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Monitoring Report:

The Principles of Public Administration

KOSOVO*
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LIST OF ABBREVIATIONS AND ACRONYMS

ACA	Anti-Corruption Agency
AFS	annual financial statement
AG	Auditor General
AIS	Agency for Information Society
API	application programming interface
BDMS	Budget Development and Management System
BIA	budget impact assessment
BO	budget organisation
BRS	Better Regulation Strategy 2.0 for Kosovo 2017-2021
CAF	Common Assessment Framework
CAO	Chief Administrative Officer
CFO	Chief Financial Officer
CoG	Center of Government
CHU	Co-ordination and Harmonisation Unit
CIPFA	Chartered Institute of Public Finance and Accountancy
CNPAR	Council of Ministers for Public Administration Reform
COPF	Committee for Oversight on Public Finance
COSO	Committee of Sponsoring Organizations of the Treadway Commission
CPA	Central Procurement Agency
CSL	Law on the Civil Service
DA	Department for Administrative Cases
DAQC	Department for Audit Quality Control
DCSA	Department of Civil Service Administration
DMP	Declaration of Medium-term Priorities
DPRM	Department for Public Administration Reform Management
EI	European integration
eID	electronic identification
ERA	European Reform Agenda
ERP	Economic Reform Programme
ESA	European Statistical Accounts
EU	European Union
EUR	euro
FMC	financial management and control
GAWP	Government Annual Work Plan
GCS	Government Co-ordination Secretariat

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List of Abbreviations and Acronyms

GDP	gross domestic product
GIZ	<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i>
HRMIS	Human Resource Management Information System
IA	internal audit
ICT	information and communications technology
IIA	Institute of Internal Auditors
IMF	International Monetary Fund
IOB	Independent Oversight Board
IPA	Instrument of Pre-accession Assistance
IPSAS	International Public Sector Accounting Standards
ISSAI	International Standards of Supreme Audit Institutions
IT	information technology
KFMIS	Kosovo Financial Management Information System
KIPA	Kosovo Institute for Public Administration
KJC	Kosovo Judicial Council
LAC	Law on Administrative Conflicts
LAPD	Law on Access to Public Documents
LGAP	Law on General Administrative Procedures
LO	Legal Office
LAD	Law on Administrative Disputes
LOG	Law on the Official Gazette of the Republic of Kosovo
LOPA	Law on Organization of Public Administration
LOR	Law on Obligational Relationships
LOWA	Law on Office Work Administration
LPFMA	Law on Public Financial Management and Accountability
LSA	Law on the State Administration
MCYS	Ministry of Culture, Youth and Sports
MED	Ministry of Economic Development
MEI	Ministry of European Integration
MoF	Ministry of Finance
MoJ	Ministry of Justice
MPA	Ministry of Public Administration
MTBF	medium-term budgetary framework
MTEF	Medium-term Expenditure framework
NAO	National Audit Office
NGO	non-governmental organisation
NDS	National Development Strategy

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List of Abbreviations and Acronyms

NPISAA	National Plan for Implementation of the Stabilisation and Association Agreement
OECD	Organisation for Economic Co-operation and Development
OJEU	<i>Official Journal of the European Union</i>
OPM	Office of the Prime Minister
OSCE	Organisation for Security and Co-operation in Europe
PAMS	Strategy for Modernisation of Public Administration 2015-2020
PAR	public administration reform
PFM	public financial management
PFMS	Public Finance Management Strategy
PFMRS	Public Finance Management Reform Strategy 2016-2020
PIFC	Public Internal Financial Control
PM	Prime Minister
POE	publicly owned enterprise
PPL	Public Procurement Law
PPP	Public-Private Partnership
PPRC	Public Procurement Regulatory Commission
PRB	Procurement Review Body
RIA	Regulatory Impact Assessment
RoP	Rules of Procedure
SAA	Stabilisation and Association Agreement
SAI	supreme audit institution
SG	Secretary General
SIPCC	Strategy for Improving Policy Planning and Coordination in Kosovo 2017-2021
SPC	Strategic Planning Committee
SPO	Strategic Planning Office
SSA	Special Service Agreement
ToC	Table of Compliance
TSA	Treasury single account
UNDP	United Nations Development Programme
UNMIK	United Nations Mission in Kosovo
USAID	United States Agency for International Development
WCAG	Web Content Accessibility Guidelines

INTRODUCTION

SIGMA developed the Principles of Public Administration in 2014 to support the European Commission's reinforced approach to public administration reform (PAR) in the European Union (EU) Enlargement process. In 2017, the Principles¹ were updated and a new methodological framework developed to improve clarity, without changing the substance of the conceptual framework. The Principles define what good public governance entails in practice and outline the main requirements to be followed by during EU integration. The monitoring framework enables regular analysis of progress made in applying the Principles and setting benchmarks.

In 2015 SIGMA undertook comprehensive Baseline Measurement assessments for the seven EU Enlargement candidate countries and potential candidates against the Principles and has continued to monitor subsequently the progress of PAR. Monitoring reports were also published in 2016 for assessments in selected priority areas of PAR.

This 2017 Monitoring Report, for the period May 2015 to June 2017, covers the six key areas of reform: strategic framework for public administration reform, policy development and co-ordination, public service and human resource development, accountability, service delivery and public financial management, including public procurement and external audit.

The first part of the Report sets out major developments and progress made since 2015, based on the indicators and methodology used in the Baseline Measurement Reports. The analysis of individual Principles is further enhanced through the introduction of a new set of monitoring indicators and sub-indicators, described in the *Methodological Framework for the Principles of Public Administration*². The indicator values, based on the points allocated to each sub-indicator, are indicative and should not be used nor interpreted on their own without the context of the full qualitative analysis provided under each Principle.

The Report also contains short- and medium-term recommendations to help the administration take concrete actions for tackling some of the most important challenges. These include recommendations from the 2015 SIGMA Baseline Measurement Report³ which have not been implemented yet and are still relevant.

The analytical findings and recommendations in this Monitoring Report are also designed to inform the policy dialogue and discussions between the EC and the administration about priority areas for reform and potential support.

¹ OECD (2017), *The Principles of Public Administration*, OECD, Paris: <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-Edition-2017-ENG.pdf>

² OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

³ OECD (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-Kosovo.pdf>

OVERVIEW

The Stabilisation and Association Agreement (SAA) for Kosovo entered into force on 1 April 2016 and the Government prepared its first medium-term plans for European integration (EI) activities to support implementation.

In 2015, the Public Administration Modernisation Strategy was developed to establish short- and medium-term priorities for PAR and provide a mechanism to track progress across individual government bodies. The establishment of a high-quality, comprehensive PAR Strategy is an achievement in itself, and important milestones have been reached, but overall implementation of the planned reforms is slower than anticipated. In May 2016, the Public Finance Management Strategy was finalised to steer PFM reform efforts. The adoption of a PFM Strategy was a condition for Kosovo to receive sector budget support from the EU, and the implementation of the Strategy is so far progressing satisfactorily.

Kosovo has made steady progress in most areas of PAR since SIGMA's 2015 Baseline Measurement Report, but there are still significant challenges remaining. Making further progress on PAR implementation remains a crucial challenge for Kosovo in the coming years, and political stability and commitment continue to be preconditions for effective PAR reforms.

This report identifies four priorities:

- The ongoing work on creating a more rational and efficient organisation of the public administration, with fewer small government agencies and clearer lines of accountability, needs high-level political commitment to succeed.
- Finalisation of the drafts laws regulating the civil service, public sector salaries, the organisation of public administration and administrative justice is critical and should be done in a coherent manner that safeguards the quality of the legislation and enables needed improvements in these areas.
- The improvement of policies and laws on internal control and public procurement must translate into a change in practices and ultimately less waste and more efficient financial management by the administration. Effective implementation of the adopted strategies is the key to success.
- The quality of policy planning needs to be further enhanced to ensure that the Government's priorities are implemented. More realistic planning and better alignment between plans is needed.

1

Strategic Framework of Public Administration Reform

STRATEGIC FRAMEWOK OF PUBLIC ADMINISTRATION REFORM

1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 – JUNE 2017

1.1. State of play

The Government of Kosovo has established a comprehensive framework for public administration reform (PAR), comprised of four strategic planning documents covering the full scope of the Principles of Public Administration⁴. The Strategy for Modernisation of Public Administration 2015-2020 (PAMS) contains reform initiatives for the areas of public service and human resource management (PSHRM), service delivery and accountability. The Public Financial Management Reform Strategy 2016-2020 (PFMRS) covers public financial management (PFM), including public procurement and external audit. The Strategy for Improving Policy Planning and Co-ordination in Kosovo 2017-2021 (SIPPC) and the Better Regulation Strategy 2.0 for Kosovo 2017-2021 (BRS) cover policy development and co-ordination. Other strategies⁵ also contain reform initiatives within PAR areas, but are not included in the same monitoring framework as the four key PAR Strategies and are therefore not covered in this analysis.

PAR is acknowledged as a priority in the Government's central planning documents: the Government Programme for 2015-2018, the National Development Strategy (NDS) and the National Plan for Implementation of the Stabilisation and Association Agreement (NPISAA) include activities that address the substance areas of PAR. Most of the activities in the key PAR Strategies have been costed, but the financial sustainability of planned reforms is not ensured due to heavy reliance on donor funding, the majority of which is unsecured.

Outcome-level indicators are linked to all objectives of the PAR Strategies, but because the strategic framework was finalised only at the end of 2016, with the adoption of the revised SIPPC and BRS, it has not been possible to fully monitor the progress of reforms against the set objectives. The implementation rate of planned activities is so far low.

The Ministry of Public Administration (MPA) is responsible for the overall co-ordination of PAR. Its Department for Public Administration Reform Management (DPARM) monitors implementation of the PAMS. It is also the secretariat for the Council of Ministers for PAR (CMPAR), which is the co-ordination forum for PAR at the political level. Separate working groups have been established for administrative-level co-ordination of the PAR Strategies, led by the Secretary Generals of the MPA, the Ministry of Finance (MoF) and the Office of the Prime Minister (OPM). However, co-ordination at the administrative level is not fully functional.

1.2. Main developments

The following section describes key changes in the public administration for each key requirement and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement reports.

⁴ OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf.

⁵ For example: the Strategy for Training of Civil Servants 2016-2020; the Internal Control Strategy of Public Finance 2015-2019; the National Strategy for Public Procurement 2017-2021; and the Local Self-Government Strategy 2016-2026.

Key requirement: The leadership of public administration reform and accountability for its implementation is established, and the strategic framework provides the basis for implementing prioritised and sequenced reform activities aligned with the government's financial circumstances.

In the two years since the 2015 Baseline Measurement, the Government has adopted the PAMS⁶ and the PFMS⁷, and has completely revised the SIPPC and the BRS⁸. These activities address SIGMA's 2015 Baseline Measurement recommendations on finalising the strategic framework, to establish implementation plans in all areas of PAR and to set up a comprehensive monitoring and reporting system⁹. As a result, the scope of PAR central planning documents is complete, which is reflected in the value assigned to the respective indicator.

Each of the objectives in the Strategies is accompanied by outcome-level indicators. Because 2016 was an interim year for the BRS and the SIPPC, during which they were considerably revised, the monitoring mechanism has not yet been regularly used in practice to report on outcomes and provide information on progress for decision makers. Nevertheless, the value for the indicator on comprehensiveness of the PAR reporting and monitoring system has improved considerably.

All five central planning documents¹⁰ analysed feature objectives and priorities in a consistent and coherent manner. The reform orientation of PAR planning documents has slightly improved, as has the share of costed activities. However, the implementation rate of activities related to PAR has decreased. This can be attributed partly to overly ambitious plans and inadequate funding, but also to the fact that two of the four Strategies were substantially revised in 2016, postponing the efforts to implement them. Nevertheless, the Strategy with the lowest implementation rate of activities was the PAMS (8%), which was not in fact revised.

Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports¹¹

	2015 Baseline Measurement indicator	2015 value	2017 value
Qualitative	Extent to which the scope of PAR central planning document(s) is complete.	2	5
	Extent to which a comprehensive PAR reporting and monitoring system is in place.	2	4

⁶ In September 2015.

⁷ In June 2016.

⁸ Revised versions adopted in December 2016. The original version of the SIPPC was adopted in May 2015, and the original version of the BRS in May 2014. The main reason for revising them was to develop a proper monitoring framework with relevant outcome-level indicators for the two Strategies, but ultimately, the structure of the SIPPC was also revised, and the content of the BRS largely rewritten.

⁹ OECD (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, p. 12, Recommendations 1, 3 and 4, http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Kosovo.pdf.

¹⁰ The Government Programme 2015-2018, NDS 2016-2021, NPISAA, the Government Annual Work Plan (GAWP) 2017 and the Medium-term Expenditure Framework (MTEF) 2018-2020 (including the Declaration of Medium-Term Priorities [DMTP]).

¹¹ OECD (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Kosovo.pdf.

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Quantitative	Ratio of central planning documents featuring PAR objectives and priorities uniformly and coherently.	67% ¹²	100% ¹³
	Share of public administration development activities and reforms from all activities in PAR planning documents.	69% ¹⁴	73% ¹⁵
	Annual implementation backlog ¹⁶ of public administration development activities and reforms.	33% ¹⁷	22% ¹⁸
	Percentage of fulfilled PAR objectives.	Not available ¹⁹	Not available ²⁰
	Share of resourced and costed PAR measures.	63% ²¹	82% ²²

¹² Out of the nine central planning documents assessed in 2015, the Government Programme 2011-2014; the Government Programme 2015-2018; the GAWP 2015; the DMTP for 2014-2016; the National Strategy for European Integration "Kosovo 2020"; and the Action Plan on the Stabilisation Association Agreement 2014 featured PAR objectives and priorities uniformly and coherently. The three planning documents that did not were the GAWP 2014; the MTEF 2014-2016 and the MTEF 2015-2017.

¹³ All five central planning documents assessed in 2017 (the Government Programme, the NDS, the NPISAA for 2017, the MTEF 2018-2021 and the GAWP for 2017) feature PAR objectives and priorities uniformly and coherently. This indicator value is not directly comparable with the 2015 value, because a different set of planning documents was used for the assessment.

¹⁴ In the absence of PAR central planning documents in all areas, the value was calculated based on the following planning documents: the GAWP 2014, the GAWP 2015, the PAR Roadmap for 2014, the Better Regulation Strategy Action Plan, and the Action Plan for Implementation of Electronic Government Strategy 2009-2015. Of 238 activities, 160 were assessed to be reform-oriented.

¹⁵ Of 184 activities from the four key PAR Strategies, 135 were assessed as reform-oriented. The value cannot be directly compared with the 2015 value for the same indicator, which is calculated on the basis of a different set of planning documents.

¹⁶ The indicator refers to the implementation rate of public administration development activities and reforms within the particular year.

¹⁷ Of 30 activities from the PAR Roadmap planned for implementation in 2014, 10 were actually implemented.

¹⁸ Of 116 activities from the four key PAR Strategies planned for implementation in 2016, 25 were actually implemented.

¹⁹ Since the national planning documents in the PAR area did not have measurable objectives (linked to performance indicators and targets) for 2014, it was not possible to calculate the indicator value for the implementation ratio of PAR objectives.

²⁰ Since the national planning documents in the PAR area did not have measurable objectives (linked to performance indicators and targets) for 2016, it was not possible to calculate the indicator value for the implementation ratio of PAR objectives.

²¹ Assessment was made on the basis of the PAR Road Map 2014; the Better Regulation Strategy 2014-2020; the Action Plan for Implementation of the Electronic Governance Strategy 2009-2015; and the PIFC Strategy 2015-2019.

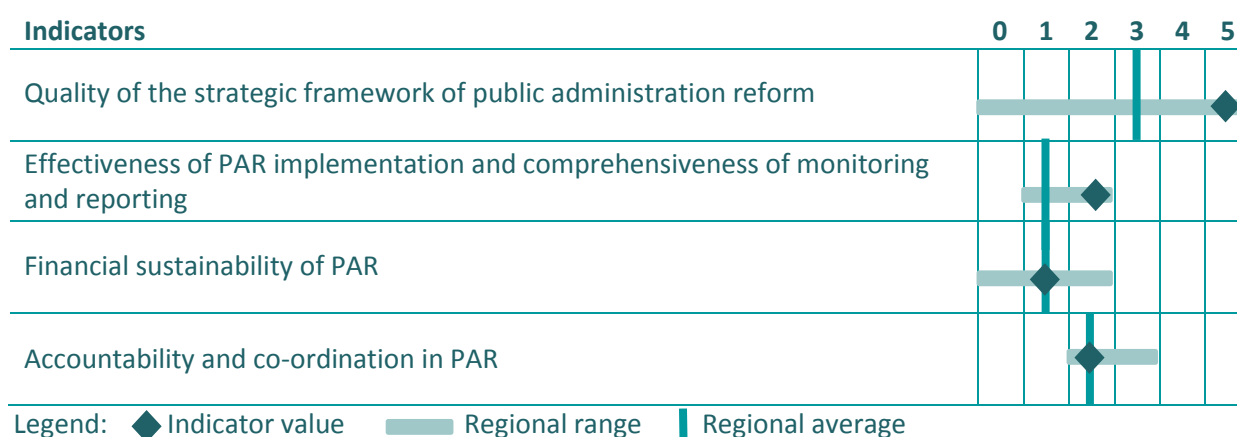
²² Of 184 activities from the four key PAR Strategies, 150 have been costed.

2. ANALYSIS

This analysis covers four Principles for the strategic framework of public administration reform, grouped under one key requirement. It includes a summary analysis of the indicator used to assess against each Principle, including sub-indicators²³, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

Key requirement: The leadership of public administration reform and accountability for its implementation is established, and the strategic framework provides the basis for implementing prioritised and sequenced reform activities aligned with the government's financial circumstances.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

Principle 1: The government has developed and enacted an effective public administration reform agenda which addresses key challenges.

The strategic framework for PAR consists of four planning documents, which cover all substance areas defined by the Principles of Public Administration. The PAMS covers public service and HRM, service delivery and accountability; the PFMRS covers PFM; and the SIPPC and the BRS cover policy development and co-ordination. The division of topics among the plans is clear, and the plans are mostly coherent with each other in terms of objectives, targets, deadlines and assignment of responsibilities to institutions²⁴.

The Strategy documents contain the information required of strategic plans, including situation analysis, objectives, indicators and target values, actions, responsible institutions and deadlines, estimates of resources needed, and a description of the monitoring and reporting arrangements. All four Strategies were made available for public consultation for at least two weeks, but non-

²³ OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

²⁴ The only exception is the activity "Functionalisation of the Steering Group on Strategic Planning and the Strategic Planning Committee", which appears in the SIPPC and the PFMRS. Under the PFMRS, this should have been determined in 2016, while according to the SIPPC (the revised version of which was adopted six months after the PFMRS) the deadline was the second quarter of 2017.

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governmental stakeholders were not engaged in earlier stages of preparation of the PAR Strategies, which reduces the number of points allocated for the sub-indicator on the quality of consultations.

The Government Programme for 2015-2018, the NDS and the NPISAA all include activities that address the substance areas of reform. Encouraging evidence-based policy making and increasing participation of citizens in decision making are shared goals under policy development and co-ordination²⁵, and reforming the salary system of the civil service is the goal in the public service and HRM area²⁶. In service delivery, the common priority is to reduce administrative barriers for businesses and improve the interoperability of registries²⁷. Increasing the efficiency of the judiciary is the general aim in the accountability area²⁸, and introducing e-procurement is one of several common goals in the PFM area (in addition to tax reform)²⁹. Overall, the key central planning documents prioritise PAR.

The reform orientation of activities included in the four PAR planning documents has improved compared with the 2015 Baseline Measurement, but the calculation was based on different planning documents, because the PAR Strategies had not yet been adopted. On average, 73% of the activities included in the plans are aimed at creating changes in the existing legal and institutional frameworks or in expected practices³⁰.

The PAR planning documents meet the requirements for minimum content, coverage, scope and coherence; PAR is prioritised in other key central planning documents; and the PAR Strategies are largely reform-oriented. Consequently, the value for the indicator 'Quality of the strategic framework of public administration reform' is 5.

Quality of the strategic framework of public administration reform						
This indicator measures the quality of the strategy for public administration reform (PAR) and related planning documents (i.e. to what extent the information provided is comprehensive, consistent and complete), including the relevance of planned reforms.						
A separate indicator measures financial sustainability and cost estimates in detail.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Coverage and scope of PAR planning documents	5/5
2. Prioritisation of PAR in key horizontal planning documents	2/2
3. Coherence of PAR planning documents	4/4
4. Presence of minimum content of PAR planning documents	7/7
5. Reform orientation of PAR planning documents	1/3
6. Quality of consultations related to PAR planning documents	1/2
Total³¹	20/23

²⁵ Measure 11 of the NDS (encouraging evidence-based policy making) and p. 38 of the Government Programme (Increase of transparency and participation of citizens in decision-making).

²⁶ The Government Programme, p. 38, and the NPISAA, pp. 341 and 410.

²⁷ Measure 9 of the NDS (decreased administrative barriers to licences and permits), p. 11 of the Government Programme (1.2.4. Elimination of legal barriers and reduction of bureaucracy), and p. 412 of the NPISAA (provision of e-public administrative services).

²⁸ Measure 14 of the NDS (increased judicial efficiency), measures in Chapter 23 of the NPISAA (judiciary and fundamental rights), and p. 35 of the Government Programme (advancement of legislation in the field of justice).

²⁹ Measure 12 of the NDS (closing loopholes in the public procurement system), p. 15 of the Government Programme (under "Efficiency of expenditures, size of the public sector and fiscal rules"), and NPISAA measures in Chapter 5.

³⁰ The individual values are the following: PAMS 87%; BRS 74%; SIPPC 68%; and PFMRS 65%.

³¹ Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-15=3, 16-19=4, 20-23=5.

A comprehensive strategic framework for PAR covering all key substance areas is established, and the four PAR Strategies are coherent and contain the required minimum content. PAR is prioritised in key central planning documents, and most activities of the PAR Strategies are aimed at reforming the public administration system. However, the reform orientation of activities included in the strategies is low, and other central planning documents do not sufficiently prioritise PAR. Although all the strategies were presented for public consultation, non-governmental stakeholders did not participate in drawing up the Strategies.

Principle 2: Public administration reform is purposefully implemented; reform outcome targets are set and regularly monitored.

The reporting and monitoring framework for PAR has been established³² and is functioning in practice. The Secretary Generals of the three institutions assigned as PAR co-ordinators report annually to the CMPAR³³ in their respective reform areas: the OPM for policy development and co-ordination, the MPA for public service, service delivery and accountability, and the MoF for PFM. After Council discussions, reports are submitted to the Government. Quarterly reports are expected to be produced for all Strategies, to be discussed first by the respective intermediate co-ordinating bodies for each Strategy³⁴ and then at the weekly meetings of Secretary Generals. Thus far, quarterly reports have been prepared only on the implementation of the PAMS.

All four Strategies have indicators monitoring progress against specific objectives. All indicators are described and defined in detail in the indicator passports developed separately for each of the four Strategies. However, indicator passports are publicly available only for the PAMS³⁵. 2016 was the first year for which annual reports were produced for all four Strategies, but they are not publicly available³⁶. Civil society organisations are not involved in monitoring the implementation of the PAR Strategies.

Despite the availability of guidance for developing good and comprehensive reports, those prepared so far are mainly overviews of implementation of individual activities. The report on the PFMRS stands out in this respect, as it explicitly describes outputs for each of the planned activities. In addition, it is the only report to include a clear overview of values for all outcome-level indicators (in relation to targets set for 2017). The PAMS report also contains information on progress towards selected (but not all) objectives. The lack of focus on outcomes can be explained by the absence of targets for the PAMS (and for the PFMRS) for 2016 and the omission of outcome-level indicators in the previous versions of the BRS and the SIPPC. None of the reports pay sufficient attention to the challenges that have negatively affected implementation. Only the PAMS report identifies the need for additional capacities for implementing and for co-ordinating PAR implementation.

The implementation rate of PAR activities is low for all four Strategies: in 2016, on average, only 22% of activities from the four PAR Strategies with deadlines in that year were implemented³⁷, and therefore no points are awarded for the corresponding sub-indicator. While the low implementation rates of the

³² Government Decision No. 09/13 on the Organization and Functioning of Structures for the Implementation of Strategic Documents and Public Administration Reform, adopted 12 February 2015.

³³ Established with Government Decision No. 06/09, adopted 21 January 2015.

³⁴ The Steering Group for Strategic Planning of the BRS and the SIPPC; and separate Co-ordination Groups for the PFMRS and PAMS respectively.

³⁵ [http://map.rks-gov.net/getattachment/30c4162e-d08d-41a6-91fc-79e3c6582c07/Pasaporta-e-Treguesve-per-SMAP-te-Kosoves-\(-2015-%E2%80%9393.aspx](http://map.rks-gov.net/getattachment/30c4162e-d08d-41a6-91fc-79e3c6582c07/Pasaporta-e-Treguesve-per-SMAP-te-Kosoves-(-2015-%E2%80%9393.aspx).

³⁶ The most recent publicly available report is the 2015 report on PAMS implementation: <http://map.rks-gov.net/getattachment/d647e1f3-9765-4814-bfcb-4e9d91e3b17c/-.aspx>.

³⁷ For the PFMRS, 33%; the SIPPC, 20%; the BRS, 17%; and the PAMS, 8%. For the SIPPC, the calculation was based on the activities with deadlines in 2016, according to the previous strategy. Of the 20 activities in the original SIPPC with deadlines in 2016, 4 activities have been implemented, 13 have been included in the revised SIPPC with a new deadline in 2017 or later and 3 have been excluded.

BRS (17%) and the SIPPC (20%) can be explained by their extensive revision in 2016, it is the PAMS that has the lowest share of implemented activities (8%).

As the previous versions of the BRS and the SIPPC did not contain any outcome-level indicators, and as the PAMS and the PFMRS contain specific outcome-level targets only for 2017, the fulfilment rate for PAR objectives for 2016 could not be assessed, with the result that the value for the respective sub-indicator is automatically set at 0.

Due to the low implementation rate and lack of outcome-level targets in the PAR Strategies for 2016 (and earlier), the value for the indicator 'Effectiveness of PAR implementation and comprehensiveness of monitoring and reporting' is 2.

Effectiveness of PAR implementation and comprehensiveness of monitoring and reporting						
This indicator measures the track record of implementation of PAR and the degree to which the goals were reached. It also assesses the systems for monitoring and reporting of PAR.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Comprehensiveness of PAR reporting and monitoring systems	6/8
2. Implementation rate of PAR activities (%)	0/4
3. Fulfilment of PAR objectives (%)	0/4
Total³⁸	6/16

The reporting and monitoring system for PAR is established, and annual implementation reports for all four strategies have been prepared for the first time for 2016. Despite low implementation rates, the reports focus mostly on achievements and less on challenges and how to overcome them. There were no outcome-level targets set for PAR strategies in 2016.

Principle 3: The financial sustainability of public administration reform is ensured.

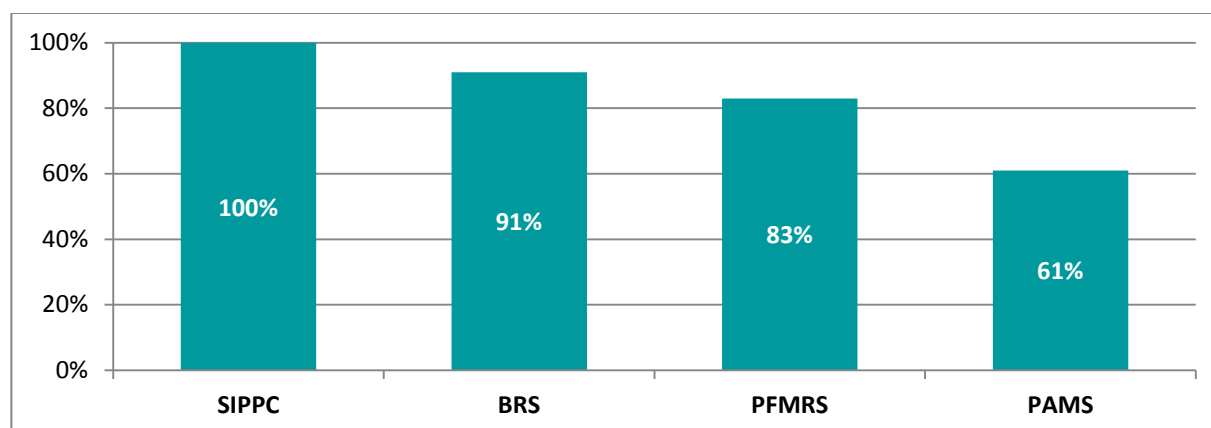
Analysis of the action plans of the PAR Strategies shows that 82% of activities include specific cost estimates or are labelled as being covered by the regular operating costs of implementing institutions. The share is highest for the SIPPC (100%), but according to its Action Plan for 2017-2019, only 15 out of 41 activities will require additional resources, with the rest to be taken care of within existing budgets. This can be attributed to the nature of SIPPC activities, which focus primarily on improving planning through enhanced co-ordination among existing bodies, and which do not require external resources.

The share of costed activities is lowest for the PAMS (61%), and the Strategy also includes several activities that should require additional resources³⁹ but that have not been costed. The costs of implementing the PFMRS are set out in great detail, including separate estimates for investments and for hiring additional employees. For the other Strategies, the costs are not broken down into one-off and recurring costs.

³⁸ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

³⁹ 1) Specific Objective 2 under the Civil Service area, Activity 3, linking the Human Resource Management Information System (HRMIS) with the salary system and pension trust; 2) Specific Objective 3 under Administrative Procedures and Public Administrative Service Delivery, Activity 3, establishing the unit (structure) responsible for managing, planning, monitoring, evaluating and implementing public administration services; and 3) Specific Objective 1 under Organisation of Public Administration and Accountability, Activity 2, reorganisation of the public administration under the new legal framework.

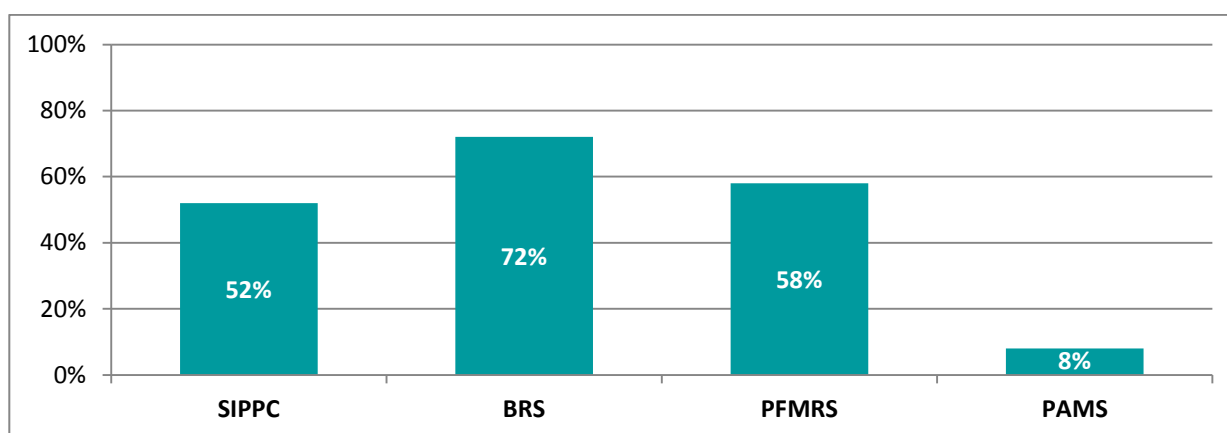
Figure 1. Costed activities in action plans of key public administration reform planning documents (%)



Source: Action Plans of the four PAR strategies.

Analysis of the share of donor funding in all the PAR Strategies shows that implementation of PAR in Kosovo relies heavily on donor support. The share of implementation costs to be covered by the domestic budget is only 7% for the BRS, 40% for the SIPPC, 41% for the PFMRS and 72% for the PAMS. In the case of the BRS, 72% of the budgeted costs are to be covered by donors that have not yet been identified. For the other Strategies, the funding gap is less acute, but still significant considering that activities without secured funding are to be implemented in the next two to three years. No mechanism is in place to secure donor support for PAR activities for which funding sources have not yet been identified⁴⁰.

Figure 2. Share of unsecured funding as a proportion of the total cost of implementation (%)



Source: Action Plans of the four PAR Strategies.

Funding of PAR from the domestic budget has also not been adequately secured, and no points are awarded for the corresponding sub-indicator. Three of the five most costly PAR Strategy activities to be financed from the domestic budget in 2017 have been guaranteed only very limited funding compared with estimates in the PAR planning documents, and some have been guaranteed none at all⁴¹.

PAR is a priority under the Government's Declaration of Medium-Term Priorities (DMTP), which is part

⁴⁰ Confirmed in interviews with the Ministry of European Integration (MEI), the MoF, the Strategic Planning Office in the OPM and the MPA.

⁴¹ The three activities are: 1) PFMRS Priority 1, Pillar 1, Activity 3.3, modernisation of the information technology system (EUR 1.2 million planned in the Strategy, EUR 150 000 allocated in the budget); 2) PAMS Specific Objective 2 under Administrative Procedures and Public Administrative Service Delivery, Activity 4, training of Civil Servants (EUR 425 228 planned in the Strategy, EUR 80 070 allocated in the budget); and 3) PFMRS Pillar 1, Priority 3, Activity 3.2, introduction of e-invoice electronic service (EUR 400 000 planned in the Strategy, no funding provided for in the budget).

of the medium-term expenditure framework (MTEF)⁴², but only the MTEF chapter on Public Finance Sector explicitly refers to PAR⁴³. The MTEF gives no estimate of the approximate resources planned specifically for PAR activities: funding is indicated based on budgetary organisation and does not distinguish between PAR-related and other activities.

Given the incomplete financial information in the PAR planning documents, and allocated funding for PAR that is considerably less than is stipulated in the Strategies, the value for the indicator 'Financial sustainability of PAR' is 1.

Financial sustainability of PAR						
This indicator measures to what extent financial sustainability has been ensured in PAR as a result of good financial planning.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Costed PAR activities (%)	2/3
2. Completeness of financial information in PAR planning documents	1/4
3. Actual funding of the PAR agenda	0/3
Total⁴⁴	3/10

Although costing of PAR activities is mostly done, financial information in the PAR Strategies is lacking in detail and is incomplete. Implementation of PAR relies heavily on donor support, some of which has not yet been secured, and in addition, actual budget allocations for activities to be financed from the domestic budget are more limited than planned for in the PAR Strategies. The financial sustainability of PAR is therefore not ensured.

Principle 4: Public administration reform has robust and functioning management and co-ordination structures at both the political and administrative levels to steer the reform design and implementation process.

The MPA is responsible for overall PAR co-ordination, and the DPARM of the MPA co-ordinates and monitors the implementation of the PAR Strategies⁴⁵. The DPARM is responsible for co-ordinating the PAR process, ensuring consistency among all areas, ensuring that PAR activities are included in the MTEF, the budget and the Government Annual Work Plan (GAWP), and analysing the implementation of the PAR Strategies⁴⁶. The DPARM currently has four staff members to implement these activities.

The DPARM is also the secretariat for the CMPAR⁴⁷, the co-ordination body at the political level. Although the CMPAR is required to meet at least once every three months⁴⁸, it met only twice in

⁴² MTEF 2018-2020, p. 11.

⁴³ *Idem*, p. 46.

⁴⁴ Point conversion ranges: 0=0, 1-3=1, 4-5=2, 6-7=3, 8-9=4, 10=5.

⁴⁵ Government Decision No. 09/13 on the Organisation and Functioning of Structures for Implementation of Strategic Documents for Public Administration Reform, Article 3. According to the Government Decision, the DPARM is expected to prepare a comprehensive annual report covering all four strategies, but in order to keep the monitoring framework streamlined and rational, this has not been carried out in practice.

⁴⁶ Article 11 of the Regulation No. 41/2013 on the Internal Organisation and Systematisation of Jobs in the Ministry of Public Administration.

