscal estimations are given, these are often superficial or fail to take into account all costs. The MoF has some means of challenging these estimations, as has been the case for example with the new Law on Civil Service⁴².

Concerning current expenditure, outlays on health care and social welfare, at around 6% of GDP, are low by European and OECD standards. The sectorial economic analysis does not envisage any significant increase in these proportions over time, and no compositional shift is foreseen across sectors. Indeed, the sectorial forecast methodology takes as its starting point the public finance targets set by international donors (in particular the IMF) and subtracts the technical revenue projections; the residual – expenditure – is apportioned across sectorial categories. While “top-down” approaches to public financial management are usually associated with discipline and rigour, from a budgetary sustainability viewpoint, the risk in Kosovo is that in the medium term, as the political system and broader societal expectations equilibrate with international norms, there will be pressure for significant increases in the level of social expenditure.

In particular, longer-term economic and demographic forecasting and planning, which are usual across OECD countries, are absent. The results of the 2011 census, which became available in 2012, present a better opportunity to engage in this area.

Preparations are well advanced for the implementation of a new fiscal rule as from 2013/2014, the main effect of which will be to restrict the overall budget deficit to 2% of GDP. Effective rules that constrain the capacity of a government to pursue pro-cyclical fiscal policy promote prudent fiscal management. However, as the EU experience has shown, one-dimensional rules can run the risk of “blindsiding” governments to more fundamental economic imbalances that can pose longer-term risks to sustainability. Up to now, there is little analysis of how to apply these lessons in the Kosovo context. Due to hardly predictable growth rates and an internationally common tendency for raised

³⁸ Audit Report on the Public Investment Projects, March 2012.

³⁹ For further details please refer to the 2013 SIGMA assessment on Policy Making and Co-ordination.

⁴⁰ Nikaj (2013) (op. cit.) observes that no comprehensive methodology has been worked out for preparing and assessing budget proposals as well as evaluating the budgetary impacts of legal acts and strategic documents; such an assessment is needed even more now that the number of budget-users and the size of the annual budget have increased.

⁴¹ For further details please refer to the 2013 SIGMA assessment on Policy Making and Co-ordination.

⁴² For further details please refer to the 2013 SIGMA assessment on Civil Service and Administrative Law.

expenditures to match revenue growth, more rounded economic management approaches need to be considered. The newly elaborated EU economic governance framework includes much more specific fiscal constraints and structural safeguards that may be relevant for Kosovo in the future, such as a structural benchmark to constrain expenditure growth.

Relations between central and municipal budgeting

The overall budget of Kosovo's 38 municipalities amounted to EUR 361 million in 2012 (some 24% of overall government expenditure) and is forecast to remain in the range of EUR 375-377 million in the period 2013-2015. The bulk of the municipal budget (over 82%) is funded from a government grant, administered by a grants commission with a secretariat in the MoF. The balance is funded from own-source revenues, largely property taxes and municipal fees and charges. The formula for determining the amount of the government grant is currently being revised in order to take account of the results of the 2011 census and to conform to the new fiscal rule.

Municipalities have functional responsibility for primary education and primary health care in their jurisdictions, and approximately 60% of central grants are earmarked for such purposes. Except for some restrictions on wages and salaries, the level of functional decentralisation is very high: municipalities are free to spend their remaining revenues, and all own-source revenues, on the local priorities that they have themselves determined.

In principle, advanced decentralisation of this nature can promote innovative approaches to policy making, generating different perspectives on good practice and allowing for learning and dissemination. From a budgetary perspective, the capacity risks identified within central institutions are amplified in municipalities, and there is a major challenge to embed a culture of budgetary professionalism and discipline.

The role of external financial assistance

In 2012 Kosovo received financial assistance of EUR 68.8 million under the EU's Instrument for Pre-Accession (IPA), which amounted to about a half of overall external financial assistance from international donors – notably the IMF, World Bank and USAID. This overall level of commitment, if well directed and co-ordinated with national processes, has the potential to provide a marked uplift to institutional capacity building and to the social and economic infrastructure within Kosovo. Concrete project cases demonstrate however, that co-ordination among donors, or between donors and line ministries, is not always as strong as it should be. For example, there are instances of specific capacity-building projects being initiated by one donor organisation, which was unaware of the fact that a very similar project was being initiated by another body.

An "Aid Management Platform" web portal was launched in 2010 to promote greater awareness and co-ordination of donor projects. However, donor funding is external to national budgeting, and it does not feature in the MTEF 2013-2015. Disbursements of donor funding to individual line ministries and in support of particular projects are nevertheless handled centrally via the Kosovo Consolidated Fund. A more integrated approach to handling and accounting for these major sources of funds in the framework of MTEF remains a challenge.

The distinctive compositional features of the Kosovo revenue and expenditure bases are likely to pose particular risks and challenges for budgetary planning beyond the three-year horizon, but these risks and challenges have not been acknowledged or factored into fiscal strategy and would require longer-term planning. A proposed fiscal rule (imposing an upper limit of 2% for the budget deficit) could assist in promoting budgetary sustainability, but it will need to be supported by an analytic apparatus to identify longer-term budgetary risks. The fact that the implementation costs of new legislation are often not calculated, or are not fully taken into account, poses further risks to fiscal sustainability.

**CO-ORDINATION,
IMPLEMENTATION AND
PRIORITIES OF THE PUBLIC
ADMINISTRATION REFORM**

**KOSOVO
APRIL 2013**

1. State of play and main developments since the last assessment

1.1. State of play

Public administration reform (PAR) issues are included in key strategic documents of the Government, such as the Program of Government 2011-2014 and the Government annual work plans, as well as central European integration planning documents, such as the Action Plan for the SAA. The Comprehensive Strategy for Public Administration Reform 2010–2013⁴³ and an action plan for its implementation⁴⁴ are in force. The MPA is responsible for PAR, with a small, dedicated team responsible for PAR co-ordination and monitoring in the Department for the Management of Public Administration Reform (DMPAR). The co-ordination structure for the implementation of the Strategy and a monitoring mechanism are formally in place. However, the PAR co-ordination structure enables solely technical-level discussions due to the inactive political-level structures.

The regular PAR agenda setting and key documents do not include whole-of-government priorities and objectives. The PAR strategy objectives are set under 12 sectors and in sub-objectives level (39 in total). The planning process overestimates the existing capacities of responsible institutions. Together with the challenges of implementing cross-governmental reforms, these problems have led to delays in the implementation of key reforms. Although improved in 2012, financial planning for public administration (PA) reforms is still fragmented and short-term.

Despite the above shortcomings, progress has been made with regard to the implementation of PAR. The approval of relevant laws and by-laws indicates that a considerable amount of energy is being devoted to the reforms. A more specific assessment of progress and the state of play in certain PAR sectors is provided in other sections of the SIGMA assessment: policy making and co-ordination (corresponding sections in the PAR strategy are under objectives 1 and 2); public expenditure management (PAR strategy objective 5); civil service, human resources management, and administrative law (PAR strategy objectives 9 and 10); and public procurement (PAR strategy objective 8).

This specific assessment covers developments in the PAR co-ordination mechanism, priorities and implementation at the central government level in Kosovo. It analyses the scope and coherence of the PAR agenda, its objectives, institutional co-ordination framework, and planning assistance for the reforms.

1.2 Main developments

Almost two years after the adoption of the strategy, an Action Plan for Implementation of the Public Administration Reform Strategy 2012-2014 (PARAP) was approved in May 2012⁴⁵. The PARAP addresses the 12 strategic objectives defined under the strategy and serves as a good operational tool for guiding PAR implementation. A decision concerning the organisation and management of structures for the implementation of PAR was also adopted in July 2012⁴⁶.

PAR priorities in the framework of European integration process were set by the Government with the adoption of the Action Plan on Negotiation of the Stabilisation (APSAA) in December 2012.

⁴³ Approved by Government Decision no. 07/145, dated 15.09.2010.

⁴⁴ The *Action Plan for the Implementation of the Public Administration Reform Strategy 2012-2014* (May 2012) was endorsed by the Inter-Ministerial Commission on PAR on 9 March 2012.

⁴⁵ The Plan was presented to and initially endorsed at the meeting of the Inter-Ministerial Commission for Public Administration Reform on 9 March 2012.

⁴⁶ Decision by the Government of Kosovo 4 July 2012 (no. 05/82): "For the organising and functioning of the structures for implementation of the Action Plan for Public Administration Reform".

2. Analysis

2.1. Scope, objectives and coherence of the public administration reform agenda

Coherence of strategic documents

PAR priorities have been established in the following strategic documents: Strategy on Public Administration Reform (2010-2013); Action Plan for the Implementation of Public Administration Reform 2012-2014 (PARAP); Action Plan on Negotiation of the Stabilisation and Association Agreement (APSAA); Programme of the Government 2011-2014 (PG); and Annual Work Plan of the Government of Kosovo (GAWP) for 2012 and 2013. To analyse the coherence of the PAR agenda, the above documents were compared (see Annex).

The PG, APSAA and PARAP all highlight the internal reorganisation of ministries and civil service reform. In other areas the scope of PAR is broad and fragmented. The PG emphasises the quality of public services and the overall strengthening of administrative capacities, and it touches on decentralisation issues. The PARAP focuses on 12 different sectors. Of those sectors, seven are partly covered in the PG and nine in the APSAA. The PARAP does not cover local government and decentralisation issues, though the policies related to those issues have a prominent place in both the PG and the APSAA. It demonstrates the varying scope of PAR in key strategic documents.

While the PARAP is largely coherent with the APSAA, the administration has faced difficulties in streamlining the PARAP with the GAWP priorities. In 2012, the priority section of the GAWP included the development and implementation of the PARAP as one of the priority activities, but as the PARAP comprises 12 sectors and 39 sub-objectives, its implementation cannot be considered as a real priority in itself. Other priority activities in the GAWP address fragmented and narrow development activities, such as the assessment of training needs for implementation of the Ministry of European Integration (MEI) Strategy for Training on European Affairs 2012-2015, which has still not been adopted.

Regarding activities under the responsibility of the MPA, coherence has improved remarkably in 2013. The reorganisation of ministries, job classification and implementation of the new salary system are among the listed priorities in GAWP 2013. However, none of the activities of other institutions – the Office of the Prime Minister (OPM), MoF, Regulatory Commission for Public Procurement (RCPP) – are highlighted as a priority in the GAWP under the priorities section. This demonstrates that the challenge of whole-of-government co-ordination and prioritisation of PAR has not yet been met by the MPA (see Annex).

Scope and prioritisation of the PAR strategy

The scope of the PAR strategy is broad. However, some of the key policy areas that are relevant in the context of PAR are not included in the document and are not considered as a part of PAR. The current Action Plan for the Economic Vision of Kosovo 2011-2014 approved in July 2011, which encompasses projects to improve the business environment, is being conducted with the involvement of several ministries (OPM, Ministry of Interior, Ministry of Trade and Industry, Ministry of Finance and Ministry of Justice). These projects⁴⁷ have a positive impact on the economy of Kosovo and increase the level of public services to businesses and citizens. If communicated properly, they could also demonstrate the positive impact of governance reforms.

⁴⁷ Indicative examples of the projects considered: Approval by the Assembly of the package of laws aimed at eliminating barriers in doing business and improvement of Doing Business (DB) indicators; List of Laws on Change: Administrative Instruction no. 07/2009 on Registration, de-registration and issuance of fiscal number; Administrative Instruction no. 15/2008, Determination of fees for registration and for services offered by the Business Registration Agency; Administrative Instruction no. 06/2008 on Tariffs and services offered by the Municipal Cadastral Office and licensed survey companies; Improvement of DB indicators: Starting a business; Protecting investors; Registering property 2011 (USAID/BEEP, EU/SME); Enabling online business registration.

Kosovo Mosaic 2012⁴⁸, a survey conducted by the United Nations Development Programme (UNDP), showed a decreasing satisfaction level of citizens with regard to public services between 2009 and 2012. The satisfaction index for 16 public services was negative. A very low percentage (13%) of citizens has an opinion that the central government is working according to the priorities of its citizens; local and municipal governments earn a slightly more positive assessment (26%)⁴⁹.

The survey provides grounds for emphasizing a need for improved public services when setting PAR reform priorities. The Programme of the Government has set the quality of public services as one of the key priorities for PAR reforms. However, due to state building needs and lack of key PA legislation, PAR in Kosovo has been oriented towards management and organisational issues. The citizens-orientation is underpinned in the PARAP by sectors of communication with and participation of citizens, rationalisation of electronic administrative processes, and development of electronic governance. These sectors and the sub-objectives set have not been translated into the Government's central strategic documents, i.e. the APSAA and the GAWP. Overall, there are not whole-of-the government objectives in the PARAP which underpin citizens-orientation (for example, improved accessibility to public services or decreasing administrative burdens).

As the annual Programme of the Government (PG), the Action Plan for SAA (APSAA), and the Action Plan for PAR (PARAP) address the reorganisation of ministries and civil service reform, those fields can be considered as coherent reform priorities. The other fields covered vary between these strategic documents. The PARAP is, in large part, coherent with the APSAA, while streamlining the priorities of the PG with the PARAP remains a challenge, in particular regarding activities of the OPM and the MoF. The role of the Government as a provider of public services to citizens' has been given little attention in the setting and implementation of the PAR agenda.

2.2. Institutional and co-ordination framework for PAR

The Minister of Public Administration drives the public administration reform process forward as a priority of the Ministry. The MPA is a central ministry in the PAR process, having responsibility for 4 key sectors and for the co-ordination and monitoring of PAR. The OPM (4 sectors) and the MoF (3 sectors) also have direct responsibility for implementing PAR and influencing the agenda and the process, as centre of government institutions.

Co-ordination structures

To establish responsibilities for PAR, a decision on the organisation and management of structures for the implementation of PAR was adopted by the Government in July 2012⁵⁰. This decision sets up the composition of the PA working group as a central administrative co-ordination body, including the secretaries general of OPM, MoF and MPA, and representatives of the Ministry of European Integration and the Ministry of Government of Local Administration.

Co-ordinators, at the middle-management level, have been appointed for 12 sectors, acting as chairs of sub-working groups. The sub-working groups and the PA working group met in July 2012, February 2013 and again in March, which means that the administrative co-ordination structure is not functioning as an operational mechanism that sets the agenda of activities, discusses implementation problems, and guides work between meetings through forward-looking decisions. Interviews with the chairs of the sub-working groups confirmed that the meetings have been mainly used as reporting platforms. Knowledge about the existence of these groups and their functions proved to be limited outside the MPA.

⁴⁸ [Kosovo Mosaic 2012](#), overview of perceptions on public services and local authorities, published in December 2012 by the UNDP.

⁴⁹ Public Pulse Report (August 2012), prepared by the UNDP-Kosovo, p. 11.

⁵⁰ Decision by the Government of Kosovo of 4 July 2012 (no. 05/82): "For organising and functioning of the structures for the implementation of the Action Plan for Public Administration Reform".

A number of factors influence the effectiveness and efficiency of the PAR Strategy's administrative co-ordination structure, in particular concerning non-MPA areas. Some sectors of the strategy are narrow, concerning mainly the work of the ministry responsible for the sub-working group (for example, MoF areas). Other regular interministerial co-ordination mechanisms are often used by institutions. The OMP, for example operates regular co-ordination structures that handle the same or similar issues, such as the working group of legal directors, which focuses on PAR Strategy objective 2 activities, and the Strategic Planning Steering Group covering PAR Strategy objective 1. For the reorganisation of ministries and the reform of job classifications, the MPA has created a separate joint working group with the MoF. These factors decrease the need for PAR strategy sub-working groups.

This does not mean that the administration underestimates the relevance of PA reforms. PAR is one of the permanent agenda items of weekly meetings of the secretaries general. However, an analysis of both the minutes of the meetings and the interviews carried out confirmed that these meetings were mainly used for reporting on progress and not for discussing problems of implementation or reform priorities⁵¹.

This must be put into context. The reorganisation of the administration and the reform of the civil service salary system, currently underway are very challenging reforms, impacting across all government institutions. They therefore require both leadership and effective co-ordination throughout government, including at the political level.

The key structure responsible for PAR co-ordination is the Interministerial Commission for the Reform of Public Administration, composed of the Deputy Prime Minister (DPM), who chairs the commission; the Minister for Public Administration, who acts as vice chairman; the Minister of Finance; the Minister for European Integration; and the Minister for Local Administration. The Commission has not met since July 2012, which means that there is no active co-ordination of PAR at the political level.

Capacity for co-ordination and monitoring

The MPA's Department for the Management of Public Administration Reform (DMPAR) has a key role in supporting both co-ordination and implementation. The department also supports the interministerial structure and commission in their functioning, at the level of the PA working group, and the sub-working groups covering the 12 sectors of the PAR Strategy and the PARAP. The DMPAR is also deeply engaged at the technical levels of the reforms, having received support from several international donors, most recently from the UNDP. The head of the DMPAR is responsible for one of the most challenging sectors of the PAR strategy – reorganisation of the public administration.

The DMPAR has been active but does not possess the capacity to address all of the co-ordination and support issues. This situation will remain, unless the Department is reinforced. In 2013, only 2.6% (7 positions) of MPA staff is assigned to the DMPAR. In comparison, the Department of NGO Registration has 4.1% (11 positions) of all employees and the central administration services constitute 33% of the MPA staff⁵².

The monitoring of progress and assessment of the impact of reforms are weak in terms of capacities and conduct. It should be underlined that clear guidelines from the Government on drafting the annual Government work report now exist. This report provides a good basis for the preparation of a first overview of implementation initiatives⁵³. The OPM provides quarterly reports on the implementation of the GAWP, covering all ministries, but these reports do not analyse the progress of PA reforms specifically or the impact of PAR.

⁵¹ Minutes of the 336th (11.12.2012), 338th (15.01.2013) and 339th (22.01.2013) meetings of the Council of Secretaries General.

⁵² Law no. 04/L-165 "On Budget of the Republic of Kosovo for 2013".

⁵³ Manual on Drafting the Annual Government Work Report, November 2011.

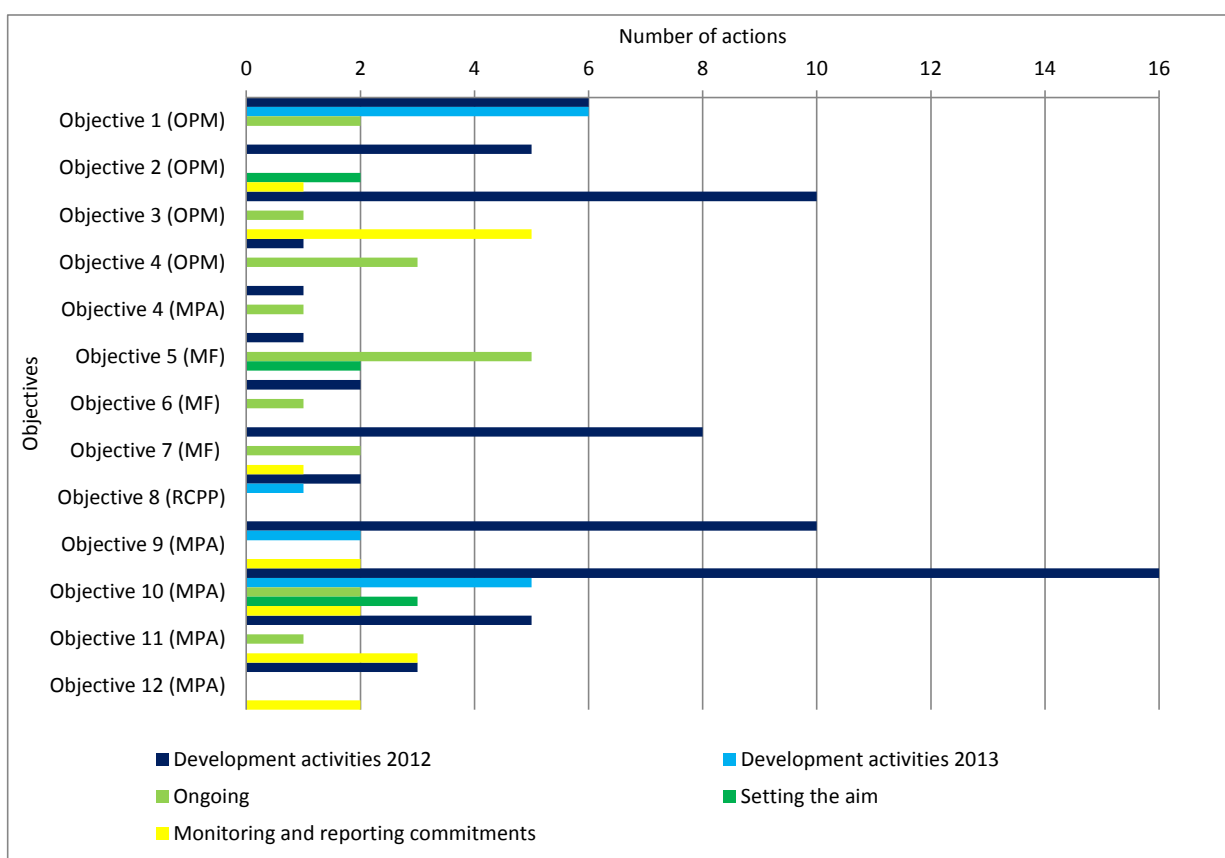
The administrative co-ordination structure for the PAR strategy is in place, and the progress of PAR is discussed regularly at the secretary general level. However, due to a number of regular parallel structures and to the scarce allocation of resources to supporting structures, the co-ordination mechanism of the strategy is not operational and does not provide guidance concerning the PAR agenda. Political level co-ordination mechanisms are formally in place but are inactive in practice.

2.3. Planning of the PAR agenda and resources

Planning activities and workload for PAR

The PARAP provides a good format for planning activities, deadlines, success indicators and required financing. To facilitate analysis, PARAP actions are divided into three categories: development activities; on-going activities; and aim setting, without specifying concrete actions.

Figure 9. Planning of activities in the Action Plan for Implementation of the Public Administration Reform Strategy 2012-2014⁵⁴



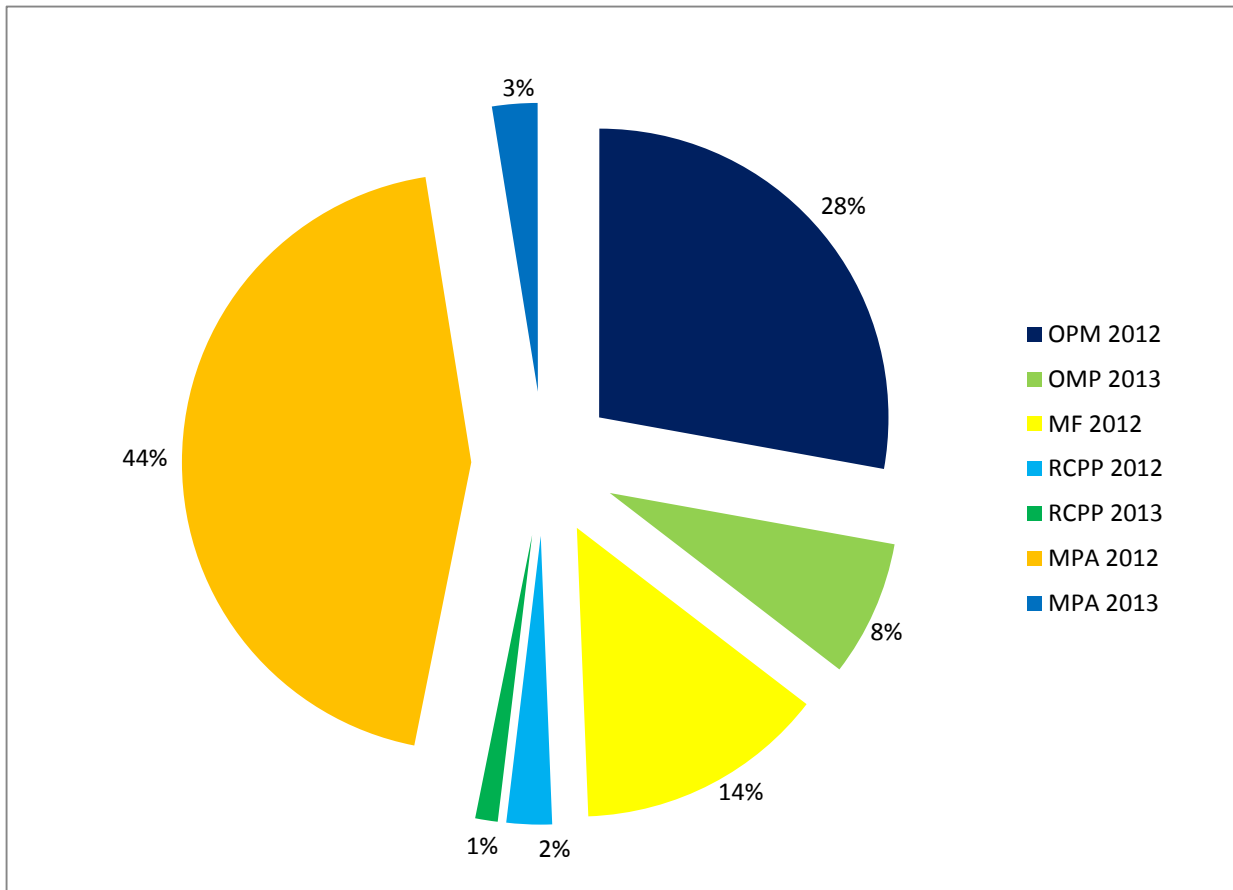
Source: Public Administration Reform Action Plan 2012-2014

In seven cases, no concrete actions were listed, and instead general aims were set for the future. A total of 18 actions (16.5% of all actions) concerned ongoing regular activities already under implementation. Ongoing activities have most often been used by the MoF (42% of MoF actions). Planning has been characterised by an underestimation of existing human and financial capacities.