⁴⁷ Government Decision No. 06/09 on the Organisation and Functioning of the Committee of Ministers to Ensure Implementation of Public Administration Reform, Article 3.

2016⁴⁹. All three institutions responsible for PAR areas (the MPA, the MoF and the OPM) were represented at the political level at the meeting in May 2016, but in November 2016 and in March 2017 the OPM was represented only at the administrative level by heads of departments. The CMPAR reviews progress reports on implementation of the PAR Strategies, discusses implementation challenges and takes decisions, but the decisions are often too general to lead to specific actions to address the exact causes of problems in implementation of PAR⁵⁰. Non-governmental stakeholders are not involved in discussions on PAR.

The Secretary Generals of the MPA, the MoF and the OPM are responsible for planning and implementing activities in their respective areas at the highest administrative level. Separate administrative-level co-ordinating bodies have been established for each Strategy⁵¹, but they are not fully functional from the perspective of the PAR agenda. For example, the information submitted to SIGMA by the authorities shows that the Steering Group for Strategic Planning met three times in 2016, but did not discuss any issues regarding PAR or the two PAR Strategies it is responsible for co-ordinating. Instead, administrative-level co-ordination of the PAR agenda has taken place informally, through discussions on finalisation of the Sector Budget Support Contract with the European Commission⁵², but this is not sustainable in the long term. Occasionally, PAR is a separate discussion point on the weekly meeting agenda of the Secretary Generals⁵³.

Managerial accountability for each activity in the PAR Strategies is not in place. The exact units responsible for implementing activities are clearly indicated only for all BRS actions. The PFMRS clearly identifies the unit responsible within the MoF, and the SIPPC designates the unit responsible within the OPM, but not for other institutions. The action plan of the PAMS usually refers only to the responsible institution, without specifying the unit.

Mainly because an administrative-level body for co-ordinating the BRS and the SIPPC is not fully functional and also because non-governmental stakeholders are not involved in the co-ordination structures of the PAR agenda, the value for the indicator 'Accountability and co-ordination in PAR' is 2.

⁴⁸ Government Decision No. 06/09 on the Organisation and Functioning of the Committee of Ministers to Ensure Implementation of Public Administration Reform, Article 2.

⁴⁹ On 20 May and 2 November 2016.

⁵⁰ See for example Conclusion No. 5 from the meeting of 20 May 2016: "In order to implement the strategic framework for the Public Administration Reform, it is required by the responsible institutions (the OPM, the MPA, the MoF) to intensify the measures for implementing the strategies for modernization of public administration, better regulation and policy planning and coordination".

⁵¹ The Steering Group for Strategic Planning for the BRS and the SIPPC; separate Co-ordination Groups for the PFMRS and the PAMS.

⁵² According to information obtained in interviews with MPA and OPM representatives.

⁵³ For example, the agenda of the 31 March 2017 meeting.

Accountability and co-ordination in PAR						
This indicator measures the extent to which leadership and accountability in PAR are established, the regularity and quality of co-ordination mechanisms at both the political and administrative levels, and the performance of the leading institution.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Establishment of organisational and managerial accountability for PAR	4/6
2. Co-ordination mechanisms for PAR	3/10
Total⁵⁴	7/16

The Council of Ministers for Public Administration Reform has been established as the co-ordination forum at the political level. Separate co-ordination bodies exist for the individual PAR strategies at the administrative level, but they are not fully functional. Non-governmental stakeholders are not involved in the established co-ordination structures.

Key recommendations

Short-term (1-2 years)

- 1) Monitoring of all four PAR-related Strategies should provide clearer information on progress against outcome-level targets and objectives, as well as recommendations for corrective actions addressing key implementation shortcomings. The reports containing this information should be made publicly available, together with the indicator specifications.
- 2) The MPA should engage in the preparation process of the MTEF to help identify PAR activities that should be included, to ensure funding. The MPA should co-ordinate with the OPM, MoF and MEI in seeking donor funding for high-priority PAR reforms.
- 3) The administrative-level co-ordination bodies for all four Strategies should be made fully operational through regular discussions on the implementation of activities and on identifying possibilities for solving challenges.
- 4) Civil society organisations should be included in the PAR monitoring process, for example as participants at meetings of the CMPAR when annual reports of the four strategies are discussed.

Medium-term (3-5 years)

- 5) During the development of the next action plans for the PAR Strategies, or during the next revision of the action plans, more emphasis should be placed on the costing of activities and prioritising of activities based on available funds. If necessary, the funding gap for the Strategies should be narrowed by excluding activities for which necessary funding cannot be secured.

⁵⁴ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

2

Policy Development
and Co-ordination

POLICY DEVELOPMENT AND CO-ORDINATION

1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 – JUNE 2017

1.1. State of play

In Kosovo, the Regulation of Rules and Procedures of the Government of the Republic of Kosovo (hereafter the rules of procedure [RoP]) sets the general principles for policy development and co-ordination⁵⁵. The Regulation on the Areas of Administrative Responsibility of the Office of the Prime Minister (OPM) and Ministries⁵⁶ assigns the critical functions for the policy-making system, including co-ordination of the European integration (EI) process to centre of government (CoG) institutions. Challenges remain in implementing policy planning and in complying with the RoP's demanding requirements for policy development. The Government has adopted a multitude of central planning documents that exceed its implementation capacities. The preparation and regular updating of the plans require extensive resources, which further reduces the resources available for implementation. The number of staff dealing with policy development in line ministries is disproportionately low compared with the staff assigned to administrative and enforcement functions. The policy content of most draft legislation is not checked by any CoG institution. As a result, the analytical quality of policy proposals is low.

A mechanism for parliamentary scrutiny of the Government is in place, but the large number of Government draft laws being processed in extraordinary proceedings limits its effectiveness. Only adopted primary legislation is available online through the Official Gazette. Most secondary legislation must be accessed through a separate registry or the individual websites of line ministries or the OPM.

1.2. Main developments

The following sections describe key changes in the public administration for each key requirement⁵⁷ and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement reports.

Overall, the quality of policy planning has improved slightly since 2015, as the share of planned strategies and EI-related commitments carried forward from one year to the next has decreased considerably. The costing of strategies is also more consistent at the level of additional spending needs. On the negative side, however, public availability of reports has deteriorated and fewer proposals are submitted to the Government for decision in a timely manner.

Kosovo signed the Stabilisation and Association Agreement (SAA) with the European Union (EU) on 27 October 2015. The National Programme for the Implementation of the Stabilisation and Association Agreement (NPISAA) was subsequently developed as the medium-term plan for implementing all EI-related activities.

The first-ever National Development Strategy (NDS), adopted on 20 January 2016, contains the most important strategic commitments. However, a detailed roadmap and monitoring framework are not yet in place to ensure its implementation.

The Minimum Standards for Public Consultation Process were approved by the Government in 2016 and entered into force on 1 January 2017⁵⁸. A new web portal for conducting written public

⁵⁵ Regulation No. 09/2011 of RoP of the Government of the Republic of Kosovo.

⁵⁶ Regulation No. 02/2011 on the Areas of Administrative Responsibility of the OPM and Ministries.

⁵⁷ OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, http://sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf.

⁵⁸ Regulation No. 05/2016 on the Minimum Standards for Public Consultation Process.

consultations was launched in February 2017⁵⁹, which has improved the consistency of line ministries in conducting written public consultations.

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

The CoG institutions fulfil the critical functions defined in the Principles of Public Administration⁶⁰ at the same level as they did in 2015: the value for the corresponding indicator therefore remains 4. The greatest shortcomings are in co-ordinating the policy content of proposals, as only the content of concept documents is consistently checked by CoG bodies. The quality control of strategies and their alignment with Government priorities has improved compared to the 2015 Baseline Measurement Report, but is still not fully consistent. There is no scrutiny of the policy content of draft legislation. A positive development is the improved co-ordination among CoG institutions during preparation of the Government Annual Work Plan (GAWP).

The most important development concerning the fulfilment of EI functions is the adoption of the NPISAA as the medium-term plan for all EI-related activities. This addresses one of the SIGMA 2015 Baseline Measurement Report recommendations⁶¹. As Kosovo is not yet an EU candidate, the value for the indicator 'EI functions are fulfilled by institutions' is still 3.

Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports⁶²

	2015 Baseline Measurement indicator	2015 value	2017 value
Qualitative	Proportion of critical CoG functions that are fulfilled by the institutions.	4	4
	EI functions are fulfilled by the institutions.	3	3

Key requirement: Policy planning is harmonised, aligned with the government's financial circumstances and ensures that the government is able to achieve its objectives.

The quality of whole-of-government planning has improved, as evidenced by the considerable progress that has been made in reducing backlogs in strategy development and EI-related activities; this also addresses another of SIGMA's 2015 Baseline Measurement Report recommendations⁶³. At the same time, however, the overall backlog of commitments in central planning documents (based on planned draft laws carried forward) has not decreased.

An analysis of samples indicates that the completeness of financial estimates in sector strategies has improved slightly, as the majority include systemic information about additional spending needs. It was not possible, however, to check the alignment between funding of sector strategies and funding

⁵⁹ <http://konsultimet.rks-gov.net/>

⁶⁰ OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, p. 19, <http://sigmaweb.org/publications/Principles-of-Public-Administration-Edition-2017-ENG.pdf>.

⁶¹ OECD (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, p. 26, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-Kosovo.pdf>.

⁶² OECD (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-Kosovo.pdf>.

⁶³ OECD (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, p. 26, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-Kosovo.pdf>.

provided for in the medium-term expenditure framework (MTEF) because the MTEF does not specify funding allocations for the implementation of specific objectives or Government priorities.

The value for the indicator on reporting on the outcomes achieved has deteriorated, because reports on the implementation of the NPISAA are not publicly available, unlike the inputs prepared for the EC Progress Report prior to the adoption of the NPISAA. The Government has not succeeded in introducing outcome-based reporting, due to a lack of outcome-level indicators in central planning documents.

Table 2. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports

	2015 Baseline Measurement indicator	2015 value	2017 value
Qualitative	Completeness of financial estimates in sector strategies ⁶⁴ .	1	2
	Extent to which reporting provides information on the outcomes achieved.	3	2
Quantitative	Annual implementation backlog of planned commitments in the central planning document(s).	48.5%	45.37% ⁶⁵
	Annual backlog in developing sectoral strategies.	67%	21.95% ⁶⁶
	Ratio between total funds estimated in the sectoral strategies and total funding identified for corresponding sectors within the MTBF ⁶⁷ .	20% ⁶⁸	0% ⁶⁹
	Annual implementation backlog of EI-related commitments.	67.2%	26.80% ⁷⁰

Key requirement: Government decisions and legislation are transparent, legally compliant and accessible to the public; the work of the government is scrutinised by the parliament.

The ratio of items submitted on time to Government sessions has decreased considerably since the 2015 Baseline Measurement Report. The relatively large number of items added to Government

⁶⁴ A sample of five recently adopted sector strategies was used.

⁶⁵ Of the 108 draft laws included in the 2016 GAWP, 49 also appear in the 2017 GAWP.

⁶⁶ Nine of the 41 sector strategies included in the 2016 GAWP also appear in the 2017 GAWP.

⁶⁷ The ratio is calculated as a percentage (0% minimum and 100% maximum) illustrating the difference in planned funding in the last five strategies adopted and the MTEF. The value of the indicator is the average of the five cases. If it is not possible to calculate this due to a lack of financial data in the MTEF and/or in all or some sector strategies, the ratio is determined to be 0%.

⁶⁸ One out of the five most recent sectoral strategies contained financial estimates and were linked with cost estimates in the MTEF.

⁶⁹ The MTEF does not specify the funding envisaged for implementing activities or achieving objectives from the sample sector strategies. The indicator value is thus 0%.

⁷⁰ Of the 612 commitments included in the 2016 NPISAA (excluding continuous commitments), 164 also appear in the 2017 NPISAA.

session agendas at the last minute is also one of the reasons the agendas of Government sessions are not published in advance⁷¹. The Assembly continues to discuss reports on the implementation of laws.

The OPM departments have slightly improved quality control of the content of proposals submitted to the Government for approval and have thus partly addressed SIGMA's recommendation in the 2015 Baseline Measurement⁷². The Government Co-ordination Secretariat (GCS) checks the policy content of all concept documents and the Strategic Planning Office (SPO) provides comments on most, but not all, sector strategies submitted to the Government for approval. Still, the policy content of draft legislation is not scrutinised by any CoG body, because the Legal Office (LO) only focuses on the legislative drafting quality, and the GCS and the SPO do not review draft regulations or their explanatory memorandums.

Table 3. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports

	2015 Baseline Measurement indicator	2015 value	2017 value
Quantitative	Ratio of regular agenda items submitted on time ⁷³ by ministries to the government session.	84.6%	70.37% ⁷⁴
	Ratio of laws initiated by the government and approved by the parliament no later than one year after submission.	77%	81.48% ⁷⁵
	Number of law implementation reports discussed in the parliament.	8	9 ⁷⁶

Key requirement: Inclusive, evidence-based policy and legislative development enables the achievement of intended policy objectives.

A higher value for the indicator on the 'Extent to which ministries are oriented towards policy development' can be attributed to improvements in the distribution of tasks among the main co-ordination departments (policy co-ordination, EI co-ordination and legal drafting). Departments for relevant policy areas lead working groups established for elaborating policy proposals, and the co-ordination departments provide support in their respective roles.

There is no change to the indicator on the 'Extent to which the policy development process makes the best use of analytical tools'. Analyses in the explanatory memoranda accompanying draft legislation are of low quality and are not checked by CoG bodies. On the positive side, training sessions have been organised for ministry staff on Regulatory Impact Assessments (RIAs), as recommended by SIGMA in 2015⁷⁷.

⁷¹ According to information obtained from the OPM departments during interviews.

⁷² OECD (2015), *Baseline Measurement Report: Kosovo*, OECD, Paris, pp. 21 and 29, http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Kosovo.pdf.

⁷³ "On time" is understood as within the procedural criteria set by regulation(s).

⁷⁴ Of the 162 proposals submitted in total in the fourth quarter of 2016, 114 were submitted on time (15 days before the Government meeting, as provided for in Article 10 of the RoP).

⁷⁵ Of the 81 draft laws submitted to the Assembly by the Government in 2015, 66 were processed within a year.

⁷⁶ According to information provided by the Assembly.

⁷⁷ OECD (2015), *Baseline Measurement Report: Kosovo*, OECD, Paris, p. 36, http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Kosovo.pdf.

The Minimum Standards for Public Consultation Process⁷⁸ were implemented in early 2017, but their application has not yet affected the indicator value as the assessment is based on samples from the end of 2016. Only two of the five sample draft laws analysed were published for public consultation on ministry websites⁷⁹ (part of the requirements already established in 2016). This indicates that the consistency of enforcement of public consultation procedures has deteriorated, leading to a reduction in the value for the indicator on the 'Extent to which public consultation is used in developing policies and legislation'.

An improvement since 2015 is that explanatory memoranda accompanying draft laws include tables of comments provided during consultation procedures (public debates or interministerial consultations). Because the Government is thus slightly better informed on the outcomes of the process, the value for the indicator on the 'Extent to which the interministerial consultation process occurs' has increased to 3. The effectiveness of consultation procedures remains a concern, however, as most comments are provided by international organisations and not by other line ministries.

The value for the indicator on the 'Extent to which primary and secondary legislation is made publicly available in a centralised manner' remains 2, because secondary regulation is not published consistently through an electronic registry.

Table 4. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports

	2015 Baseline Measurement indicator	2015 value	2017 value
Qualitative	Extent to which ministries are oriented towards policy development.	1	2
	Extent to which the policy development process makes the best use of analytical tools.	3	3
	Extent to which public consultation is used in developing policies and legislation.	3	2
	Extent to which the interministerial consultation process occurs.	2	3
	Extent to which primary and secondary legislation is made publicly available in a centralised manner.	3	2 ⁸⁰

⁷⁸ Regulation No. 05/2016 on Minimum Standards for Public Consultation Process, adopted on 29 April 2016.

⁷⁹ The draft Law on Child Protection was published for public consultation on the OPM website, and the draft Law on Mediation was published on the website of the Ministry of Justice (MoJ). However, the draft Law on Legalisation of Weapons and Surrender of Small Arms and Light Weapons, Ammunition and Explosive Materials was not published on the website of the Ministry of Interior, the draft Law on Education Inspectorate was not published on the Ministry of Education (MoE) website, nor was the draft Law on State Aid published on the website of the MoF.

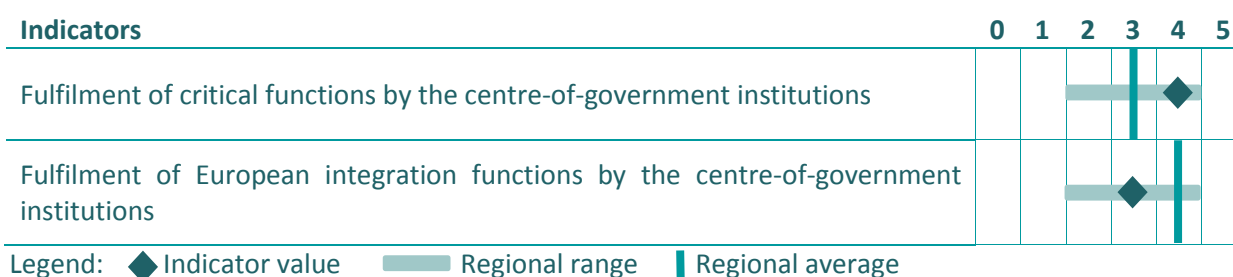
⁸⁰ There were no changes from 2015 to 2017. The modified value is based on revised analysis of the situation.

2. ANALYSIS

This analysis covers 12 Principles for the policy development and co-ordination area, grouped under 4 key requirements. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators⁸¹, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

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

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

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

The critical functions of the CoG⁸² are assigned to the OPM, the Ministry of Finance (MoF) and the Ministry of European Integration (MEI). According to the RoP⁸³, the GCS within the OPM is responsible for co-ordinating the preparation of Government sessions, leading the preparation and co-ordinating approval of the GAWP, monitoring the Government's performance and managing the relationship between the Government and other parts of the state. The GCS, together with the SPO, is responsible for checking the policy content of proposals⁸⁴, while the SPO leads approval of the Government's strategic priorities⁸⁵. The LO is responsible for ensuring legal conformity⁸⁶, and the Communication Office co-ordinates Government communication activities together with the Government Spokesperson⁸⁷. The MoF ensures that policies are affordable⁸⁸ and oversees co-ordination of public sector resource planning⁸⁹, and the MEI co-ordinates the EI process⁹⁰.

⁸¹ OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

⁸² As defined in: OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, http://sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf, p. 19.

⁸³ Article 3 (1.12); Article 35 (2); Article 48; and Article 57.

⁸⁴ RoP, Article 35 (2) and (4).

⁸⁵ RoP, Article 3 (1.15); Article 46 (2).

⁸⁶ RoP, Article 3 (1.13); Article 35 (3); and Article 42.

⁸⁷ RoP, Article 3, (1.14); Article 35 (5); and Article 72. See also Regulation No. 03/2011 on the Public Communication Service of the Government.

⁸⁸ RoP, Article 31 and Article 35 (1).

⁸⁹ Regulation No. 02/2011 on the Areas of Administrative Responsibility of the OPM and Ministries, Appendix 2.

Guidelines and detailed regulations are available for supporting policy development, policy planning and monitoring processes in line ministries. Since 2015, the Government has approved new minimum standards for the public consultation process⁹¹ and has updated the instructions for budget impact assessments (BIAs)⁹².

In practice, shortcomings persist in the implementation of two functions: checking the policy content of proposals and policy planning. The GCS co-ordinates the review process of concept documents and collects comments from all CoG bodies, but it does not check the policy content of all draft legislation, even though it is responsible for doing so⁹³. In addition, the SPO has not been able to check the consistency of draft legislation with Government priorities⁹⁴.

Co-ordination of the GAWP preparation has improved since Technical Review Teams comprised of representatives from all CoG bodies were established to give consolidated views to line ministries on their proposals for inclusion in the GAWP. However, the GAWP still falls short of being a realistic plan focused on the implementation of Government priorities.

Despite these shortcomings, Kosovo meets most of the basic requirements for fulfilment of critical functions by the CoG institutions, and the value for the indicator 'Fulfilment of critical functions by the centre-of-government institutions' is 4. The only deficiency is that OPM departments provide consolidated comments on only a minority of policy proposals discussed in the Government, namely concept documents.

Fulfilment of critical functions by the centre-of-government institutions						
This indicator measures to what extent the minimum requirements for functions critical to a well-organised, consistent and competent policy-making system are fulfilled by the centre-of-government (CoG) institutions.						
As this indicator is used to assess the fulfilment of the minimum requirements, it does not measure outcomes or include quantitative sub-indicators. The outcomes of some of these critical functions are captured by other indicators on policy development and co-ordination.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Critical functions are assigned to CoG institutions by legislation	8/8
2. Availability of guidelines to line ministries and other government bodies	4/4
3. Institutionalisation of co-ordination arrangements between the CoG institutions	2/4
Total⁹⁵	14/16

The critical CoG functions are all established, and their fulfilment is supported by detailed regulations and guidelines. Co-ordination within the CoG on preparation of the GAWP is ensured, but not for the scrutiny of policy proposals.

⁹⁰ Regulation No. 02/2011 on the Areas of Administrative Responsibility of the OPM and Ministries, Appendix 16, and Regulation No. 32/2012 on the Internal Organization and Systematization of Jobs in Ministry of European Integration.

⁹¹ Regulation No. 05/2016 on Minimum Standards for Public Consultation Process.

⁹² Administrative Instruction No. 03/2015 on Budget Impact Assessment for New Government Initiatives.

⁹³ According to RoP, Article 35, (2).

⁹⁴ According to interviews with the staff of the SPO.

⁹⁵ Point conversion ranges: 0-2=0, 3-5=1, 6-9=2, 10-12=3, 13-14=4, 15-16=5.

Principle 2: Clear horizontal procedures for governing the national European integration process are established and enforced under the co-ordination of the responsible body.

The MEI is the key institution for co-ordinating the EI process. According to the Regulation stipulating the Ministry's internal organisation⁹⁶, its departments have been assigned the authority for overall daily EI co-ordination, planning of reforms, monitoring of preparations for the EI process, co-ordinating alignment of national legislation with the EU *acquis*, and co-ordinating the planning and monitoring of EU assistance. The only EI co-ordination function not assigned is that of accession negotiations, as Kosovo is not yet an EU candidate.

Guidelines are in place supporting EI-related planning and monitoring, as well as alignment of the national legislation with the *acquis*. The guidelines for translation of the *acquis*, for providing inputs to planning and monitoring EU assistance, and for the EI-related negotiation process, have not been adopted.

Regarding the implementation of EI co-ordination functions, the MEI leads preparation and annual updating of the NPISAA. It also monitors implementation of the plan through quarterly and annual reports.

Co-ordination of EU assistance and co-ordinating the *acquis* alignment process through secondary legislation is not yet satisfactory. The Department of Development Assistance within the MEI co-ordinates EU assistance, and has created a mechanism for monitoring the provision of donor assistance (evidenced by the Aid Management Platform, which allows donors to enter details about the assistance they provide in Kosovo⁹⁷). No process has yet been established, however, for co-ordinating the planning of EU assistance needed to support implementation of adopted policies⁹⁸.

The RoP stipulates that each piece of legislation be submitted to the MEI for its opinion regarding alignment with the *acquis*, and this is the practice with draft laws⁹⁹. All five draft laws dealing with *acquis* alignment submitted to SIGMA as samples were accompanied by the opinion of the MEI on alignment with the *acquis*. However, only 10 out of 55 pieces of secondary legislation dealing with transposition of the *acquis* adopted by the Government in 2016 were submitted to the MEI for an opinion¹⁰⁰.

The Ministerial Council for the Co-ordination of the European Integration Process, chaired by the Prime Minister (PM), the political-level co-ordination body for EI, did not meet in 2016. Furthermore, the Working Committee for European Integration, the top administrative-level co-ordination body (consisting of secretary generals of ministries), met just once. The five sectoral EI Working Groups¹⁰¹ met more frequently, but due to a lack of meetings at the political and top administrative levels, the co-ordination mechanism is not yet fully functional.

Due to shortcomings in the functioning of EI co-ordination bodies and the lack of three key guidance documents supporting the EI process, and because Kosovo has not reached the phase of EU accession negotiations, the value for the indicator 'Fulfilment of European integration functions by the centre-of-government institutions' is 3.

⁹⁶ Regulation No. 32/2012 on the Internal Organization and Systematization of Jobs in Ministry of European Integration.

⁹⁷ <http://amp-mei.net/portal/>.

⁹⁸ According to information obtained in interviews with MEI staff.

⁹⁹ The MEI must provide an opinion according to the RoP, Article 7 (1.2) (during prior consultation); Article 35; and Article 36 (1.4) (a written opinion prior to the Government session).

¹⁰⁰ According to the report on implementation of the NPISAA and information received from the MEI.

¹⁰¹ For Governance, Economy, Internal Market, Innovation and Social Cohesion, and Agriculture and Fisheries.

Fulfilment of European integration functions by the centre-of-government institutions

This indicator measures to what extent the minimum criteria for European integration functions are fulfilled by the CoG institutions.

As this indicator is used to assess the fulfilment of the minimum criteria, it does not measure outcomes or include quantitative indicators. The outcomes of some of these critical functions are captured by other indicators on policy development and co-ordination.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
1. Proportion of the EI functions that are assigned to the CoG institutions by law	5/6
2. Availability of guidelines to line ministries and other government bodies	2/4
3. Government's capacity for co-ordination of EI	6/8
Total¹⁰²	13/18

All critical functions relevant for EI, with the exception of co-ordinating accession negotiations, are assigned to the MEI. The main shortcomings remain in the capacity for planning EU assistance to support implementation of planned or adopted policies, and in co-ordinating alignment of secondary legislation with the *acquis*. EI co-ordination forums at the political and top administrative levels are in place, but are not fully functional.

Key recommendations

Short-term (1-2 years)

- 1) The OPM should strengthen the SPO and the GCS, primarily by increasing the number of positions and by providing training in the following fields: policy analysis; prioritisation and objective setting; action setting; and costing.
- 2) The GCS and the SPO should fulfil their respective responsibilities as specified in the RoP, and should begin checking the policy content of draft legislation (in the case of the GCS) and draft strategies (in the case of the SPO).
- 3) OPM departments (including the GCS, the SPO and the LO) should further co-ordinate their activities during the prior consultation stage of the policy development process and provide consolidated comments on draft legislation.
- 4) The political- and administrative-level co-ordination forums for EI should become fully functional and meet regularly.
- 5) The MEI should finalise and adopt the guidelines for translation of the *acquis*.

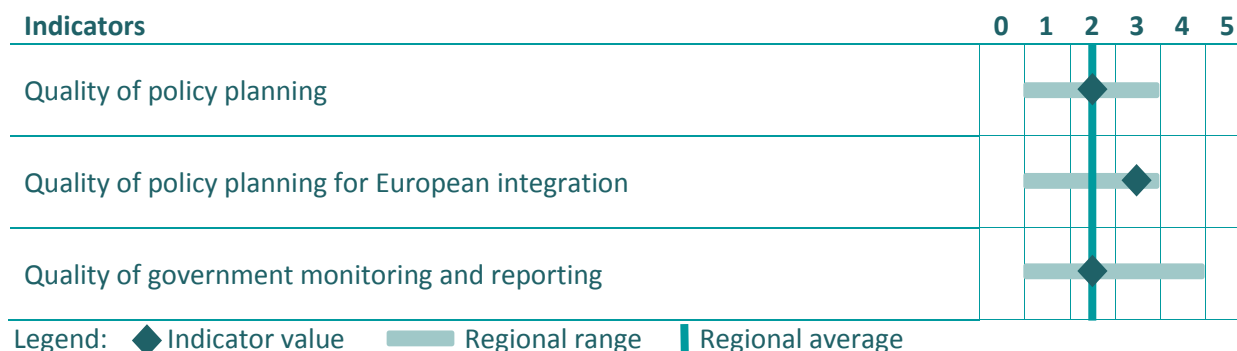
Medium-term (3-5 years)

- 6) The MEI should further develop the co-ordination system of EU assistance to enable inclusive, whole-of-government priority setting and to strengthen monitoring of EU assistance projects.
- 7) The OPM should strengthen the ability of the GCS to guide ministries in performing impact assessments and conducting quality control.

¹⁰² Point conversion ranges: 0-2=0, 3-5=1, 6-9=2, 10-13=3, 14-16=4, 17-18=5.

Key requirement: Policy planning is harmonised, aligned with the government's financial circumstances and ensures that the government is able to achieve its objectives.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

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

The status and hierarchy of key government planning documents are established only partially in the legal framework. According to the RoP, the annually updated Declaration of Medium-term Priorities (DMTP) provides the policy framework for preparing the MTEF, the subsequent annual budget and the GAWP¹⁰³. The GAWP includes a Legislative Programme as a separate annex, containing all legislative commitments of the Government¹⁰⁴. The EI-related plan (in practice, the NPISAA) must be harmonised as far as possible with the DMTP¹⁰⁵.

In addition to these planning documents, Kosovo has prepared medium-term plans, the status of which has not been established in the legal framework: 1) the NDS 2016-2021 identifies 34 priority interventions in 4 areas¹⁰⁶ and extends beyond the mandate of the Government¹⁰⁷; 2) the Government Programme for 2015-2018 establishes political priorities for the current Government under 5 priority pillars¹⁰⁸; and 3) the Economic Reform Programme (ERP) is a 3-year plan, updated annually, containing 20 measures supporting economic growth, grouped under 9 pillars¹⁰⁹. The current policy planning framework consists of six medium-term plans in total, which require extensive resources for their development and updating. As a result, fewer resources are available for their implementation.

¹⁰³ RoP, Article 46 (1).

¹⁰⁴ *Idem*, Article 47 (3).

¹⁰⁵ *Idem*, Article 46 (3).

¹⁰⁶ 1) Human capital; 2) good governance and rule of law; 3) competitive industries; and 4) infrastructure.

¹⁰⁷ The NDS Roadmap containing the indicator framework for monitoring its implementation and describing the activities necessary for implementing the interventions has been drafted, but not yet adopted.

¹⁰⁸ 1) Economic development, employment and welfare; 2) rule of law; 3) European agenda and foreign policy; 4) education, science, culture, youth and sports; and 5) modern health care.

¹⁰⁹ 1) Public financial management; 2) energy, transport and telecommunications market; 3) sectoral developments: agriculture, industry and services; 4) business environment and reduction of the informal economy; 5) research and innovation; 6) foreign trade and investment facilities; 7) education and skills; 8) employment and labour markets; and 9) social inclusion, reduction of poverty and equal opportunities.

CoG bodies are in charge of policy planning. The SPO co-ordinates preparation of the DMTP in co-operation with the MoF. The DMTP, discussed by the Strategic Planning Committee (SPC)¹¹⁰ and then approved annually by the Government, is structured around the same four priority areas as the NDS, with the addition of a fifth pillar of “European integration, foreign policy and security issues”. The DMTP is incorporated into the MTEF (as its first chapter), which is prepared by the MoF. The MoF also leads preparation of the annual budget. The GCS is responsible for preparing the GAWP, and the MEI manages preparation of the NPISAA. The GCS and the MoF also provide guidance to line ministries during the GAWP and MTEF preparation processes respectively, as well as for reporting on the GAWP.

The establishment of Technical Review Teams made up of representatives of all CoG bodies who are providing consolidated comments on proposals of line ministries has improved co-ordination during the GAWP preparation process. Still, however, the Plan’s activities exceed the Government’s implementation capacities. As a result, 45% of the GAWP 2016 legislative commitments were carried forward to the 2017 Plan, and only 47% of the draft laws planned for approval were approved in 2016¹¹¹. The Legislative Programme was amended 17 times in 2016¹¹², mainly to incorporate draft laws that originated from concept documents approved during the year. Most of the activities in the GAWP are not connected to the achievement of Government priorities, as only 24%¹¹³ of activities are included in Table A of the Plan¹¹⁴.

On the positive side, the share of sector strategies carried forward from one year to the next has decreased considerably to 22% (from 67% in 2015 and 48% in 2016). This was achieved mainly by reducing the number of strategies planned for adoption in 2017 to 16, compared with 46 in 2015. However, alignment of central planning documents at the level of specific activities is poor, as none of the draft laws to be developed in 2017 (according to the last five sector strategies adopted in 2016¹¹⁵) appears in the 2017 GAWP¹¹⁶. In November 2016, the Government adopted the European Reform Agenda (ERA) aimed at helping to prioritise specific EI-related actions, but it contains commitments for 2017 that were not included in the GAWP adopted a month later¹¹⁷. The deadlines for several activities are also misaligned in the two Plans¹¹⁸.

Even though the priorities of the GAWP are coherent with those of the MTEF, a clear link between the priorities of policy plans and budget plans is evident only in the narrative part of the MTEF. The MTEF does not provide any information about funding allocated specifically for implementing activities considered to be Government priorities¹¹⁹. For this reason, it is not possible to ensure that these activities will be adequately funded, nor is it possible to assess the alignment of the MTEF with the

¹¹⁰ A political-level co-ordination forum established under Government Decision No. 02/70 of 15 January 2016. The Committee was constituted by reorganising two existing Committees: the Fiscal and Budget Affairs Committee and the Public Investment Committee.

¹¹¹ GAWP report 2016, p. 125.

¹¹² According to the amendments highlighted in the preamble of the most recent version of the Legislative Programme for 2016.

¹¹³ This included 158 out of 655 activities.

¹¹⁴ Table A contains the activities necessary for implementing the strategic objectives of the Government and is based on the five priority pillars of the DMTP and the MTEF.

¹¹⁵ The National Strategy for Protection against Domestic Violence, the Better Regulation Strategy 2.0 for Kosovo 2017-2020, the Strategy for Improving Policy Planning and Co-ordination in Kosovo 2017-2020, the Disaster Risk Reduction Strategy 2016-2020 and the Cultural Heritage Strategy.

¹¹⁶ The two draft laws planned for adoption, both according to the Cultural Heritage Strategy, are the draft Law on Cultural Heritage and the draft Law on Museums. The Strategy includes “Advancement of legislation on cultural heritage and museums” and does not specify a clear deadline, but the 2017 NPISAA includes both draft laws, with an adoption deadline in the same year. Neither of the draft laws is included in the GAWP.

¹¹⁷ For example, the ERA provided for drafting of the Law on Services in the first quarter of 2017 (and its subsequent adoption in the second quarter), but it is not mentioned in the GAWP.

¹¹⁸ The concept documents for the draft laws on the civil service, salaries and the organisation of public administration were to be developed by December 2016 under the ERA, while in the GAWP the deadline was June 2017.

¹¹⁹ Assessed on the basis of the MTEF 2018-2020, adopted in April 2017.

costs of sector strategies. In addition, there are no outcome-level indicators established in the GAWP or the MTEF for measuring the achievement of Government priorities.

Although the legal framework¹²⁰ establishes the requirements for development of sector strategies, including information about the costs of planned activities and their funding sources, in practice it is not followed consistently. Analysis of the last five strategies adopted in 2016 reveals that for three strategies¹²¹ almost all activities with additional expenditure needs had been costed (full costing, including estimates for activities already covered by the budget, was not done for any strategy). For one strategy¹²², less than one-third of the activities were costed, and another strategy did not include any costing at all¹²³.

Due to shortcomings in the costing of plans, a lack of alignment between planning documents, and the large share of planned legislative commitments carried forward, the value for the indicator 'Quality of policy planning' is 2.

Quality of policy planning						
This indicator measures the legislative, procedural and organisational set-up established for harmonised policy planning and the quality and alignment of planning documents. It also assesses the outcomes of the planning process (specifically the number of planned legislative commitments and sector strategies carried forward from one year to the next) and the extent to which the financial implications of sectoral strategies are adequately estimated.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Adequacy of the legal framework for policy planning	5/7
2. Availability of guidance to line ministries during the policy-planning process	4/4
3. Alignment between central policy-planning documents	2/6
4. Planned commitments carried forward in the legislative plan of the government (%)	1/4
5. Planned sectoral strategies carried forward (%)	3/4
6. Completeness of financial estimates in sector strategies	2/5
7. Alignment between planned costs in sector policy plans and medium-term budget (%)	0/3
Total¹²⁴	17/33

The framework for policy planning consists of too many short- and medium-term plans, and there are several inconsistencies involving planned commitments and their deadlines in central planning documents. Despite improvements in the co-ordination of the GAWP preparation, the Plan remains too ambitious and not focused enough on achievement of Government priorities. Shortcomings in the costing of plans also contribute to a large proportion of commitments being carried forward from one year to the next.