⁵⁴ The PARAP has column titled “actions/objectives” and a column titled “success indicators”. However, in both column often activities can be found and at the same time wordings which can’t be considered as activities/actions can be found under “actions” column. Therefore, PARAP does not allow automatic calculation of insertions under “actions” column as PARAP activities. Concrete activities listed in the “success indicators” column are taken into account in the analysis. In addition, activities have a very different scope, as there can be detailed activities, but at the same time the development of secondary legislation for the Law on Civil Service is listed as one activity. To allow comparison, the scope of the activities was streamlined, with very small-scale activities merged and large-scale activities separated.

Although the PARAP implementation is planned to end in 2014, no activities were planned for 2014. A total of 70 development activities (representing 68% of the actions) were planned for 2012, more than half with a deadline of June 2012. Therefore, it is understandable that majority of the deadlines were not met in time.

Figure 10. **Workload of government institutions (yearly distribution) in implementing Public Administration Reform development activities**



Source: Public Administration Reform Action Plan 2012-2014

The MPA clearly has the greatest share of PAR development activities, with 47% of all activities. This Ministry planned most of its development activities (35) in 2012; only two development activities are foreseen for 2013. This is a clear sign of unrealistic planning, which does not allow for concentration on key priorities. Key reforms derived from the Programme of the Government and from preparations of the administration for the SAA process, were among the development activities but, with so many tasks in the pipeline in addition to priorities, human and financial resources have been fragmented. Key reforms being implemented (reorganisation of ministries, job classification, and implementation of the civil service law) have an interministerial nature, which requires a particular focus on co-ordination capacity and on the time needed for consultation and implementation. At the same time, the MPA has fragmented resources for dealing with issues where their authority is not clear, for example with better regulation issues (action 9.1.6 in the PARAP), which are a responsibility of the OPM. Over optimistic planning tendencies are most acute in the case of the MPA, but visible as well in the case of the OPM, in particular concerning interministerial reforms, such as preparations for transposition of the *acquis*.

Overambitious planning is one of the reasons behind the low implementation record. Other reasons include the scarce attention paid to planning implementation and supporting resources (analysed above in the section on co-ordination). Small-scale activities often include an implementation aspect, such as the training of civil servants. However, in the case of key PAR reforms, such as civil service reform, no planning was made for either implementation activities or funds. The action plan

pre-supposes a strong and well-staffed technical structure in place to support and guide the needed technical work of the reforms.

Planning resources for PAR reforms

When comparing available information from different documents and sources concerning the resourcing of PAR reforms, there is no clarity as to how much is actually being spent on these reforms. Financial resources for PAR are planned in the Medium-Term Expenditure Framework (MTEF), the annual state budget and the PARAP. EU assistance, including assistance to PAR, is planned through the annual programme for Kosovo under the IPA transition assistance and institution-building component for 2013. None of Kosovo's national financial-planning documents provides a coherent overview of PAR implementation costs.

Resources are allocated to sectors/objectives in the PARAP. However, in a similar way to overall financial impact analysis and planning practices in Kosovo (see SIGMA's assessment on public expenditure management and on policy making and co-ordination), financial planning takes into account only the direct costs of activities and does not enable the forecasting and planning of implementation costs. Shortcomings of this approach are clearly visible in the MTEF 2013-2015 where, for the objectives targeting the implementation of the PARAP, a separate small amount of resources is allocated compared with the objectives under the MPA targeting the actual implementation of PA reforms (implementation of civil service salary reform, e-governance and civil service training).

The quality of medium-term financial planning for PAR has clearly improved in the last two years. As Kosovo does not implement programme budgeting, PAR objectives are set in the MTEF government priorities section, whereas resources are planned under the institutions implementing PAR (MPA, OPM, MoF).

Table 2. Planning resources for Public Administration Reform in the Medium-Term Expenditure Framework

	MTEF 2011-2013	MTEF 2012-2014	MTEF 2013-2015
Objectives at level of government priorities	No	<ul style="list-style-type: none"> • Building administrative capacity • Capacity building for policy planning and co-ordination • Improvement of budget planning • Decentralisation 	<ul style="list-style-type: none"> • Implementation of new legislation (including salary reform) • Capacity building for policy planning and co-ordination • Decentralisation and local governance reform
MPA PAR objectives	6 objectives, functions of ministry generally covered	6 objectives, functions of ministry generally covered, 4 coinciding with 2011-2013 (implementation of legislation and HR development added)	4 objectives, two with clear focuses (implementation of legislation and skills development of civil servants)
Objectives linked with financial resources	No	No	Yes
MF PAR objectives	4 objectives on PAR	4 objectives on PAR, including concrete objectives for implementing government priorities	1 coherent objective on PAR (improvement of public expenditure management) and 1 objective linked with PAR (macroeconomic stability, including better prioritization and planning)
Objectives linked with financial resources	No	No	Yes

OPM objectives	No objectives on PAR	No objectives on PAR	No objectives on PAR
Objectives linked with financial resources	No	No	No

Sources: [Medium-Term Expenditure Framework 2011-2013](#); Medium-Term Expenditure Framework 2012-2014; [Medium-Term Expenditure Framework 2013-2015](#)

During the past two years, MPA and MoF objectives have developed an increased coherency within each institution and in relation to Government priorities. The OPM does not plan resources separately for PAR activities and maintains very general sectors/objectives in the MTEF. In the 2013-2015 MTEF, PAR objectives are clearly expressed for the MPA and MoF and are linked with financial resources, which demonstrates an improved planning capacity and provides a solid basis for tackling the remaining incoherencies in planning PAR financial resources. For example, the MTEF 2013-2015 allocates EUR 1.5 m for the implementation of the PAR Strategy 2010-2013 and the PAR Action Plan 2012-2014 (objective 1 of the MPA in the MTEF). However, the overall planned annual cost of PAR is EUR 20 m (objective 2 of the MPA in the MTEF), complemented by EUR 9.56 m for e-government (objective 3 of the MPA in the MTEF), which is also part of the PAR Strategy. For the MPA objective 4 in the MTEF, “capacity building of civil servants”, also included in the PAR Strategy, no separate funding is allocated. The MoF has planned an expenditure of EUR 334 800 in PAR-related costs under its MTEF objective 4, “public expenditure management”. It is not clear how those sums are interlinked and how financing is calculated for implementation in other policy areas under the PAR Strategy (for example, in OPM sectors). As the MTEF does not yet include EU assistance, joint prioritisation of national and EU resources has not been done.

The planning and sequencing of PAR reforms is over-ambitious, as it does not match the allocation of adequate operational resources, nor does it take into consideration the complexity and time needed for interministerial reforms. Decisions have to be made on priorities and realistic deadlines, as well as on the reallocation of human capacities within ministries, particularly in the MPA so that it will be able to handle the workload required for such a process and steer the reforms. The quality of financial planning has improved in recent years but inconsistencies remain, hindering the coherent planning of the financing needed for PAR.

ANNEX. COMPARISON OF KEY STRATEGIC DOCUMENTS OF THE GOVERNMENT ADDRESSING PUBLIC ADMINISTRATION REFORM

Strategy on PAR and its Action Plan 2012-2014	Action Plan on negotiation of the Stabilisation and Association Agreement	Programme of the Government of the Republic of Kosovo	Action Work Plan of the Government 2012 (Table A – priorities)	Action Plan of the Government 2013 (Table A – priorities)
Government programme: <ul style="list-style-type: none"> • During this mandate continuation by the Government of the development of the public administration in accordance with democratic principles and in the best interest of citizens. • Strengthening of administrative capacities to provide services to citizens and to fulfil the criteria for European integration. 				
Strategic objective 1: Policy management Sub-objectives: <ul style="list-style-type: none"> • Focusing of the Office of the Prime Minister (OPM) mandate on development and strategic planning • Capacity building for policy development and co-ordination in ministries • Regulating the system for strategy and policy 	<ul style="list-style-type: none"> • Improved co-ordination and joint planning between the assembly and the Government • Capacity building for the development and co-ordination of policies and strategic planning, and assurance that legislative agenda corresponds to individual capacities of ministries • Establishment of structures for co-ordination of the SAA Process and building of government capacities to improve the harmonisation of national legislation with the <i>acquis</i>, policy co-ordination and assistance absorption 	<ul style="list-style-type: none"> • Further improving the quality of analysis and information on which the Government bases its policies and decision making, including further advancement of the capacities of the Statistics Office of Kosovo • Completing the necessary legal framework on the work of the Government to ensure consistency and a harmonisation of policies between the main pillars of its work 	<ul style="list-style-type: none"> • Not covered in the document (“not covered”) 	<ul style="list-style-type: none"> • Not covered in the document (“not covered”)
Strategic objective 2: Legislative drafting and EU harmonisation Sub-objectives: <ul style="list-style-type: none"> • Office of Legal Support Services (OLSS) focus on co-ordinating activities for drafting of legislation • By-laws drafted by line ministries reviewed by OLSS • Secondary legislation published in Official Gazette • Legislative activities pursuing a realistic approach according to priorities defined for approximation with EU legislation • Guidelines for legislative drafters in line ministries defined by OLSS 			<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered
Strategic objective 3: Ethics and transparency Sub-objectives: <ul style="list-style-type: none"> • Strengthening of responsibility and accountability in public administration • Combat against corruption in public administration, de-politicisation of civil servants and avoidance of conflict of interest • Drafting of normative acts and periodic public opinion survey on ethics and transparency 	<ul style="list-style-type: none"> • Allocation of premises for the • Ombudsperson and assurance of budgetary independence • Assured compliance with decisions of the Independent Oversight Board 	<ul style="list-style-type: none"> • Continuing the strengthening of measures for fighting corruption and negative phenomena in the administration • Increasing transparency and citizens’ access to the decision making process 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered
Strategic objective 4: Communication with and participation of citizens Sub-objectives: <ul style="list-style-type: none"> • Capacity building in the Office for Communication in 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Increasing transparency and citizens’ access in the decision making process 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered

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<p>OPM</p> <ul style="list-style-type: none"> • Co-ordination by Office for Communication in OPM of explanatory information • Office for Communication in OPM providing general communication services to government network and citizens • Office for Communication in OPM co-ordinating the calendar of media events in the Government 				
<p>Strategic objective 5: Budgetary planning</p> <p>Sub-objectives:</p> <ul style="list-style-type: none"> • Budget planning taking into account fiscal constraints • Capacity building for planning capital projects in budgetary organisations • Drafting of macroeconomic policies, notably fiscal policies 	<ul style="list-style-type: none"> • Fiscal system reforms in line with EU principles • Design and implementation of the fiscal rule • Management and monitoring of public debt • Continuous increase of the share of domestic revenues to total revenues 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered
<p>Strategic objective 6: Budgetary execution</p> <p>Sub-objectives:</p> <ul style="list-style-type: none"> • Completion of legal framework for budget execution • Strengthening the control system for criteria fulfilment of budgetary requirements 		<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered
<p>Strategic objective 7: Internal financial control and audit</p> <p>Sub-objectives:</p> <ul style="list-style-type: none"> • Legal framework for internal auditing and control • Improvement of internal quality control and recommendations for transparency in public money spending • Continuous capacity building for internal audit and financial control 	<ul style="list-style-type: none"> • Develop internal control practices based on European standards • Risk development of internal audit and financial management and control (FMC) in the public sector in compliance with international standards and practices • Assurance of institutional stability • Contribution to the strengthening of good governance 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered
<p>Strategic objective 8</p> <p>Sub-objectives:</p> <ul style="list-style-type: none"> • Public procurement procedures that enable transparency • Electronic procurement to ensure transparency, to increasing competition and guaranteeing efficiency 	<ul style="list-style-type: none"> • Increase the transparency of public procurement processes as well as treatment, prosecution and sanctions in public procurement cases • Build human capacity- as well as sustainability of procurement officials • Adopt a centralised list of services and supplies for both the central and municipal levels 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered
<p>Strategic objective 9: Reorganisation of public administration</p> <p>Sub-objectives:</p>	<ul style="list-style-type: none"> • Implement policies for the public administration by providing budget and sufficient capacities 	<ul style="list-style-type: none"> • Implementing recommendations of the government's functional 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Reorganisation of ministries and their subordinate bodies