¹²⁰ Administrative Instruction No. 02/2012 on the Procedures, Criteria and Methodology for the Preparation and Approval of Strategy Documents and Plans for Their Implementation.

¹²¹ The National Strategy for Protection against Domestic Violence, the Better Regulation Strategy 2.0 for Kosovo 2017-2020, and the Strategy for Improving Policy Planning and Co-ordination in Kosovo 2017-2020.

¹²² The Disaster Risk Reduction Strategy 2016-2020.

¹²³ The Strategy for Cultural Heritage.

¹²⁴ Point conversion ranges: 0-5=0, 6-11=1, 12-17=2, 18-23=3, 24-29=4, 30-33=5.

Principle 4: A harmonised medium-term planning system is in place for all processes relevant to European integration and is integrated into domestic policy planning.

The two EI planning documents are the annually updated five-year NPISAA and the short-term ERA introduced in 2016. The requirements and procedure for the preparation of the NPISAA are stipulated in a Government decision¹²⁵ and, in addition to the short- and medium-term measures to be implemented for the EI process, the NPISAA also contains a detailed 200-page annual plan with deadlines for completing the legislative and non-legislative activities necessary for implementing the SAA (including alignment of the *acquis*). The ERA contains 22 EI-related priorities (broken down into approximately 130 legislative and non-legislative activities for 2016 and 2017) and is intended to assist in SAA implementation.

The MEI co-ordinates preparation of the NPISAA, and has so far had little co-operation from the OPM departments and the MoF in their capacities as CoG bodies. Although EI is one of the priority pillars in the DMTP, the MEI has not participated in its preparation, nor in the preparation of the MTEF in the role of EI co-ordinator. As a result, activities included in the 2016 NPISAA did not receive adequate funding in the 2016 budget¹²⁶. The MEI prepared the Statement of Priorities for Financing of EI during 2018-2020 and included it in the most recent NPISAA adopted in early 2017, without using the established system for agreeing on Government priorities.

The GCS, which co-ordinates the GAWP preparation, is not involved in the NPISAA preparation process. Both Plans are prepared in parallel and are compared for alignment just before adoption of the GAWP. Alignment of the legislative activities included in both Plans has improved (85% in 2016, when 10 draft laws included in the NPISAA were left out of the GAWP¹²⁷, compared with 23 in the previous year). However, the addition of items to the GAWP to ensure alignment with the NPISAA does not take into account the capacities of line ministries nor the relevance of the activities to Government priorities. The NPISAA was not discussed at SPC meetings in 2016, even though one of its mandates is to link the NPISAA to other development priorities of the Government¹²⁸.

Even though the share of activities carried forward from one plan to the next has decreased from 67% in 2015 to 27% in 2016¹²⁹, the NPISAA implementation rate remains very low. Only 29% of the draft laws included in the Plan were approved by the Government in 2016¹³⁰. In order to improve implementation of the NPISAA, line ministries were asked to submit activities which are covered by the budget for the 2017 NPISAA, and all activities included in the most recent Plan were costed. The volume of annual activities has not decreased however, compared to 2016. The total number of activities remains high, and includes a large share of continuous activities (such as the preparation of annual and semi-annual reports and regular monitoring of the implementation of laws) and very generic activities (one example is “Reducing the level of informal economy and fiscal evasion”). The lack of prioritisation further complicates monitoring and implementation of the Plan and makes it difficult to ensure that key objectives are achieved.

The value for the indicator on ‘Quality of policy planning for European integration’ is 3 because of the low implementation rate of the NPISAA and the poor alignment between the GAWP and the NPISAA.

¹²⁵ Decision No. 06/22 of 3 April 2015 is the legal basis for preparation of the NPISAA.

¹²⁶ The lack of funding for NPISAA activities was confirmed in interviews with MEI staff.

¹²⁷ 1) The Law on Market Surveillance; 2) the Law on Business Organizations; 3) the Law on Driving Time and Rest; 4) the Law on the State Prosecutor; 5) the Law for Out-of-Court Procedures; 6) the Law on the Suspension or Dismissal of Senior Public Officials Accused or Convicted of a Criminal Offence of Corruption; 7) the Law on Museums; 8) the Law on Waste from the Mining Industry; 9) the draft Law on Reproductive Health; and 10) the draft Law on Management of Municipal Real Property.

¹²⁸ According to the Decision on Establishment of the SPC of 15 January 2015.

¹²⁹ Of the 612 commitments included in the 2016 NPISAA (excluding continuous commitments), 164 also appear in the 2017 NPISAA.

¹³⁰ That is, 26 out of 90.

Quality of policy planning for European integration						
This indicator analyses the legislative set-up established for policy planning of the European integration (EI) process and the quality and alignment of planning documents for EI. It also assesses the outcomes of the planning process (specifically the number of planned legislative EI-related commitments carried forward from one year to the next) and the implementation rate of planned EI-related commitments.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. The legal framework enables harmonised planning of EI	2/2
2. Quality of planning documents for EI	4/6
3. EI-related commitments carried forward	3/4
4. Implementation rate of the government's plans for EI-related legislative commitments (%)	0/4
Total¹³¹	9/16

The legal framework for EI-related planning is in place, but co-ordination between the MEI and the OPM departments, as well as with the MoF, in preparing EU integration plans remains weak. Overambitious planning has resulted in a low implementation rate of the NPISAA.

Principle 5: Regular monitoring of the government's performance enables public scrutiny and supports the government in achieving its objectives.

The legal framework is in place for monitoring and reporting on implementation of the GAWP¹³² (including the Legislative Programme, which is part of the GAWP) and of the budget¹³³. Both reports are required to be publicly available¹³⁴, and this regulation is complied with¹³⁵. There is no regulation governing reporting on the NPISAA, however. The Plan stipulates that the MEI is responsible for overall co-ordination, and that the Departments for European Integration and Policy Co-ordination in individual ministries shall submit reports to the MEI, but it does not specify the frequency of reporting. In practice, quarterly and annual reports are prepared according to guidance from the MEI, but the 2016 NPISAA annual report is not publicly available.

Although the Administrative Instruction on the strategic planning process establishes the option for the SPO to require reports on sectoral strategy implementation, it does not stipulate a clear and consistent obligation¹³⁶. In practice, this has not ensured regular reporting on the implementation of sectoral strategies. In 2016, reports were prepared only for the four Strategies constituting the strategic framework for PAR¹³⁷, but these are not publicly available.

¹³¹ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

¹³² RoP, Article 48 (5).

¹³³ Law on Public Financial Management and Accountability, Articles 44-46.

¹³⁴ RoP, Article 74 and the Law on Public Financial Management and Accountability, Article 45.

¹³⁵ GAWP report for 2016 available at <http://www.kryeministri-ks.net/repository/docs/ANG-Final-Raport-Vjetor-i-Punes-se-Qeverise-per-vitin-2016-final.pdf>, and budget reports published at <http://mf.rks-gov.net/page.aspx?id=2,29>.

¹³⁶ Administrative Instruction No. 02/2012 on the Procedures, Criteria and Methodology for the Preparation and Approval of Strategy Documents and Plans for Their Implementation.

¹³⁷ The Strategy for Modernisation of the Public Administration 2015-2020, the Public Financial Management Reform Strategy 2016-2020, the Strategy for Improving Policy Planning and Co-ordination in Kosovo 2017-2021 and the Better Regulation Strategy 2.0 for Kosovo 2017-2021.

The multiplicity of Plans has also led to multiple reporting processes. Separate quarterly and annual reports are prepared for the ERA and the NPISAA, because the annual report for the ERA is required to coincide with the High-Level Dialogue meetings between the Government of Kosovo and the European Commission. There are also separate reporting processes for the GAWP and the NPISAA, even though the content of the two plans overlaps considerably. In 2016, only the fourth-quarter GAWP report was prepared, because of problems with the information technology system established for monitoring GAWP implementation.

The annual report on the GAWP is a 119-page document divided into sections on achievements under the five strategic priorities and separate chapters containing the reports of each line ministry. Only the first section, on Sustainable Economic Development, Employment and Welfare, addresses selected outcomes such as employment growth and benefits provided through tax reductions. As no prior targets were set, however, it is not possible to assess whether the outcomes were satisfactory. Based on the ministerial reports, it is not possible to assess exactly which of the planned activities were implemented and which were delayed or not implemented at all, and for what reason. The ministerial chapters are also inconsistent in their content, as some report on budget use and others do not. The three appendices provide concise overviews only of the adoption of individual strategies and concept documents, as well as of the total number of draft laws approved during 2016. A clear and concise overview of the delivery of most of the planned outputs is missing.

The NPISAA implementation report for 2016 provides a more comprehensive overview of achieved outputs. The narrative part of the report includes information on implementation rates of activities within the different blocks (Political Criteria, Economic Criteria and Approximation with the *acquis*) and chapters of the *acquis*. The table accompanying the narrative section provides progress status on almost all planned activities (implemented, implemented with delay, and not implemented).

As the legal framework does not stipulate clear requirements for reporting and publishing reports on sector strategies and on the NPISAA, the reports on these planning documents are either not consistently prepared or are not published. Furthermore, the GAWP report does not provide clear information on the achievement of the majority of outputs. The value for the indicator 'Quality of government monitoring and reporting' is 2.

Quality of government monitoring and reporting						
This indicator measures the strength of the legal framework regulating reporting requirements, the quality of government reporting documents and the level of public availability of government reports.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. The legal framework enables good monitoring and reporting	3/8
2. Quality of reporting documents	2/12
3. Public availability of government reports	3/5
Total¹³⁸	8/25

The monitoring of government work remains a challenge. The report on the NPISAA provides a comprehensive and detailed overview of the implementation of planned EI-related activities, but the report is not publicly available. In contrast, the GAWP implementation report does not contain a clear overview of the implementation of planned activities and does not report on the outcomes.

¹³⁸ Point conversion ranges: 0-3=0, 4-7=1, 8-12=2, 13-17=3, 18-21=4, 22-25=5.

There is no clear requirement to report on the implementation of sectoral strategies, so reporting practices are inconsistent.

Key recommendations

Short-term (1-2 years)

- 1) The GCS, together with the other CoG bodies, should ensure that the GAWP focuses more closely on achieving the Government's priorities and is based on the actual implementation capacities of the line ministries. If necessary, the CoG bodies should exclude from the draft plan lower-priority items proposed by line ministries.
- 2) The MEI should start participating in the DMTP preparation process, to ensure that EI-related commitments are part of discussions on the Government's priorities.
- 3) NPISAA implementation reports should be made publicly available.
- 4) The MEI should streamline annual and medium-term planning and reporting of EI by avoiding duplication of effort and fragmentation, and by enforcing more realistic planning in line with available resources and capacities.
- 5) The GAWP implementation report should contain concise and precise information on the implementation of planned activities by each ministry (as they were presented in the GAWP).
- 6) The Government should introduce outcome-level indicators that are associated with the priorities and strategic objectives included in the medium-term and annual plans.

Medium-term (3-5 years)

- 7) After the outcome-level indicators have been incorporated into the Government's Plan, the implementation reports should include an assessment of the impact of implemented policies, not just the output of activities.
- 8) The OPM should launch a system to report on the implementation of sector strategies.

Key requirement: Government decisions and legislation are transparent, legally compliant and accessible to the public; the work of the government is scrutinised by the parliament.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

Principle 6: Government decisions are prepared in a transparent manner and based on the administration's professional judgement; the legal conformity of the decisions is ensured.

The RoP establish the legal framework for preparation of, follow-up from and communication on

Government sessions¹³⁹. The LO is responsible for legal scrutiny, the role of the GCS is to ensure conformity with the Government policies and the SPO is charged with checking the proposals with strategic implications for their consistency with the Government's strategic priorities¹⁴⁰. In practice, the tasks of the OPM departments are divided according to the type of document submitted to the Government for approval: the LO reviews draft legislation, the GCS co-ordinates the review of concept documents and the SPO checks draft strategies. Only the GCS invites comments from other OPM departments (as well as from the MoF and the MEI) on the concept documents submitted¹⁴¹. Draft legislation and draft strategies are only reviewed by the LO and the SPO respectively, which in the case of draft legislation effectively means that their policy content is not checked at all. Only 28%¹⁴² of all adopted draft laws were preceded by a concept document, so the policy content of draft laws is also usually not checked in the early stages of the policy development process. Furthermore, the policy content of secondary regulations is not checked at all. Despite the LO's authority to ensure legal quality, in its official opinions on legal drafts it only confirms compliance with procedural requirements¹⁴³ and usually does not provide written comments¹⁴⁴ on consistency with the existing legal framework or with drafting standards¹⁴⁵.

However, the 2017 Balkan Barometer survey¹⁴⁶ shows that 54% of businesses in Kosovo agree with the statement "Laws and regulations affecting my company are clearly written, not contradictory and do not change too frequently." This is the highest rate in the Western Balkans.

The mandate to oversee compliance with the requirements for public consultation has also been decentralised according to the type of proposal (the LO for legislation, the GCS for concept documents and the SPO for strategies)¹⁴⁷.

The relevant OPM units have the authority to return proposals not prepared in accordance with the provisions of the RoP or that have flaws in their substance¹⁴⁸. In the last quarter of 2016, 6% of submitted proposals were returned¹⁴⁹ (compared with 25% in the last quarter of 2014). Analysis of the sample of five draft laws¹⁵⁰ confirmed that submitted packages are usually complete and the required opinions from other CoG bodies have been included (from the MEI on compliance with the *acquis* and from the MoF on the budget impact assessment [BIA]). However, 45 out of 55 pieces of draft secondary legislation dealing with transposition of the *acquis* were adopted by the Government in 2016 without the mandatory prior opinion from the MEI, which indicates that the OPM is not fully consistent in checking the completeness of packages.

¹³⁹ RoP, Articles 35-36, Article 38, Article 42 and Articles 46-49.

¹⁴⁰ *Idem*, Article 35.

¹⁴¹ Evidenced by the detailed table on reviewed concept documents provided by the GCS.

¹⁴² That is, 11 out of 39 in 2016.

¹⁴³ Based on assessment of the LO opinions provided for a sample of draft laws, including: the draft Law on Prevention of Conflict of Interest; the draft Law on Amending and Supplementing the Law of Central Bank; the draft Law on Notary; the draft Law on Amending and Supplementing the Law on Border Control and Surveillance; and the draft Law on Social Enterprises.

¹⁴⁴ As evidenced by the lack of written comments on the sample drafts and confirmed through interviews with the LO.

¹⁴⁵ Administrative Instruction No. 03/2013 on Standards for the Drafting of Normative Acts.

¹⁴⁶ Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>, <http://www.rcc.int/seeds/results/3/balkan-business-barometer>.

¹⁴⁷ Regulation No. 05/2016 on Minimum Standards for Public Consultation Process, Article 19.

¹⁴⁸ RoP, Article 10 (6).

¹⁴⁹ That is, 11 out of 162.

¹⁵⁰ The draft Law on Prevention of Conflict of Interest; the draft Law on Amending and Supplementing the Law of Central Bank; the draft Law on Notary; the draft Law on Amending and Supplementing the Law on Border Control and Surveillance; and the draft Law on Social Enterprises.

According to the RoP, draft proposals must be submitted 15 days prior to the Government session at which they are to be discussed¹⁵¹. In 2016, 70% of agenda items were submitted on time by ministries, fewer than the figure of 85% in 2014¹⁵². Minutes are taken at each Government session and are approved at the beginning of the next session.

Government decisions are published online¹⁵³, but the agendas are not published in advance of sessions. According to explanations provided during interviews, the main reason for this is the frequent last-minute changes to session agendas; this is supported by evidence demonstrating a decrease in the share of items submitted on time for Government sessions. After each session, a press release on the key decisions is published on the Government's website, but communication after Government sessions has also deteriorated. While press conferences were held in the past, recordings of sessions are now sent to the press, which may then submit written questions to the Government Spokesperson.

The legal framework comprehensively establishes the procedures for Government sessions, and the decision-making process is relatively open. However, as the Government is not consistent in enforcing the procedures prescribed in the legal framework, the value for the indicator 'Transparency and legal compliance of government decision-making' is 3.

Transparency and legal compliance of government decision making						
This indicator measures the legal framework established for ensuring legally compliant decision making, the consistency of the government in implementation of the established legal framework, the transparency of government decision-making, and businesses' perception of the transparency of government policy making.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. The legal framework establishes procedures for government sessions	5/5
2. Consistency of the CoG in setting and enforcing the procedures	2/4
3. Timeliness of ministries' submission of regular agenda items to the government session (%)	1/3
4. Openness of government decision-making process	3/4
5. Perceived clarity and stability of government policy making by businesses (%)	2/4
Total¹⁵⁴	13/20

The CoG bodies fail to consistently check the policy content of proposals submitted to the Government and the quality of legal drafts. Procedural compliance checks have not ensured that all draft secondary legislation dealing with *acquis* alignment are submitted to the MEI for its opinion. The agendas of Government sessions are not published online prior to sessions, and the share of items submitted on time for the agendas has decreased.

Principle 7: The parliament scrutinises government policy making.

The Constitution of the Republic of Kosovo and the Rules of Procedure of the Assembly (RoPA)¹⁵⁵ establish the legislative process of the Assembly, which includes at least two readings at the committee level and a plenary session for all draft laws. The Assembly proposed 1 446 amendments to draft laws

¹⁵¹ RoP, Article 10 (1).

¹⁵² Data received from the GCS: of 162 proposals received, 114 were submitted on time (as per Regulation No. 09/2011) and an additional 41 were included in the agenda even though they did not meet the deadline.

¹⁵³ <http://www.kryeministri-ks.net/?page=1,31>.

¹⁵⁴ Point conversion ranges: 0-1=0, 2-5=1, 6-9=2, 10-13=3, 14-17=4, 18-20=5.

in 2016¹⁵⁶, indicating an active role in the legislative process. However, the Assembly adopted ten Government-sponsored draft laws (19% of all Government-sponsored laws adopted in 2016) in extraordinary proceedings¹⁵⁷, including the Law on Budget for 2017. This practice limits the possibility of parliamentary scrutiny of bills initiated by the Government, resulting in zero points awarded for the respective sub-indicator.

Members of the Assembly can initiate interpellations and may ask questions of the Government or individual ministers orally or in writing¹⁵⁸. In 2016, they initiated 3 interpellations and submitted 180 oral and 16 written questions to members of the Government; of the 196 questions, 50 (25%) were not answered¹⁵⁹. Staff of the Assembly Committees confirmed that, as a rule, ministers participate in plenary and committee sessions when drafts originating from their respective ministries are being debated¹⁶⁰. The Government also systematically provides opinions on draft laws initiated by the Assembly¹⁶¹.

Draft laws submitted to the Assembly must be accompanied by an explanatory memorandum (which contains an overview of the consultation process), a BIA and a Table of Compliance demonstrating alignment with the *acquis*¹⁶². Analysis of the last five draft laws¹⁶³ and accompanying materials submitted to the Assembly in 2016, as well as interviews with the Assembly staff, confirmed that the packages submitted by the Government are usually complete (only the draft Law on Radiation Protection and Nuclear Safety did not include Tables of Compliance). However, the Tables of Compliance are provided in English only. The Assembly follows the same legal drafting rules as the Government¹⁶⁴; it has continued the practice of discussing reports on the implementation of laws¹⁶⁵, and discussed nine of them in 2016 (eight in 2014).

The Secretary General (SG) of the Assembly is invited to, and does participate in, the weekly meetings of the secretary generals of the ministries to ensure co-ordination with the activities of the Government. The Government informs the Assembly of its Legislative Programme when it is adopted as an annex to the GAWP at the beginning of the year. However, because only 57% of drafts submitted to the Assembly by the Government originate from the initial plan, zero points are awarded for the sub-indicator measuring the alignment between draft laws planned and submitted by the Government. The Assembly's ability to organise its work based on the Government's Plans is also limited by frequent changes to the Government's Legislative Programme (17 times in 2016)¹⁶⁶.

In 2016, the Assembly managed to process 81% of Government-sponsored draft laws within one year of submission, which is a slight improvement on the figure of 77% in 2014. One of the reasons more

¹⁵⁵ RoPA, Articles 56-65.

¹⁵⁶ Annual report of the Assembly 2016, (4).

¹⁵⁷ Data and the list of draft laws provided by the Secretariat of the Assembly.

¹⁵⁸ RoPA, Articles 44-46.

¹⁵⁹ Annual report of the Assembly of Kosovo 2016, (2).

¹⁶⁰ According to statistics provided by the Assembly, ministries were invited to 76 committee sessions in 2016 and participated in 75 of them.

¹⁶¹ As evidenced by the opinions provided on the draft Law for Amending the Law No. 04/L-033 for the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo and during interviews with the Assembly staff.

¹⁶² RoPA, Article 54.

¹⁶³ The draft Law on Radiation Protection and Nuclear Safety, the draft Law on Establishment of National Data Infrastructure, the draft Law on Legalisation of Weapons and Surrender of Small Arms and Light Weapons, Ammunition and Explosive Materials, the draft Law on Ratification of the Agreement for Establishment of the Regional Youth Co-operation Office between Kosovo and Albania, and the draft Law on the Ratification of the Agreement of Establishment of the Western Balkan Fund.

¹⁶⁴ Administrative Instruction No. 03/2013 on Standards for the Drafting of Normative Acts.

¹⁶⁵ RoPA, Article 73.

¹⁶⁶ According to amendments highlighted in the preamble of the most recent version of the Legislative Programme for 2016. The main reason for frequent amendments to the Legislative Programme was the need to incorporate draft laws that had originated from concept documents approved during the year.

laws were not processed is that the Assembly was not fully functional for six months during 2016, due to the absence of some parties representing the non-majority communities¹⁶⁷.

Due to the large share of Government-sponsored bills processed in extraordinary proceedings and the poor alignment between draft laws planned and submitted by the Government, the value for the indicator 'Parliamentary scrutiny of government policy making' is 3.

Parliamentary scrutiny of government policy making						
This indicator measures the extent to which the parliament is able to scrutinise government policy making. The legal framework is assessed first, followed by an analysis of the functioning of important parliamentary practices and outcomes.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Strength of regulatory and procedural framework for parliamentary scrutiny of government policy making	5/5
2. Completeness of supporting documentation for draft laws submitted to the parliament	2/3
3. Co-ordination of governmental and parliamentary decision-making processes	2/2
4. Systematic review of parliamentary bills by government	1/1
5. Alignment between draft laws planned and submitted by the government (%)	0/2
6. Timeliness of parliamentary processing of draft laws from the government (%)	1/2
7. Use of extraordinary proceedings for the adoption of government-sponsored draft laws (%)	0/5
8. Government participation in parliamentary discussions of draft laws	2/2
9. Basic parliamentary scrutiny of the implementation of policies	2/2
Total¹⁶⁸	15/24

The legal framework establishes the procedures for ensuring parliamentary scrutiny of the Government. Government representatives participate in the work of the Assembly, and the Government provides its opinions on draft laws initiated by MPs. However, the high share of Government-sponsored bills being processed in extraordinary procedures limits the effectiveness of parliamentary scrutiny. The Government's inability to follow its Legislative Programme also limits the Assembly's ability to plan its work.

Key recommendations

Short-term (1-2 years)

- 1) The GCS, according to the responsibilities assigned to it by the RoP, should consistently check the content of draft legislation and the accompanying explanatory memoranda for conformity with Government policies and for the quality of policy analysis. The SPO should do the same for strategies.
- 2) The LO should fulfil its mandate and review the quality of legislation before it is submitted to the Government for decision, rather than just checking procedural compliance.

¹⁶⁷ Certain draft laws require the approval of two-thirds of the representatives of the non-majority communities, which was not possible during their absence.

¹⁶⁸ Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-16=3, 17-20=4, 21-24=5.

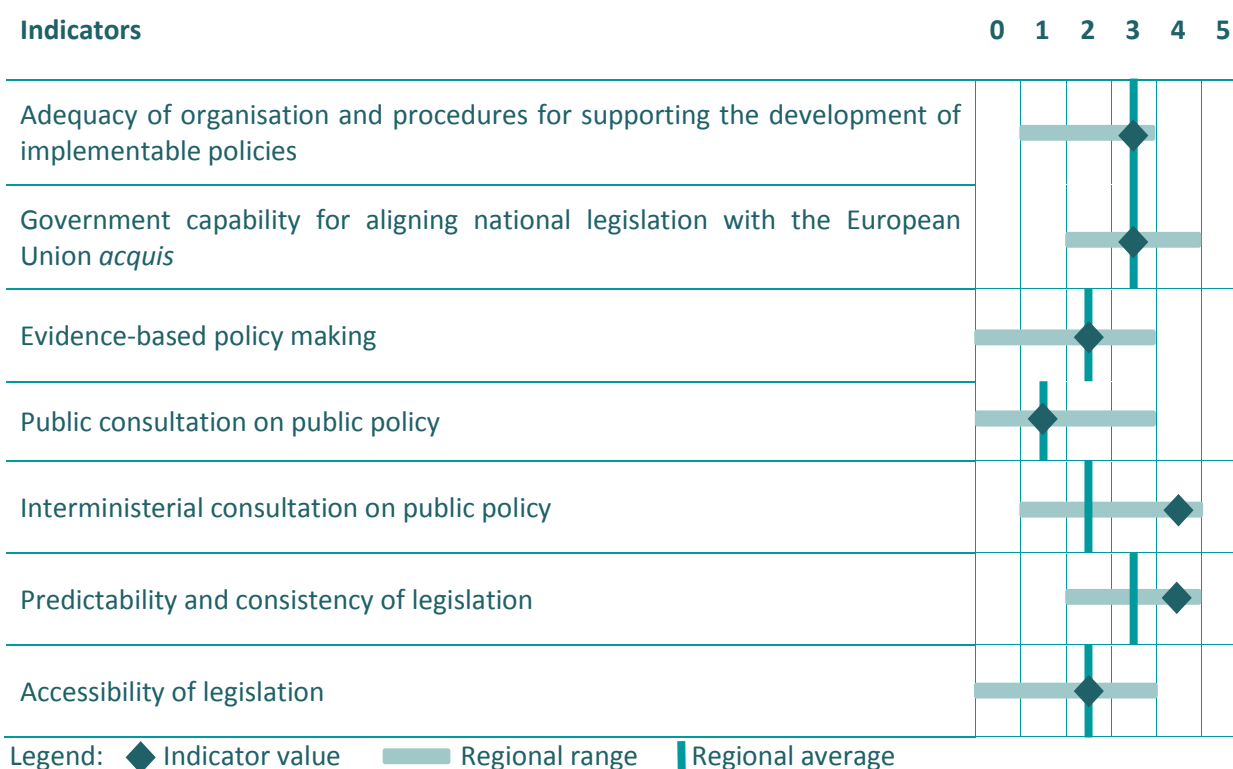
- 3) During checks on the procedural compliance of proposals submitted to the Government for decision, the GCS, in co-operation with the LO, should identify any draft secondary legislation dealing with transposition of the *acquis* that has not been submitted to the MEI for opinion, and return such proposals to the originating ministry.
- 4) Agendas of Government sessions should be published in advance, to increase the transparency of Government decision making.

Medium-term (3-5 years)

- 5) If a concept document has been prepared before the development of a draft law, it should be submitted to the Assembly with the draft law and other accompanying documents, to give the Assembly more information to substantiate the content of the proposal.

Key requirement: Inclusive, evidence-based policy and legislative development enables the achievement of intended policy objectives.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

Principle 8: The organisational structure, procedures and staff allocation of the ministries ensure that developed policies and legislation are implementable and meet government objectives.

According to the regulatory framework, line ministries are responsible for policy development¹⁶⁹, and in practice, this job is not delegated to subordinate bodies as well¹⁷⁰. The mandates for different policy

¹⁶⁹ RoP, Article 38; Regulation No. 13/2013 on Government Legal Service, Article 13 (8).

¹⁷⁰ As evidenced by the samples analysed (Concept Document on Agriculture and Rural Development Policies; draft Law on Trepča; Concept Document for Postal Services; Action Plan for the Prevention and Elimination of the Worst Forms of Child Labour; draft Law on Establishment of National Infrastructure of Spatial Information in the Republic of Kosovo;

areas have been clearly divided among ministries¹⁷¹, yet there are occasional examples of ministries not following their established responsibilities. For example, the Ministry of Justice (MoJ) is responsible for developing policies in the judiciary area, but in 2016, the Ministry of Public Administration (MPA) was responsible for developing a concept document on the Law on Administrative Disputes (to regulate administrative court procedures).

Clear boundaries are drawn in the acts regulating internal organisation and systematisation of jobs in the line ministries between the responsibilities of departments dealing with policy development and those handling administrative tasks or enforcement of policies. If a department in charge of a particular policy area is also assigned enforcement functions, then a separate division is created within the department for that function¹⁷². However, in only two of the analysed sample ministries is the number of staff dealing with policy development higher than 30% of the total staff of the ministry¹⁷³. As a result, zero points are awarded for the sub-indicator measuring the staffing levels of policy development departments.

Ministries have not adopted internal regulations on the internal policy development process; instead, they use the central regulations on policy development, when they exist¹⁷⁴. For strategy and legislation development, the SG must appoint an officer in charge of the policy development process to lead a working group established for that purpose and to co-ordinate the process with all relevant units within the ministry. Usually, the department in charge of the relevant policy area leads the working group¹⁷⁵, which includes members from other departments within the ministry as well as representatives from other ministries. Establishing working groups for policy development is the usual practice in all ministries where interviews were conducted.

However, the general regulations do not clearly allocate responsibility for the policy development process to the highest administrative and political levels within ministries and do not outline clear steps for internal co-ordination before draft proposals are submitted to other ministries for opinions or to the Government for approval. The officer in charge of the working group enjoys wide discretionary power over the policy development process. According to information obtained through interviews, in practice the SG and the Cabinet of the Minister are usually updated about the policy development process and intervene when necessary¹⁷⁶.

As a consequence of the lack of internal rules and low share of policy development staff in line ministries, the value for the indicator 'Adequacy of organisation and procedures for supporting the development of implementable policies' is 3.

draft Law on Energy Performance of Buildings) and assessment of the GAWP for 2017, according to which only ministries are responsible for developing policy proposals.

¹⁷¹ Regulation No. 02/2011 on the Areas of Administrative Responsibility of the OPM and Ministries, as well as regulations on the internal organisation of individual line ministries.

¹⁷² For example, in the Ministry of Labour and Social Welfare's Pension Department there are separate divisions for Pension Policy and for Monitoring and Control.

¹⁷³ The Ministry of Environment and Spatial Planning (37%) and the Ministry of Labour and Social Welfare (36%). In the Ministry of Economic Development and the Ministry of Agriculture, Forestry and Rural Development, the share of staff dealing with policy development was 28% and 26% respectively.

¹⁷⁴ Administrative Instruction No. 02/2012 on the Procedures, Criteria and Methodology for the Preparation and Approval of Strategy Documents and Plans for Their Implementation provides some general principles for the development of strategies (Article 7 and Article 8). Regulation No. 13/2013 on Government Legal Service does the same for the legislative process.

¹⁷⁵ Based on interviews with and decisions for establishing working groups for policy development from the Ministry of Economic Development and the Ministry of Environment and Spatial Planning.

¹⁷⁶ Confirmed in interviews with representatives of the Ministry of Labour and Social Welfare, the Ministry of Environment and Spatial Planning and the Ministry of Economic Development.

Adequacy of organisation and procedures for supporting the development of implementable policies						
This indicator measures the adequacy of the regulatory framework to promote effective policy making, and whether staffing levels and the basic policy-making process work adequately at the level of ministries.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Adequacy of the regulatory framework for effective policy making	2/4
2. Staffing of policy-development departments (%)	0/2
3. Adequacy of policy-making processes at ministry level in practice	4/6
Total¹⁷⁷	6/12

Ministries lead the policy development process and the responsibilities for specific policy areas, which have been clearly allocated among line ministries, are usually followed in practice. The internal policy development process within ministries remains unregulated, however, and the allocation of staff to policy development departments is still disproportionally low compared with staff dealing with administrative and enforcement functions.

Principle 9: The European integration procedures and institutional set-up form an integral part of the policy-development process and ensure systematic and timely transposition of the European Union acquis.

The RoP established the main requirements for the process of aligning the legislative framework with the *acquis*¹⁷⁸. Each line ministry is responsible for the preparation of draft laws and by-laws necessary for transposition of the *acquis* in its area of responsibility. Regarding impact assessments as well as interministerial and public consultations, the same requirements apply to domestic draft regulations and to proposals dealing with alignment with the *acquis*¹⁷⁹. For every draft regulation, the sponsoring ministry must prepare a declaration of its compliance with the *acquis* and a Table of Compliance (ToC)¹⁸⁰. This obligation is followed in practice¹⁸¹, although the ToC is prepared in English only.

The *acquis* alignment process is monitored and co-ordinated by the Department of EU Law of the MEI¹⁸². Before submitting a draft to the Government for adoption or approval, the sponsoring ministry should obtain the opinion of the MEI on compliance with the *acquis*. However, this rule is not always followed for secondary legislation dealing with *acquis* alignment. In 2016, only ten by-laws were submitted for MEI opinion, while according to the report on implementation of the NPISAA, the Government adopted 55 pieces of secondary legislation that year dealing specifically with adoption of

¹⁷⁷ Point conversion ranges: 0=0, 1-2=1, 3-5=2, 6-8=3, 9-10=4, 11-12=5.

¹⁷⁸ Article 7 and Articles 35 and 36.

¹⁷⁹ Regulation No. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo, Articles 28-32.

¹⁸⁰ Regulation No. 13/2013 on Government Legal Service, Article 14.

¹⁸¹ Assessment based on interviews and analysed samples (draft Regulation on Minimum Safety and Health Requirements for Protection of Employees Regarding Manual Handling of Loads; draft Regulation on Minimum Safety and Health Requirements for the Use of Personal Protective Equipment in the Workplace; draft Law on Services; draft Administrative Instruction on the Manner of Authorization of the Conformity Assessment Bodies; and draft Law on Air Protection from Pollution).

¹⁸² Regulation No. 32/2012 on the Internal Organization and Systematization of Jobs in Ministry of European Integration, Article 22.

the *acquis*¹⁸³. Similar to the system for domestic draft regulations, the weekly meeting of the secretary generals is the main conflict resolution mechanism at the top administrative level for the *acquis* alignment process before the Government session. However, since less than 20% of draft by-laws are submitted to the MEI for opinion, possible conflicts in *acquis* alignment at the level of secondary legislation may not be detected.

A technical commission consisting of representatives from the Albanian and Kosovo administrations is co-ordinating translation of the *acquis* into Albanian. However, of five sample EU Directives planned for alignment in 2017 according to the NPISAA, only two had been translated as of June 2017¹⁸⁴. As a result, zero points are awarded for the sub-indicator measuring progress in translating *acquis* into the national language.

Plans for *acquis* alignment remain overambitious: the 2016 plan included 220 transposition-related commitments, out of which 80 (36%) were carried forward to 2017. The implementation rate of the *acquis* alignment was 61%, as 134 out of 220 planned regulations were approved by the Government.

Because the EU Directives to be transposed in 2017 have not yet been translated, and because the implementation rate of *acquis* alignment plans is poor (and a relatively high share of alignment-related commitments are carried forward from one plan to the next), the value for the indicator 'Government capacity for aligning of national legislation with the European Union *acquis*' is 3.

Government capability for aligning national legislation with the European Union *acquis*.