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<ul style="list-style-type: none"> • Institutional reorganisation of the Government in accordance with the Law on Government and the Law on State Administration and in harmony with recommendations of functional reviews • Approval of Strategic Development Plans • Approval of Personnel Plans 		<p>review through the</p> <ul style="list-style-type: none"> • PAR Strategy • Reorganising public administration according to international best practices • Providing services close to citizens by continuing the decentralisation process, de-concentration, and delegation of a series of administrative and executive functions 		
<p>Strategic objective 10: Human resources management and development</p> <p>Sub-objectives:</p> <ul style="list-style-type: none"> • Completion of by-laws derived from the Law on Civil Service and Law on Salaries of Civil Servants • Merit-based and transparent system of recruitment and advancement of civil servants in line with fiscal constraints • Organisation of salary system in civil service in compliance with fiscal constraints • Raised education level by focusing on senior managerial positions and managerial positions • Strengthening of the training process in public administration 	<ul style="list-style-type: none"> • Complete the legal framework for implementation of the Law on Civil Service and the Law on Civil Servants' Salaries 	<ul style="list-style-type: none"> • Reforming the civil service through the implementation of the civil service legislation and legislation on the salaries of civil servants 	<ul style="list-style-type: none"> • Drafting and implementing the plan and programme for training civil servants based on the Manual on Assessment of Training Needs • Assessing training needs in the area of European affairs and approving the Strategy for Training on European Affairs 2012-2015 (MEI) 	<ul style="list-style-type: none"> • Finalisation of the process of classification of jobs • Implementation of the new system of salaries and grades • Performance evaluation of key functions of Ministries
<p>Strategic objective 11: Rationalisation of electronic administrative processes</p> <p>Sub-objectives:</p> <ul style="list-style-type: none"> • Electronic administrative procedures, through which the administration provides services to citizens and businesses and reduction of administrative burdens (one action) • Standards for procedures within administration • Standards for offices delivering services to citizens and for service delivery • Quality management standards for service delivery and control/inspection of service 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Providing expeditious and efficient services to citizens via e-governance 	<ul style="list-style-type: none"> • Implementing the e-municipalities project as part of the modernisation of local administration (MLGA) 	<ul style="list-style-type: none"> • Not covered
<p>Strategic objective 12: Development of electronic governance</p> <p>Sub-objectives:</p>	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered 	<ul style="list-style-type: none"> • Not covered

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<ul style="list-style-type: none">• Advancement of e-government policies• Strengthening and expansion of information technology infrastructure for all governmental institutions• Electronic systems in public administration according to rationalisation of administrative processes				
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**CIVIL SERVICE, HUMAN
RESOURCE MANAGEMENT IN
THE PUBLIC SECTOR AND
ADMINISTRATIVE LAW**

**KOSOVO
APRIL 2013**

1. State of play and main developments since the last assessment

1.1. State of play

In May 2010 Kosovo passed two laws which are expected to contribute to building a professional civil service: Law No. 03/L –149 on the Civil Service (CSL) and Law No. 03/L-147 on Salaries of Civil Servants (SCSL). These laws entered into force on 10 July 2010.

The implementation of these laws constitutes the immediate challenge for public administration reform in Kosovo, as they are a precondition for the further development of an effective public administration. In spite of the intense activity related to the adoption of the necessary secondary legislation, the implementation of these laws has been considerably delayed. The situation is therefore confusing because, in practice, the old revoked law is still in place, along with some attempts to implement some parts of the new law. As a consequence, poor professionalism, patronage and lack of motivation still remain as characteristics of the civil service system in Kosovo.

Justice in Kosovo has been criticised due to its slowness and limited effectiveness. Problems related to the organisation of the court system, insufficient numbers of judges, lack of expertise and training, and poor implementation of judicial decisions have been cited as the main weaknesses of administrative justice⁵⁵. These weaknesses are being tackled, and the current implementation of reforms on administrative justice is promising.

By advancing structural reforms in these fields, the basic conditions will be created for concentrating efforts on improving the quality of delivery of public services to citizens.

The Ombudsperson institution is increasing its capacity. An agreement has been made with the Government regarding new premises whose implementation will depend on the move of the Constitutional Court to a new building. The number of complaints submitted to the institution is growing but its effectiveness remains a concern due to the lack of co-operation from the administration.

Effectiveness is also a matter of concern regarding the activity and role of the Independent Oversight Board (IOB). A significant proportion of its recommendations are not followed by the administration. The IOB is in charge of reviewing complaints related to human resources management in Kosovo's civil service, a role that aims at complementing the monitoring role of the Ministry of Public Administration (MPA). To a certain extent, some overlapping also occurs.

1.2. Main developments since the last assessment

Administrative justice

The Government of Kosovo continued its efforts to reform the public administration and to create better conditions for the delivery of services to citizens.

Following the reform of the judiciary, a new organisation of the courts for administrative cases has been in place since January 2013. With this reform, the burden on the Supreme Court of judging all administrative cases in first and second instances has been alleviated. A special administrative department was created in both the First Instance Court of Pristina and the Appeals Court of Pristina. These two departments are

⁵⁵ Kosovo Judicial Council _Report no. 5/8,2 2011 (1 Jan– 31 March 2012) - [Progress on the work achieved by Kosovo Judiciary in Implementation of National "Backlog Reduction" Strategy](#); Judicial Reform [Index](#) For Kosovo_2010; ["Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions"](#), OSCE_2012; ["Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo"](#) - (SWD(2012) 339 final) - COM(2012) 602 final.

responsible for judging all administrative and economic/fiscal cases in first and second instances, and in this regard they have territorial competence for all Kosovo.

In these departments 4 and 3 judges were appointed respectively (compared to the single judge appointed to the Supreme Court). They were selected from among existing judges in the courts or from among legal advisors to the Supreme Court. A number of training sessions were provided to the judges in the Judicial Institute, with the support of foreign assistance.

Civil Service

The approval of the CSL and SCSL was accompanied by the approval of several implementing regulations (23 regulations approved by the end of 2012 – see Annex), which made it possible to partially start the implementation of the new civil service legal framework. Commendable work was carried out by the MPA and the working group responsible for drafting legislation, which elaborated most of the regulations for both laws. Some regulations were approved by the Government while others were approved by the MPA.

Following entry into force of the regulation “On classification of jobs in the civil service” in May 2012, a Joint Commission of the MPA and the MoF was created to review the proposals for job classification. However, as the process was really slow, the implementation of the new salary system – which depends on the classification of jobs - did not start in January 2013 as planned. The new deadline has shifted to July 2013, still a very challenging deadline.

2. Analysis

2.1. Administrative justice and administrative law

Administrative justice

The above-mentioned reorganisation of administrative justice is expected to determine the term for examining cases and pronouncing a decision, which was a very problematic issue in the previous arrangements⁵⁶. It is expected that the first and second instance court will also examine the merits of the cases, compared to the practice of the Supreme Court, which has generally examined only the procedural aspects of cases. The practice in the coming years will provide information as to whether the number of judges is sufficient to cover all possible cases⁵⁷ and whether Kosovo needs a completely separate and decentralised system of administrative justice.

It is expected that implementation of the decisions of the courts in administrative cases will increase also because the new Penal Code establishes that the failure to implement a decision of the court is a criminal offence.

Administrative procedures

The MPA started a process in 2012 to analyse the current Law on Administrative Procedures (LAP). This law was analysed with SIGMA support, and it was decided to draft a new Law on General Administrative Procedures (LGAP). The deadline for entering the draft LGAP into the legislative procedure is October 2013. The new LGAP is expected to improve and address the shortcomings of existing legislation and regulate some important issues, such as administrative silence and tacit consent.

⁵⁶ At the end of 2012, the Supreme Court was still judging appeals dating from 2008-2009. These delays have resulted in a general loss of confidence in the system and a public mistrust in the possibility of having their rights protected. A representative of the Independent Oversight Board (IOB) recently declared that individuals have now started to receive invitations to appear in the court for cases pertaining to the end of 2012.

⁵⁷ The Supreme Court transferred to the First Instance Court nearly 1 400 cases related to administrative justice, while it is expected to have 400-600 economic/fiscal cases.

The issue of administrative silence was mentioned by the Ombudsperson during an interview conducted for the purposes of this assessment. He indicated that the administration has usually neglected the requests of the public and that current remedies for such issues are ineffective. The administration is also sometimes silent concerning the requests of the Ombudsperson.

The new LGAP and the reorganisation of the administrative justice sector in the first instance and of the appeals court of Pristina are expected to have a positive effect on administrative cases. Up to now, an appeal to the courts of a decision of an administrative body was often considered to be a useless remedy. For example, there is evidence that companies participating in procurement procedures did not contest the administrative decisions of the Procurement Review Body, although these decisions were considered illegal, simply because the case in the court would last for years and there was no possibility of speeding up the process.

Relevant improvements have been made in the organisation of administrative justice, which is now better equipped to increase its effectiveness.

2.2. Management of civil service and human resources management

Implementation of civil service reform

In February 2013 it was almost two and half years since the entry into force of the CSL and the SCSL, but discussions are ongoing regarding the start of implementation or the full implementation of the laws. The new CSL narrows the scope of the civil service, and currently 24% of public employees are considered as civil servants. Of these civil servants, 90% are Albanians and minorities make up the remaining 10%⁵⁸. Concerning gender, 65% are male and 35% female. The following tables provide additional data on the civil service in Kosovo⁵⁹.

Table 3. Education level of civil servants

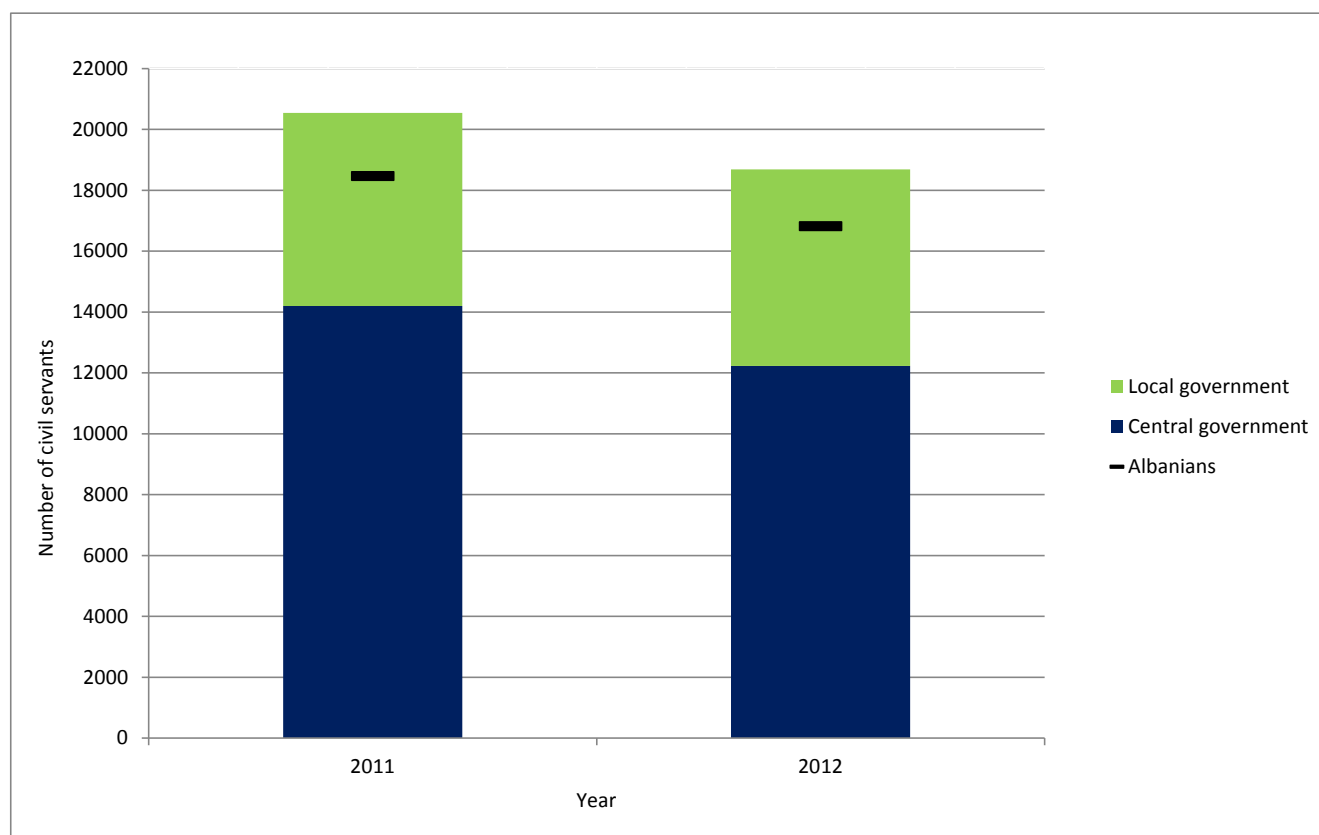
Percentage	Education			
	Elementary	High school	Superior	University
	3%	47%	7%	43%

Source: "Report on Civil Service", October 2012, Department of Civil Service Administration

⁵⁸ Data extracted from a "Report on Civil Service" of October 2012 prepared by the Department of Civil Service Administration (DCSA), not published.