This indicator measures the adequacy of the legal framework for the *acquis* alignment process, the government's consistency in using the tables of concordance in the *acquis* alignment process and the availability of the *acquis* in the national language. It also assesses the results of the *acquis* alignment process, focusing on the planned *acquis* alignment commitments carried forward from one year to the next and how the government is able to achieve its *acquis* alignment objectives.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
1. Adequacy of the regulatory framework for the <i>acquis</i> alignment process	5/5
2. Use of tables of concordance in the <i>acquis</i> alignment process (%)	2/2
3. Translation of the <i>acquis</i> into the national language	0/2
4. <i>Acquis</i> alignment commitments carried forward (%)	2/4
5. Implementation rate of legislative commitments for <i>acquis</i> alignment (%)	1/4
Total¹⁸⁵	10/17

The established *acquis* alignment process is functioning at the level of draft laws, but only a minority of transposition-related draft secondary legislation is submitted to the MEI for opinion. The co-ordinated mechanism for translating the *acquis* into Albanian has not so far ensured that the EU Directives planned for transposition are always translated in time for drafting the relevant domestic regulations. Plans for *acquis* alignment remain overambitious and have resulted in a relatively low implementation rate.

¹⁸³ According to data provided by the MEI.

¹⁸⁴ Sample directives: 1) Commission Directive (EU) 2015/566 of 8 April 2015; 2) Council Directive 2014/87/Euratom of 8 July 2014; 3) Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014; 4) Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014; and 5) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013. The first two Directives had been translated by the time of the assessment.

¹⁸⁵ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-17=5.

Principle 10: The policy-making and legal-drafting process is evidence-based, and impact assessment is consistently used across ministries.

According to the RoP, concept documents and explanatory memoranda should contain an analysis substantiating policy proposals and draft legislation submitted to the Government for approval¹⁸⁶. A concept document should usually precede the elaboration of primary legislation and important secondary legislation, and should contain the main elements of an impact assessment (problem identification, objective setting, analysis of alternative options and their impacts in the broad sense, and reasons selection of the preferred option). After Government approval of the concept document, the ministry responsible may proceed with preparing the draft legislation, which should be accompanied by an explanatory memorandum. The requirements for explanatory memoranda do not stipulate the same level of analysis of alternative options as for concept documents, but the rationale for the proposed draft, together with the BIA, must be included nevertheless.

Guidelines for drafting concept documents and explanatory memoranda have been adopted¹⁸⁷, but they do not include practical examples and clear methodologies for estimating the costs and benefits of policy proposals; a separate manual exists for conducting BIA¹⁸⁸. In 2016, the Kosovo Institute for Public Administration (KIPA) provided ten days of training on RIA for 161 officials¹⁸⁹.

Even though all draft laws should be preceded by a concept document, according to the GCS¹⁹⁰, only 11 draft laws approved by the Government in 2016 complied with this requirement (i.e. 28% of all adopted draft laws for which a concept document was considered compulsory¹⁹¹). The GCS is responsible for checking the quality of policy analysis in both concept documents and explanatory memoranda¹⁹², but it currently only checks the quality of concept documents¹⁹³. As concept documents are prepared for only a minority of draft laws and are not prepared prior to developing secondary regulations, quality control on the policy analysis accompanying draft legislation is not sufficient.

Consequently, the quality of analysis included in the explanatory memoranda is poor. The explanatory memoranda of four out of the five sample draft laws assessed¹⁹⁴ did not include problem analysis and justification for government intervention. Alternative options had not been presented, and no explanation was given why the preferred option had been selected. Information on implementation, monitoring and evaluation bodies and mechanisms was also missing from most samples assessed. Only one of the draft laws¹⁹⁵ had been preceded by a concept document that included the necessary analysis. All other sample draft laws assessed contained only very basic analysis in the explanatory memoranda. Therefore, points are awarded for the sub-indicator measuring the quality of the analysis in impact assessments.

¹⁸⁶ RoP, Articles 29 and 30.

¹⁸⁷ Guidelines on drafting Concept Papers and Explanatory Notes, issued by the General Secretary to the OPM (2012), available at http://www.kryeministri-ks.net/repository/docs/Udhezuesi_per_Koncept_D_anglisht.pdf.

¹⁸⁸ Manual on Budget Impact Assessment of New Initiatives, available at [http://www.kryeministri-ks.net/repository/docs/Doracaku_per_Vleresimin_e_Ndikimit_Buxhetor_te_Nismave_te_Reja_Qeveritar..._\(1\).pdf](http://www.kryeministri-ks.net/repository/docs/Doracaku_per_Vleresimin_e_Ndikimit_Buxhetor_te_Nismave_te_Reja_Qeveritar..._(1).pdf).

¹⁸⁹ Information received from the Kosovo Institute for Public Administration.

¹⁹⁰ Based on interviews with the GCS.

¹⁹¹ The Government approved 53 draft laws, but 14 of them dealt with ratification of international agreements for which concept documents are not compulsory, so there were 39 draft laws for which a concept document was considered compulsory.

¹⁹² RoP, Article 35 (2).

¹⁹³ Information obtained during interviews with the GCS. According to Article 29 of the RoP, concept documents “usually” precede primary legislation, so the legal requirement is not as strict as the GCS’s interpretation.

¹⁹⁴ The five samples included the draft Law on Education Inspectorate; the draft Law on Child Protection; the draft Law on Mediation; the draft Law on State Aid; and the draft Law on Legalisation of Weapons and Surrender of Small Arms and Light Weapons, Ammunition and Explosive Materials.

¹⁹⁵ The draft Law on Legalisation of Weapons and Surrender of Small Arms and Light Weapons, Ammunition and Explosive Materials.

The MoF is responsible for providing an opinion on the BIAs of proposals prepared by line ministries. In May 2015, the Government adopted more specific requirements for conducting BIA (accompanied by standardised forms)¹⁹⁶, which replaced the earlier inconsistent instructions. Line ministries are using the standardised forms in practice as well, to provide an overview of the funding needed to implement their proposals. In its opinions, the MoF confirms whether the funds are available in the budget or are foreseen in the MTEF. It also checks that estimates presented by line ministries cover all potential implementation costs of the draft. If there is a possibility of additional costs, it highlights them in its opinion and requires that the ministry take this into account when preparing the next budget proposal¹⁹⁷. However, explanatory memoranda accompanying drafts do not contain analysis of alternative options, and funding requirements are provided only for the selected option. It is thus not possible to assess whether the option chosen is the most cost-effective and rational in terms of budget impact.

The shortcomings in implementing the requirements for evidence-based policy making, the lack of adequate quality control of policy analyses, and the poor quality of the samples analysed mean that the value for the indicator 'Evidence-based policy making' is 2.

Evidence-based policy making						
This indicator measures the functioning of evidence-based policy making. It assesses the legal requirements and practice regarding the use of basic consultative processes, budgetary impact assessment and broad impact assessment. Moreover, it assesses the availability of training and guidance documents for impact assessment, the establishment of the quality control function, and the quality of analysis supporting the approval of draft laws.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Use of basic analytical tools and techniques to assess the potential impacts of new draft laws	2/2
2. Use of budgetary impact assessment prior to approval of policies	3/3
3. Use of broad Regulatory Impact Assessments	1/3
4. Availability of guidance documents on RIAs	1/2
5. Quality control of RIAs	2/3
6. Quality of analysis in RIAs	0/15
Total¹⁹⁸	9/28

A regulatory framework with requirements for conducting impact assessments, including social, environmental and economic impacts, is in place, but it is not fully implemented in practice. Contrary to existing requirements, explanatory memoranda are not used as documents for policy analysis. As only a few draft laws are prepared on the basis of concept documents, the legal drafting process is rarely evidence based.

¹⁹⁶ Adopted with Administrative Instruction No. 03/2015 on Budget Impact Assessment for New Government Initiatives.

¹⁹⁷ As evidenced in its opinion on the draft Law on State Aid.

¹⁹⁸ Point conversion ranges: 0-2=0, 3-7=1, 8-12=2, 13-18=3, 19-23=4, 24-28=5.

Principle 11: Policies and legislation are designed in an inclusive manner that enables the active participation of society and allows for co-ordination of different perspectives within the government.

General principles for public consultation are established in the RoP¹⁹⁹ and in the Regulation on Government Legal Service²⁰⁰. In April 2016, the Government adopted a comprehensive new regulation on minimum standards for public consultation that apply for both primary and secondary legislation, as well as concept documents and strategies²⁰¹. The requirements came into force on 1 January 2017.

Prior to enforcement of the new standards, public consultations were not carried out consistently. In 2016, the 4 sample ministries²⁰² submitted a total of 15 draft laws to the Government for approval, and only 1 of these drafts²⁰³ was published on the website of the ministry for written public consultation. No points are therefore awarded for the sub-indicator measuring the regularity in publishing draft laws for written public consultation. Analysis of consultation procedures for the sample draft laws²⁰⁴ revealed that written public consultations were conducted for two drafts²⁰⁵, and public debates were organised for three drafts out of five²⁰⁶. Civil society representatives were invited to these debates, in addition to participants from the government and international organisations, so the debates served the purpose of public consultation. However, as comments from civil society organisations were included in only one explanatory memorandum out of five²⁰⁷, the outcomes of these debates from the public consultation perspective were not reported to the Government. No quality assurance had been established for the public consultation process prior to 2017, and no minimum duration for the public consultation process had been set in regulations.

The new minimum standards in force as of 1 January 2017 stipulate that stakeholders must have a minimum of 15 working days to submit comments during written public consultations (for complex drafts the period can be extended to 60 calendar days). If meetings with stakeholders are organised in addition to written public consultations, prior notice of at least seven days must be given. The ministry responsible is obligated to report on the outcomes of public consultations in the documentation it submits to the Government for decision, including comments submitted and feedback to them. Furthermore, the report on public consultation outcomes must be made available to the public through the web portal. Relevant offices of the OPM are responsible for verifying that drafts submitted to the Government meet the minimum requirements. In addition, the Office on Good Governance of the OPM must prepare an annual report on the public consultation process.

To facilitate written public consultation, the Government launched a web portal in February 2017²⁰⁸ that is being used by line ministries to publish drafts and also by civil society to provide comments. In the first 4 months after its launch (February-May 2017), 85 draft documents were published on the portal for public consultation. According to the 2017 Balkan Barometer survey, Kosovo has the highest share of businesses in the Western Balkans that are satisfied with public consultation on policy making²⁰⁹.

¹⁹⁹ RoP, Article 32.

²⁰⁰ Regulation No. 13/2013 on Government Legal Service, Article 12.

²⁰¹ Regulation No. 05/2016 on Minimum Standards for Public Consultation Process, adopted on 29 April 2016.

²⁰² The Ministry of Labour and Social Welfare; the Ministry of Environment and Spatial Planning; the Ministry of Economic Development; and the Ministry of Agriculture, Forestry and Rural Development.

²⁰³ Draft Law No. 05/L-081 on Energy.

²⁰⁴ Draft Law on Child Protection; draft Law on Mediation; draft Law on State Aid; draft Law on Weapons; and draft Law on the Education Inspectorate.

²⁰⁵ Draft Law on Child Protection and draft Law on Mediation.

²⁰⁶ Draft Law on Child Protection, draft Law on Mediation and draft Law on Education Inspectorate.

²⁰⁷ Comment from KOMF (Coalition of NGOs for Child Protection) on the draft Law on Child Protection.

²⁰⁸ <http://konsultimet.rks-gov.net/index.php>.

²⁰⁹ A total of 28% of respondents are satisfied or fully satisfied with how the Government consults and involves the private sector when developing new laws and regulations relevant for doing business. Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>, <http://www.rcc.int/seeds/results/3/balkan-business-barometer>.

According to the new standards, a separate consultation document containing a brief description of the content of the proposal under consultation (the problem to be addressed and the objective, as well as the purpose of the consultation process) needs to be published along with the draft proposal for all written consultations. Analysis of current written public consultations on the recently launched web portal indicates that line ministries do not consistently publish separate consultation documents. The documents were missing in 44% of active public consultations²¹⁰. This requirement also creates an additional burden for the administration, and the same purpose could be served by publishing well-developed explanatory memoranda.

The procedure for interministerial consultation is set in the RoP²¹¹, in which the obligation to consult CoG bodies as well as all other affected government bodies is clearly stipulated. The minimum duration for providing comments is 15 working days, and the Government must be informed of interministerial consultation outcomes through a table of opinions and responses. An interministerial co-ordination and conflict resolution mechanism has been established, in the form of weekly meetings of the Council of Secretary Generals prior to discussions at the Government meetings.

Analysis of five sample draft laws²¹² shows that in practice, in addition to written interministerial consultations, meetings are organised to discuss the content of proposals, and representatives from the OPM or the relevant line ministries are also included in the working groups established for the elaboration of drafts²¹³. However, the number of comments provided by line ministries or OPM departments during interministerial consultations and included in explanatory memoranda is very low²¹⁴. Most comments originate from the international organisations and donors that participate in the interministerial consultation process (including the debates and occasionally working groups²¹⁵).

As there was no consistent practice of publishing draft proposals for public consultation prior to implementing the amendments to the regulatory framework on the public consultation process in 2017, the value for the indicator on 'Public consultation on public policy' is 1.

For interministerial consultation, the existing regulatory framework has not changed and is mostly followed in practice, so the value for the indicator 'Interministerial consultation on public policy' is 4.

²¹⁰ As of 29 May 2017, the separate consultation document was published for only 10 out of 18 active written public consultations on <http://konsultimet.rks-gov.net/index.php> (as of 29 May 2017).

²¹¹ Regulation No. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo, Article 7.

²¹² Analysis of the draft Law on Child Protection; the draft Law on Mediation; the draft Law on State Aid; the draft Law on Weapons; and the draft Law on Education Inspectorate.

²¹³ This was the case with the draft Law on State Aid (the MEI, the MoF and representatives of the Ministry of Trade and Industry were included in the working group), the draft Law on Mediation (the head of the LO from the OPM was included in the working group) and the draft Law on Legalisation of Weapons (representatives from the MoJ, the Ministry for the Kosovo Security Force, the Ministry of Culture Youth and Sport and the Ministry of Health were part of the working group). No information about consultations with affected ministries or CoG bodies was provided in the explanatory memorandum for the draft Law on the Education Inspectorate of the Republic of Kosovo.

²¹⁴ No comments from line ministries were provided on the draft Law on Education Inspectorate, the draft Law on Legalisation of Weapons or on the draft Law on Mediation. Only the LO from the OPM provided a comment on the draft Law on State Aid, and the Ministry of Labour and Social Welfare on the draft Law on Child Protection.

²¹⁵ As was the case for the draft Law on Mediation, for which representatives of the United Nations Development Programme (UNDP) and the United States Agency for International Development (USAID) were included in the working group, and for the draft Law on Legalisation of Weapons, for which UNDP and Organization for Security and Co-operation in Europe (OSCE) representatives were part of the working group.

Public consultation on public policy

This indicator measures the implementation of public consultation processes in developing policies and legislation. It assesses the regulatory framework, the establishment of the quality control function on public consultation and the consistency in publishing draft laws for written public consultation online, and tests whether minimum standards for public consultations were upheld for approved drafts laws.

Overall indicator value 0 **1** 2 3 4 5

Sub-indicators	Points
1. Adequacy of the regulatory framework for an effective public consultation process	10/10
2. Quality assurance of the public consultation process	1/3
3. Regularity in publishing draft laws for written public consultation	0/4
4. Test of public consultation practices	2/24
Total²¹⁶	13/41

Interministerial consultation on public policy

This indicator measures the implementation of the interministerial consultation process in terms of both the regulatory framework and practice. The indicator assesses if the regulatory framework contains the provisions for conducting effective consultations, co-ordination and, if necessary, conflict resolution. The indicator also analyses cases of draft laws after they have gone through interministerial consultation, to check the implementation of the process and its outcomes.

Overall indicator value 0 1 2 3 **4** 5

Sub-indicators	Points
1. Adequacy of the regulatory framework for an effective interministerial consultation process	9/9
2. Test of interministerial consultation practices	7/12
Total²¹⁷	16/21

New minimum standards and a web portal for public consultation have established the preconditions for a systematic public consultation framework, which had previously not been set up. As a result, the consistency of line ministries in publishing draft proposals for public consultation improved in the first months of 2017. The formal requirements for interministerial consultation continue to be followed in practice, but the low number of comments from other line ministries limits discussion on substantive matters during the interministerial consultation process.

Principle 12: Legislation is consistent in structure, style and language; legal drafting requirements are applied consistently across ministries; legislation is made publicly available.

The Administrative Instruction on Standards for the Drafting of Normative Acts²¹⁸ stipulates legal drafting requirements, including how to enact and commence laws and transitional issues, and

²¹⁶ Point conversion ranges: 0-6=0, 7-13=1, 14-20, 21-27=3, 28-34=4, 35-41=5.

²¹⁷ Point conversion ranges: 0-2=0, 3-6=1, 7-10=2, 11-14=3, 15-18=4, 19-21=5.

²¹⁸ Administrative Instruction No. 03/2013 on Standards for the Drafting of Normative Acts.

contains several examples and templates for facilitating the drafting process; the instruction is available online²¹⁹. In 2016, the KIPA organised training courses on legal drafting for 21 officials.²²⁰

The LO is responsible for co-ordinating the work of the ministries on legislative drafting and for ensuring the consistency of the constitutional/legal framework and the quality of legislative drafting²²¹. An analysis of five sample draft laws²²² and accompanying materials shows that the LO consistently provides an opinion on compliance with procedural requirements, but there is no evidence that controls are conducted on legal drafting quality or compliance with the Standards for the Drafting of Normative Acts. According to representatives of the LO, they provide comments orally through the working groups established for elaboration of the drafts. However, the ability to ensure legal quality through oral comments only is limited, as opinions on possible legal inconsistencies would have to be properly substantiated to be accepted by ministries. In their current wording, the official written opinions of the LO only ensure procedural compliance, but the responsibility of the unit according to the RoP is wider, as it should also check the consistency of drafts with the existing legal framework and for compliance with legal drafting standards.

According to the 2017 Balkan Barometer survey, 54% of responding businesses tend to agree or strongly agree that the laws and regulations affecting their companies are clearly written, are not contradictory and do not change too frequently. This is the highest rate of positive responses among Western Balkans and is supported by the fact that in 2016 the Government did not approve any amendments to the 33 new laws adopted by the Assembly in 2015. Nevertheless, some amendments are passed relatively quickly after recently adopted laws: for example, amendments to the Law on Public Debt Forgiveness (adopted on 22 May 2015) were approved by the Government less than 16 months after adoption (on 16 September 2016).

Procedures for making legislation accessible are stipulated in the Law on the Official Gazette of the Republic of Kosovo (LOG)²²³. All adopted legal acts to be published in the Official Gazette must be submitted to the Office for Publication of the Official Gazette of the OPM by the responsible institution within five days of their adoption. The Office is then responsible for publishing legislation within 15 days of submission.

All primary legislation is published online in the Official Gazette²²⁴. However, secondary legislation adopted by the Government and ministries is published in the Official Gazette only when specifically requested by the PM. The LO keeps a registry of all secondary regulations adopted by the Government and line ministries²²⁵, but the registry does not provide electronic access to all acts listed. The registry is updated after a considerable delay – the five regulations last adopted by the Government at the end of 2016 (Nos. 16-20) were added to the registry more than six months after their adoption. Secondary regulations, which are published in the Official Gazette, are also made publicly available after periods longer than the deadlines stipulated in the LOG²²⁶. These mechanisms for publishing normative acts do not allow for an up-to-date overview of the legislation in force. There is also no obligation to publish

²¹⁹ http://www.kryeministri-ks.net/repository/docs/Udhezim_Administrativ_Nr_032013_per_standardet_e_hartimit_te_akteve_norm....pdf.

²²⁰ Information received from the Kosovo Institute for Public Administration.

²²¹ RoP, Article 3 (1.13).

²²² The draft Law on Prevention of Conflict of Interest in Discharge of a Public Function; the draft Law of Social Enterprises; the draft Law on Amending and Supplementing the Law No. 04/L-072 on State Border Control and Surveillance, amended and supplemented with the Law No. 04/L-214; the draft Law on Notary; and the draft Law on Supplementing and Amending the Law No. 03/L-209 on the Central Bank of the Republic of Kosovo.

²²³ LOG No. 03/L-190, Article 4, Articles 6-7, Article 10 and Article 12.

²²⁴ <https://gzk.rks-gov.net/>.

²²⁵ RoP, Article 38 (8), [http://www.kryeministri-ks.net/repository/docs/REGJISTRI_I_AKTEVE_NENLIGJORE_Perditesuar_me_29.03.2017_\(2\).pdf](http://www.kryeministri-ks.net/repository/docs/REGJISTRI_I_AKTEVE_NENLIGJORE_Perditesuar_me_29.03.2017_(2).pdf).

²²⁶ For example, Administrative Instruction No. 03/2016 adopted 18 February 2016 (and enforced 11 March, i.e. seven days after being signed by the PM) was published in the Official Gazette on 5 May 2016: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12418>.

consolidated versions of draft laws: the original act and all subsequent amendments are published separately in the Official Gazette. The 2017 Balkan Barometer survey reports that less than half (49%) of business representatives found information on laws and regulations affecting their companies to be easily obtainable from the authorities. As a result, no points are awarded for the sub-indicator measuring the perceived availability of laws and regulations affecting businesses.

Standards and guidance for legal drafting are available, but due to shortcomings in the quality assurance of legal drafting, the value for the indicator 'Predictability and consistency of legislation' is 4. As only primary legislation is available online through the central registry, the value for the indicator 'Accessibility of legislation' is 2.

Predictability and consistency of legislation						
This indicator measures the predictability and consistency of legislation. It assesses the availability of training and guidance along with the establishment of the quality control function. The consistency of laws is assessed based on the ratio of laws amended one year after adoption, and predictability is assessed through the perceived consistency of interpretation of business regulations.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Availability of guidance documents on legal drafting	2/2
2. Quality assurance on legal drafting	1/3
3. Laws amended one year after adoption (%)	3/3
4. Perceived clarity and stability of government policy making by businesses (%)	1/2
Total²²⁷	7/10

Accessibility of legislation						
This indicator measures both the regulatory framework for making legislation publicly available and the accessibility of legislation in practice, based on the review of the availability of legislation through the central registry and as perceived by businesses.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Adequacy of the regulatory framework for public accessibility of legislation	5/6
2. Accessibility of primary and secondary legislation in practice	3/8
3. Perceived availability of laws and regulations affecting businesses (%)	0/2
Total²²⁸	8/16

Standards, guidelines and processes have been established for ensuring the quality of legislative drafting. The quality assurance role of the LO is not fully functional, as it has limited itself to providing an official opinion only on the procedural compliance of drafts. Only primary legislation is consistently available online through a central registry. Most secondary legislation is published on

²²⁷ Point conversion ranges: 0=0, 1-2=1, 3-4=2, 5-6=3, 7-8=4, 9-10=5.

²²⁸ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

the websites of individual ministries and the OPM, and consolidated versions of legal texts are not available.

Key recommendations

Short-term (1-2 years)

- 1) The co-ordination of the *acquis* translation should be brought in line with the plan for transposition. The co-ordination mechanism established for selecting EU legal acts for translation should ensure that relevant sections of the *acquis* are available in Albanian before draft legislation dealing with transposition is elaborated.
- 2) The GCS should focus more on improving the quality of policy analysis in the explanatory memoranda accompanying draft normative acts by consistently checking their content and co-ordinating capacity building in line ministries.
- 3) To increase the effectiveness of the interministerial consultation process, drafts as well as accompanying explanatory memoranda (with prior concept documents, if they exist) should be shared with all affected ministries. Affected line ministries should take the time to review the proposals and provide comments in the consultation rounds designated in the RoP.
- 4) The LO should increase its focus on checking the consistency of draft legislation with the existing legal framework and its compliance with legal drafting standards. In its official opinion prepared prior to submitting drafts to the Government for decision, the LO should state clearly whether or not consistency and compliance have been achieved, providing justification for this assessment.

Medium-term (3-5 years)

- 5) The OPM should establish a mechanism for publishing all secondary legislation in the Official Gazette (including relevant changes to the Law on the Publication of the Official Gazette) and for publishing consolidated versions of all normative acts.
- 6) The analytical quality of BIAs accompanying draft legislation should be improved so that assessments help to clarify why the preferred option was selected (from the perspective of the costs involved).

3

Public Service and Human Resource Management

PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT

1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 – JUNE 2017

1.1. State of play

The Ministry of Public Administration (MPA) has made substantial progress in the implementation of the civil service job classification in government institutions²²⁹. However, its scope of action in this area is being challenged by several semi-autonomous agencies and regulatory authorities, as well as constitutional bodies.

The Department of Civil Service Administration (DCSA) and human resource management (HRM) units in public institutions have only limited capacity for strategic planning and management of human resources.

Selection panels for civil servants are composed in an ad hoc manner for each recruitment process, precluding the accumulation of knowledge and expertise in assessment methods. Job profiles are not systematically defined. This makes it difficult to apply adequate, coherent standards across the system. Regulations do not adequately protect top civil service positions from undue political influence during recruitments, disciplinary procedures and dismissals.

The salary system laid out in the Law on Salaries of Civil Servants No. 03/L-147 has not yet been put into effect. Significant differences in total salaries for similar positions persist, especially between ministries and agencies and independent institutions.

The Kosovo Institute for Public Administration (KIPA) lacks sufficient capacity to run the training system for civil servants. The training budget is insufficient and civil servants have few opportunities for training.

The basic legal framework on integrity in the public service is established, but key actors for preventing corruption in the public sector are not co-ordinated. Perception of corruption is high, particularly among businesses.

1.2. Main developments

The following section describes key changes in the public administration for each key requirement²³⁰ and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement reports.

The payroll division was transferred from the MPA to the Ministry of Finance (MoF) in 2015. In 2016, as an expenditure control measure, the MoF required all public institutions whose payroll is paid by the state to obtain prior authorisation from the Ministry before filling any vacancy included in the annual staffing plan. This resulted in cancellations and delays in recruitment processes.

In May 2016, the Strategy for Training of Civil Servants 2016-2020 (Training Strategy) was adopted by the Government, jointly with the Action Plan 2016-2018.

A decision by the Constitutional Court in November 2016 excluded five constitutional entities²³¹ and

²²⁹ The civil service job classification was established under Law No. 03/L-149 on the Civil Service and Law No. 03/L-147 on Salaries of Civil Servants, and developed in Regulation No. 05/2012, on the civil service job classification.

²³⁰ OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf.

²³¹ The Ombudsperson, the Auditor General, the Central Election Commission, the Central Bank and the Independent Media Commission.

also itself from the obligation to submit their job classification to the MPA for approval²³².

The Independent Oversight Board (IOB) asked the Assembly in December 2016 to prepare amendments to the Law on the Board. The changes envisaged would significantly reinforce the authority of this body.

In March 2017, approximately 80% of the civil servants, that is 14 888 staff out of 18 000, have had their positions harmonised with the Job Catalogue and classified according to Regulation No. 05/12, which was approved at the beginning of 2015.

The MPA has developed concept papers and is currently working on three laws (to amend and provide additional regulations on the civil service, on organisation of the public administration and on salaries in the public sector), with the same wide scope, to ensure common principles across the public sector. The three laws, intended as a package, will constitute a major reform and are included in the legislative programme for 2017. The MPA has consulted with other public institutions, adhering to the minimum standards established in legislation. However, widespread opposition to the planned reforms persists.

Key requirement: The scope of public service is clearly defined and applied in practice so that the policy and legal frameworks and institutional set-up for professional public service are in place.

The horizontal and vertical scope of the civil service has not changed in the last two years. Exceptions to the wide horizontal scope remain, and were identified in a recent analysis conducted by the MPA. The boundaries between civil servants and public servants in the lower tiers of the vertical scope are still blurred. The material scope is complete and includes all relevant aspects of the employment relations of civil servants. Nevertheless, no common principles and employment standards are in effect for the remaining public employees.

The policy and legal framework of the civil service is established. The Strategy for Modernisation of Public Administration 2015-2020 (PAMS)²³³ was adopted, jointly with an Action Plan. However, some key aspects, such as the interoperability between the Human Resource Management Information System (HRMIS) and the payroll are not costed.

The institutional set-up is simple and adequate, assigning extended authority to the MPA over the civil service system. However, the law does not yet formally recognise the authority of the DCSA for the overall implementation of the civil service policy. The capacity of both the DCSA and of the HRM units for strategic planning and management of human resources is limited. The HRMIS is not being used for management and monitoring purposes.

²³² The decision annulled Circular No. 01/2016, but not the legal provisions that determine the Classification of Civil Service Workplaces. The Constitutional bodies are thus supposed to classify their jobs according to the Civil Service Law and to Regulation No. 05/2012 on the Classification of Jobs in the Civil Service.

²³³ <http://www.kryeministri-ks.net/repository/docs/Strategy-for-Modernisation-of-PA-2015-2020.pdf>.

Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports²³⁴

	2015 Baseline Measurement Indicator	2015 value	2017 value
Qualitative	Extent to which the scope of public service is adequate, clearly defined and applied in practice.	4	4
	Extent to which the policy and legal frameworks for professional and coherent public service is established and implemented.	3	3
	Extent to which the institutional set-up enables consistent HRM practices across the public service.	3	3

Key requirement: Professionalism of public service is ensured by good managerial standards and human resource management practices.

The shortcomings identified in SIGMA's 2015 Report concerning the application of coherent standards in selection processes have not been addressed. Temporary contracts bypassing regular recruitment procedures, often to fulfil civil service functions, have been increased. The number of candidates per vacancy is, on average, adequate to fair, especially in external competitions. Middle-management vacancies are mostly covered through internal competition, providing opportunities for career development.

Senior civil servants are still vulnerable to political influence. Nevertheless, stability in these positions remains high, with a turnover of only 5% in 2016.

The 2010 salary system is not yet in force, although the implementation of the job classification is almost complete, which represents an important advance. Constitutional bodies are reluctant to adopt the common system.

The capacity of the KIPA to provide continuous training is a significant weakness that has not been addressed by the Training Strategy approved in May 2016. Initiatives to develop sector-specific training activities and facilities are emerging.

The legal framework for ensuring integrity in the public service is in place, but the Law on Protection of Informants²³⁵ is not being actively implemented, and the Law on Prevention of Conflict of Interests in Discharge of Public Functions is being amended. High-level co-ordination among key actors for preventing corruption in the public sector is not institutionalised.

²³⁴ OECD (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Kosovo.pdf.

²³⁵ Law on Protection of Informants, No. 04/L-043.

Table 2. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports

	2015 Baseline Measurement indicator	2015 value	2017 value
Qualitative	Extent to which the recruitment of public servants is based on the merit principle in all its phases.	3	3
	Extent to which the termination of employment of public servants is based on merit.	3	3
	Extent to which political influence on the recruitment and dismissal of senior managerial positions in the public service is prevented.	2	2
	Extent to which the remuneration system of public servants is fair and transparent and applied in practice.	2	2
	Extent to which the training system of public servants is in place and applied in practice.	4	3
	Extent to which the performance appraisal system of public servants is in place and applied in practice.	3	3
	Extent to which the integrity and anti-corruption system of the public service is in place and applied in practice.	3	3
	Extent to which the disciplinary procedures against public servants are established to promote individual accountability and avoid arbitrary decisions.	3	3
Quantitative	Annual turnover of civil servants at the level of central administration.	1.13%	2% ²³⁶
	Percentage of vacant positions filled by external competition in the civil service at the level of central administration.	29.62%	42.3% ²³⁷
	Percentage of women in senior managerial positions in the civil service at the level of central administration.	5.26% ²³⁸	7%

²³⁶ The data refers to the total public administration, not only to the central administration. A total of 17 358 civil servants were employed at the beginning of the year, 402 of whom left the civil service in 2016, according to the MPA Report on the Situation of the Civil Service in 2016.

²³⁷ In 2016, 645 vacancies were filled through competition, 273 of which were filled through external competition, according to the MPA Report on the Situation of the Civil Service in 2016.

²³⁸ The SIGMA 2015 assessment report incorrectly gave 26.3%. The Government has now corrected the percentage after conferring with SIGMA.

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	Annual turnover of senior managerial civil servants at the level of central administration.	1.8%	5% ²³⁹
	Percentage of vacant senior managerial positions at the level of central administration filled by external competition.	Not available ²⁴⁰	75% ²⁴¹

²³⁹ In 6 cases, employment of senior-level civil servants was terminated, of a total of 122 civil servants in that category at the beginning of the year, according to the MPA Report on the Situation of the Civil Service in 2016.

²⁴⁰ Data not provided by the country in 2015.

²⁴¹ There were 12 vacancies filled in the senior-level category, of which 9 were filled through external competition, according to the MPA Report on the Situation of the Civil Service in 2016.

2. ANALYSIS

This analysis covers seven Principles for the public service and human resource management area, grouped under two key requirements. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators²⁴², and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

Policy, legal and institutional frameworks for public service

Key requirement: The scope of public service is clearly defined and applied in practice so that the policy and legal frameworks and institutional set-up for professional public service are in place.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

Principle 1: The scope of public service is adequate, clearly defined and applied in practice.

The horizontal scope of the Law on the Civil Service²⁴³ (CSL) is well defined and includes the ministries, the administrations of the President, the Prime Minister (PM) and the Assembly, executive agencies, regulatory bodies, independent institutions and local governments.²⁴⁴ The proportion of civil servants as a percentage of total employment in the public sector has decreased slightly: from 23.9% in 2014 to about 20% in 2016²⁴⁵.

However, the CSL opens the door to exceptions established by special laws²⁴⁶. Furthermore, the Law on the State Administration (LSA) allows for exceptions in applying the principle of public competition if defined otherwise by the relevant legislation. Additionally, the institutions and agencies accountable to the Assembly can be excluded from the civil service, according to the laws under which they were established.

²⁴² OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

²⁴³ CSL, No. 03/L-149.

²⁴⁴ See definition of horizontal, vertical and material scopes of the civil service in OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, p. 41, <http://sigmaweb.org/publications/Principles-of-Public-Administration-Edition-2017-ENG.pdf>

²⁴⁵ Data for 2014: SIGMA (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-Kosovo.pdf>, p. 41. Data for 2016 (DCSA): on 31 December 2016, there were 78 381 public employees, 15 779 of whom were civil servants.

²⁴⁶ CSL, Article 1, point 4.

These provisions have led to exceptions in the wide horizontal scope of the CSL. According to a recent analysis by the MPA²⁴⁷, in 10 of the 36 agencies reporting to the Government, the CSL is either not applied or is only partly applied. This is also the case in certain institutions accountable to the Assembly that are not expressly excluded from the CSL, such as the Central Bank, the Pensions Savings Trust and the Energy Regulatory Office. It is also not clear whether certain groups of public employees not expressly mentioned in the CSL are included in the civil service, including directors and non-teaching staff of public schools, or non-medical staff in the public health system.

Currently, no legislation provides common principles for the public servants who are not subject to the CSL, whether exercising functions of public authority (for example, police officers, customs officers, correctional officers), delivering public services (health, education and social services) or in support functions. Depending on the specific instance, either special legislation or the Labour Code applies. This is to be tackled with new legislation on the civil service under review.

The vertical scope of the CSL is well defined at the upper levels. Secretary generals and other positions at that level are considered senior civil servants²⁴⁸. The Law expressly excludes political appointees and political advisers appointed by them²⁴⁹. At the lower level, the lack of clarity identified in the 2015 SIGMA Baseline Measurement Report still persists to some extent. Clerical support functions (“overall administrative support”)²⁵⁰ are provided by the lowest category of civil servants and “support and maintenance functions”²⁵¹ are expressly excluded from the scope of the CSL. A quick review of the titles of positions in the lowest civil service category demonstrates how broad its definition is, encompassing some non-administrative support functions²⁵². The material scope of the CSL establishes all necessary provisions for regulating the employment relations, management and integrity of the civil service²⁵³.

The value for the indicator ‘Adequacy of the scope of public service’ is 4.

²⁴⁷ MPA, Review of Institutions and Agencies of the Assembly and Central Bodies of the Government, pp. 33-35.

²⁴⁸ CSL, Article 15.

²⁴⁹ CSL, Article 4, point 1.

²⁵⁰ CSL, Article 2, point 1.2.

²⁵¹ CSL, Article 4, point 4, Regulation No. 05/2012 on the Classification of Job Positions, defines civil servants in the technical administrative category as follows: “This administrative-level grade includes civil servants for certain administrative-technical services and administrative personnel supporting managerial level managers” (accounting assistant, technical secretary/ies and other civil servants for certain services). Article 23, point 3, refers to Level 3 in this professional category. The definition of the other three levels in this category is similar.

²⁵² For example: logistics officer, transport officer, receptionist, archive officer, data processing officer, civil engineering officer, administrative assistant.

²⁵³ Including rights and duties, management of the civil service, job classification, recruitment, professional development, career, integrity, disciplinary system and termination of employment.

Adequacy of the scope of public service						
This indicator measures the extent to which there is a legal framework establishing an adequate horizontal, vertical and material scope for the public service ²⁵⁴ , and whether it is consistently applied across the public sector.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Clarity in the legislative framework of the scope of the civil service	2/2
2. Adequacy of the horizontal scope of the public service	5/6
3. Comprehensiveness of the material scope of civil service legislation	2/2
4. Exclusion of politically-appointed positions from the scope of the civil service	2/2
5. Clarity of the lower division line of the civil service	0/1
Total²⁵⁵	11/13

The horizontal scope of the civil service is adequately established in the CSL and encompasses nearly all institutions that perform public authority functions. However, there are several independent institutions and autonomous agencies outside the civil service system. The vertical scope is clear at the upper end, but there is a lack of clarity on some non-administrative support functions.

Principle 2: The policy and legal frameworks for a professional and coherent public service are established and applied in practice; the institutional set-up enables consistent and effective human resource management practices across the public service.

The overlap in the mandates of certain laws and by-laws leads to confusion in some cases. For example, the job classification and some aspects of career development in the civil service are regulated both by the CSL and the Law on Salaries of Civil Servants²⁵⁶, as well as by partially overlapping by-laws in these same areas²⁵⁷. The lack of alignment of some by-laws with the CSL, as noted in a 2013 parliamentary report²⁵⁸, has not yet been resolved. For example, the Council of Senior Management Positions is not created by the CSL, but by the Regulation No. 06/2010 on Procedures for Appointments to Senior Management Positions in the Civil Service.

²⁵⁴ SIGMA (2017), *The Principles of Public Administration*, OECD Publishing, Paris, clarifies that it applies the narrow scope of public service to: 1) ministries and administrative bodies reporting directly to the government, prime minister or ministers (i.e. the civil service, strictly speaking); administrations of the Parliament, the President and the Prime Minister; 2) other administrative bodies at the level of the central administration, if they are responsible for safeguarding the general interests of the state or other public bodies; and 3) independent constitutional bodies reporting directly to the Parliament. The scope of public service thus does not cover institutions at the level of the sub-national administration and special types of public service, elected and politically appointed officials, or support and ancillary personnel in the administrative bodies.

²⁵⁵ Point conversion ranges: 0-3=0, 4-5=1, 6-7=2, 8-9=3, 10-11=4, 12-13=5.

²⁵⁶ Law on Salaries of Civil Servants, No. 03/L-147.

²⁵⁷ There are separate regulations for job descriptions and for classification of jobs, which include partially overlapping provisions on the procedures for proposing and approving the grades of the positions (e.g. Regulation No 03/2010, Article 9, and Regulation No. 05/2012, Articles 28-29). On the other hand, Regulation No. 05/2012 on the Classification of Jobs also includes provisions on the calculation of the basic salary (Article 26). The regulation of employment relations of senior civil servants is laid out under two different by-laws (Regulation No. 06/2012 on Senior Management Positions, and Regulation No. 06/2010 on the Procedures for Appointments to Senior Management Positions in the Civil Service) that also include overlapping articles. For example, different aspects of the Council of Senior Management Positions are regulated under both regulations.

²⁵⁸ Assembly of the Republic of Kosovo, Committee for Education, Culture, Youth, Sports, Public Administration, Local Government and Media, Report with recommendations on the monitoring of implementation of the Law on Civil Service of Republic of Kosovo, No. 03/L-149, 3 April 2013.

The main political responsibility for the civil service is assigned to the MPA. The DCSA, part of the MPA, is the central administrative body responsible for the co-ordination of implementation of the civil service policy. The PM, the MoF and the IOB are also key stakeholders. While the MPA is responsible for the civil service salary policy, the MoF has the final say in the wage budget. In 2016, as an expenditure control measure, the MoF required all public institutions whose payroll is paid by the state to obtain prior authorisation from the Ministry to fill any vacancy included in the annual staffing plan. The PM appoints the members of the Council of Senior Management Positions. This body, only established under secondary legislation²⁵⁹, is responsible for the recruitment of senior civil servants. It also regulates their performance appraisal, mobility, disciplinary procedures and dispute resolution. The IOB²⁶⁰ plays an oversight role in the civil service system

The civil service policy is one of the three pillars of the PAMS. The setting of general and specific objectives for the policy is based on an adequate diagnosis. However, some objectives in the PAMS Action Plan 2015-2017 are defined only in a generic way²⁶¹. The Action Plan includes a set of activities for each specific objective, usually including implementation timelines and estimation of costs. Nevertheless, there is no cost estimation for some key activities, such as ensuring that the HRMIS interoperates with the payroll system.

In the central administration, the DCSA is tasked with co-ordinating and supervising the implementation of CSL and HRM procedures, by organising regular meetings with HRM units, providing training and issuing of regulations and circulars. Nevertheless, the CSL does not expressly establish the competences and authority of the DCSA. In particular, the Law does not stipulate that the public institutions should provide information to the DCSA. This lack of legal recognition weakens the role of the Department in relation to the HRM units²⁶².

HR units²⁶³ are mostly focused on personnel administration. They lack strategic orientation, particularly for staff planning and professional development. Their capacities, as well as DCSA's ability to conduct the civil service policy, have not still benefited from the HRMIS, due to its limited development. Technically, the HRMIS has been set up to function as the central register for all public employees, as well as the information system for HR management. The system is already implemented in most public institutions²⁶⁴, but 30% of the data has not been uploaded yet²⁶⁵. Three modules, for staff planning, senior management recruitment and online applications to vacancies, have been developed. The use of the modules reached a level of 44% in 2016, as compared to 13.55% in 2015. Using the system to report on civil service indicators, although technically feasible, is not yet possible in practice. The interoperability of the HRMIS and the payroll system is not developed.

Amendments to the Law on the IOB²⁶⁶, currently under preparation in the Assembly, would reinforce the authority and capacities of the Board and extend its competences to annul recruitments of senior

²⁵⁹ Regulation No. 06/2010, on the Procedures for Appointment to Senior Management Positions in the Civil Service.

²⁶⁰ CSL, Article 9, and the Law on the IOB, No. 03/L-192.

²⁶¹ Specific Objective No. 3, dealing with recruitment, combines several aspects that could be better defined as separate objectives ("Organisation and functioning of a professional and apolitical civil service. Recruitment and competitive merit-based selection and clear testing criteria. Continuous and necessary training. Performance evaluation system based on institutional and individual objectives"). Specific Objective No. 4 is too generic ("Ensuring strategic approach in civil service development and training of civil servants in all public administration levels").

²⁶² The Department is only mentioned in Article 18 of the CSL, on Admission Procedures.

²⁶³ The CSL provides that all institutions employing civil servants have an HRM unit (Article 7). However, it does not establish clear criteria to ensure efficiency in the use of resources.

²⁶⁴ MPA, Draft 2016 Annual Report: Progress in implementation of Public Administration Modernisation Strategy 2015-2020, p. 21. The HRMIS is implemented in 132 institutions. New institutions created after the approval of the PAMS, such as nine new courts, are not yet using the system, however.

²⁶⁵ Only 12 000 individual registers for civil servants have been uploaded, of a total of about 18 000 civil servants.

²⁶⁶ Law on the IOB No. 03/L-192.

civil servants²⁶⁷. The number of complaints resolved by the IOB declined slightly between 2014 and 2015. The proportion of decisions of the Board executed by the public institutions concerned has progressed steadily from 2013, reaching 87% in 2016 (Table 3).

Table 3. Management of complaints and execution of decisions of the IOB, 2013-2016

	2013		2014		2015		2016	
Complaints reviewed	480	100%	727	100%	690	100%	654	100%
Complaints resolved	440	92%	650	89%	632	92%	571	87%
IOB executable decisions	188	100%	241	100%	263	100%	209	100%
IOB decisions executed	142	76%	181	75%	221	84%	181	87%

Source: Independent Oversight Board. Annual reports of activity for the years 2013, 2014, 2015, 2016.

The value for the indicator ‘Adequacy of the policy, legal framework and institutional set-up for professional human resource management in public service’ is 3.

Adequacy of the policy, legal framework and institutional set-up for professional human resource management in public service

This indicator measures the extent to which the policy, legal framework and institutional capacities are in place and enable consistent human resource management (HRM) practices across the public service, and assesses whether policies and laws are implemented to ensure proper management of the civil service, for example a functioning civil service database, availability and use of data, etc.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
1. Establishment of political responsibility for the civil service in the legal framework	2/2
2. Quality of public service policy document	3.5/4
3. Implementation and monitoring of public service policy	2/4
4. Right balance between primary and secondary legislation	2/2
5. Existence of a central, capable co-ordination body	2.5/4
6. Professionalism of HRM units in civil service bodies	0/2
7. Existence of a functional HR database with data on the civil service	2/4
8. Availability and use of data on the civil service	1/5
Total²⁶⁸	15/27

There are no common legal principles for HRM outside the civil service. The role and the powers of the DCSA to co-ordinate the CS system are not explicitly stated in the CSL, which could weaken the position of the Department in a highly decentralised HRM system. The HRMIS is technically developed but not fully implemented, which limits opportunities for strategic HR planning and efficient HR management.

²⁶⁷ The proposed changes would substantially increase the body’s authority. Candidates to the Board would be required to have at least ten years of professional experience, and at least five years of experience in the civil service. The Board’s mandate would be extended from five to seven years. Procedures to ensure the enforcement of IOB decisions would also be reinforced. Among other things, the Board would have the authority to withhold 50% of the monthly salary of the employee responsible, as a means of enforcing its decisions in case of noncompliance. Finally, the amendments include the approval or cancellation of appointments to senior level and managerial positions, based on whether there has been compliance with the selection method.

²⁶⁸ Point conversion ranges: 0-3=0, 4-8=1, 9-13=2, 14-18=3, 19-23=4, 24-27=5.

Key recommendations

Short-term (1-2 years)

- 1) State authorities should guarantee the application of public service principles to all institutions and positions that exercise public authority, even if they don't belong to the executive power.
- 2) The IOB should preserve its external oversight role, to avoid being involved in HR decision-making.
- 3) The Government should reinforce the role of the DCSA, ensuring leadership and visibility. Additionally, it should consider regulating the competences of the DCSA more explicitly in the legislation.
- 4) The MPA should ensure the introduction of complete data in the HRMIS, and set procedures for quality assurance and regular updating.

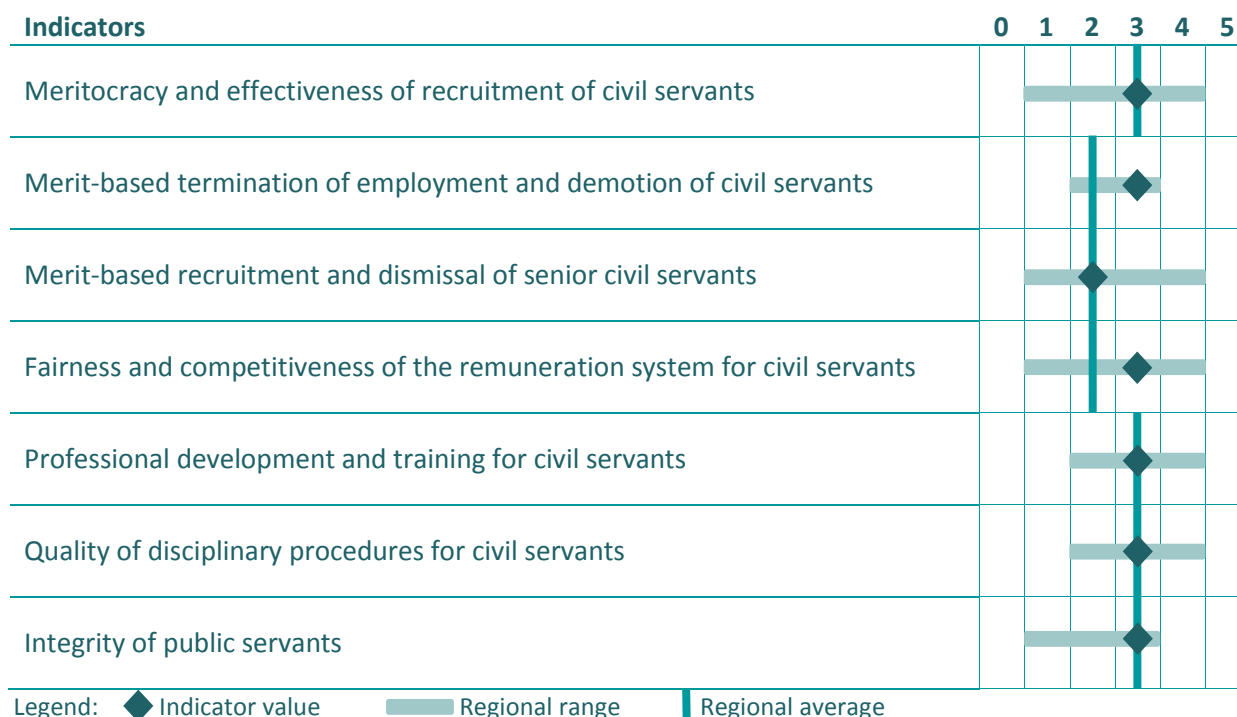
Medium-term (3-5 years)

- 5) The MPA should develop strategic planning methods and make the most of the HRMIS to provide evidence for better HR policies and decisions, at central and at decentralised levels.

Human resource management

Key requirement: Professionalism of public service is ensured by good managerial standards and human resource management practices.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

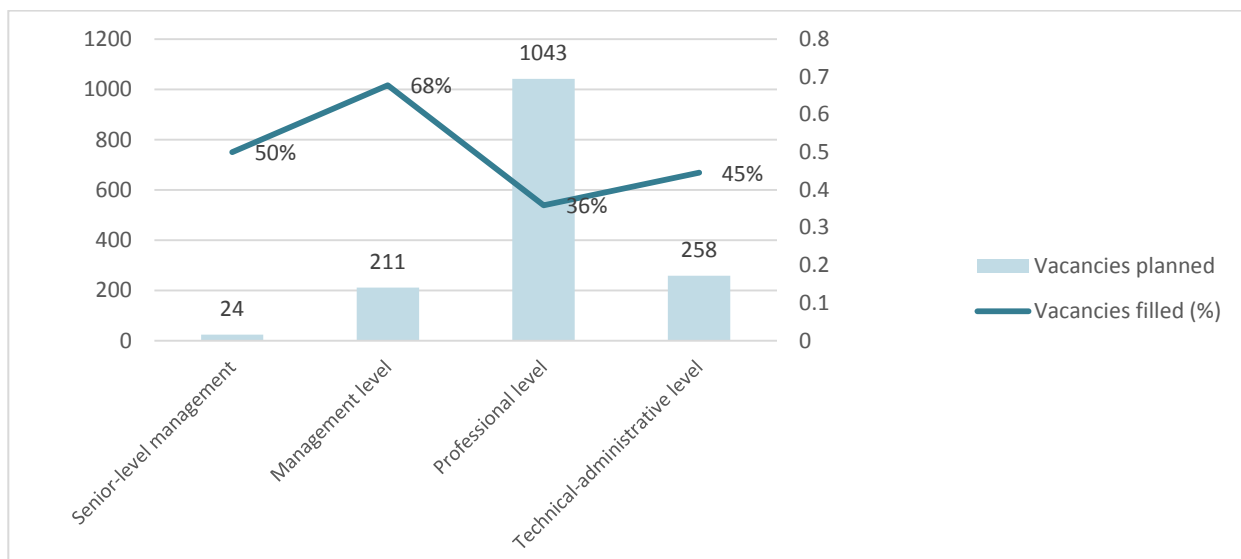
Principle 3: The recruitment of public servants is based on merit and equal treatment in all its phases; the criteria for demotion and termination of public servants are explicit.

The CSL establishes explicitly that civil servants are employed on the basis of merit²⁶⁹. All civil servant vacancies in the administrative and professional categories are filled through competitions open to internal and external candidates. Vacancies in the management category may also be open to external competition if there are no internal candidates eligible.

According to the CSL, the principle of merit must be combined with the right to fair and proportional representation of communities²⁷⁰. Compliance with the requirement to reserve 10% of the civil service positions for staff who are not from majority communities improved significantly between 2014 (6.5%) and 2016 (9%)²⁷¹. The requirement that selection committees include one non-majority member is difficult to fulfil, resulting in delays in some recruitments²⁷².

Recruitments are based on individual plans presented by each institution²⁷³, integrated into an annual General Personnel Plan approved by the MPA. The regulations governing such staffing plans establish adequate analytical requirements that exceed the current capacity of the HRM units. The staffing plans reviewed for this assessment included only lists of vacancies to be filled. Besides, the level of implementation of the plan is low, which suggests that it is not well aligned with budget resources and implementation capacity. In 2016, only 42% of the vacancies included in the staffing plan were filled, although the proportion was higher in the managerial category (Figure 1).

Figure 1. Implementation of the staffing plan by professional category, 2016



Source: Ministry of Public Administration, Report on the State of the Civil Service in 2016.

The organisation of recruitment is the responsibility of each institution²⁷⁴. Each recruitment procedure is managed by an *ad hoc* selection committee made up of group of five civil servants, four of them

²⁶⁹ CSL, Article 3, points 2 and 9; Article 11.

²⁷⁰ CSL, Article 5, point 1.9. Article 11, points 2-4.

²⁷¹ MPA, draft 2016 Annual Report: *Progress in implementation of Public Administration Modernisation Strategy 2015-2020*, p. 27.

²⁷² Interviews with HRM units.

²⁷³ CSL, Article 18, point 2, establishes the obligation for public bodies to prepare institutional human resource plans. Point 8 of the same article refers to the "Department of the Ministry in charge of public administration", as being responsible for the development and implementation of human resource planning. The procedures for drafting and approval of staffing plans are further developed in Regulation No. 02/2014.

²⁷⁴ CSL, Article 18, point 2.

occupying higher positions than the vacancy that must be filled. The composition of the committee is as follows: one member comes from the HR unit, two from the unit where the vacancy is, one from the same institution and one with specialised knowledge in the relevant area²⁷⁵. The *ad hoc* composition of panels, the lack of specific expertise in selection techniques, and the lack of clarity in defining the content of the tests in the regulations weakens the selection procedures and allows for the application of different standards for similar positions²⁷⁶. In addition, the anonymity of written tests is not ensured in many competitions²⁷⁷.

In 2016, the IOB annulled 144 out of 248 (58%) appointments to civil service managerial positions that it observed in exercising its competences. These cancellations were due to legal and procedural violations²⁷⁸. Most were related to deadlines, publication of announcements with different criteria for similar positions, selection committees, and written and oral tests. The number of appeals to the IOB related to recruitments doubled between 2013 and 2016 (105 appeals were filed in 2013 and 205 in 2016).

Despite these shortcomings, recruitments overall demonstrate an adequate level of competition. External competitions are more frequent in the lower professional categories, while internal competitions are more prevalent at the managerial level (Figure 2), providing opportunities for internal promotion. The average number of applicants per vacancy (Figure 3) is adequate (13), although data on applicants who fulfil the requirements and are considered eligible is not available. Internal recruitments, however, are far less competitive (2-3 applicants) than external ones (22-29 applicants), irrespective of the category. Some data is missing to assess the sub-indicator on the effectiveness of recruitments (comparing the vacancies offered with the positions filled). Only data on vacancies initially planned and on vacancies finally filled is available.

²⁷⁵ Regulation No. 02/2010, on recruitment procedures in the civil service. The composition of the committee is proposed by the HR unit of the institution and approved by the highest administrative authority of the institution. The committee must be multi-ethnic and gender-balanced.

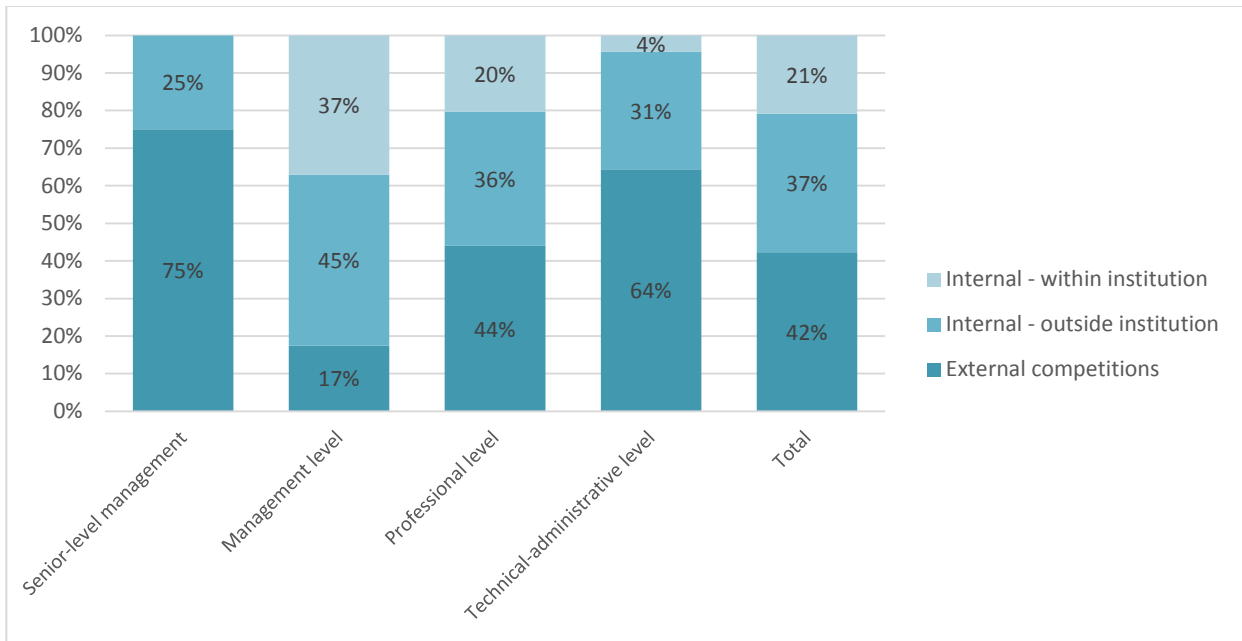
²⁷⁶ Regulation No. 02/2010 establishes the general structure of the content of the written and oral tests, which is similar for both and mostly focused on assessing candidates' level of knowledge. The written test must assess general knowledge, personality, knowledge related to the position and, if relevant, proficiency in foreign languages. The oral section assesses personality and professional plans, general institutional and economic knowledge, knowledge relevant for the job position and, if necessary, proficiency in foreign languages. Nevertheless, the composition of selection committees only guarantees knowledge and expertise relevant to the job, not necessarily in other areas.

²⁷⁷ Confirmed during interviews with HR units and through a sample of recruitment files.

²⁷⁸ Annual Working Report of the IOB for the Civil Service of Kosovo 2016, Pristina, March 2017, p. 43.

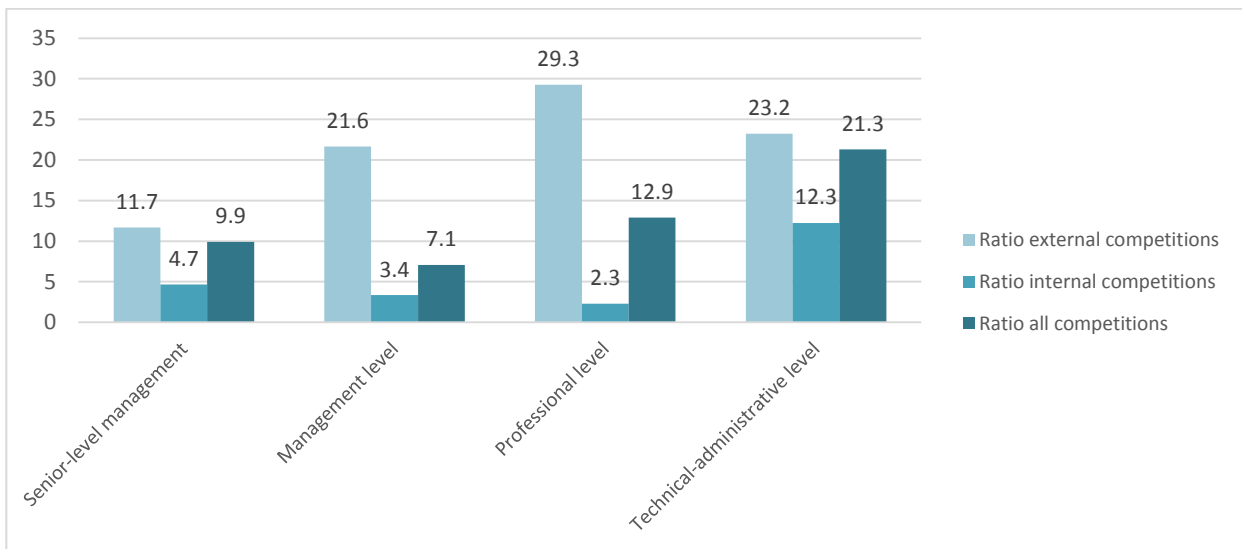
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Figure 2. Vacancies filled, by type of competition and professional category, 2016



Source: Ministry of Public Administration, Report on the State of the Civil Service in 2016.

Figure 3. Number of applicants per vacancy in recruitment procedures, broken down by professional category, 2016



Source: Ministry of Public Administration, Report on the State of the Civil Service in 2016.

On the other hand, the CSL provides for temporary vacancies to be covered through the so-called Special Service Agreements (SSA)²⁷⁹ for periods of up to six months. Such contracts are often used to fill regular civil service functions without any recruitment procedure, for longer periods than those established in the CSL²⁸⁰. This is becoming a common practice in public institutions under the CSL: in 2016, of the total staff hired in these institutions, 816 (56%) were through the SSA, and 645 (44%)

²⁷⁹ CSL, Article 12, point 4.

²⁸⁰ IOB, *Annual Working Report 2016*, p. 63.

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through regular recruitment²⁸¹. The IOB also reported several cases of civil servants being appointed to acting positions for periods longer than three months²⁸², in contravention of the CSL.

The legislation establishes clear grounds for individual dismissals from the civil service. Dismissal is possible through a disciplinary measure, due to a violation of the code of conduct or other regulations, or due to criminal charges. After two consecutive poor performance appraisals, dismissals can be initiated through a disciplinary procedure. Finally, civil servants can also be dismissed during restructuring processes, but the legislation does not provide detailed criteria for dismissals in cases of restructuring, closing or merging of public institutions²⁸³.

Dismissals due to disciplinary procedures fell significantly between 2015 and 2016, from 52 to 10, and termination of employment due to the abolishment of positions remained very low (Table 4). Nevertheless, the number of appeals to the IOB against dismissal procedures increased by 24% between 2013 and 2016. In the past year, court rulings on dismissal decisions observed in a group of public institutions²⁸⁴ were adjudicated mostly in favour of the civil servants dismissed (9 out of 12 rulings, that is 75%), which indicates shortcomings in the dismissal practices.

Table 4. Appeals managed by the Independent Oversight Board, by topic, 2013-2016

Topic	2013		2014		2015		2016		Variation in the number of appeals between 2013 and 2016
Disputed recruitment	105	23%	178	26%	153	25%	205	34%	+95%
Salaries and allowances	163	36%	217	31%	116	19%	101	17%	-38%
Termination of working relationship	50	11%	111	16%	83	14%	62	10%	+24%
Transfer and promotion	17	4%	48	7%	86	14%	58	10%	+241%
Disciplinary measure	20	4%	39	6%	41	7%	44	7%	+120%
Preventive suspension	19	4%	20	3%	19	3%	31	5%	+63%
Performance appraisal	6	1%	5	1%	41	7%	19	3%	+217%
Demotion	23	5%	25	4%	9	1%	5	1%	-78%
Other	49	11%	46	7%	65	11%	71	12%	+45%
Total	452	100%	689	100%	613	100%	596	100%	+32%

Source: Independent Oversight Board.

²⁸¹ Report on the State of the Civil Service for the year 2016, pp. 29-30, MPA.

²⁸² IOB, *Annual Working Report 2016*, p. 67.

²⁸³ Restructuring or closing of public organisations can lead to dismissal, as established in the CSL, Article 32. Regulation No. 01/2011 makes reference to this in Article 3, but the procedure is established in a different by-law, Regulation No. 08/2012. This regulation, however, does not explain the criteria permitting the dismissal of civil servants in case of restructuring, closing or merging public institutions. It regulates only what will happen with them (i.e. their rights and obligations). The regulations establish that a working group shall be created to formulate a proposal for a restructuring programme. The composition of such a group, the criteria on which the programme shall be drafted, and its minimum contents are not specified. The regulation is not detailed enough to ensure that objective criteria are applied.

²⁸⁴ The Ministry of Labour and Social Welfare (two court rulings, both in favour of the civil servant), the Tax Administration (five court rulings, of which three were in favour of the civil servant), the Civil Registry (five court rulings, all in favour of the civil servant).

Considering the factors analysed above, the value for the indicator 'Meritocracy and effectiveness of recruitment of civil servants' is 3. The value for the indicator 'Merit-based termination of employment and demotion of civil servants' is also 3.

Meritocracy and effectiveness of recruitment of civil servants					
<p>This indicator measures the extent to which the legal framework and the organisation of civil service recruitment support merit-based and effective selection of candidates wishing to join the civil service and whether this ensures the desired results in terms of competitive, fair and non-discretionary appointments that enhance the attractiveness for job-seekers and performance of the public sector.</p> <p>This indicator measures only external recruitment. The indicator on merit-based recruitment and dismissal of senior civil servants covers recruitment and promotion to senior managerial positions, and the indicator on professional development covers promotions to other positions.</p>					
Overall indicator value	0	1	2	3	4 5

Sub-indicators	Points
Legal framework and organisation of recruitment	
1. Adequacy of the legislative framework for merit-based recruitment for civil service positions	14/18
2. Application in practice of recruitment procedures for civil service positions	13/18
Performance of recruitment practices	
3. Time required to hire a civil servant	2/2
4. Average number of eligible candidates per vacancy	0/4 ²⁸⁵
5. Effectiveness of recruitment for civil service positions	0/4 ²⁸⁶
6. Retention rate of newly hired civil servants (%)	4/4
Total²⁸⁷	33/50

²⁸⁵ Data on eligible candidates is not available.

²⁸⁶ In the MPA Annual Report on the Civil Service, there is no data on the effectiveness of recruitments, i.e. on the number of vacancies offered for competition and filled.

²⁸⁷ Point conversion ranges: 0-7=0, 8-16=1, 17-25=2, 26-35=3, 36-43=4, 44-50=5.

Merit-based termination of employment and demotion of civil servants

This indicator measures the extent to which the legal framework and the human resource management practices support fair termination of employment in the civil service and fair demotion of civil servants wherever it is envisioned in the legislation. The indicator does not deal with the termination of employment and demotion of senior civil servants.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators

Points

Legal framework and organisation of dismissals and demotions

1. Objectivity of criteria for termination of employment in civil service legislation	6/6
2. Objectivity of criteria for demotion of civil servants in the legislative framework	2/2
3. Right to appeal dismissal and demotion decisions to the courts	2/2

Fairness and results of dismissal practices

4. Dismissal decisions confirmed by the courts (%)	0/4 ²⁸⁸
5. Implementation of court decisions favourable to dismissed civil servants (%)	0/4 ²⁸⁹
Total²⁹⁰	10/18

The merit principle for recruitment is clearly established in the CSL. However, the *ad hoc* setup of selection panels, their mostly internal composition, and their wide discretion to formulate the written and oral testing questions compromise the full objectivity of the selection processes. Complaints on recruitments were the most numerous of all the appeals filed to the IOB in 2016. Most of the court rulings on dismissals were favourable to the civil servants, which points to shortcomings in the termination practices.

Principle 4: Direct or indirect political influence on senior managerial positions in the public service is prevented.

The positions in the tier below the minister or the equivalent are formally included in the scope of the civil service and are classified as senior-level management²⁹¹. The secondary legislation, however, allows for exceptions in cases where special laws provide otherwise²⁹². The exceptions to the horizontal scope of the CSL noted in Principle 1 also affect these positions. The 2016 MPA Review of Institutions and Agencies of the Assembly and Central Bodies of the Government identified cases in which the functions of senior management are exercised by political appointees in some agencies that report to the Assembly (e.g. the Regulatory Authority for of Electronic and Postal Communication, the Water Services Regulatory Authority and the Procurement Regulatory Commission), and also in some agencies that report to the Government (e.g. the Kosovo Police Inspectorate, the Emergency Management Agency and the Kosovo Forensic Agency)²⁹³.

²⁸⁸ Of the final court decisions, 75% did not confirm the dismissal.

²⁸⁹ Data on how many of those court decisions have been implemented was not provided by the MPA.

²⁹⁰ Point conversion ranges: 0-2=0, 3-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

²⁹¹ The CSL, Article 15, and Regulation No. 05/2012, on the classification of jobs in the civil service.

²⁹² Regulation No. 06/2012 on Senior Management Positions in the Civil Service, Article 2, point 2.

²⁹³ MPA, Review of Institutions and Agencies of the Assembly and Central Bodies of the Government, pp. 30- 34.

The regulations on selection procedures for senior-level management positions do not provide sufficient safeguards to prevent potential political influence²⁹⁴. A Council of Senior Management Positions, established not in the CSL but in the secondary legislation²⁹⁵, is responsible for the direction and supervision of the appointment system. It is composed of three Ministers (Public Administration, Finance and Communities) and three Secretary Generals, and is chaired by a deputy prime minister. The functions of the Council include formulating job descriptions, as well as ensuring the adequacy of recruitment methods. Despite its competences, technical support to the Council is not provided by the MPA, but by the Government Co-ordination Secretariat in the Office of the Prime Minister, which has no technical expertise in the civil service and HRM.

Each selection process is managed by an *ad hoc* created Criteria Assessment Commission (CAC)²⁹⁶, appointed by the Minister of Public Administration. Each CAC is made up of three secretary generals and two external experts, one from academia and the other from civil society²⁹⁷. Introducing external experts is a good technique for preventing undue influence. However, the regulations do not establish transparent criteria and procedures for selecting, assessing the merits of, and appointing the members of the CAC, to ensure their professionalism and independence. The contents and the methods for the assessment and selection of candidates to senior civil service positions are not regulated, beyond the pre-screening of applicants²⁹⁸. Finally, the highest-ranked candidates are not necessarily appointed. The CAC must propose to the MPA a list of the three best candidates, which is submitted by the MPA to the employment institution. The head of the institution can propose for nomination any of the three shortlisted candidates.

The Council of Senior Management Positions is responsible for supervising senior civil servants' performance appraisals, transfers, dispute resolution, disciplinary procedures and the resolution of government proposals to extend senior civil servants' mandates. The control of those HR processes by a high-level political committee, in combination with the lack of detail in essential aspects of the recruitment procedures, suggests that such positions are highly vulnerable to political influence. Moreover, the term of office of senior managers is three years, shorter than in most European Union (EU) member countries²⁹⁹. Fifty percent of the senior-level vacancies included in the annual staffing plan were filled in 2016 (Figure 1), most of them (75%) through external competitions (Figure 2) with a reasonable number of applicants per vacancy (an average of 11.7) (Figure 3).

²⁹⁴ These procedures are regulated in two partially overlapping by-laws: Regulation 06/2010 on the Procedures for Appointment to Senior Management Positions in the Civil Service, and Regulation No. 06/2012 on Senior Management Positions in the Civil Service.

²⁹⁵ Provisions on the setting up, composition and functions of the Council are included in Regulation No. 06/2010 on Senior Management Positions in the Civil Service, and in Regulation 06/2010 on the Procedures for Appointments to Senior Management Positions in the Civil Service.