⁵⁹ The provided data does not include the civil servants in North Kosovo (estimation: 600).

Figure 11. Number of civil servants in 2011-2012



Source: "Report on Civil Service", October 2012, Department of Civil Service Administration

At the moment there is no clear boundary in the lower vertical scope of the CSL (which categories should be classified or not as civil servant). This causes confusion as to whether support staff should be categorised as civil servants. The definitions in the law are not very clear, and the MPA is planning to identify possible discrepancies to avoid contradictions between the law and the secondary legislation, and among the different bylaws. However, the work being performed regarding the classification system leaves room for some inconsistent solutions in this regard instead of being a tool for further clarification.

When analysing the overall implementation of civil service reform, it is commonly recognised that the Government of Kosovo and the MPA are not satisfactorily monitoring and controlling the whole process. The implementation of civil service reform is not seen as an individual responsibility of each ministry, but rather as a responsibility of the MPA alone. The Government is not paying the necessary attention to the development of a professional public administration and does not see the administration as a tool towards the achievement of strategic objectives. Patronage, politicisation and the lack of professionalism still characterise the civil service system. Motivation is low, skills are insufficient, and much work needs to be done to implement a service-oriented administrative culture. Managerial capacities and delegation of power from the top level are other problems to be addressed.

The Department of Civil Service Administration (DCSA) lacks the capacity in terms of staff⁶⁰ and skills to properly steer the reforms, despite the efforts made by the existing staff and the continuous support it has received over the years⁶¹. The CSL and the SCSL assigned this department a central monitoring and policy making role, but the DCSA has not been able to impose itself as a respected and recognised professional body to carry out this role and to demonstrate the required skills in interpreting any confusing dispositions of the law, in promoting common standards across the whole administration, and in steering the overall processes.

⁶⁰ Only 4 to 5 people are working on the implementation of the CSL and the SCSL.

⁶¹ Such as the United Nations Development Programme, the World Bank and the Department for International Development (through the Public Administration International project).

There is no evidence of any specific strategy or action plan for implementing these fundamental laws. The results have been the continuous postponement of deadlines and the current situation with regard to implementation of the reforms.

The continuous delays in adopting the secondary legal framework and in starting implementation have led to insecurity in the civil service ranks and opened opportunities for mismanagement. For instance, some decisions on demotions based on poor performance have been made in accordance with the old regulation on performance appraisal.

Despite the fact that the LSCS entered into force in June 2010, the implementation of the new salary system has not yet begun. The new system is aimed at increasing transparency and fairness across the civil service and to provide additional incentives for increasing civil servants' professionalism. Initially, the Government planned to start implementing the new system in January 2011 but, besides the lack of budgetary resources, the necessary regulation "On classification of jobs in the civil service" was adopted only in March 2012. The second deadline was January 2013, but the Government was again unable to complete the classification process. A new deadline has now been set for July 2013, three years after entry into force of the law. This deadline is compatible with the budget planned for salary reform (EUR 10 m in 2013), but it may not be reached. In February 2013, only local government institutions and some independent institutions that report to the Parliament and employ civil servants were analysed⁶². Central institutions have not yet submitted proposals to the MPA-MF Joint Commission, and the payroll software to support the new salary system is not yet in place.

The job classification process has not been properly planned and implemented. Institutions were poorly instructed on how to carry out the process. Although the regulations foresaw the creation of a job catalogue, this catalogue has not been prepared, and the institutions elaborated proposals based on their own assessment. The MPA-MF Joint Commission collected the proposals but ended up with almost 4 500 job titles for about 45 institutions. Only now are they trying to consolidate these job titles so as to create a job catalogue. This inverse way of operating has delayed the process and substantially increased the workload, and it is not a guarantee for success.

The approval of the secondary legislation related to the CSL was accomplished in a hurry, and different opinions on fiscal impact accompany some of the regulations. For example, the regulation "On allowances in salaries and other compensations for civil servants", approved by the Government in December 2012. Some sectors within the MoF strongly opposed the approval of this regulation and the related costs. According to the MPA, the cost would be EUR 250 000 per year, while the MF estimates approximately EUR 8-10 million per year. Based on budget allocations for 2013, the MoF was very sceptical about the actual possibilities for implementation of this regulation because, according to their estimation, the overall salary reform will be consumed by this regulation alone. Finally, by mid-March, it was clarified that the estimation of the MoF relates not only to this regulation but also to the implementation of the whole SCSL. However, the MoF also fears the possible cascade impact of this regulation on the remuneration of other public servants (teachers, doctors, etc.).

The Medium-Term Expenditure Framework (MTEF) 2013-2015⁶³ foresees EUR 20 million in funds to support all public administration reform policies, including the reform of salaries of civil servants. If the revenue base does not change, it will be possible to provide additional funds for this purpose only after 2016.

The process of elaborating the implementing regulations has been very complex, and implementation is not being proactively planned. As a result, implementation has proved to be more problematic than initially foreseen, and the support provided to institutions by the MPA, together with instructions and interpretations, was perceived by many of the institutions as insufficient. Implementation practice has revealed problems in

⁶² The adopted methodology implies that prior to the job classification the different entities have to review and adapt its internal organisation according to the Law on State Administration adopted in 2012.

⁶³ [Medium Term Expenditure Framework 2013-2015](#).

the by-laws, and the MPA is planning to start a review process, with the support of The World Bank technical assistance project⁶⁴.

Recruitment and performance appraisal

Implementation of the Cadre Fund Scheme⁶⁵ is continuing, but at the moment it has lost its original aim of attracting well educated professionals to key positions. The implementation practice in ministries shows that funds are distributed to all directors and heads of divisions across the board, without limitations. This fund is now simply a top-up mechanism, which further distorts the salaries system and creates discontent among civil servants.

The legal framework for admission into the civil service is fragmented in several regulations. The recruitment procedure is basically regulated by the Regulation No. 02/2010 "On recruitment procedures in the civil service", but the recruitment is dependent on the possible existence of transfers and employment from the redundancy list. For both these procedures a separate regulation (Regulation No. 06/2010 "On transfer of civil servants" and Regulation No. 08/2012 "On redundant civil servants") was approved. Regulation No. 21/2012 "On promotion of civil servants" is also a possible parallel procedure to fill a vacancy. The way in which these procedures interlink is overly complex. There are also separate regulations on appointments in the civil service (Regulation No. 07/2010) and a regulation on the probation period (Regulation No. 02/2011). This fragmentation creates potential for confusion during implementation and difficulties for human resources managers in institutions.

The recruitment process encountered some difficulties during the first stages of implementation as a result of the novelty of the process, the complexity of the regulation and the lack of capacities of institutions to implement the procedures foreseen in the regulation. This problem was especially acute in small institutions. The DCSA has elaborated a set of multiple choice questions and distributed it to institutions in order to help them.

The Independent Oversight Board (IOB) has received 80 appeals related to recruitment procedures (almost 21% of all appeals). It observed that, in some cases, the requirements for a vacant position were very vague and created confusion⁶⁶. According to the IOB, the capacities in the civil service remain weak, and the MPA should take the appropriate measures to improve the situation.

The transfer procedure is regulated only as a tool used by institutions for re-shuffling civil servants and not as a means for stimulating careers. The procedure is initiated by the institution and no publication of the vacancy is required. This practice contravenes the principles of equality of opportunities and merit in the civil service, and it is problematic as almost 20% of recruitment processes in the civil service follow this procedure⁶⁷ (meaning that 20% of the recruitments are not properly advertised and do not follow a fair competition procedure, even if simplified).

The regulation "On performance appraisal" was approved in December 2012, but the Government has not started the process of planning its implementation. This regulation foresees an annual cycle, starting with the

⁶⁴ According to the ToR of the project "Technical Assistance to Improve Human Resource Management in the Core Civil Service (Including Training)" the aim is to "Identify the eventual legal problems and discrepancies of the secondary legislation (sub-legal acts) for implementing the Law on Civil Service and the Law on Salaries of the Civil Servants (beneficiary institutions: MPA, MoF and OPM). According to the findings and if deemed necessary, provide specific recommendations and respective amendments for improving the aforementioned bylaws and for resolving conflicts among sub-legal acts and between sub-legal acts and the laws."

⁶⁵ The Cadre Fund Scheme was created by the Government as a way to attract, maintain and develop the experience, qualifications and skills in strategic and priority positions of relevant government bodies. It is aimed at increasing the competitiveness of public salaries in relation to the private sector and international organisations acting in Kosovo for a limited number of strategic positions in the civil service. It can be used for topping-up salaries of existing positions in the Civil Service, as well as to attract newly qualified and experienced people. For additional information on the Cadre Fund Scheme: <http://www.kryeministri-ks.net/?page=2,157>.

⁶⁶ The applicants were required to have secondary or university education. This requirement has created difficulties in selecting the best candidate for the position because it is difficult to have the same judgement standard for candidates with such differences in the level of education.

⁶⁷ Data from DCSA.

setting of objectives at the beginning of the year. Currently there is no indication that institutions have taken steps to set objectives for all civil servants, and the MPA is not supervising or supporting this process. No training was provided in this field in 2012 due to the late approval of the related regulation. Performance appraisal marks are very important because they generate horizontal increases in salary steps for civil servants.

The same regulation foresees some quotas for civil servants who can be appraised with the top scores. However, the mechanism to ensure the observance of these quotas is not in place. Delays in adopting and implementing the regulation "On performance appraisal", along with those related to the previous implementation of the job classification, will further postpone the full implementation of the LSCS, because the promotion system is closely linked with the appraisal results.

In April 2012 the Government approved the regulation "On standards of internal organisation and systematisation of jobs in the state administration". Most of the institutions started to elaborate their new internal organisations throughout 2012, but the process was not an easy one. At the moment⁶⁸ 15 out of 19 ministries have drafted their regulations on internal organisation and submitted them to the MPA for comments. Meanwhile 5 ministries have already had their regulations approved by the Government. Assuming that, in theory, the adopted methodology is suitable, in practice embarking on a process in which the internal organisation and job classification across the whole of government have to be carried out as a pre-condition for full implementation of the CSL and the SCSL is actually a very demanding and sophisticated job for the small and dedicated team in charge. Additional political support, resources and information systems will be necessary for doing it within the established deadlines.

The civil service in Kosovo is not immune from political interference or from other pressures on civil servants. The IOB mentions the case of the Ministry of Trade and Industry, where almost all department directors were demoted or appraised negatively at the end of the year. Nearly all of the complaints to the IOB were accepted in these cases.

The MPA started a project to create a Human Resources Management Information System (HRMIS) through the Public Sector Modernisation Project which is co-financed by the World Bank. Implementation was expected to start in March 2013 and to be operational within one year. The HRMIS is also important as a link with the payroll system. The MPA is expected to review the payroll system as well and to make it compatible with the new salary system and job classifications used in civil service institutions. However, it will be very difficult to transform the system and make it operational in time for July 2013, when it is planned to start implementation of the salary law, provided that the job classification process will have been completed.

Other public employees

The MPA has focused its attention only on the civil service and has not considered the large categories of public employees who are no longer considered as civil servants, i.e. in the education and health care sectors and in the police force. For these categories the legal situation for human resources management is not clear and the salary legislation regarding important sectors, such as health and education is lacking. The whole salary system is, in general, based on administrative acts. In the Legislative Plan for 2013 the MPA planned to draft a law for the salary system for these categories. However, its implementation – if the law has been prepared and adopted – will only start in 2014. The priority given by the MPA to the legislation on the civil service seems appropriate but the delay in completing this job may create further pressure in dealing very quickly with the reform of the salaries of other public employees.

The law "On salaries for high officials" has not been approved by Parliament. The reasons for this are still to be examined, but the fact is that the salary system for this category of officials is chaotic and lacks a proper hierarchy for institutions. Among others, the situation of the high officials' salaries in institutions such as the IOB and the Ombudsperson's Office is negatively affected by the absence of that piece of legislation.

⁶⁸ End of March 2013.

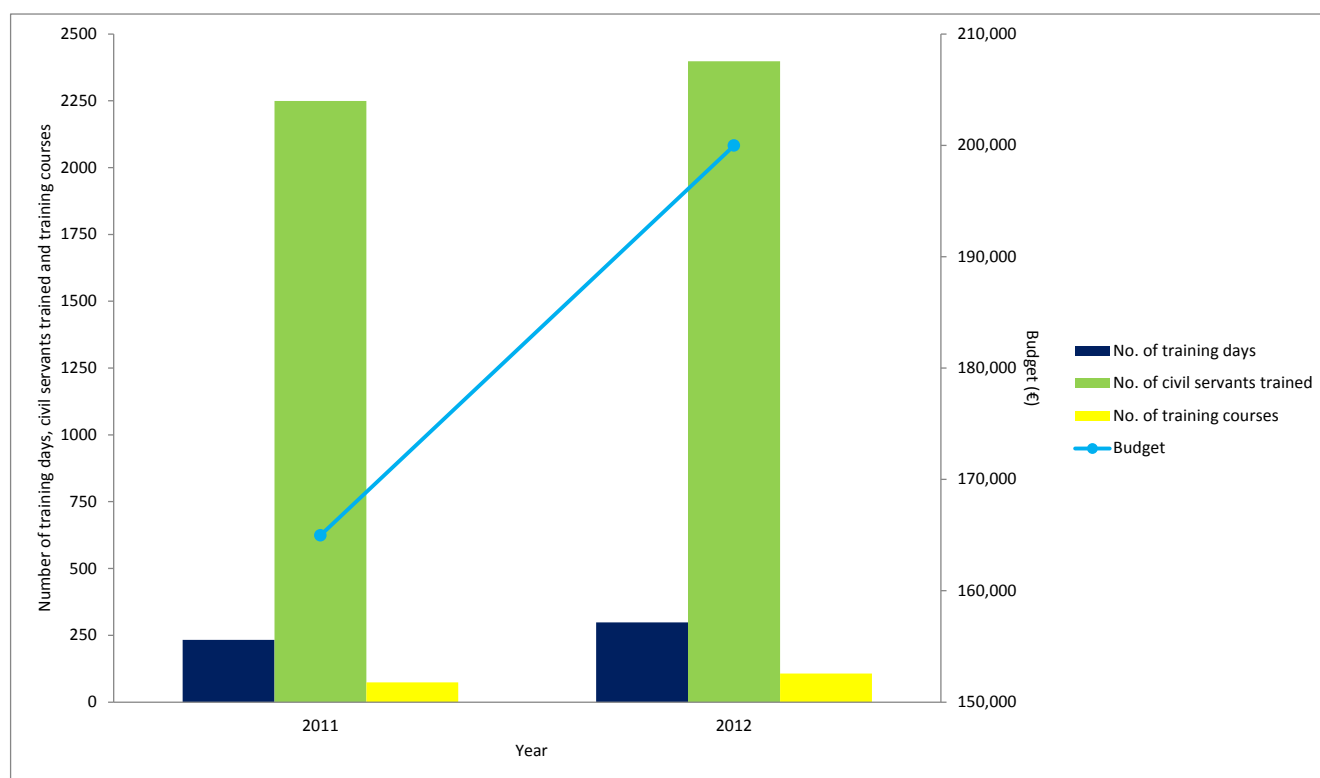
Training

The Kosovo Institute for Public Administration (KIPA)⁶⁹ continues to provide training for civil servants but the budget, as well as the staff allocated, and the lack of proper premises do not allow the implementation of all training plans. The KIPA staff has remained at the level of 16 persons since 2011. Available budget has increased by 26% within two years (2011-2013) reaching EUR 209 245 in 2013, Comparing 2012 budget with 2011, budget increase has been 21%. Training volumes increased as well in the same period: by 18% in relation to trained civil servants, and 28% for training days. In the first quarter of 2013 KIPA has organised 29 training courses for 643 civil servants (79 training days in total).

KIPA budget and training outputs (2011, 2012)

The Government prepared a draft law on KIPA, giving it the status of an academic institution within a five-year period of time, provided that it could meet the accreditation criteria. The draft was returned by Parliament. It is questionable to have KIPA transformed into an academic institution instead of reinforcing its capacity as a professional training institution. Academic education should be provided by existing academic institutions. Furthermore, for a country of Kosovo’s size, the creation of a special academic institution for the public administration would be costly and unlikely to provide an efficient solution for the training of civil servants.

Figure 12. Kosovo Institute for Public Administration training and budget outputs 2011-2012



Source: Kosovo Institute for Public Administration

Capacity for reforming, monitoring and managing the civil service is still a problem in spite of the efforts that are being made. The legal framework related to the reform of the civil service (CSL and SCSL) has been completed with the approval of the necessary bylaws. Implementation has been delayed and effective change towards a more professional civil service is not perceptible yet.

⁶⁹ “The Kosovo Institute of Public Administration (KIPA) is responsible for the implementation of training and education policies and strategies and capacity building in the Civil Service” (CSL, article 10).

2.3. Independent oversight bodies

*The Independent Oversight Board (IOB)*⁷⁰

The IOB continues to express concerns regarding the voluntary enforcement of its decisions, although the situation has improved considerably compared to previous years. Currently 80% of IOB decisions are enforced voluntarily by the institutions concerned. In cases where institutions refuse to enforce the decision, the IOB is supposed to inform the Prime Minister, but so far this has not occurred. In order to become more effective the IOB should have specific mechanisms for ensuring enforcement of its decisions.⁷¹

Table 4. The activity and effectiveness of the Independent Oversight Board over the past 3 years

<i>Year</i>	<i>Budget (€)</i>	<i>Staff</i>	<i>Complaints</i> ⁷²	<i>Accepted</i>	<i>Rejected</i>	<i>Enforced</i>	<i>Not enforced</i>
2012	217,872.00	23	375	114	184	80%	20%
2011	214,789.00	23	407	172	144	148	43
2010	207,268.00	23	290	108	147	91	61

Source: For 2010 and 2011, the IOB annual reports. For 2012, data is provided by the Independent Oversight Board and the annual report has yet to be published. The 2012 data is expressed as a percentage rather than actual number of complaints in two categories: 'Enforced' and 'not enforced', as is the case in 2010 & 2011.

The IOB continues to oversee the recruitment of directors in institutions, but this function overlaps with that of the MPA. However, due to a lack of resources (staff, budget, vehicles) the IOB has participated only occasionally in these procedures. Co-operation between the MPA and the IOB remains limited.

The IOB also needs better working conditions. The premises where it is currently located have no proper conditions for conducting hearings and for holding panel meetings.

*The Ombudsperson*⁷³

During 2012 the Ombudsperson received 20% more requests from the public compared to the previous year⁷⁴. The staff of the Ombudsperson was increased by seven officials, and the budget was significantly increased (see chart below). As already mentioned, an agreement has been reached with the Government regarding providing adequate premises for the Ombudsperson. It is perceived that such improvements were due to external pressure on the Government rather than recognition of the important role of the Ombudsperson institution in promoting human rights and in protecting the rights of the citizens in relation to the public administration. The recommendations of the Ombudsperson are sometimes not implemented, although this situation is improving year after year.

It has been reported that the Government is thinking of creating a special ombudsperson for the police and for the army. This proposal, if materialised, will contribute to fragmentation of the overall oversight mechanisms and to further weaken the position of the Ombudsperson.

⁷⁰ The IOB was established by the 2010/03-L-192 Law on Independent Oversight Board of Kosovo Civil Service, 16 August, 2010. The IOB is "an autonomous body reporting to Assembly of the Republic of Kosovo and which shall determine appeals and shall ensure compliance with all rules and principles governing the civil service in the Republic of Kosovo" (article 3).

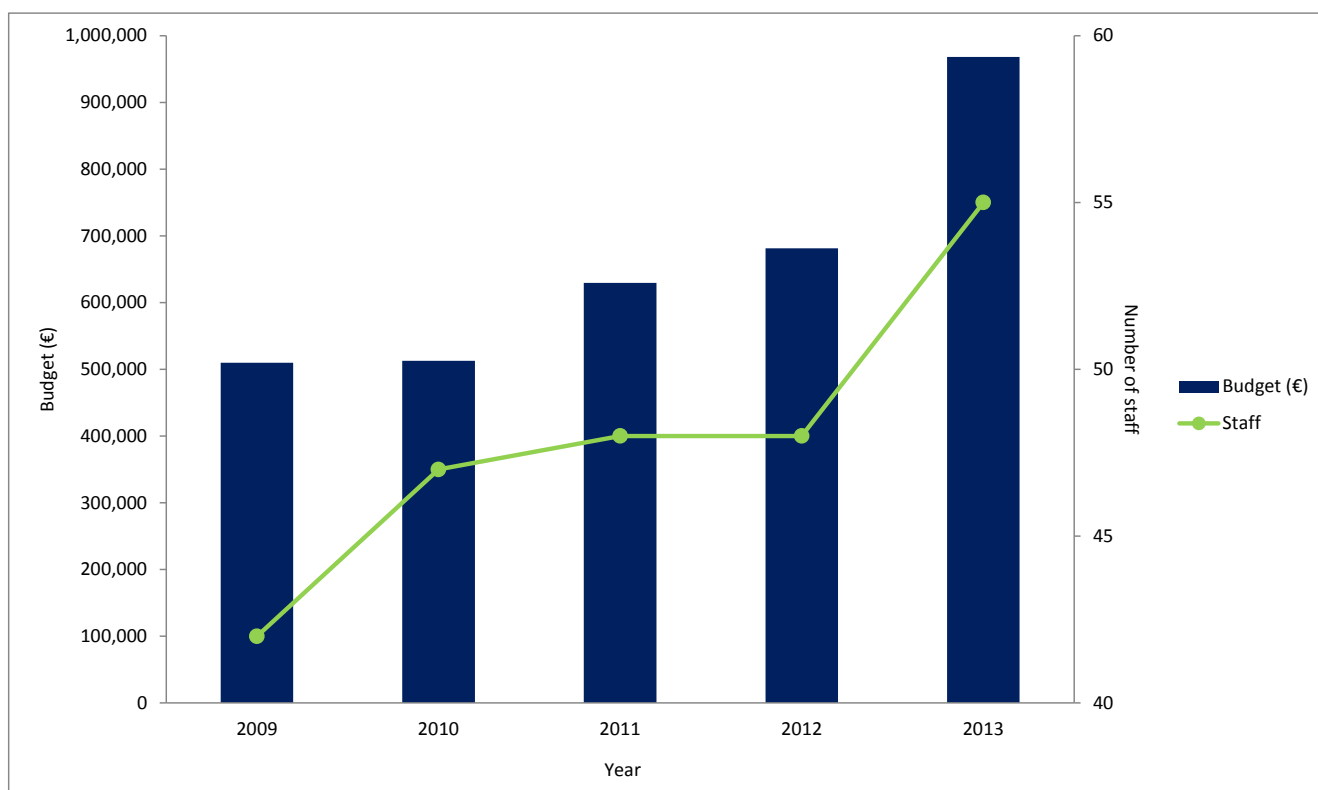
⁷¹ See also the report "[On the defence of professionalism of bureaucrats: A discussion upon the protection mechanisms of civil service in Kosovo May 2012](#)", Group for Legal and Political Studies, Policy Analysis - No. 02/2012.

⁷² Includes complaints inherited from the previous years, as well as those in which the complainant dismissed the complaint and those in which the IOB was not competent for resolving the case.

⁷³ The Ombudsperson Institution in Kosovo (OIK) is an independent, constitutional, institution established in 2000 for receiving and investigating complaints from every person in Kosovo who claims his/her human rights have been violated by the Kosovo public authorities.

⁷⁴ The 2012 annual report is not available yet.

Figure 13. Ombudsperson staffing and budget



Source: Ombudsperson annual reports (2009, 2010 and 2011). Data provided by the Ombudsperson institution (2012 and 2013)

Effectiveness of the independent institutions overseeing civil service and public administration (the IOB and the Ombudsperson) has slightly increased and the Ombudsman institution is now better resourced. The problem with the premises of the Ombudsman is on the way to being solved but the same cannot be said regarding the IOB. Collaboration of public institutions with the Ombudsman and the IOB needs to be improved.