²⁹⁶ CSL, Article 15, and Regulation No. 06/2010 on the Appointments to Senior Management Positions in the Civil Service.

²⁹⁷ Regulation No. 06/2010, on the Procedures for Appointments to Senior Management Positions in the Civil Service, provides for the composition of the Criteria Assessment Commission, and sets out the eligibility criteria of the members (e.g. secretary generals must have at least three years of working experience at senior level; university professors must have at least two years of teaching experience in an accredited faculty; the member of civil society must be recognised for integrity and sound judgement). However, the regulation does not specify the criteria and procedures to appoint the university professors.

²⁹⁸ Regulation 06/2010 does not establish the contents and methods of the selection procedure (Article 13). It only establishes a "pre-evaluation" (Article 9), intended to ensure that candidates meet the basic requirements; and to "test the person's writing skills and other tests, as required by the instructions". The evaluation of candidates after this pre-selection phase is not regulated. Through a 2016 co-operation agreement with the United Kingdom, the British Embassy will support the Kosovo institutions during the selection of 20 senior positions within the civil service and independent institutions through an executive search firm. This initiative is intended to ensure merit and professionalism in recruitments to these positions.

²⁹⁹ Ministry of the Interior and Kingdom Relations (2016), *Top Public Managers in Europe. Management and Employment in Central Administration*, The Hague, Netherlands, pp. 29-30. The most common term of appointment is 5 years, followed by 7 years. Only Malta has established a term of 3 years.

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Turnover in senior civil service positions was moderate in 2016 (5%), but higher than in 2015 (1.8%)³⁰⁰.

The number of women in senior management positions in government and agencies reporting to the Government is very low: of 75 senior civil servants, only 7 positions (9%) are held by women. This contrasts sharply with the situation in countries in the region, as well as in EU countries, where this proportion has increased substantially in recent years.

Considering all the above factors, the value for the indicator 'Merit-based recruitment and termination of senior civil servants' is 2.

³⁰⁰

In 2016, there were 6 cases of termination of employment of senior-level civil servants, with 122 civil servants employed in that category at the beginning of the year, according to the MPA, Report on the State of the Civil Service.

Merit-based recruitment and dismissal of senior civil servants						
<p>This indicator measures the extent to which the legal framework and the organisation of recruitment and tenure conditions of the senior civil service support a professional senior management, free from undue political influence in access or termination of employment in senior civil service positions. This indicator relates to all competitions for senior positions, both external and internal.</p> <p>Recruitment and dismissal in senior positions is treated under a separate indicator due to the importance of the role of this group of civil servants and the increased risk of politicisation and favouritism. High priority accorded to merit and competitiveness in the recruitment process reduces the possibility of political influence in appointments to such positions.</p>						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal framework and organisation of recruitment and dismissal of senior civil servants	
1. Appropriateness of the scope for the senior civil service in legislation	3/3
2. Adequacy of the legislative framework for merit-based recruitment for senior civil service positions	10/15
3. Objectivity of criteria for the termination of employment of senior civil servants in the legislative framework	0/4
4. Legislative protection of the rights of senior civil servants during demotion	2/2
Merit-based recruitment and termination of employment in senior civil service positions in practice	
5. Application in practice of recruitment procedures for the senior civil service	0/9 ³⁰¹
6. Ratio of eligible candidates per senior-level vacancy	0/4 ³⁰²
7. Effectiveness of recruitment for senior civil service positions (%)	0/4 ³⁰³
8. Women in senior civil service positions (%)	0/4
9. Stability in senior civil service positions	4/4
10. Dismissal decisions confirmed by the courts (%)	4/4
11. Implementation of final court decisions favourable to dismissed senior civil servants (%)	4/4
Total³⁰⁴	27/57

Senior positions remain highly vulnerable to undue political influences, because of the short three-year term of secretary-generals, the lack of detailed recruitment procedures and the control of key decision affecting senior civil servants by a political committee.

Principle 5: The remuneration system of public servants is based on job classification; it is fair and transparent.

The current salary structure in the civil service is still the one set out in an instruction from the United

³⁰¹ Insufficient data provided to enable assessment.

³⁰² Insufficient data provided to enable assessment. Data provided refers only to applicants, without specifying whether they are eligible or not, according to the MPA Report on the State of the Civil Service in 2016, p. 29, Table 9.

³⁰³ Insufficient data provided to enable assessment. Data provided by the MPA do not include the total number of vacancies announced for competition during the year, but only the number of vacancies included in the staffing plan and those filled (MPA Report on the State of the Civil Service in 2016, p. 27). Thus, this indicator cannot be accurately calculated.

³⁰⁴ Point conversion ranges: 0-10=0, 11-19=1, 20-28=2, 29-37=3, 38-46=4, 47-57=5.

Nations Mission in Kosovo (UNMIK) issued in 2000, based on coefficients that follow a general ten-point grade scale, from less qualified jobs to management positions. In the ministries, base salaries for similar positions have usually been allocated based on common criteria. In the absence of a genuine job classification, however, many institutions have allocated coefficients for jobs without using homogeneous criteria based on responsibility and competence. In addition, some independent institutions and agencies apply coefficients outside the ten-point grade scale. There is thus no guarantee of equal pay for equal jobs for base/position salaries. Supplements and allowances are in some cases allocated without following clear criteria, although the application of uniform control in this respect is improving³⁰⁵. Salary tables are not publicly disclosed.

According to a review³⁰⁶ conducted by the MPA in 2016, the monthly base/position salary of a senior legal officer varies from EUR 465 in a ministry, rising to EUR 863 for the Ombudsperson and even up to EUR 1 046 in the Privatization Agency. Similar discrepancies apply to other horizontal positions, such as Senior Procurement Officer³⁰⁷. The IOB reports identify several irregularities related to salary supplements that distort the principle of equal pay for an equivalent job³⁰⁸. In certain cases, civil servants receive additional supplements of over 50% of their base salaries, in contravention of Regulation No. 33/2012. Moreover, labour market supplements are sometimes awarded to civil servants who are not employed in the jobs for which the supplement was created (information technology, engineers, etc.).

Law No. 03/L-147 of 25 June 2010 on the Salaries of Civil Servants established a new salary structure based on the job classification³⁰⁹. The Law is formally in force, but has not been applied, thanks to delays in rolling it out. However, the job classification process is at an advanced stage. On 5 February 2015, the Government adopted Regulation No. 05/12 on Classification of Jobs in the Civil Service, and the Jobs Catalogue in the Civil Service. In March 2017, about 80%³¹⁰ of the positions in the civil service were classified according to the Catalogue.

The MPA Administrative Circular on Job Classification was challenged by the Ombudsperson before the Constitutional Court³¹¹. According to a recent Court decision, the Ombudsperson, four other constitutional bodies³¹² and the same Constitutional Court, all of them paying higher salaries than the ministries, will not be obliged to submit their job classification to the MPA's approval.

The 2010 Law No. 03/L-147 on the Salaries of Civil Servants defines a system more advanced, fair and transparent than the provisional UNMIK arrangement still in use. It does have certain weaknesses concerning the awarding of different salary supplements³¹³. The 2010 system also sets out a horizontal career path, through the award of salary steps for those with positive appraisals. But some significant

³⁰⁵ In January 2016, a committee to review requests for allowances, consisting of the MPA and the MoF, was established. Only 1 of 20 requests sent to the committee in 2016 was approved. MPA, draft 2016 Annual Report, Progress in Implementation of the Public Administration Modernisation Strategy 2015-2020, p. 20.

³⁰⁶ MPA, Review of Institutions and Agencies of the Assembly and Central Bodies of the Government, December 2016.

³⁰⁷ *Idem*, pp. 42-43.

³⁰⁸ IOB, Annual Report for 2016, p. 64.

³⁰⁹ Law No. 03/L-147, Article 6. The classification follows the four professional categories of civil servants set out in the CSL, Chapter IV, and develops the job grades and steps also mentioned in the CSL.

³¹⁰ That is, 14 888 of 18 000 positions.

³¹¹ This refers to the Constitutional Court Ruling issued on 16 November 2016 as a result of a referral from the Ombudsperson against alleged undue interference of the MPA, referred to under Principle 2 above. The ruling is also applicable to other four constitutional bodies included in Chapter 12 of the Constitution.

³¹² The Auditor General, the Central Election Commission, the Central Bank and the Independent Media Commission.

³¹³ The civil service salary structure established by the Law No. 03/L-147 includes basic salary and allowances. Basic salary is calculated through a coefficient assigned to each position, in accordance with the job classification. The Law establishes 14 salary grades in the four professional categories. Each salary grade has several salary steps. Progress from one to the next is based on individual performance appraisal results. The Law also provides for different salary supplements related to shift and overtime work, certain work conditions and labour market conditions. The criteria included in the secondary legislation (Regulation No. 33/2012 on Allowances in Salaries and Other Compensations for Civil Servants) for determining such supplements are not clearly specified and allow for broad managerial discretion.

shortcomings of the performance appraisal scheme are a cause for concern (see Principle 6). This Law sets a 1:5 ratio between the lowest and the highest civil service base salary, which is a reasonable parameter.

A framework regulation on public employees' salaries does not yet exist, but a draft law on salaries paid by the state budget is in preparation. This future law is not intended to modify the civil service salary system, but to set common principles for public sector salaries.

Overall, salaries in the public sector seem competitive enough to attract qualified professionals. Data provided by the MPA show a ratio of 103:100 between average monthly salaries in the civil service and those of tertiary-educated workers (EUR 458 compared to EUR 446). However, this aggregated data does not allow for identification of specific salary gaps between the public and private sectors that may exist for certain jobs. This situation is implicitly recognised by the inclusion of "market supplements" for certain jobs in Law No. 03/L-147. The regulations do not provide sufficiently detailed, clear criteria to ensure a fair allocation of salary supplements.

Considering the factors described above, the value for the indicator 'Fairness and competitiveness of the remuneration system for civil servants' is 3.

Fairness and competitiveness of the remuneration system for civil servants						
This indicator measures the extent to which the legal framework and the organisation of the civil service salary system support fair and transparent remuneration of civil servants, in terms of both the legislative and organisational preconditions and the performance and fairness of the systems in practice.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal framework and organisation of the remuneration system	
1. Legal obligation to base salaries on job classifications	2/2
2. Comprehensiveness, clarity and transparency in legal definitions of salary, criteria and procedures for allocation	0/2
3. Availability of salary information	0/3
Performance and fairness of the remuneration system in practice	
4. Fairness in the allocation of base salaries in the job classification system	2/4
5. Base salary compression ratio	2/2
6. Managerial discretion in the allocation of bonuses	2/2
7. Motivational character of bonuses (%)	1/2
8. Competitiveness of civil service salaries (%)	3/3
Total³¹⁴	12/20

The job classification process is at an advanced stage, but the salary system provided in the Law No. 03/L-147 is not implemented yet. Therefore, equal pay for equal jobs is not always ensured, especially when comparing independent institutions with the public bodies within the executive power.

³¹⁴ Point conversion ranges: 0-3=0, 4-7=1, 8-10=2, 11-13=3, 14-16=4, 17-20=5.

Principle 6: The professional development of public servants is ensured; this includes regular training, fair performance appraisal, and mobility and promotion based on objective and transparent criteria and merit.

Training is recognised as a right and a duty of civil servants³¹⁵. The KIPA is responsible for the training of civil servants in central and local governments³¹⁶, and reports to the MPA. The Training Strategy was prepared by the MPA and adopted by the Government in May 2016, together with the Action Plan 2016-2018. The drafting of the Strategy was based on a comprehensive analysis conducted in 2014, which identified not only training needs, but areas for improvement of the training system. Such weaknesses were to some extent included in the background of the Strategy³¹⁷. However, the Action Plan does not include objectives and/or activities to address these shortcomings identified in the Strategy. In practice, the action plan is mainly a multi-annual training plan³¹⁸. Implementation of the Action Plan is monitored by the MPA/DCSA and KIPA.

The state resources devoted to training are extremely low (0.02% of the total annual salary budget)³¹⁹. The very limited training budget and the lack of a strategic approach prevent KIPA from assuming the role of reference institution for the training of civil servants. In 2016, only 22%³²⁰ of civil servants received training from KIPA, and the average of training hours per civil servant was very low: 5.8, less than one working day. This weakness increases fragmentation tendencies in the training system: at least two initiatives, by the MoF and by the Public Procurement Regulatory Commission, are under way to develop sectoral training policies without co-ordination with KIPA.

Performance appraisal is conducted in all the institutions examined for this assessment, under a system of forced ranking quotas³²¹. The proportion of civil servants assessed has increased in the last two years, from 49% in 2015 to 64% in 2016³²². Even though the quotas established in the legal framework are not applied, the results show a quite reasonable distribution, 16% falling within the highest performance level (Figure 4)³²³. The result of the appraisals has no formal consequences for salaries or career development³²⁴, except for the requirement that negative appraisals disqualify candidates for internal promotion. In the period 2013-2016, few appeals were filed with the IOB on this procedure (Table 2). The Board reported many cases³²⁵ where no objectives had been established to provide a basis for assessing staff. Such shortcomings could in the future distort the process of “salary steps” based on performance, when this element will be implemented as established in the Law No. 03/L-147 on Salaries.

³¹⁵ CSL, Articles 43 and 58.

³¹⁶ CSL, Article 10 and the Law on KIPA No. 04/L-221.

³¹⁷ Including training needs analysis, training plans; criteria to prioritise trainings and participants, and the quality of KIPA training.

³¹⁸ The Strategy and Action Plan also include an objective to centralise financial resources available for training.

³¹⁹ Data provided by KIPA and by the DCSA: the state expenditure for civil service trainings in 2016, excluding donor contributions, was EUR 80 070, while the total budget expenditures for salaries in the same fiscal year amounted to EUR 514.13 million.

³²⁰ Progress in Implementation of Public Administration Modernisation Strategy 2015-2020, p. 26: 3 761 civil servants participated at least once in trainings organised by KIPA in 2016, that is, 22% of 17 358 civil servants at the beginning of 2016. MPA, Draft 2016 Annual Report.

³²¹ Regulation No. 19/2012 on Civil Servants’ Performance Appraisals.

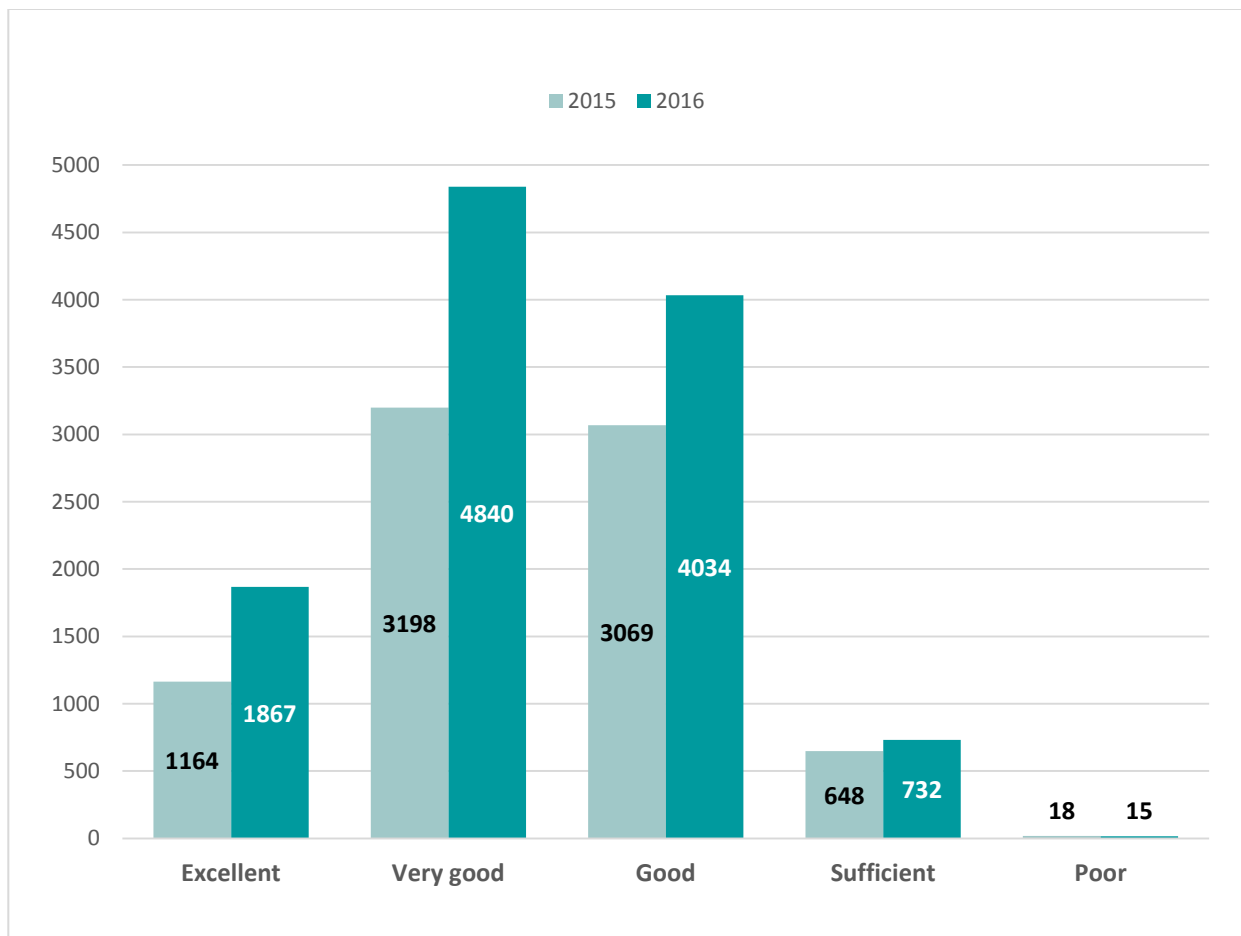
³²² MPA, Reports on the State of the Civil Service in 2015 and 2016.

³²³ Sixty-seven percent of the civil servants assessed obtained “Excellent” or “Very good” ratings, while Regulation No. 19/2012 establishes that only 20% should be awarded such a high rating.

³²⁴ Consequences for salaries and career development are established in the Law No. 03/L-147 on Salaries, which provides for salary steps based on performance results, as mentioned under Principle 5. However, the Law is not implemented.

³²⁵ IOB, *Working Report 2016*, p. 59.

Figure 4. Individual performance appraisal of civil servants, 2015 and 2016



Source: Ministry of Public Administration, Reports on the State of the Civil Service, 2015 and 2016.

The merit principle is explicitly established in the CSL for vertical promotions, but not for transfers or secondments³²⁶. There is no formal link between training and career development. Horizontal transfers affected less than 1% of civil servants in 2016³²⁷. As mentioned in Principle 3, the system provides opportunities for internal promotion: most vacancies in the managerial category were covered through internal competitions (83%) in 2016 (Figure 2), and the same applies to the professional level, although to a lesser extent (56%). Appeals on transfers and promotions have increased significantly from 2013 (from 17 appeals in 2013 to 58 in 2016 [Table 2]). Kosovan public employees have the highest perceived level of meritocracy in the public sector in the Western Balkans³²⁸.

Considering the factors analysed above, the value for the indicator 'Professional development and training for civil servants' is 3.

³²⁶ CSL, Article 26, point 2. Vertical promotion is regulated in Regulation No. 21/2012, which refers to Regulation No. 02/2010, on recruitment procedures, for the composition of selection panels and the organisation and contents of written and oral examinations. Written examinations are waived for promotions within the same professional category, for applicants who occupy positions only one grade lower than the vacancy to be filled. The CSL, Article 28, and Regulation No. 06/2010 on Transfer of Civil Servants.

³²⁷ In 2016, of 17 358 civil servants employed at the beginning of the year, 165 were given transfers. DCSA data.

³²⁸ Responses of a sample of public employees to a 2017 Balkan Barometer survey, asking to what extent they agreed with the following statement on a scale from 1 to 10 (1: totally disagree, 10: totally agree): "In the public sector most people can succeed if they are willing to work hard". The average for Kosovo is 6.47, by far the highest in the Western Balkans.

Professional development and training for civil servants						
This indicator measures the extent to which the legal framework and the organisation of training, performance appraisal, mobility and promotion support fair professional development in the civil service.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal framework and organisation of professional development	
1. Recognition of training as a right and a duty of civil servants	2/2
2. Co-ordination of the civil service training policy	3/3
3. Development, implementation and monitoring of training plans	2/3
4. Evaluation of training courses	2/2
5. Professionalism of performance assessments	3/4
6. Linkage between performance appraisals and measures designed to enhance professional achievement	4/4
7. Clarity of criteria for and encouragement of mobility	1/2
8. Adequacy of legislative framework for merit-based vertical promotion	1/2
9. Absence of political interference in vertical promotions	2/2
10. Right of civil servants to appeal against performance appraisal decisions	2/2
11. Right of civil servants to appeal mobility decisions	2/2
Performance of professional development practices	
12. Training expenditures in proportion to the annual salary budget (%)	0/4
13. Participation of civil servants in training	0/5
14. Perceived level of meritocracy in the public sector	3/5
Total³²⁹	27/42

In practice, KIPA is not the reference institution for the training of civil servants, due to its very limited training budget and lack of a strategic approach. The performance appraisal system, with no formal generalised consequences for salaries or career development, is working adequately. Most managerial and professional vacancies are covered internally, providing career opportunities to the existing civil servants. One of the most positive outcomes measured is that Kosovan public employees themselves believe that the public sector is a meritocracy, more than any of their counterparts in the Western Balkans.

Principle 7: Measures for promoting integrity, preventing corruption and ensuring discipline in the public service are in place.

The basic legal framework on integrity and corruption prevention in the public service is in place³³⁰. However, it has some shortcomings. The whistle-blowing legislation³³¹ does not offer protected reporting channels and does not clearly indicate how to manage whistle-blowing reports and how to protect informants. Moreover, the law does not specify the authorities responsible for the

³²⁹ Point conversion ranges: 0-6=0, 7-13=1, 14-21=2, 22-29=3, 30-36=4, 37-42=5.

³³⁰ Conflicts of interest are regulated by Law No. 04/L-051 on Prevention of Conflict of Interest in the Discharge of Public Functions, and in the Criminal Code (Article 424). Rules related to gifts and benefits, are regulated by Law No. 04/L-050, amended by Law No. 04/L-228, and also in the Criminal Code. Obligation to disclose assets for senior civil servants is regulated by Law No. 04/L-050. Whistle-blowing is regulated by Law No. 04/L-043 on Protection of Informants. Furthermore, the Criminal Code regulates corruption offences perpetrated by public officials.

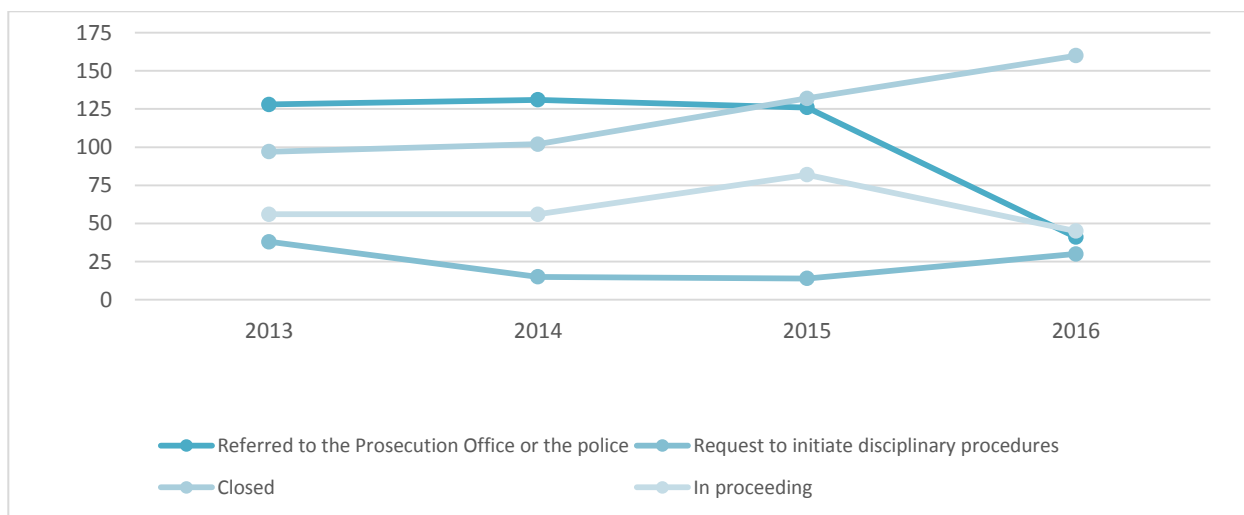
³³¹ Law on Protection of Informants No. 04/L-043, adopted in August 2011.

enforcement of the law. The Law on Prevention of Conflict of Interest has important limitations and is being amended, in line with EU recommendations³³². A Code of Conduct for civil servants has been set up under Regulation No. 04/2015³³³.

One of the principal actors in the fight against corruption is the Anti-Corruption Agency (ACA)³³⁴, which reports to the Assembly. The ACA is responsible for enforcing the anti-corruption legal framework, including referring criminal offences to the prosecutor and submitting requests to initiate disciplinary proceedings. It is also in charge of conflicts of interest and asset declarations among public officials, and of registering gifts, as well as preventing corruption in public procurement. Breaches of the obligation to declare assets are extremely rare³³⁵. In 2016, the ACA conducted complete reviews of 805 (20%) of the declarations presented. Irregularities were found in 38 cases (4.7%), some of which were referred to the Prosecutor³³⁶.

The number of preliminary investigations conducted by the ACA increased steadily after the Agency was set up and through 2014. In 2015, it fell slightly, and the decline was even more pronounced in 2016 (Figure 5). The number of cases referred to the Prosecutor to the police dropped by about 70% between 2015 and 2016. The ACA has not provided information on the causes of this sharp decline.

Figure 5. Cases managed by the Anti-Corruption Agency, 2013-2016



Source: Anti-Corruption Agency, Annual Report 2016.

Co-ordination with other bodies working on the fight against corruption, including the Chief State Prosecutor, the Police Directorate, the Auditor General, the Tax Administration or the Financial Intelligence Unit in the MoF, is not formally set up, but interviews suggest that the system works well in practice.

The comprehensive Anti-Corruption Strategy and Action Plan 2013-2017³³⁷ covers the public service as a whole. Nevertheless, the document is only a general reference to the former strategy, rather than a

³³² According to a document *Kosovo – EU High Level Dialogue on Key Priorities – European Reform Agenda*, of November 2016, p. 10, and an interview with the Director of the Anti-Corruption Agency, amendments will clarify the definition of public officials subject to the law, an indication of activities that are permitted and not permitted while in office and after; and a clear indication of the obligations and procedures in instances of conflict of interest. The proposal of amendments has been approved by the Government and is being considered by the Assembly.

³³³ Regulation No. 04/2015 on Civil Servants' Code of Conduct of the Republic of Kosovo.

³³⁴ Law No. 03/L-159 of 29 December 2009, on the Anti-Corruption Agency.

³³⁵ In 2016, 18 out of 4 352 senior public officials (0.42%) failed to submit their annual declaration of assets, compared with 1.4% in 2015. Of the other required declarations (as officials took office, at the request of the Agency and on termination), 100% were submitted in both years.

³³⁶ ACA Annual Report 2016, p. 17.

³³⁷ The period in which the Strategy and Action Plan are to be in effect is not clear. The ACA website refers to the period 2013-2017, but the title and contents of both documents specify 2012-2016.

detailed diagnosis of the situation. Neither the Strategy nor the Action Plan specifies how its implementation is to be funded. The ACA, in co-operation with responsible persons in each institution, is responsible for the overall planning and monitoring. The Action Plan allocates responsibilities for the implementation of each specific action to one or more institutions. Monitoring reports are prepared and disclosed every six months³³⁸, but they only include information on the activities that have been implemented. The reports do not mention activities that have not been implemented, or explain what the barriers to implementation have been.

Perception of corruption in the public sector is significant and similar to other Western Balkan countries. According to the 2017 Balkan Barometer survey, irregular payments by businesses are close to the Western Balkan average³³⁹ and bribes paid by citizens are lower than the regional average³⁴⁰.

The regulation of disciplinary procedures in the civil service presents some weaknesses. The CSL classifies violations as minor and serious³⁴¹. A by-law provides a detailed list of offences in both categories³⁴², but because only two levels are specified, the violations included in the same category³⁴³ are too broadly classified, which could jeopardise the principle of proportionality. For example, counterfeiting official documents and unjustified absence for two consecutive days are both classified as serious violations. Other procedural aspects, such as the time limits for taking disciplinary action, and the need to consider individual circumstances in imposing sanctions, are not sufficiently regulated.

Disciplinary committees have been set up in each public institution³⁴⁴, and staffed by members appointed for two years. Training on the regulation and implementation of disciplinary procedures is not adequate³⁴⁵. The number of disciplinary procedures fell slightly between 2015 and 2016 (from 325 to 302), but complaints filed to the IOB on disciplinary procedures more than doubled between 2013 and 2016 (Table 2). The most frequent complaints concerned the observation of legal deadlines, the composition of committees, the imposition of disciplinary measures that conflict with legislation, and the initiation of procedures by an authority without legal standing.

Considering all the factors analysed above, the value for the indicator 'Quality of disciplinary procedures for civil servants' is 3 and the value for the indicator 'Integrity of public servants' is 3 as well.

³³⁸ Reports are publicly disclosed on the ACA (<http://www.akk-ks.org/en/publications>).

³³⁹ From an analysis of responses to a 2017 Balkan Barometer Business Opinion Survey. Twenty-six percent of respondents totally agreed or tended to agree with the following statement: "It is common for firms in my line of business to have to pay some irregular 'additional payments/gifts' to 'get things done'".

³⁴⁰ Analysis of responses to a 2017 Balkan Barometer survey by a sample of citizens to the question: "In your contact or contacts with the institutions, have you or anyone living in your household paid a bribe in any form in the past 12 months?" in relation to any of the following institutions: police, registry and permit services, utilities, tax revenues, land services, any government agency. The result of adding all "Yes" answers is 4.4%.

³⁴¹ CSL Article 66.

³⁴² Regulation No. 04/2011.

³⁴³ Regulation No. 04/2011, Article 6.

³⁴⁴ CSL, Article 70, and Regulation No. 04/2011 on Disciplinary Procedures.

³⁴⁵ Interviews with members of disciplinary committees, and IOB, *Working Report 2016*, p. 56.

Quality of disciplinary procedures for civil servants

This indicator measures the extent to which the legal framework and the organisation of disciplinary procedures support individual accountability, professionalism and integrity of civil servants and safeguard civil servants against unfair and arbitrary disciplinary cases.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators

Points

Legal framework and organisation of disciplinary system

1. The adequacy of civil service legislation to uphold basic principles related to disciplinary procedures	2/4
2. Compliance between disciplinary procedures and essential procedural principles	6/6
3. Time limits for the administration to initiate disciplinary action and/or punish misbehaviour	1/2
4. Legislative safeguards for suspension of civil servants from duty	2/2

Performance of the disciplinary procedures

5. Disciplinary decisions confirmed by the courts (%)	0/4 ³⁴⁶
Total³⁴⁷	11/18

Integrity of public servants

This indicator measures the extent to which legislation, policies and organisational structures promote public sector integrity, whether these measures are applied in practice and how the public perceives the level of corruption in the public service.

The indicator does not address the internal administrative proceedings related to integrity, as that is covered by a separate indicator on disciplinary procedures.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators

Points

Legal framework and organisation of the public sector integrity

1. Completeness of the legal framework for public sector integrity	5/5
2. Existence of a comprehensive public sector integrity policy and action plan	2/4
3. Implementation of public sector integrity policy	2/3

Public sector integrity in practice and public perceptions

4. Use of investigations in practice	1/4
5. Perceived level of bribery in the public sector by businesses (%)	1/4
6. Bribery in the public sector by citizens (%)	2/4
Total³⁴⁸	13/24

³⁴⁶ Data was not provided by the administration.

³⁴⁷ Point conversion ranges: 0-3=0, 4-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

³⁴⁸ Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-15=3, 16-19=4, 20-24=5.

The basic legal framework on integrity in the public sector is in place. However, there are noticeable shortcomings related to conflicts of interest and whistle-blowing. The Anti-Corruption Agency coordinates the implementation of a wide-reaching integrity policy, but the problem diagnosis is not always sufficiently thorough or clear. Perception of corruption in the public sector is similar to other Western Balkans, but irregular payments and bribes are less frequent than the regional average. Disciplinary procedures present some flaws.

Key recommendations

Short-term (1-2 years)

- 1) The Government should reinforce KIPA so that it has adequate leadership, management and resources.
- 2) The Government should design measures to increase the number of women in senior civil service positions.
- 3) The Government should reinforce the merit principle in the selection of senior civil servants, reinforcing the role, the independence and the professionalism of the Criteria Assessment Commission, and ensuring full alignment of the secondary legislation with the law.
- 4) The Government should complete the job classification process, implement the salary system across the public service system and then introduce corrective measures to ensure internal fairness and coherence.

Medium- term (3-5 years)

- 5) The MPA should further reinforce adequate selection devices:
 - enhancing the capacity of selection panels to use objective selection methods and standards in external and internal competitions;
 - ensuring the anonymity of written tests in external and internal competitions;
 - supporting the use of structured selection interviews.



ACCOUNTABILITY

1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 – JUNE 2017

1.1. State of play

Basic mechanisms of organisational accountability in central government are mostly in place. The Constitution and relevant laws set out the fundamental principles of organisation and accountability of public bodies and managers. The Law on State Administration (LSA) establishes the general framework but does not create the basics for a rational system with clear lines of accountability, nor a mechanism to screen the establishment of new bodies. Also, the Assembly still supervises numerous public bodies, without the necessary tools or capacity to supervise them.

The most serious shortcomings of the Law on Access to Public Documents (LAPD), which sets out procedural guarantees for the right of access to public information and establishes the requirements for proactive dissemination of it, are still a wide range of grounds for denying access, and the absence of a supervisory body with the necessary authority to make compulsory prescriptions and impose sanctions for failure to disclose.

The Auditor General and the Ombudsperson have the necessary legislative support to carry out their mandate independently and operate in full compliance with international standards. Nevertheless, the effectiveness of the Ombudsperson's activities is undermined by a relatively low rate of implementation of its recommendations by state administration bodies.

The administrative judiciary lacks legislative clarity to manage the cases before it effectively. Its lack of resources does not permit it to handle the workload efficiently and the excessive backlog of cases inherited from the pre-reform era. The current situation does not guarantee access to administrative justice or effective judicial control over the executive branch.

There is no conceptually clear legal regulation on public liability, nor a procedure to instruct the applicant to apply for it in case of incurred damage. However, the right to seek compensation for damage caused by unlawful actions or omissions of administrative bodies is stated in the Law on Obligational Relationships (LOR), part of the civil law. No data on the matter exists to assess the practice in this area.

1.2. Main developments

The following section describes key changes in public administration for each key requirement³⁴⁹ and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement reports.

Key requirement: Proper mechanisms are in place to ensure accountability of state administration bodies, including liability and transparency.

In the area of governance of central government organisations, no major changes have occurred since the 2015 assessment. The number of bodies subordinate to the Office of the Prime Minister (OPM) was reduced by one when the State Agency for Archives was moved to the Ministry of Culture, Youth and Sports (MCYS).

There were also no changes in the area of access to public information. The 2017 Balkan Barometer survey of the population in Kosovo shows that, in general, citizens, as well as businesses, are satisfied with the timeliness of responses to public information requests (respectively 52% and 44%) and with

³⁴⁹ OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf.

the pertinence and completeness of the information (respectively 61% and 51%), representing some of the highest satisfaction levels in the Western Balkan region³⁵⁰.

The Assembly adopted the Law on General Administrative Procedures (LGAP) in 2016, and it became effective in June 2017. The Ministry of Public Administration (MPA) is now in a position to prepare the necessary amendments to many specific administrative laws and regulations to harmonise administrative procedures as much as possible with the new LGAP. According to Government plans, a new Law on Organization of Public Administration (LOPA), a new Law on the Civil Service (CSL), a Law on Salaries in Public Service, and a new Law on Administrative Disputes (LAD) should follow³⁵¹.