Annex

1. Regulation no. 03/2010 on job description (20.09.2010)
2. Regulation no. 04/2010 on procedures of fair and proportional representation of minorities in civil service (20.09.2010)
3. Regulation no. 05/2010 on working hours (20.09.2010)
4. Regulation no. 06/2010 on appointment procedures in senior managing positions in civil service (26.09.2010)
5. Regulation no. 06/2010 on the transfer of civil servants (21.12.2010)
6. Regulation no. 07/2010 on appointment of civil servants – (21.12.2010)
7. Regulation no. 02/2010 on recruitment procedures in civil service (20.09.2010)
8. Regulation no. 01/2011 on interruption, suspension and termination of employment in civil service (21.03.2011)
9. Regulation no. 03/2011 on central files and registry of civil servants (21.03.2011)
10. Regulation no. 04/2011 on disciplinary procedures in civil service (09.06.2011)
11. Regulation no. 05/2011 on procedures for solving contests and complaints (09.06.2011)
12. Regulation no. 06/2011 on civil servants' leave (23.06.2011)
13. Regulation no. 02/2011 on probation work of civil servants (21.03.2011)
14. Regulation no. 05/2012 on job classification in civil service (02.03.2012).
15. Regulation no. 06/2012 on Senior Managing Positions in Civil Service of the Republic of Kosovo (02.04.2012)
16. Regulation no. 08/2012 on redundant civil servants (18.04.2012)
17. Regulation no. 13/2012 on early retirement of Civil Servants (20.06.2012)
18. Regulation no. 19/2012 on Assessment of Working Results of Civil Servant (20.09.2012)
19. Regulation on volunteer work of civil servants after retirement (03.10.2012)
20. Regulation on career promotion of civil servants (03.10.2012)
21. Regulation 30/2012 on Restriction of the Right on Strike in Special Services in Civil Service (14.12.2012)
22. Regulation no. 31/2012 on Care Procedures for Civil Service due to their Physical or Mental Disability or Health Problems (14.12.2012).
23. Regulation no. 33/2012 on Allowances to Salaries and Other Compensations for Civil Servants (24.12.2012).

PUBLIC PROCUREMENT

KOSOVO

APRIL 2013

1. State of play and main developments since the last assessment

1.1. State of play

The legal framework for public procurement largely covers the EU *acquis*. The overall institutional set-up provides the elements needed for a functional system. Public procurement is nevertheless perceived by the public and stakeholders as being prone to favouritism, nepotism and other corrupt practices. This persisting conception is commonly shared⁷⁵, with a resulting negative impact on the recruitment of professional staff as public procurement officers.

The total value of public procurement during 2012 was EUR 507.9 m⁷⁶, which represents 10.40% of GDP, a slightly lower proportion than in previous years (11.88% in 2011 and 11.78% in 2010).⁷⁷ The legislative framework enables central procurement, however their list of common use items for central purchasing remains to be adopted by the Government and the Central Procurement Agency (CPA), has not resulted in any central purchasing since its creation. The procurement framework enables joint procurement, where several contracting authorities pool their resources for a procurement procedure, although it is not used by contracting authorities. However, the usage of framework agreements started to increase in 2011 and is expanding according to the Public Procurement Regulatory Commission (PPRC).

1.2. Main developments since the last assessment

No revisions to the fundamental legislation governing public procurement and public-private partnerships (PPPs) occurred, giving institutions and stakeholders time to absorb the changes introduced by three new laws issued in 2010 and 2011. This legislative pause was welcome.

In March 2013, the CPA submitted the list of common use items and a detailed analysis of categories proposed for central procurement (fuel, office supply, food) to the Ministry of Finance.

The issues of joint and central procurement and the existing level and quality of resources in public procurement, will be examined in this assessment report.

2. Analysis

2.1. Level and quality of existing resources in the area of public procurement

This sub-section examines some distinctive features of the public procurement system in Kosovo in terms of outcomes, administrative capacity and capacity building.

Procurement activities and workload of key institutions

The public procurement system in Kosovo is implemented by 530 licensed procurement officers and approximately 70 uncertified officers, working in 166 contracting authorities (CAs), which have existed since the end of 2012⁷⁸.

12 045 contracts were signed by CAs in 2012, and 5 203 tender notices were published. At the same time volume of published contract award notices amounted only to 51% compared with signed contracts (6 172)⁷⁹.

⁷⁵ See a survey published in 2012 by the American Chamber of Commerce in Kosovo, [Public Procurement in Kosovo – Challenges of the Business Community](#), as well as [Kosovo Mosaic 2012](#), an overview of perceptions on public services and local authorities, published in December 2012 by the UNDP.

⁷⁶ This figure is based on the PPRC annual report for 2012.

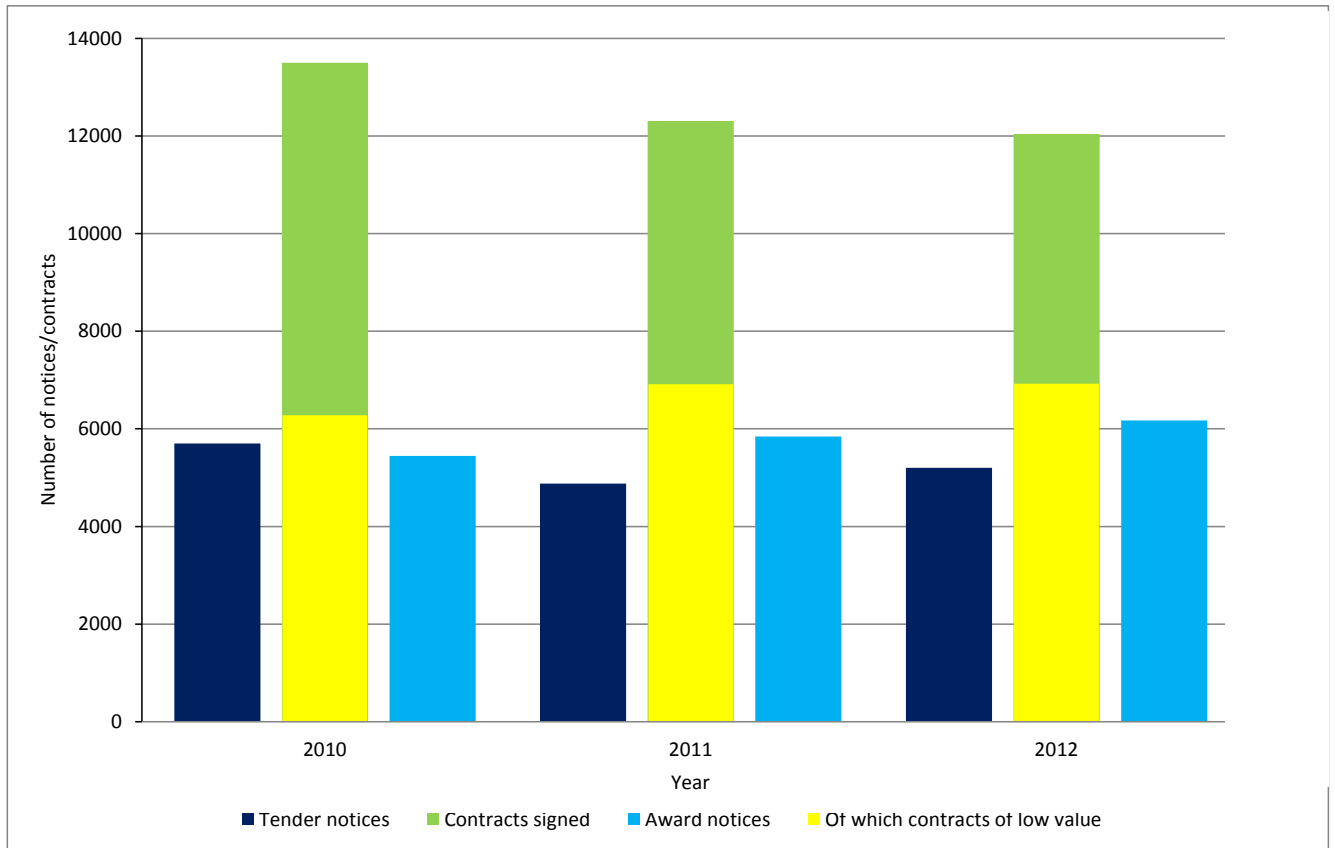
⁷⁷ Including Morinë-Merdare highway project planned for 2012 (EUR 235.4 m), public procurement in 2012 represents 15.21% of GDP.

⁷⁸ Figures provided by the Public Procurement Regulatory Commission (PPRC).

⁷⁹ The PPRC (<http://krpp.rks-gov.net>) and [the PPRC database](#).

The difference in these figures can be explained by the large number of low-value procurement procedures, which do not have to be announced by a tender notice but only published *ex post* with an award notice. 67.1% of the total number of signed contracts was of a low value (0.54% of GDP⁸⁰, EUR 26.5 million).

Figure 14. Tender volumes 2010-2012



Source: Public Procurement Regulatory Commission database

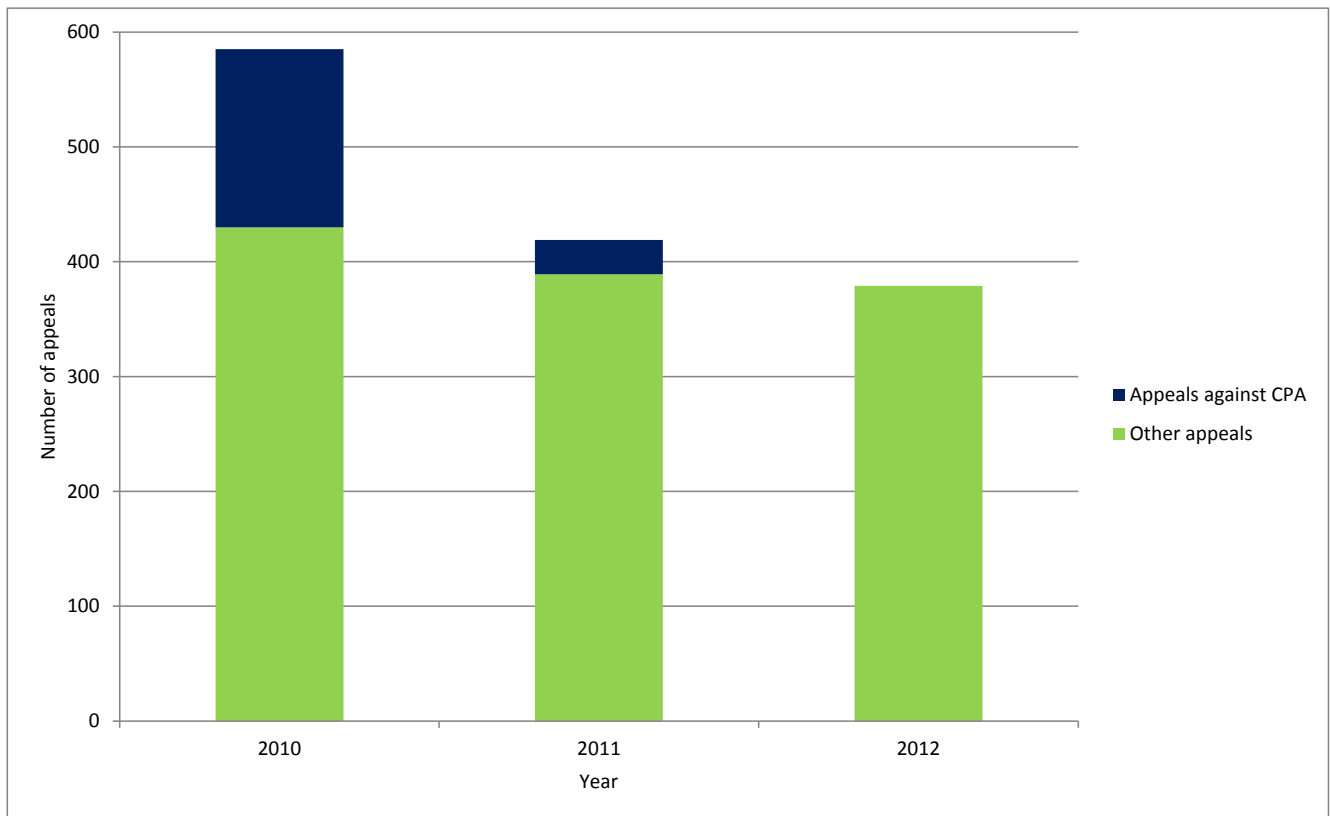
The Procurement Review Body ([PRB](#)), responsible for implementing review procedures and maintaining a blacklist of economic operators received 379 complaints and processed 331 cases in the 230 PRB sessions organised in 2012. The number of complaints has gradually decreased recently (585 in 2010 and 419 in 2011). This is partly owing to decreasing the CPA's *ex ante* control function, which was diminished in the 2010 Public Procurement Law (PPL) and withdrawn in the 2011 PPL (there were 155 appeals of this kind in 2010 and 30 in 2011).

The most common violations found in the tendering procedures concerned: cost effectiveness and efficiency (art. 6 of the PPL); the equality of treatment (art. 7); the means to promote transparency (art. 10); the tender dossier (art. 27); the technical specifications (art. 28); the examination, evaluation and comparison of tenders (art. 59); and the contract award criteria (art. 60)⁸¹. The number of cases returned for re-evaluation and retendering in conjunction with the violations found by the PRB indicates that immeasurable criteria and unclear technical specifications continue to be issues in Kosovo.