New laws on the Ombudsperson (2015) and the Auditor General and the National Audit Office (NAO) (2016) were adopted to enhance the profile of the institutions. The Ombudsperson has seen new tasks introduced in the field of anti-discrimination and gender equality, as well as for acting as the National Preventive Mechanism against torture and other cruel, inhuman and degrading treatments and punishments. The new Law on the Auditor General and the NAO has strengthened the operational, financial and functional independence of the institution.

No significant changes have taken place in the accountability area, which is reflected in the 2017 values. While the backlog of administrative court cases has increased over the past years, the clearance rate of the Basic Court of Pristina reached 100% for the first time in 2016, bringing the backlog down slightly (3.5%) in a year-to-year comparison to 2 216 cases (see Figure 1 on p. 87). This is due to the fact that there are now seven administrative judges serving in the Department for Administrative Cases.

Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports³⁵²

	2015 Baseline Measurement indicator	2015 value	2017 value
Qualitative	Extent to which the overall structure of ministries and other bodies subordinated to central government is rational and coherent.	1	1
	Extent to which the right to access public information is enacted in legislation and applied in practice.	3	3
	Extent to which the mechanisms are in place to provide effective checks and balances, and controls over public organisations.	3	3
	Extent to which public authorities assume liabilities and guarantee redress.	1	4 ³⁵³
Quantitative	Number of bodies reporting to the council of	27 ³⁵⁴	26 ³⁵⁵

³⁵⁰ Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>, <http://www.rcc.int/seeds/results/3/balkan-business-barometer>

³⁵¹ Concept Papers on the LOPA and CSL were adopted by the Government on 15 May 2017.

³⁵² OECD (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Kosovo.pdf.

³⁵³ There were no changes in the legal framework regarding public liability. The modified value is based on revised analysis of the laws.

³⁵⁴ There were 5 bodies under the Prime Minister and 22 under the Assembly (excluding constitutional bodies).

³⁵⁵ There are 4 bodies within the OPM and 22 under the Assembly (excluding constitutional bodies). The difference compared with the last report is a transfer of the State Agency on Archives from the OPM to the MCYS.

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	ministers, to the prime minister or to the parliament.		
	Share of public information requests refused in a given year by the supervisory authority.	Not applicable ³⁵⁶	Not applicable ³⁵⁷
	Share of oversight institutions' recommendations to state administrative bodies implemented within two years ³⁵⁸ .	31% ³⁵⁹	21% ³⁶⁰
	Number of complaints submitted to the administrative court in a given year.	2 568 ³⁶¹	2 216 ³⁶²
	Percentage of cases changed or returned for verification by the higher court.	28% ³⁶³	14.8% ³⁶⁴
	Backlog of administrative cases.	4 039 ³⁶⁵	5 192 ³⁶⁶

³⁵⁶ No such authority exists in Kosovo.

³⁵⁷ Ditto.

³⁵⁸ Relates to the Ombudsperson only.

³⁵⁹ Ombudsperson Institution (4 recommendations implemented, 13 not implemented).

³⁶⁰ Ombudsperson Institution, *Annual Report 2016*, No. 16, www.ombudspersonkosovo.org/repository/docs/Annual_Report_for_2016_OIK_978633.pdf (36 recommendations implemented, 36 not implemented and 101 pending implementation).

³⁶¹ Kosovo Judicial Council (KJC).

³⁶² KJC, data from 2016, Statistics of the Courts, Annual Report 2016, www.gjyqesori-rks.org/en/kjc/report/list/1.

³⁶³ KJC (of 376 cases resolved, 84 were returned and 21 were changed).

³⁶⁴ KJC, data from 2016, Statistics of the Courts, Annual Report 2016, www.gjyqesori-rks.org/en/kjc/report/list/1 (of 426 cases solved, 53 were abrogated and 10 were changed).

³⁶⁵ KJC (number of unresolved cases in the Basic Court of Pristina at the end of 2014).

³⁶⁶ KJC, data from 2016, Statistics of the Courts, Annual Report 2016, www.gjyqesori-rks.org/en/kjc/report/list/1.

2. ANALYSIS

This analysis covers five Principles for the accountability area, grouped under one key requirement. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators³⁶⁷, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

Key requirement: Proper mechanisms are in place to ensure accountability of state administration bodies, including liability and transparency.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

Principle 1: The overall organisation of central government is rational, follows adequate policies and regulations and provides for appropriate internal, political, judicial, social and independent accountability.

The Constitution of Kosovo and the LSA³⁶⁸ set out the general legal framework for state administration bodies and provide the general typology of central government bodies, including bodies subordinate to the ministries, and independent agencies.

However, two major issues in this area arise: 1) the regulation is not clear in providing the framework for setting up particular types of agencies for specific tasks and laying down the principles for their governance, and 2) many agencies are not subject to the regulation at all, being established by the Assembly and functioning on the basis of specifically designed, case-by-case laws.

Article 142 of the Constitution gives the Assembly the legal right to establish so-called independent agencies that exercise their functions autonomously from any other body or authority. But this Article should be seen in the broader context of the constitutional law principle of separation of powers, as defined in Article 4 of the Constitution. However, the Assembly has established more than 30 such agencies of a regulatory and executive nature. When new agencies are created, there are no criteria

³⁶⁷ OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

³⁶⁸ Law No. 03/L-189 on the State Administration, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2706>.

applied to achieve consistency with the existing agency types. Moreover, no criteria or guidelines exist to decide whether they should be governed by collegial or individual bodies, or on the appointment of members to the boards, their organisation, finance or recruitment or how they make decisions. Consequently, each law establishing an agency has regulated these aspects differently. The Assembly has not regulated which agency reports to which Assembly committee or how the reports should be presented and approved. Only one person in the Assembly serves as the focal point between the Assembly and the agencies. The large number of agencies under the Assembly hinders the Government's ability to effectively exercise its policies. As a result, the sub-indicator on the 'Number of subordinate bodies to the parliament' receives the value of zero.

In the case of government agencies, the Law defines two main types: central government bodies and independent government bodies³⁶⁹. The problems described above in relation to the agencies under the Assembly are also relevant for agencies under the Government. The LSA provides neither clear grounds for establishing government agencies nor the type of structure and criteria for the appointment of management bodies, decision-making, organisation, finance and recruitment independence, nor any other issue of importance on the organisation of agencies. According to the MPA's Review of Institutions and Agencies of the Assembly and Central Bodies of the Government, more than 20 agency concepts exist in the legislation³⁷⁰. There are 46 agencies under the Government. Reporting lines have not been defined in legislation for 13 of the 46 agencies. Consequently, it is unclear whether they report to their respective ministry or the Government, if at all. Twenty-six agencies do not make their reports publicly available, and 16 do not have websites³⁷¹. Overall, the regulatory and policy framework to manage central government institutions is poor, resulting in the value of zero on this sub-indicator.

Based on the analysis of five ministries³⁷² and their subordinated agencies, SIGMA observed that although the governance regimes of similar types of agencies vary considerably, their management by ministries – which is to a large extent institutionalised and adjusted to the existing legal situation – works rather well. Agencies enjoy a reasonable amount of independence in their day-to-day professional decision-making. Heads of agencies under a ministry are accountable to the minister, but also co-operate with the secretary general in regard to managerial and financial issues. Agencies must follow the Regulation on Internal Organization and Systematization of Job Positions and are governed by the CSL³⁷³.

The delegation of decision-making authority within ministries is not well developed. Legislation provides that the minister or secretary general must sign internal administrative decisions (such as approval of leave requests, training and business trips), but in practice, the preparation of such decisions is usually delegated to a lower level of management, such as the heads of departments. The value of this sub-indicator is zero.

No law establishes a performance management scheme that sets objectives and measures performance for the institutions under ministries or the Assembly. Annual planning and quarterly and annual reports are produced consistently. Annual plans and reports of the subordinated bodies consist of general objectives and detailed lists of activities planned and later executed, without targets or performance indicators. The format and presentation of information in the planning documents and reports vary significantly.

³⁶⁹ Law No. 03/L-189 on the State Administration, Articles 23 and 26, <http://bit.ly/1fpUvqM>.

³⁷⁰ MPA (2016), Review of Institutions and Agencies of the Assembly and Central Bodies of the Government, <http://map.rks-gov.net/getattachment/1d5a601b-3d46-4028-a5ad-b7ba07d9b109/Review-of-institutions-and-agencies-of-the-assembly.aspx>.

³⁷¹ *Idem*, p. 7.

³⁷² Ministry of Economic Development (MED), Ministry of Education, Ministry of Finance (MoF), Ministry of Interior (MoI) and Ministry of Justice (MoJ).

³⁷³ Law No. 03/L-189 on the State Administration, Articles 47 and 50, <http://bit.ly/1fpUvqM>.

Ministries may conduct inspections of a subordinated body, but there is no such instrument available for the Assembly. All subordinated bodies are required to provide information and documents if requested to do so by their parent organisation.

The MPA is trying to bring order to the current system. An analysis was conducted and presented to the Government, as a result of which, on 15 May 2017, the Government adopted concept documents for the new LOPA, as well as the CSL.

The value for the indicator 'Accountability and organisation of central government' is 1.

Accountability and organisation of central government						
This indicator measures the extent to which the governance model of central government upholds lines of accountability and contributes to increasing the state's capacity, which is defined as the ability of the administrative apparatus of the state to implement policies, deliver services to citizens and support decision makers with policy advice. This includes assessing the legal and institutional framework for overall organisation of central government, as well as its implementation in practice.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Policy and legal framework for central government organisation	
1. Clarity and comprehensiveness of official typology of central government bodies	1/5
2. Adequacy of the policy and regulatory framework to manage central government institutions	0/5
3. Strength of basic accountability mechanisms between ministries and subordinated bodies	5/5
4. Managerial accountability mechanisms in the regulatory and legislative framework	3/5
Central government's organisation and accountability mechanisms in practice	
5. Consistency between practice and policy in government re-organisation	0/4 ³⁷⁴
6. Number of public bodies subordinated to the parliament	0/4
7. Accountability in reporting between central government bodies and parent ministry	1/4
8. Effectiveness of basic managerial accountability system for central government bodies	2/4
9. Delegation of decision-making authority within ministries	0/4
Total³⁷⁵	12/40

The LSA does not provide a comprehensive and clear legislative framework for state administration. In particular, it is not adequate to regulate the heterogeneous landscape of public bodies. The large number of independent agencies under the Assembly makes it difficult for the Government to effectively exercise its policies. Internal accountability mechanisms function reasonably well in large bodies, but performance management is rudimentary, and the delegation of decision-making authority is not well developed.

³⁷⁴ Insufficient data provided to enable assessment.

³⁷⁵ Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-40=5.

Principle 2: The right to access public information is enacted in legislation and consistently applied in practice.

The Constitution guarantees the right of access to public documents³⁷⁶. The main law regulating this right is the LAPD. The Law on Office Work Administration (LOWA) facilitates the realisation of this right by establishing an order for the administration of official documents, from their initial recording to their final processing³⁷⁷. The LAPD specifies that applications for access may be submitted in any form, including e-mail³⁷⁸. The deadline for processing the request is 7 days and can be extended up to 15 days.

Grounds for refusal of granting access to documents are defined in Article 12 of the LAPD, which seems to define the exceptions to a greater degree than in the Constitution³⁷⁹. The information presented in Table 2 suggests that this is not a problem in practice, as few requests are refused. However, SIGMA focus group interviews with NGOs suggested that government data does not capture all refusals of information. Concrete examples were provided of the cases where information requests had not been recorded by information holders to whom a public information request had been submitted.

The main problem in this area is that there is no supervisory authority over the implementation of the LAPD. The LAPD stipulates that the OPM has a duty to collect and publish annual data on public information requests, to make recommendations for implementation of the LAPD and to prepare an action plan of measures to be taken by the institutions. It does not, however, grant the OPM the authority to enforce the right to access to public information through issuing binding guidelines and imposing sanctions on institutions failing to comply with the LAPD.

Table 2. Requests for public information handled by public administration bodies, 2015 and 2016

	2015	2016
Total number of public information requests	2 132	2 169
Full access to public information granted	1 960 (91.9%)	2 050 (94.5%)
Limited access to public information granted	116 (5.4%)	62 (2.9%)
Access to public information refused, including requests for public information not answered ("administrative silence")	56 (2.6%)	57 (2.6%)

Source: Comprehensive Report of Public Institutions on the Realisation of the Right to Access Public Documents, Annual Report 2016 (March 2017), Office of the Prime Minister.

The LAPD also foresees the assignment of units or officers who will be responsible for processing applications for access to documents, keeping records and preparing reports in all public institutions. By the end of 2016, 91 public bodies had appointed a contact person, but 21 public bodies had still not nominated a contact person³⁸⁰.

In general, respondents to the 2017 Balkan Barometer survey are fairly positive about the timeliness of responses to requests for information held by government agencies (44% of businesses and 53% of citizens are satisfied; more specifically, 63% of citizens who actually had been in contact with central

³⁷⁶ Article 41 of the Constitution on the Right of Access to Public Documents.

³⁷⁷ Law No. 04/L-184 on Office Work Administration, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8670>.

³⁷⁸ Law No.03/L-125 on Access to Public Documents, Article 6.1, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2724>.

³⁷⁹ For example, the LAPD provides for additional restrictions based on the need for protection of national and public security, privacy commercial and economic interests, economic and monetary policies and environmental issues.

³⁸⁰ Comprehensive Report of Public Institutions on the Realisation of the Right to Access Public Documents. Annual Report 2016, <http://kryeministri-ks.net/repository/docs/ANG.pdf>.

government services were satisfied)³⁸¹ and even more so about the pertinence and completeness of the information provided (58% of citizens in general and 61% of citizens who had been in contact with central government services, and 51% of businesses)³⁸².

The Ombudsperson is the only state institution authorised to help citizens if access to documents is refused³⁸³. Nevertheless, the Ombudsperson's powers are limited and do not compensate for the lack of a centralised institution responsible for imposing sanctions in cases of a failure to make information public or grant access to public documents without providing legal justification. Given the inefficiency of the administrative justice system in solving cases, and given the financial costs that a party might incur, referring cases to the court is not an effective mechanism.

The LOWA sets forth general requirements for document management. Every public institution is required to establish a Document Administration Unit with responsibility for registration, distribution and maintenance of documents. However, there is no institution responsible for guiding other government bodies³⁸⁴.

The LAPD obligates public institutions to provide on their websites a wide range of material on their activities, including standard information on missions and tasks, organisational structure, the legislation governing their functioning and a list of services provided with guidelines for application and timelines for processing of the applications, as well as their budget and annual reports³⁸⁵. According to law, responsible persons should be assigned to update and ensure access to the information posted on the website, ensuring its credibility.

SIGMA's review of the websites of selected institutions reveals that the transparency of government institutions remains a challenge. In particular, major planning documents (annual plans, annual budgets) and annual reports of government bodies are not publicly available on the institutions' websites (Table 3).

³⁸¹ Those who "Tend to agree" or "Totally agree" with the statement "Requests for information held by a government agency are granted in a timely manner".

³⁸² Those who "Tend to agree" or "Totally agree" with the statement "The information provided by a government agency is pertinent and complete".

³⁸³ Law No. 03/L-125 on Access to Public Documents, Article 17.

³⁸⁴ Law No. 04/L-184 on Office Work Administration, Article 3.

³⁸⁵ The requirements for the content of web pages is more precisely defined in the Administrative instruction (MPA) No. 01/2015 on the websites of public institutions: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=11007>.

Table 3. Proactive provision of general information on ministry websites

	Ministry of Finance	Ministry of Economic Development	Ministry of Education, Science and Technology	Ministry of Foreign Affairs	Ministry of Justice
Personnel diagram		✓	✓	✓	✓
Names and contact details of heads of organisational units	✓	✓	✓	✓	✓
Contact details with postal address and e-mail		✓	✓	✓	✓
Tasks and competencies of the institution	✓	✓			
Annual work plan of the institution for 2017					
Annual budget for 2017					
Annual report for 2015	✓				

Source: SIGMA review of the websites of the five ministries (April 2017).

Overall, the value for the indicator 'Accessibility of public information' is 3.

Accessibility of public information						
This indicator measures the extent to which the legal and institutional framework regarding access to public information is established. It also covers the practical application of these legal requirements, with particular focus on proactive disclosure of public information. In addition, this indicator measures procedural aspects of access to information (e.g. whether responses to public information requests are provided in a timely manner and access to information is granted either free of charge or at reasonable cost).						
Overall indicator value	0	1	2	3	4	5

Sub-indicators

Points

Legal and institutional framework for access to public information

1. Adequacy of legislation on access to public information	9/10
2. Comprehensiveness of monitoring on the implementation of legislation on access to public information	2/5

Citizens' level of access to public information

3. Proactivity in disclosure of information by state administration bodies on their websites (%)	2/5
4. Proactivity in disclosure of datasets by the central government (%)	4/5
5. Perceived accessibility of public information by the population (%)	1.5/2.5
6. Perceived accessibility of public information by businesses (%)	1.5/2.5
Total³⁸⁶	20/30

The Constitution, LAPD and Law on Office Work Administration adequately establish the main guarantees on the right of access to public information. Current shortcomings include a wide range

³⁸⁶ Point conversion ranges: 0-5=0, 6-10 =1, 11-15 =2, 16-20 =3, 21-25 =4, 26-30 =5.

of grounds for refusing access to public information and the lack of supervisory authority to issue prescriptions and impose sanctions for failure to disclose information. On the positive side, the percentage of requests for access to public information is high and the refusal rate low.

Principle 3: Functioning mechanisms are in place to protect both the rights of the individual to good administration and the public interest.

The legal framework for oversight institutions in Kosovo meets generally accepted international standards. The Ombudsperson and Auditor General are constitutional institutions mentioned in Chapter XII of the Constitution³⁸⁷, and their independence and impartiality are guaranteed by respective laws, with new versions passed in 2015 and 2016 respectively³⁸⁸.

The Constitution provides fundamental guarantees of independence and defines the Ombudsperson's areas of responsibility. The institution of the Ombudsperson enjoys organisational, administrative and financial independence in the implementation of tasks. The mandate is broad and includes both protection and promotion of the human rights. Several new tasks were defined in the new Law on the Ombudsperson, including dealing with issues related to discrimination and gender equality³⁸⁹, as well as acting as the National Preventive Mechanism against torture and other cruel, inhuman and degrading treatments and punishments³⁹⁰. All state administrative bodies are subject to scrutiny by the Ombudsperson. The Ombudsperson stated during an interview that there are no problems with getting necessary information from the administrative bodies, as the Law on the Ombudsperson provides the necessary authority³⁹¹. The Ombudsperson acknowledged that his recommendations do not receive adequate attention from the different governmental bodies and the Assembly. He also explained that in the final months of 2016 he sent a number of recommendations to the Assembly, whose non-implementation was quoted in the 2016 annual report³⁹².

The Ombudsperson manages his budget independently. It was significantly increased in 2013 and can be reduced from the previous level only with the Ombudsperson's consent³⁹³.

Table 4. Implementation of Ombudsperson recommendations

	Total number of recommendations	Recommendations implemented	Pending implementation	Unimplemented recommendations
2016	173	36 (21%)	101 (58%)	36 (21%)
2015	57	14 (25%)	7 (12%)	36 (63%)

Source: Annual Report for 2016, p. 188.

Basic tasks of the Auditor General and NAO are defined in the Constitution and guarantees in a new Law on the Auditor General and the NAO. The regulations concerning the work of Auditor General and the NAO follow international standards and the Mexico Declaration on Supreme Audit Institution Independence. The Law stipulates that the Auditor General is functionally, financially and operationally

³⁸⁷ Articles 132-135 and 136-138 of the Constitution.

³⁸⁸ Law No. 05/L-019 on the Ombudsperson (and Law No. 05/L-055 on the Auditor General and the NAO: www.zka-rks.org/repository/docs/LAW_NO_05_L-055_ON_THE_AUDITOR_GENERAL_AND_THE_NATIONAL_AUDIT_OFFICE_OF_THE_REPUBLIC_OF_KOSOVO_894910.pdf).

³⁸⁹ Law No. 05/L-019 on the Ombudsperson, Article 16, subparagraphs 13 and 14.

³⁹⁰ *Idem*, Article 17.

³⁹¹ SIGMA interview with the Ombudsperson on 6 April 2017.

³⁹² Annual Report of the Ombudsperson 2016, p. 190. www.ombudspersonkosovo.org/repository/docs/Annual_Report_for_2016_OIK_978633.pdf.

³⁹³ *Idem*, Article 35.2.

independent and shall not be subject to direction or influence by any person or institution³⁹⁴. The NAO shall publish on its website, among other information, all individual audit reports, the Annual Audit Report and the Annual Performance Report, including the audited financial statement³⁹⁵. The Auditor General shall present the Annual Audit Report to the Plenary Session of the Assembly and may at any time address the Assembly on any matter within the mandate of the NAO³⁹⁶. The NAO has unrestricted access to all information and explanations that it deems necessary for audit purposes³⁹⁷.

The NAO is financed through the central government budget and is independent in financial matters, but must follow the budget process as described in the Law on Public Financial Management and Accountability³⁹⁸.

In practice, the only serious concern is the low rate of implementation of the recommendations of the Auditor General. The Auditor General referred to this in the 2016 report and recommended that the Assembly request the Government to prepare an action plan on the implementation of recommendations of the NAO and report to the Committee on Oversight of Public Finances on the progress achieved³⁹⁹.

Table 5. Implementation of recommendations given by the National Audit Office for 2014 and 2015⁴⁰⁰

	Given recommendations	Implemented	%	Addressed (in process)	%	Not addressed	%
Total 2015	1 177	356	30	418	36	403	34
Total 2014	1 033	336	33	304	29	393	38

Source: Annual Performance Report of the National Audit Office 2016, p. 20: www.zka-rks.org/repository/docs/ZKA_RVP_2016_English_806367.pdf.

According to the 2017 Balkan Barometer survey, 59% and 48% of respondents find the Ombudsperson and NAO, respectively, to be politically independent. These figures are the highest in the Western Balkan region⁴⁰¹. The independence of courts and judges is established in the Constitution and the Law on Courts. There are no general deficiencies in legislation to restrict the independence of judges to decide freely all cases addressed to them. However, the courts and judges suffer from a low level of citizens' trust, which stood at 18.4% in April 2016⁴⁰².

Overall, the value for the indicator 'Effectiveness of scrutiny of public authorities by independent oversight institutions' is 4.

³⁹⁴ Law No. 05/L-055 on the Auditor General and the NAO, Article 4.1.

³⁹⁵ *Idem*, Article 7.

³⁹⁶ *Idem*, Article 23, subparagraphs 7 and 8.

³⁹⁷ *Idem*, Article 25.

³⁹⁸ *Idem*, Article 13.

³⁹⁹ Annual Performance Report of NAO 2016, p. 4: www.zka-rks.org/repository/docs/ZKA_RVP_2016_English_806367.pdf.

⁴⁰⁰ *Idem*, p. 19.

⁴⁰¹ Respondents who "Tend to agree" or "Totally agree" with the statements: "Do you agree that the ombudsman is independent of political influence?" and "Do you agree that the supreme audit institution is independent of political influence?"

⁴⁰² According to the United Nations Development Programme Kosovo Public Pulse Project, <http://www.ks.undp.org/content/kosovo/en/home/search.html?q=public+pulse+XI+>.

Effectiveness of scrutiny of public authorities by independent oversight institutions						
This indicator measures the extent to which there is a functioning system of oversight institutions providing independent and effective supervision over all state administration bodies. The strength of the legislative framework is assessed, as well as the effectiveness of oversight institutions in changing practices in the state administration and building trust among the population.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal and institutional framework for oversight institutions	
1. Legislative safeguards for the independence and adequate mandate of the ombudsman institution	10/10
2. Legislative safeguards for the independence and adequate mandate of the SAI	10/10
3. Legislative safeguards for the independence of courts and judges	10/10
Effectiveness of and public trust in oversight institutions	
4. Implementation of ombudsman recommendations (%)	0/8
5. Implementation of supreme audit institution recommendations (%)	2/8
6. Perceived independence of oversight institutions by the population (%)	3/5
7. Trust in oversight institutions by the population (%)	3/5
8. Perceived ability of oversight institutions and citizens to effectively hold the government accountable (%)	5/5
Total⁴⁰³	43/61

The Constitution and specific legislation enable strong and independent oversight of government institutions by oversight institutions. Also, the main legal safeguards for judicial independence and integrity are established. However, the level of implementation of the recommendations from the Ombudsperson and Auditor General remains low. Public trust in the Ombudsperson and the National Audit Office is high, but the judiciary does not enjoy a high level of trust.

Principle 4: Fair treatment in administrative disputes is guaranteed by internal administrative appeals and judicial reviews.

The Constitution and the Law on Courts⁴⁰⁴ set out the general framework of the judicial system, including the administrative justice system. There are no specialised administrative courts in Kosovo, and there is no plan to create any, because the role of administrative justice is not clearly conceptualised. Administrative justice is carried out in the first instance by the Department for Administrative Cases (DAC), operating only in the Basic Court of Pristina for the entire territory of Kosovo⁴⁰⁵. Only seven judges are currently appointed to this department, an increase from four in 2014/2015. There are also three judges in the Administrative Department of the Court of Appeal, which serves as the second-instance body in administrative cases.

The Law on Administrative Conflicts allows the affected parties to challenge final administrative individual decisions or the actions of public administration authorities before the administrative court, and provides a 30-day deadline for lodging complaints⁴⁰⁶. In practice, the state administration does not generally participate in proceedings, and there is no mechanism for making it participate, nor to

⁴⁰³ Point conversion ranges: 0-10 = 0, 11-20 = 1, 21-30 = 2, 31-40 = 3, 41-50 = 4, 51-61 = 5.

⁴⁰⁴ Law No. 03/L-199 On Courts: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2700>.

⁴⁰⁵ *Idem*, Articles 11 and 12.

⁴⁰⁶ Law No. 03/L-202 on Administrative Conflicts, Articles 2 and 27.

provide the documents required for adjudication. As a result, judges cannot collect evidence to decide on substance and often send cases back to the administration for reconsideration.

The Kosovo Judicial Council (KJC) regularly monitors the workload of the courts. The Basic Court of Pristina has a substantial backlog of administrative cases (with 5 192 cases at the end of 2016, 188 fewer than the 5 380 at the beginning of the year). This backlog is unlikely to be reduced substantially within the current resources available to the administrative justice system. Figure 1 shows that the clearance rate of the first-instance administrative court only recently reached 100%, but at the same time, two and a half times more cases were solved in 2016 compared to the previous year. Moreover, the legislation provides no effective mechanism against the excessive length of judicial proceedings in administrative cases, which results in the value of zero on this sub-indicator. The average time needed to solve a case is not likely to be reduced, given the lack of resources available to the administrative justice system. The calculated disposition time to complete administrative cases in the first-instance court is 788 days, resulting in a value of zero for this sub-indicator.

The new Law on Minor Offences, which took effect 1 January 2017⁴⁰⁷, stipulates different paths of appeal for minor offences, depending on the amount of the financial sanction involved. Based on the current logic for appeals in minor offence cases, the delegation of the decision-making power to administrative bodies in the majority of cases of minor offences is likely to flood the DAC with appeals against fines imposed by administrative bodies⁴⁰⁸, which means these cases will be dealt with by administrative judges.⁴⁰⁹

From the appellants' perspective, the appeals procedure in cases with smaller sanctions will delay justice. This is because when reviewing the appeal against the fine imposed by an administrative body, the judges at the DAC can only abolish the appealed decision and send the case back to the administrative body. They cannot amend the original decision or make a new decision for the administrative body⁴¹⁰.

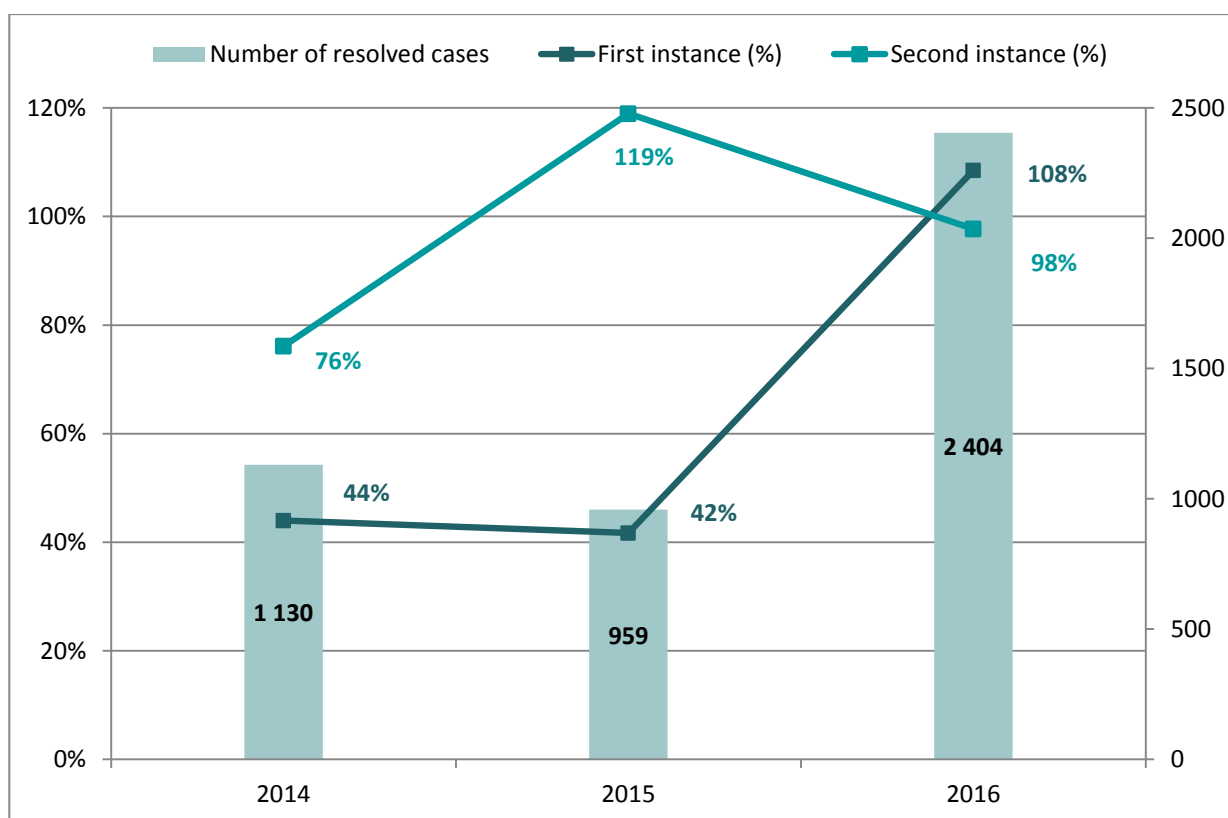
⁴⁰⁷ Law No. 05/L-087 on Minor Offences; <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12839>.

⁴⁰⁸ Draft Concept Paper for the Law on Administrative Disputes, p. 15, February 2017.

⁴⁰⁹ Fines of up to EUR 500 (or EUR 1 000 regarding legal persons) will be dealt with by administrative bodies and subsequently by administrative judges.

⁴¹⁰ Draft Concept Paper for the Law on Administrative Disputes, pp. 22-23, February 2017.

Figure 1. Clearance rate for the first- and second-instance administrative courts, 2014-2016



Source: Judicial Council of Kosovo Annual Report 2016, www.gjyqesori-rks.org/en/kjc/report/list/1.

Court cases are registered on paper, which reduces efficiency and the possibility of monitoring judges' caseloads. An electronic case management system has never been fully implemented, despite international donor assistance, but the Pristina Basic Court continues to request assistance. This explains the value of zero on the sub-indicator on the use of an electronic case-management system. From a citizen's perspective, only selected administrative court judgements are available to the public through a designated website, resulting in a value of zero for the sub-indicator of the public availability of court rulings.

The Kosovo Judicial Council (KJC) provides very limited training to administrative judges and little exposure to international best practices. Also, limited legal and technical assistance is provided to administrative judges.

Access to administrative adjudication is not prohibitive, since court fees in administrative cases are fairly low. Fees are determined by the Kosovo Judicial Council⁴¹¹ and depend on the value of the dispute. Applicants of limited means may be exempted from court fees at the court's discretion. However, Article 62 of the Law on Administrative Conflicts (LAC) stipulates that in an administrative conflict, the opposing parties are responsible for their own expenses. Since legal aid is provided in administrative matters only for the preparation of complaints, this significantly reduces access to justice.

Access to administrative justice is undermined by the courts' inefficiency, which is likely to reinforce the very low level of public trust in the courts and administrative justice. In April 2016, 18.4% of citizens trusted the courts, a figure 4.5 percentage points higher than in September 2014. This is on a par with the trust rating of the prosecutor's office, which in 2014 stood at 16.9%, the two having fluctuated at roughly the same level over the years. To address these problems, the MPA recently prepared a Concept Paper for the Law on Administrative Disputes, which has undergone public

⁴¹¹ Administrative Instruction on Unification of Court Fees, No. 02/2008.

consultation⁴¹². However, this should have been assigned to the Ministry of Justice (MoJ), which is charged with ensuring an efficient, independent and impartial judicial system that is safe and equitable for all citizens.

Overall, the value for the indicator 'Fairness in handling of administrative judicial disputes' is 3.

Fairness in handling of administrative judicial disputes						
This indicator measures the extent to which the legal framework and the organisation of courts support fair treatment in administrative judicial disputes, examining both the legislative and organisational preconditions and the actual outcomes, in terms of case flow and public perceptions of independence.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal framework and organisation of the judiciary	
1. Adequacy of the legislative framework for administrative justice	5/6
2. Accessibility of administrative justice	2/4
3. Effectiveness of remedies against excessive length of proceedings in administrative cases	0/2
4. Use of an electronic case-management system	0/1
5. Public availability of court rulings	0/2
6. Organisation of judges handling administrative justice cases	1/5
Performance of the administrative the justice system	
7. Perceived independence of judicial system by the population (%)	3/5
8. Calculated disposition time of first-instance administrative cases	0/5
9. Clearance rate in first-instance administrative courts (%)	5/5
10. Cases returned for retrial by a higher court (%)	5/5
Total⁴¹³	21/40

The fundamental principles of judicial appeal in administrative courts are established in law, but in practice the administrative justice system shows a worrying lack of comprehensive regulations and number of judicial staff (both judges and legal assistants), administrative means and training to fulfil their duties, as well as a knowledgeable leadership. The right to access to and fair treatment in administrative courts is clearly not guaranteed in Kosovo. The current backlog of cases has already caused unacceptable delays and lengthy court proceedings.

Principle 5: The public authorities assume liability in cases of wrongdoing and guarantee redress and/or adequate compensation.

There is no conceptually clear legal regulation on public liability. The Constitution does not establish a general principle of public liability in cases of damaging acts or omissions by public authorities, nor is a coherent and comprehensive statutory public liability regulation in place. However, the right to seek compensation for damage caused by unlawful actions or omissions of administrative bodies is laid out in the LOR⁴¹⁴, part of the civil law. Furthermore, in several other laws, some provisions⁴¹⁵ refer to this

⁴¹² A public consultation event was held on 19 May 2017 in Pristina.

⁴¹³ Point conversion ranges: 0-6 = 0, 7-13 = 1, 14-20 = 2, 21-27 = 3, 28-34 = 4, 35-40 = 5.

⁴¹⁴ Law on Obligational Relationships, No. 04/L-077.

⁴¹⁵ Law on the State Administration, Article 13; Law on Administrative Procedure, Article 3; Law on Civil Service, Article 65; Law on Administrative Conflicts, Articles 17, 26, 30 and 46; Law on General Administrative Procedure, Articles 57.4, 59, 66.2 and 66.3, and 155.

issue, but they set out only a few examples of areas of public liability, while not containing any systematic procedural provisions to assist persons seeking compensation.