⁸⁰ As a comparison, below-threshold procurement was estimated at around EUR 250 b throughout the EU in 2008 or around 2% of EU GDP ("EU Public Procurement Legislation: Delivering Results", summary of evaluation report, p. 9).

⁸¹ The Annual Report of the [PRB](#).

Figure 15. Appeals 2010-2012



Source: Procurement Review Body Annual Work Report 2012

In 2012, the rate of decision making of the PRB slowed noticeably when comparing – on the online repository – recent decisions with those of previous years. The functioning of the organisation has been hampered by the lack of meeting rooms and two unfilled positions on the PRB Board, which emerged due to expired mandate of previous board members in September 2012. Kosovo has remained a specific system, despite the updating of the PRB's internal rules of procedure, where important responsibilities are entrusted to their internal experts, who interact directly with plaintiffs and contracting authorities, through the means of a review assessment recommending corrective action. Only *ex post* control is conducted by the review board (PPL, art. 114).

In 2012 Partnerships Kosovo (<http://pppkosova.org>), the unit in the MoF in charge of implementing and promoting public-private partnerships (PPPs), is focused on enhancing the capacity for creating PPPs in contracting authorities. Furthermore, the unit has an ambitious plan for five new PPP projects, to be completed in 2013.

There is a room for improvement in terms of the overall capacity of contracting authorities to plan procurements as more than one-third of the procurement procedures are cancelled. These cancellations reflect a consistent trend in Kosovo, representing 37.7% of the contract notices in 2010, 34.5% in 2011 and 34.4% in 2012, although the reasons for cancellation have varied over the years.

The number of contracts that are without the publication of prior contract notices is fairly consistent. Negotiated procedure was used in case of 466 contracts (3.9% of the total number of signed contracts). Nevertheless, since 2011 the monetary value has increased by 55% (from EUR 34.3 million to EUR 53 million), representing in 2012 10.4% of the total value of signed contracts⁸². These procedures were mainly used by utilities and public companies (17.9% of the total value of their signed contracts), but as well by budget organisations (6.1%).

⁸² As a comparison, the negotiated procedure without publication accounts for 7% of contract award notices and 5% of the value of all contract award notices published in the *Official Journal of the EU (EU Public Procurement Legislation: Delivering Results, summary of evaluation report, p. 12)*.

Contracting authorities published 26 contract notices for the restricted procedure in 2012⁸³. The PPRC reports, however, that no contracts were finally signed.

The first framework agreements were awarded in Kosovo in 2011. A sample check in the PPRC database from September to December 2012 confirms that these agreements are in use, although limited to only a few contracting authorities.

Economic operators

Based on the number of economic operators participating in procurement tenders, it has been observed that the level of competition is satisfactory, with an average number of 5.8 bidders per tendering procedure, a stable figure compared to previous years (5.1 in 2011 and 5.9 in 2010)⁸⁴. However, 82.2% of the cancelled procurement procedures were due to the absence of competition (fewer than two valid, responsive tenders or requests to participate) in 2012. Another positive trend is the decreasing number of unjust or ill-grounded appeals to the PRB, which is particularly encouraging when taking into account the relatively negligible effort made to provide the training for economic operators in public procurement.

Capacity-building activities

Discussions in workshops organised by SIGMA have demonstrated that procurement officers are still focused essentially on compliance with procedural requirements, with little or no consideration for the concept of value for money. There is not yet any ownership of the promising new provisions, introduced into the PPL in 2010, regarding the establishment of a management plan and follow-up contract management on the part of contracting authorities and the monitoring of these activities by the PPRC. Those capacity skills are not supported with the training activities.

In 2011 and 2012, the Kosovo Institute for Public Administration (KIPA) organised⁸⁵ basic level certificate training in public procurement for contracting authorities⁸⁶. In 2011 two advanced courses were also organised and in 2012 only 16-day basic courses were provided. In 2013, 15 modules of basic training and 4 of advanced training are scheduled, with the latter planned for 534 persons⁸⁷. This is a backwards situation compared with 2010, when the KIPA received external help in defining the training programme and in producing training material. Depending on the interpretation of the PPL, there is a risk that that in 2013 or at the latest in 2014 some staff within Kosovo institutions will not have received or confirmed the required advanced certification, which must be obtained or renewed within three years, so that these staff can continue to work as procurement officers (PPL, art. 25.5).

In addition to managing ongoing projects, the PPP unit in co-operation with the KIPA, has also conducted a training programme on PPPs for 60 civil servants at the central government level. In 2013 the unit is continuing the training programme, with 200 persons trained on the basics of PPPs by the end of 2013.

The outputs of the procurement system have not changed remarkably in recent years. The capacity of the KIPA to provide training remains low. Capacity building needs are partly compensated by two recent international assistance projects.

⁸³ The [PPRC database](#).

⁸⁴ Figures provided by the PPRC.

⁸⁵ Training calendars of the KIPA and confirmation by several contracting authorities.

⁸⁶ [KIPA training calendar for 2012](#).

⁸⁷ [KIPA training plan for 2013](#).

2.2. The framework for central and joint procurement

Legislative framework for central procurement activities

A legislative framework is in place and enables central procurement. [The Central Procurement Agency](#) (CPA), has existed under its current name since the Law on Public Procurement No. 03/L-241 came into force on 1 December 2010⁸⁸. In its previous capacity, the organisation was responsible for conducting tasks of an oversight and a control nature⁸⁹. In 2011⁹⁰, the Central Procurement Agency was transferred to the MoF. The organisation powers as an autonomous executive agency and to authorise the use of negotiated procedures without prior notice were removed. The obligation for contracting authorities to send their yearly procurement plans to the CPA was maintained, to ensure that the Agency would receive the necessary information for planning centralised purchasing where appropriate. All other notices and reports are to be sent to the PPRC.

Since the enforcement of the current PPL in late 2011, the CPA was left to focus almost exclusively on the centralised purchasing function, which contracting authorities will be obliged to use for a list of items to be decided by the Government, on the proposal of the MoF. Hence the main role of the CPA is central purchasing, other specific procurement activities are also included in the Agency's charter (art. 95.4) to enable the use of CPA expertise in other procurement procedures built up since 2003. Contracting authorities may assign or request services from the CPA on a one-off, voluntary basis (PPL art. 95.4).

Although the legal provisions are largely clear, discussions over the responsibility for signing of large-value contracts⁹¹ can potentially hinder the streamlined⁹¹ functioning of centralised purchasing. Provisions were introduced for every kind of public contract in order to address issues other than centralised purchasing, and especially issues involving responsibility and integrity.

Overall, the legal framework is sufficient and allows for centralised purchasing, although some technicalities regarding the signature of the contract need to be adjusted⁹².

2.3. Implementation efforts of central and joint procurement

Priorities and procurement output of the CPA

Since the CPA was placed under the authority of the MoF, the organisation continues to hold on to its previous position as an independent executive agency⁹³, and important steps have not been completed to effect the change, such as the absence of a director for the CPA. In 2012, the Ministry of Finance advertised the open position of the head of the CPA. By March 2013 no nomination had been announced. Since 2011, a deputy director has run the Agency, and this situation has often been cited as a reason for the Agency not having the power and authority to move ahead with the mandate of the organisation.

Under its new guise as the Central Procurement Agency, the organisation has not concluded any centralised purchasing activities and has not tried to support any joint procurement activities. While the PPL does not obstruct co-operative approaches in procurement, no steps have been taken to organise joint procurement by either the PPRC, the PRB or the CPA.

The CPA has continued procurement mainly on behalf of contracting authorities pursuant to art. 95.4 of the PPL for projects funded by international donors. In 2012, according to [the database of PPRC](#), the CPA

⁸⁸ The organisation was originally created by Law No. 2003/17 under the name Public Procurement Authority (PPA), with similar responsibilities to those of the CPA, and it was transformed into an autonomous agency by the amending Law No. 2/I-99 dated 27 March 2007.

⁸⁹ Authorisation for negotiated tendering procedures without prior notice and for carrying out a procedure with limited competition.

⁹⁰ The Law No. 04/L-042, which came into force on 5 October 2011.

⁹¹ Paragraphs 2 and 3 of PPL article 26.

⁹² For further details, see *Central Procurement Agency in Kosovo – Proposal for a way forward*, SIGMA, June 2012.

⁹³ Even today, in official documents the CPA uses the term "independent executive agency" within the Ministry of Finance.

published 53 contract notices, contract award notices and cancellation notices. These notices concerned 18 different projects, 13 of which were carried out on behalf of the Danish International Development Agency. One procurement procedure was conducted for the CPA's own needs. Of the 18 procurement projects, 10 ended with the publication of a contract award notice.

CPA financing for 2013 totals EUR 161 617; for the years 2014 and 2015, the estimated total remains the same. With 15 staff, the Agency is adequately manned for starting up centralised purchasing operations.

Apart from the activities set out in article 95 paragraph 4 of the PPL, the CPA has worked on collecting detailed information on procurement in three common use item categories and has been involved in discussions on the list of commodities and on the procurement of common-use items.

Development of the list of centrally procured items

The CPA, in accordance with the PPL art. 8 "shall identify common-use items and any other objects and items that may be acquired more efficiently through the application of a consolidated or common procurement procedure". In short, the responsibility for preparing the list of centrally procured items lies with the CPA.

The CPA has presented the stated list, but has been asked by the cabinet of the Minister of Finance to substantiate its original proposal for the list of centrally procured articles through a more detailed analysis of the categories chosen, with a view to having the list endorsed by the Government. The CPA, in co-operation with the PPRC, published on 19 December 2012 the Administrative Instruction PPRC 1/2012 requesting more detailed information from contracting authorities when sending their procurement plan, with regard especially to three procurement categories that the CPA had identified over the previous three years as potential candidates for central purchasing: fuel supply, office supplies and supply of food for staff. This instruction demonstrates the positive support of the PPRC to ensuring implementation of the law with regard to centralised purchasing.

Interviews conducted highlighted the different interpretations of the MoF and the CPA concerning the level of detail of the required supportive analysis, the extent to which the items categorised should be justified and the confidentiality of price difference data. However, the CPA has presented the list of common use items, attached with three analytical reports on categories proposed for central procurement (fuel, office supply, food) to the Ministry of Finance on 13 March 2013.

Also, there is a lack of vision as to how centralised purchasing could be conducted and how centralised framework agreements would function from the viewpoints of contracting authorities and economic operators.

Potential customers for centralised purchasing

The approved budget of [the Republic of Kosovo for 2013](#) (2012/04-L-165) indicates that 35 891 public employees are working at central government level. The majority of ministerial offices are relatively small (under 50 staff), and their spending on goods and services is low. At the central government level, the amount forecast to be spent on goods and services is EUR 4564 per employee, and the expenditure in utilities per employee is EUR 423. At the municipal level, the average amounts to be spent on utilities and procured goods and services are at much lower levels. The number of employees in the total of 38 municipalities is 43 663. In municipalities the foreseen expenditure for the procurement of goods and services is EUR 835 per employee, and EUR 205 per employee is to be spent on utilities. The overall government structure and layout could provide a perfect fit for centralised procurement, with smaller agencies benefitting the most.

Interviews confirmed that the perception in the CPA is that contracting authorities are opposed to any form of centralisation. Some negative attitudes have been highlighted by foreign observers: "Some reforms aimed at improving governance and transparency could encounter resistance. For example, line ministries and municipalities may resist or delay consolidated procurement as this would reduce their discretion in awarding

public contracts⁹⁴. However, there is no substantive evidence for example in the form of responses to a questionnaire, on the resistance of contracting authorities to centralised procurement. During the preparation of this report, some economic operators were also asked their views on the centralisation of procurement. No resistance was noticeable.

The CPA's overall approach to its role as the central procurement institution remains a challenge. Over the years, the CPA has gathered procurement experience by conducting procurement activities on behalf of other contracting authorities. However, centralised purchasing differs in various ways from developing a procurement activity for a single contracting authority. It requires in particular the assumption of a "service provider" attitude⁹⁵ which was not necessary when conducting its previous functions as an *ex ante* control body.

The CPA has not engaged in any joint or central procurement activities since its establishment under its new guise. Despite long-term comprehensive international effort that has focused on knowledge transfer on centralised and joint procurement, overall development in this area is very limited. The list of common-use items for central procurement has not yet been approved by the Government. Co-operation between relevant stakeholders remains a challenge.

⁹⁴ The World Bank's programme document for a proposed grant for an amount equivalent to EUR 23 m to the Republic of Kosovo for a second sustainable employment development policy operation, Grant and programme summary, p. V.

⁹⁵ A study carried out by SIGMA concluded that the services provider approach, generally encountered with central purchasing bodies, is one of the key elements for their success, in either a compulsory or non-compulsory system.