In principle, the general system of compensation for damages is established in the LOR. The reference to use of civil legislation on this topic is in Article 46, subparagraph 5, of the LAC, which states that in case of adjudication that annuls the contested administrative act, the court shall instruct the claimant to implement his/her request (on damages) in the contentious procedure. This means that in such cases, the civil law, and especially the LOR, should be the basis for resolving the claim for compensation. The LOR states in Article 136 that any person who inflicts damage to another shall be obliged to reimburse them. It also defines in Article 137 what constitutes damage, such as diminution of property, lost profits, infliction of physical or mental distress or fear on another person, and encroachment upon the reputation of a legal person. Finally, the LOR states a reasonable time limit of three years for submitting a public liability request.

Insufficient data is available on this subject, which results in values of zero both for the sub-indicator on the application of the public liability mechanism in the court in practice and for the proportion of entitled applicants receiving payments. The Ministry of Finance collects general data on court rulings to pay compensation by the state authorities. The data is not classified according to types of cases, however, and it also includes compensation that is paid as a result of contractual obligations of the state that do not fall within the scope of public liability. Additionally, administrative judges are not prepared to deal with this issue. Under the current procedural set-up, compensation claims are handled (if the necessary preconditions are fulfilled) by civil judges, according to civil law provisions and principles of liability and compensation of damages⁴¹⁶.

The MPA has prepared a Concept Note on the Non-Contractual Liability of Public Administration, which has not yet been approved by the Government.

Overall, the value for the indicator 'Functionality of the public liability regime' is 2.

⁴¹⁶ Interviews with the Ministry of Justice and Basic Court of Pristina.

Functionality of public liability regime						
The indicator measures the extent to which there is a functioning system guaranteeing redress or compensation for unlawful acts and omissions of public authorities. It examines the strength of the legislative framework for public liability and whether it is applied in practice.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal framework for public liability	
1. Comprehensiveness of the scope of public liability	1/1
2. Coverage of the public liability regime to all bodies executing public authority	1/1
3. Non-discrimination in seeking the right to compensation	1/1
4. Efficiency and fairness of the procedure for seeking compensation	3/3
Practical implementation of the right to seek compensation	
5. Application of the public liability mechanism in the court in practice	0/3
6. Proportion of entitled applicants receiving payments	0/3
Total⁴¹⁷	6/12

The general system of compensation for damages is established in the LOR, part of the civil legislation. Existing general provisions in legislation give civil courts the opportunity to resolve public liability cases, but in practice there are very few such cases. Sufficiently disaggregated data on compensation for damages is not available, which makes it impossible to assess the functioning of the current system in practice.

Key recommendations

Short-term (1-2 years)

- 1) The Government should prepare, in close co-operation with the Assembly, a programme for the reform of agencies and prepare amendments to the existing legislative framework for agencies. It should also amend the Law on Organisation of Public Administration and other legislation (the Civil Service Law and the Law on Salaries), to create a common institutional and managerial framework for all agencies.
- 2) The Government should conduct a comprehensive *ex post* assessment of the Law on the Right to Information, and subsequently propose amendments relating primarily to: a) the establishment of a supervisory authority to issue prescriptions and guidelines, and to impose sanctions for failure to disclose public information; b) enhancing proactive disclosure of public information; and c) administrative liability mechanisms.
- 3) The Assembly, the Ombudsperson Institution and the National Audit Office, in co-operation with the Government, should develop mechanisms to increase the level of recommendations implemented.
- 4) The Ministry of Justice (MoJ), in co-operation with the KJC, should urgently develop and implement an action plan to reduce the backlog of administrative cases in the first-instance court. Temporarily or permanently increasing the number of administrative judges so they can successfully perform their duties and reduce the backlog of cases should be considered. Also, technical modernisation of courts is needed, especially by introducing a modern, digital court information system.

⁴¹⁷ Point conversion ranges: 0-2 = 0, 3-4 = 1, 5-6 = 2, 7-8 = 3, 9-10 = 4, 11-12 = 5.

- 5) To improve accessibility to administrative justice, the Government should propose an amendment to legislation to compensate the expenses of the winning party of an administrative case.

Medium-term (3-5 years)

- 6) The Government should prepare amendments to the existing legislative framework for the management of ministries, extending the scope of managerial autonomy of heads of internal units and secretaries general for day-to-day management of the institution. This scheme should be bolstered with provisions ensuring accountability of those civil servants for the decisions made.
- 7) The Government, ministries and the Assembly should strengthen their capacities to actively control and oversee the performance of semi-independent institutions and agencies accountable to the Assembly or the Government. Performance management frameworks should be introduced governing the relationship between ministries and agencies. This would include operational objectives and performance indicators for the agencies, as well as key performance indicators for the heads of these bodies or their boards, to allow for effective assessment at the leadership level. To improve oversight and steering capacity, more analytical staff should be engaged, and better-established coherent procedures for management and reporting of agencies should be developed.
- 8) The Government should agree on and prepare the necessary legislation on non-contractual liability of state administrative bodies and start to implement it in administrative and judicial practice. The Government should also introduce mechanisms to monitor court cases that result in liability for the State, with the goal of improving administrative procedures and decisions, and thus reducing future cases of public liability.

5

Service Delivery

SERVICE DELIVERY

1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 – JUNE 2017

1.1. State of play

The strategic framework for service delivery is in place, but does not clearly articulate a Government vision for service delivery transformation. It currently consists of the Strategy for Modernisation of Public Administration 2015-2020 (PAMS) and a Better Regulation Strategy, which aims to reduce administrative burdens. The Strategy on Electronic Governance 2016-2020 has been prepared by the Government, but has not been approved.

The capacity of the Ministry of Public Administration's (MPA) to steer reform is weak, due to a shortage of staff and unclear distribution of responsibilities. As a result, monitoring implementation of the reforms in the area of service delivery has not been adequate. Digitisation is in the early stages. Central electronic identification (eID) and electronic signature infrastructure have been installed, the policy framework for interoperability is established and a technical solution is being prepared, with implementation planned to begin in 2017.

Quality management tools are not promoted in the state administration. Initial steps have been taken to introduce central tools to collect citizen and business feedback on service delivery, but the citizen feedback collection tool, the E-box, provides little quality or usable feedback.

No standards for service delivery are in effect. The MPA is finalising an inventory of central government services, and should serve as a basis to plan the next steps for revamping service delivery.

1.2. Main developments

The following section describes key changes in the public administration for the key requirement⁴¹⁸ and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement reports.

Key requirement: The public administration is citizen oriented; the quality and accessibility of public services is ensured.

The major development in this area has been the adoption of Law No. 05/L-031 on General Administrative Procedures⁴¹⁹ (LGAP), which came into force in June 2017. While its impact is yet unclear, it is a major improvement on the previous law, as it contains all the fundamental principles of administrative law. Actions to support its implementation are still in the planning phase.

The PAMS was adopted in September 2015⁴²⁰. The Strategy covers the priorities of PAR, including reforms in civil service, public service delivery, accountability and public financial management. To complete the strategic framework, the Strategy on Electronic Government 2016-2020 has been prepared, but not adopted, by the Government.

Some agencies have made valuable progress in improving service delivery, such as the Kosovo Business Registration Agency and the Tax Administration, but this has been achieved at the initiative of the agencies themselves, without central management or guidance.

The 2017 Balkan Barometer survey of the population in Kosovo shows that satisfaction with public

⁴¹⁸ OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf.

⁴¹⁹ Official Gazette, June 2016.

⁴²⁰ Strategy for Modernisation of Public Administration, approved on 25 September 2015, <http://bit.ly/1WA5Rse>.

services in general remains rather low (23% of citizens and 21% of businesses), while satisfaction with administrative services is higher (34% of citizens)⁴²¹.

Although progress made since 2015 has been moderate, most indicators below show improvement. The most notable improvements have been in the share of citizens declaring personal income tax electronically (from 1% to 97%); the Business Registration Agency having reduced the average number of days needed to set up a business (from 11 to 1.6⁴²² days); and the share of institutions where customer satisfaction surveys are conducted on a regular basis (from 0% to 35.4%). Time spent on issuing personal IDs has been reduced from 7 days to 6. The policy framework for providing citizen-oriented services, as well as legislation in this area, has also improved.

No significant progress has been made in central co-ordination in the service delivery area. Even though the MPA is formally responsible for the area, co-ordination activities are not being undertaken in practice due to a lack of staff and to the fact that responsibilities have not been clearly assigned within the MPA. No progress has been made in some of the service delivery-related sub-areas, such as introducing service delivery standards and quality assurance mechanisms, or ensuring access to government buildings for people with special needs. Regarding quality assurance mechanisms, the Kosovo Institute of Public Administration (KIPA) has conducted introductory training on the Common Assessment Framework (CAF) methodology, but there have been no follow-up actions.

The citizen feedback collection tool (E-Box) has been launched in 28 central government institutions to encourage after-service expressions of opinion on a three-point scale.

Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports⁴²³

	2015 Baseline Measurement indicator	2015 value	2017 value
Qualitative	Extent to which citizen-oriented policy for service delivery is in place and applied.	1	2
	Extent to which policy and administrative preconditions for e-service delivery are applied.	1	2
	Extent to which the legal framework for good administration is in place and applied.	2	2
Quantitative	Expenditure on general public services as a share of gross domestic product.	5.7% ⁴²⁴	2.8 ⁴²⁵

⁴²¹ Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>, <http://www.rcc.int/seeds/results/3/balkan-business-barometer>. "Satisfied" covers the responses "Tend to be satisfied" and "Strongly satisfied" to the questions "How satisfied are you with public services in general?" "How satisfied are you with administrative services from central government?" and "How satisfied are you with public services for businesses?".

⁴²² The Kosovo Business Registration Agency has made further progress in reducing the time needed to register a business from 6 to 1.6 days since 2016, the date used in the World Bank Group *Doing Business 2016* report, as noted in Table 1.

⁴²³ OECD (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Kosovo.pdf.

⁴²⁴ Ministry of Finance (MoF) Annual Financial Report 2014.

⁴²⁵ MoF Annual Financial Report 2016.

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	Proportion of institutions using quality assurance tools and techniques (e.g. European Foundation for Quality Management, Common Assessment Framework and other international standards).	0.8% ⁴²⁶	0% ⁴²⁷
	Average time needed to acquire a personal identification document (passport or ID card) after submitting the application.	7 days ⁴²⁸	6 days ⁴²⁹
	Share of institutions where customer satisfaction surveys are conducted on a regular basis (at least every two years).	0%	35.4% ⁴³⁰
	Average number of days needed to set up a business.	11	6 ⁴³¹
	Average cost of setting up a business ⁴³² .	1.2% ⁴³³	1.1% ⁴³⁴
	Share of citizens who submitted paperless/electronic/digital income tax statements last year.	70% ⁴³⁵	96.75% ⁴³⁶
	Share of companies that sent their tax declarations using the Internet.	85.5% ⁴³⁷	93.77% ⁴³⁸

⁴²⁶ One institution, the Kosovo Institute of Public Administration, had implemented the CAF and International Organization for Standardization (ISO) standards.

⁴²⁷ Information on the use of quality assurance tools and techniques is not collected by the administration. In comparison to the last period, the one institution that used CAF has not applied it recently, and no other government body reported taking up the quality management tools.

⁴²⁸ Information provided by the Ministry of Internal Affairs.

⁴²⁹ Information provided by Civil Registration Agency.

⁴³⁰ The denominator is based on the list of state administrative bodies subordinated to the Council of Ministers, the Prime Minister and the Parliament: 46 agencies under the Government and 33 institutions under Parliament. Of these, the e-Box user feedback tool is used by 28 central government institutions.

⁴³¹ Information from World Bank Group (2016), *Doing Business 2016*, International Bank for Reconstruction and Development/World Bank, Washington, DC.

⁴³² Percentage of income per capita.

⁴³³ World Bank, *Doing Business 2014*.

⁴³⁴ Percentage of income per capita. Information from World Bank, *Doing Business 2016*.

⁴³⁵ Relates to annual personal income tax declarations; data provided by Kosovo Tax Administration.

⁴³⁶ Information provided by Tax Authority via e-mail communication of 7 April 2017.

⁴³⁷ Relates to annual corporate income tax declarations; data provided by the Kosovo Trust Agency.

⁴³⁸ Data submitted by the Tax Administration.

2. ANALYSIS

This analysis covers four Principles for the service delivery area, grouped under one key requirement. It includes a summary analysis of the indicator used to assess each Principle, including sub-indicators⁴³⁹, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

Key requirement: The public administration is citizen-oriented; the quality and accessibility of public services is ensured.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

Principle 1: Policy for citizen oriented state administration is in place and applied.

The policy framework to improve public administration and service delivery is largely established, with the PAMS being the main strategic document in the service delivery area; the new Strategy on Electronic Government 2016-2020 is in the finalisation stage and should be adopted in 2017⁴⁴⁰. However, the two strategies are poorly synchronised: whereas the PAMS recognises the creation of one-stop shops as one of the cornerstones of service delivery improvement⁴⁴¹, the Strategy on Electronic Government does not even mention one-stop shops, except for the state portal. In addition, the Electronic Communications Sector Policy – Digital Agenda for Kosovo 2013-2020⁴⁴² (the Policy) focuses on developing information and communications technology (ICT) infrastructure, transforming government services into digital public services and enhancing citizens' ability to use ICT tools. The Policy was compiled by the Ministry of Economic Development (MED), but according to the Agency for Information Society (AIS), its section on digital public services is no longer considered relevant for the current strategic framework after the adoption of the PAMS⁴⁴³ and the preparation of the Strategy on Electronic Government 2016-2020.

⁴³⁹ OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

⁴⁴⁰ Interview with the Agency for Information Society, 27 March 2017.

⁴⁴¹ Strategy for Modernisation of Public Administration 2015-2020, p. 25.

⁴⁴² Electronic Communication Sector Policy – Digital Agenda for Kosovo 2013-2020, March 2013.

⁴⁴³ Interview with the AIS, 27 March 2017.

Leadership and co-ordination to support service delivery reform are lacking, and digital transformation is to a large extent donor-driven. The MPA is responsible for co-ordinating the service delivery area, and its subordinate institution, the AIS, is responsible for co-ordinating the reform of e-service delivery. In practice, however, there is very little co-ordination between the two institutions.

Responsibilities for service delivery co-ordination within the MPA are not clearly assigned to any specific unit, nor are resources sufficient to follow up on implementation of the service delivery agenda. The AIS is struggling with funding to start the planned activities and is not goal-driven in e-services delivery improvement for citizens. Interviewees from other authorities claim they do not know what is happening at the central co-ordination level in the service delivery area⁴⁴⁴.

Due to lack of leadership, other public institutions are either waiting for guidance or are implementing solutions based on their own experience and skills, without relying on central infrastructure. For example, the Kosovo Business Registration Agency has been successfully implementing tools to register businesses online, but has not been using the central eID tools to authenticate users or to provide an electronic signature option in the application process, particularly because it is not fully aware of the status of these tools⁴⁴⁵. The Agency has worked around this by instead enabling online uploading of a scanned business application during the submission process (the original must be delivered to the authority when the candidate collects the new business documents). This has resulted in a reduction in the average number of days needed to set up a business from 11 (2015) to 1.6⁴⁴⁶ (2017). Many other institutions are not reforming their services, however, citing that without central tools in place (such as an interoperability solution, eID tools and a government portal) they cannot start their reforms, even though the first steps could be taken to review procedures or introduce digital applications to reduce the need for in-person contact during the service delivery process.

The way in which the Law on Services was prepared further illustrates the ambiguous distribution of responsibilities in this area⁴⁴⁷. Although the Law was prepared by the Ministry of Trade and Industry, the responsibility for the sector lies with the MPA. There was no co-operation between the two ministries to ensure that all the relevant issues would be covered by the Law while drafting it.

A policy for administrative simplification is in place (the Better Regulation Strategy 2017-2021), but the Regulatory Impact Assessment is at an early stage of development. Legislative proposals are not at present reviewed before they are presented in Government sessions to assess their potential impact, to avoid adding to the administrative burden for businesses.

Overall, the situation has moderately improved since the assessment in 2015. The value for the indicator 'Citizen-oriented service delivery' is 3.

⁴⁴⁴ SIGMA interviews with the Kosovo Business Registration Agency (29 March), the Civil Registration Agency (28 March), and Tax Administration (28 March).

⁴⁴⁵ Interview with the Kosovo Business Registration Agency, 29 March 2017. In an interview on 28 March 2017 with the Civil Registration Agency, it was established that the ID cards currently issued by the Government already include a chip with electronic certificates for authentication and e-signature.

⁴⁴⁶ Kosovo Business Registration Agency.

⁴⁴⁷ Draft Law on Services intended to transpose the EU Services Directive, <https://ec.europa.eu/growth/single-market/services/services-directive/>.

Citizen-oriented service delivery						
This indicator measures the extent to which citizen-oriented service delivery is defined as a policy objective in legislation or official government plans and strategies. It furthermore measures the progress of implementation and evaluates the results achieved, focusing on citizens and businesses in the design and delivery of public services. Implementation and results are evaluated using a combination of quantitative and perception-based metrics.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Policy framework for citizen-oriented service delivery	
1. Existence and extent of application of policy on service delivery	8/8
2. Existence and extent of application of policy on digital service delivery	8/8
3. Existence of central co-ordination for digital government projects	2/4
4. Established policy on administrative simplification	6/12
Performance of citizen-oriented service delivery	
5. Perceived quality of public service delivery by citizens (%)	2/6
6. Renewing a personal identification document	1.5/6
7. Registering a personal vehicle	1.5/6
8. Declaring and paying personal income taxes	4/6
9. Perceived quality of public service delivery and administrative burdens by businesses (%)	2/6
10. Starting a business	4.5/6
11. Obtaining a commercial construction permit	2/6
12. Declaring and paying corporate income taxes	4/6
13. Declaring and paying value added taxes	5/6
Total⁴⁴⁸	50.5/86

The PAMS 2015-2020 defines the strategic framework for service delivery, but it does not articulate enough to provide a comprehensive vision for the area. The new Strategy on Electronic Government 2016-2020 has been prepared for the Government to adopt. Because the leadership and co-ordination needed to support service delivery reforms has not been sufficient, other public institutions have either waited for guidance or have implemented their own solutions. Good examples of service improvement exist, such as the Kosovo Business Registration Agency's successful implementation of tools to register businesses online. The Better Regulation Strategy 2017-2021 sets policy direction for administrative simplification, but its implementation has been problematic, and has produced few results.

Principle 2: Good administration is a key policy objective underpinning the delivery of public service, enacted in legislation and applied consistently in practice.

The Parliament adopted the new LGAP in June 2016, but since it has not yet taken effect, its impact is unknown. The new LGAP recognises all the major principles of good administrative behaviour, such as: proportionality; equality and non-discrimination; objectivity and impartiality; legitimate and reasonable expectations; open administration; de-bureaucratisation and efficiency of administrative proceedings; provision of information and active assistance; minimising procedural costs; and the right to legal remedies.

⁴⁴⁸ Point conversion ranges: 0-14=0, 15-28=1, 29-42=2, 43-56=3, 57-70=4, 71-86=5.

Sixty-two percent of citizens that had been in contact with central government services the past year reported that they perceive administrative procedures as efficient, according to the 2017 Balkan Barometer survey. This is the highest level of satisfaction in the Western Balkans⁴⁴⁹.

No specific activities were initiated by the MPA to support implementation of the new LGAP until May 2017, when a donor-funded project was launched. The project aims to introduce new by-laws, compiling a list of special regulations that need review; reviewing and thoroughly analysing existing special regulations to identify the changes needed; and providing training to different target groups.

No systematic training on a broad scale has so far been provided, because the individuals who need training have not yet been identified. According to its mandate, KIPA is responsible for conducting the training, but budget constraints have prevented the initiation of activities⁴⁵⁰. Furthermore, there has been no attempt to raise public awareness of the new Law.

The value for the indicator 'Fairness and efficiency of administrative procedures' is 2.

Fairness and efficiency of administrative procedures						
The indicator measures the extent to which the regulation of administrative procedure is compatible with international standards of good administration and good administrative behaviour. This includes both the legal framework for administrative procedure and its practical applications.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Legal framework for administrative procedure	
1. Existence of legislation on administrative procedures of general application	3/3
2. Adequacy of law(s) on administrative procedures to ensure good administration	3/7
Fairness and efficiency of administrative procedures	
3. Perceived efficiency of administrative procedures in public institutions by citizens (%)	3/4
4. Repeals of or changes to decisions of administrative bodies made by the administrative courts (%)	0/4 ⁴⁵¹
Total⁴⁵²	9/18

The new LGAP adopted in June 2016 recognises all the major principles of good administrative behaviour, but it has not yet come into effect. The MPA, as the responsible institution, has just started a project to provide support for implementation of the LGAP. So far, no general awareness-raising events to educate the public have been held. Nevertheless, citizens hold the efficiency of administrative services in high regard.

Principle 3: Mechanisms for ensuring the quality of public services are in place.

No central quality-assurance framework is in place, nor has clear responsibility been assigned to introduce such a framework. KIPA conducted introductory training on the CAF in 2015-2016, but since responsibility for managing this area is not clear within the MPA, there has been no concrete follow-up⁴⁵³.

⁴⁴⁹ Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC).

⁴⁵⁰ Interview with MPA, 27 March 2017.

⁴⁵¹ Insufficient data provided to enable assessment.

⁴⁵² Point conversion ranges: 0-3=0, 4-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

⁴⁵³ Interview with KIPA, 29 March 2017.

Employing user engagement and feedback tools is in the initial stages. The MPA finalised its e-Box project in 2016, and electronic, touch screen-enabled feedback devices were installed in 35 public institutions that provide over-the-counter public services (28 in state administration bodies). The system allows feedback to be given on services delivered in specific offices, but its design does not lead to pertinent and usable feedback from users. For instance, the system permits feedback to be given multiple times and accepts comments on any service listed, not necessarily that received by the contributor. The quality of the feedback is therefore not very reliable, and the AIS does not follow up on feedback with the public authorities equipped with e-Boxes. A few of the authorities concerned report that they do not know who receives the information or how it is used⁴⁵⁴.

A policy framework for interoperability has been established⁴⁵⁵, but a technical integration solution has not yet been introduced, due to budgetary constraints. Funds have been allocated to the AIS, however, to initiate the first pilot project. The government portal has not been created yet, as the AIS plans to start its development only after the technical solution for interoperability is in place. Even without central interoperability integration, all the main registries⁴⁵⁶ are digitally accessible, and three are already connected with each other and are exchanging data, to reduce the administrative burdens⁴⁵⁷.

ID cards are issued with certificates for electronic authentication and an e-signature, making them “smart”. The Ministry of Internal Affairs provides information about how to use the ID card to citizens who can download middle-ware supporting digital services of the service providers who have incorporated this option into their websites. The Ministry has also created a service for integrating the authentication and signature functionality into digital public services. The Civil Registration Agency organises awareness-raising and instructional events for both public and private sector bodies, to facilitate its uptake. However, only a couple of examples were provided of digital services that would have benefited from such enablers.

Standards to improve service delivery quality have not been introduced, because the AIS has been focusing on hardware and software (e.g. e-mail) usage by public institutions, in other words, only the basic government electronic infrastructure. In addition, the re-use of already existing data, the so-called “only once” policy and other key concepts such as standards and guidelines for ensuring high usability and accessibility of in-person and e-services are not in place. That said, the “only once” principle is one of the priorities under the interoperability framework⁴⁵⁸.

The AIS has been compiling the list of all administrative services, which is in the final stages. The initial data include a list of services, service provider contact details, basic information about using the service and its legal basis. No metrics, such as volume of transactions, cost per service transaction, satisfaction rates, complaints or digital uptake, are currently included in the public services catalogue.

Best practices in the service delivery area are not shared. So although some institutions have found ways to work around the missing central components, others have had no opportunity to learn from their experience because in the service delivery area, contact among institutions is not facilitated, and experience is not shared. For example, other institutions could learn from the Kosovo Business Registration Agency’s success in implementing digital tools, resulting in a reduction of the average time for registering a business from 57 days in 2011 to 1.6 days in 2017.

The value for the indicator ‘Existence of enablers for public service delivery’ is 1.

⁴⁵⁴ Interviews with the Kosovo Business registration Agency (29 March 2017) and Civil Registration Agency (28 March 2017).

⁴⁵⁵ Government Decision No. 08/115 from 13 February 2013 on the Approval of Interoperability Framework of the Republic of Kosovo.

⁴⁵⁶ The Civil Register, Business Register, Vehicle Register, and the Land Register.

⁴⁵⁷ Interviews with the Kosovo Business registration Agency (29 March), Civil Registration Agency (28 March) and Ministry of Environment and Spatial planning (29 March).

⁴⁵⁸ Chapter 3, Principle 2: User Centricity, in the Interoperability Framework of the Republic of Kosovo.

Existence of enablers for public service delivery						
This indicator measures the extent to which citizen-oriented service delivery is being facilitated by the existence and implementation of enabling tools and technologies, such as public service inventories, interoperability frameworks, digital signatures and user feedback mechanisms. It evaluates how effective the central government is in establishing and using those tools and technologies to improve the design and delivery of public services.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Central and shared mechanisms to better enable public service provision are in place	
1. Central monitoring of service delivery performance	0/3
2. Interoperability infrastructure in place	0.5/3
3. Existence of common standards for public service delivery	0/3
4. Legal recognition and affordability of electronic signatures	2/3
Performance of central and shared mechanisms for public service delivery	
5. Use of quality management tools and techniques	0/4
6. Adoption of user engagement tools and techniques	3/4
7. Interoperability of basic registers	2/4
Total⁴⁵⁹	7.5/24

Quality management in public administration is not promoted by the Government. Employing user engagement and feedback tools is only in the early stages, but a customer feedback collection solution (the e-Box) was recently installed in 71 government offices. The policy framework for interoperability has been put in place, but the technical solution has not yet been developed. Nevertheless, the main registries are digitally accessible and are already connected and exchanging data with one another. Compilation of the public services list is almost complete.

Principle 4: The accessibility of public services is ensured.

There is no general policy on accessibility to public services for people with disabilities, but the regulatory framework to ensure accessibility to public buildings is sound, and proper accessibility standards are referred to in the Administrative Instructions⁴⁶⁰ under the Law on Construction⁴⁶¹. This sub-legal act gives specific guidelines for implementing accessibility standards to ensure accessibility to buildings for people with disabilities, but practical enforcement is weak.

The majority of public buildings, even new ones, are not accessible for people of limited mobility⁴⁶². In some cases, accessibility solutions have been implemented (e.g. ramps), but they do not follow the standards set out in the regulations and are not usable in practice (e.g. the ramp is too steep). Moreover, in many cases, the solutions are partial and do not ensure actual accessibility. For instance, even when a ramp has been installed, the surrounding street and pavement, as well as bathrooms in the building, are not wheelchair-accessible, making it impossible for people using wheelchairs to get to or to spend an adequate amount of time in the building⁴⁶³. In new buildings, inspections to determine whether accessibility standards are being met is deficient; this was confirmed by both the Municipality

⁴⁵⁹ Point conversion ranges: 0-4=0, 5-8=1, 9-12=2, 13-16=3, 17-20=4, 21-24=5.

⁴⁶⁰ Administrative instructions under the Law on Construction: Administrative Instruction No. 33/2007 for Construction of Buildings Technical Terms of Accessibility to Disabled Persons, Official Gazette of 18 June 2007.

⁴⁶¹ Law No. 04/L-110 on Construction, Official Gazette of 3 July 2012.

⁴⁶² Interview with HandiKOS, a non-governmental organisation, 30 March 2017.

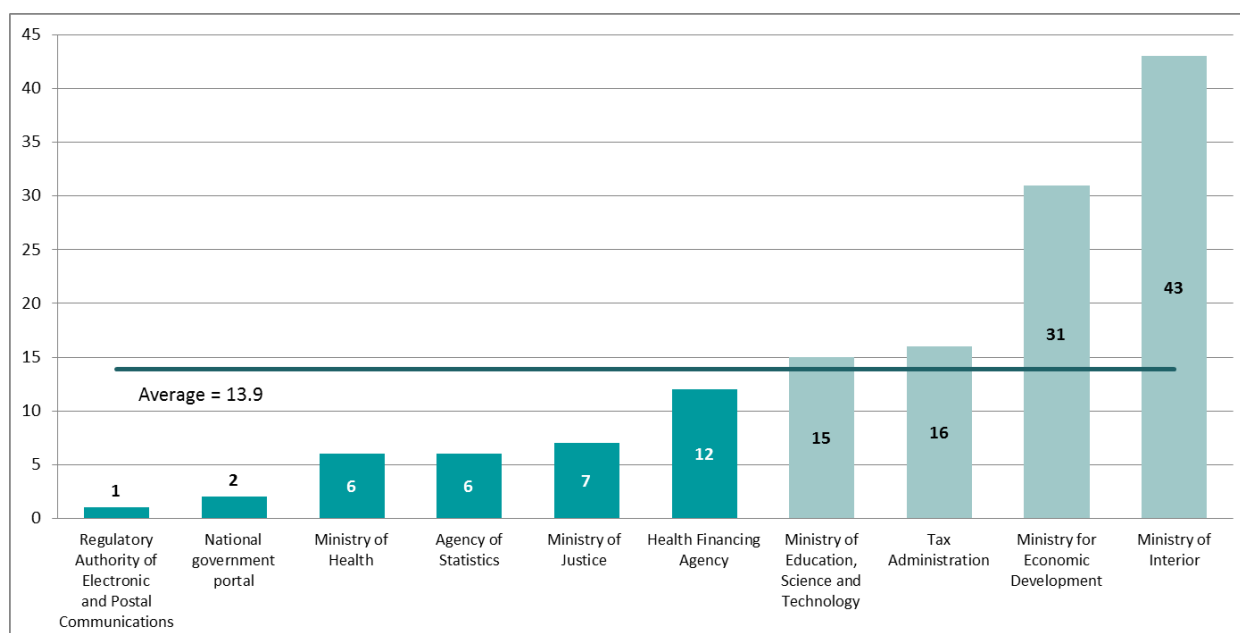
⁴⁶³ Interview with HandiKOS, a non-governmental organisation, 30 March 2017.

of Pristina (no inspection capability) and HandiKOS, a major nongovernmental organisation active in this area.

There is no strategy that assesses the physical service delivery infrastructure in terms of future needs, especially in relation to changing customer habits as more services are brought online. However, the PAMS envisages the creation of two pilot one-stop shops to consolidate the delivery of physical services in 2017. Introduction of a central digital one-stop shop in the form of an e-government portal is planned, but it will be delivered by the AIS only after the interoperability technical solution is resolved. However, the Kosovo Business Registration Agency is functioning as a one-stop shop for starting businesses, with 30 offices across the country, covering 28 different municipalities.

Compliance of government websites with the international Web Content Accessibility Guidelines (WCAG) 2.0⁴⁶⁴ is not required by any of the strategic or regulatory documents, but certain common requirements set by the AIS on the content that needs to be available on government websites are being followed⁴⁶⁵. In practice, however, testing demonstrates that the compliance of public institutions' websites with the WCAG standard is low and that improvements are needed.

Figure 1. Number of content accessibility problems on government websites, 2017



Source: SIGMA tests of compliance with Web Content Accessibility Guidelines (WCAG), February 2017.

According to the 2017 Balkan Barometer survey, only 23% of respondents are satisfied with general public services in Kosovo, the lowest such rating in the Western Balkans. In contrast, the public has a much more favourable opinion of the cost of public services and that the time required to receive them are reasonable (75% and 64% of respondents who had been in contact with central government services are satisfied). Thirty-six percent of respondents are satisfied with accessibility to digital public services.

The value for the indicator 'Accessibility of public services' is 3.

⁴⁶⁴ See more from <http://www.w3.org/TR/WCAG20/>.

⁴⁶⁵ Administrative Instruction No. 03/2011 on the Websites of Public Institutions.

Accessibility of public services						
This indicator measures the extent to which the access to public services is promoted in policy formulation and implementation. It evaluates whether this policy framework leads to measurably easier access for citizens, measures citizen perceptions of accessibility to public services and tests the actual accessibility of government websites. Dimensions covered are territorial access, access for people with disabilities and access to digital services.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Policy framework for accessibility	
1. Existence of policy for the accessibility of public services	2/3
2. Availability of statistical data on accessibility to public services	2/3
3. Adequacy of policy framework for public service users with special needs	2/4
4. Existence of common guidelines for government websites	1/2
Government performance on accessibility	
5. Compliance of government websites with Web Content Accessibility Guidelines (WCAG)	2/3
6. Perceived satisfaction with public services across the territory by population (%)	0/3
7. Perceived accessibility of digital public services by population (%)	1/3
8. Perceived time and cost of accessing public services by population (%)	2.5/3
Total⁴⁶⁶	12.5/24

There is no general policy on accessibility to public services for people with disabilities. Though the regulatory framework to ensure accessibility to public buildings is sound, enforcement is weak and public buildings remain inaccessible for people with limited mobility. There is also no e-government portal at present. As for web accessibility, the WCAG standard is not required, but compliance is nevertheless good. Satisfaction with general public services across the country is low, while people are more satisfied with accessibility to digital public services, reporting that the time required to receive public services and their cost are reasonable.

Key recommendations

Short-term (1-2 years)

- 1) The MPA should clearly assign responsibility for monitoring implementation, organising exchanges of best practices and further developing the policies and standards in the service delivery area. The AIS should be supported in setting the goals and targets for its activities in the e-service delivery area.
- 2) The AIS should take charge of co-ordinating e-service delivery, starting by initiating a format for regular information sharing with the IT departments of other public institutions, sharing information about the progress with implementing central components (especially the interoperability framework) and ensuring that best practices are being shared.
- 3) The Government should clearly signal to public bodies that digitisation of services is a priority and provide the necessary support. The public services inventory should be transformed into a tool that provides access to standardised information about public services, such as transaction

⁴⁶⁶ Point conversion ranges: 0-4=0, 5-8=1, 9-12=2, 13-16=3, 17-20=4, 21-24=5. SIGMA uses a rounding up convention when the total number of points for an indicator includes 0.5 points.

volumes, digital uptake, cost per service and customer feedback, to measure real service delivery improvements. These data should inform decisions about further digitisation and revision of service delivery networks.

- 4) Customer feedback mechanisms should be revised and promoted, to obtain regular information on satisfaction with specific service delivery situations. The MPA should support the customer-centric approach of public institutions by introducing quality management tools and standards to promote continuous improvement of performance.
- 5) The Government should task the MPA with reviewing the physical service delivery infrastructure of government agencies, to identify an optimal model for the future (including deciding whether one-stop shops are useful) to improve service delivery for citizens and businesses.
- 6) The Government should take measures to improve the accessibility of public services for people with disabilities (including through e-services).

Medium-term (3-5 years)

- 8) The MPA should co-ordinate the process of moving public service delivery reform from a donor-co-ordinated to a donor-supported model, so that the Government can take the lead in project decisions, rather than restricting its activities to those that donors support.
- 9) The Government should make it a high priority to implement the central components of digitisation, such as the interoperability technical framework, digital signature infrastructure (integration application programming interface [API]) and central government portal – all prerequisites for e-government. Adequate resources should be devoted to installing these central components.

6

Public Financial Management

PUBLIC FINANCIAL MANAGEMENT

1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 – JUNE 2017

1.1. State of play

The fiscal policy in recent years has demonstrated solid outcomes. The government budget balance (at -1.6%) and the public debt level (14.5% of gross domestic product [GDP]) continue to remain low and comfortably within the limits of the legally established fiscal rules. This prudent fiscal performance is supported by a public financial management (PFM) system in which, at a basic level, all elements are in place and functioning. However, the persistent occurrence of payment arrears shows that there is still room for improvement. In addition, the misclassification of capital expenditures is a continuing problem, leading the Auditor General (AG) to provide a qualified opinion on the annual financial statements.

The PFM system also suffers from a high number of first-line budget users compared to European Union (EU) countries. This systemic feature negatively affects budget planning, financial management and control, and internal audit (IA). Budget planning is still largely an annual process, and the strategic role of the medium-term expenditure framework (MTEF)⁴⁶⁷ remains limited. Line ministries are not held fully accountable for policy performance and internal control in their sector. Smaller budget organisations have particular problems complying with the legal provisions for advanced internal control and IA.

The legal framework for public procurement is largely aligned with the European Union (EU) *acquis* on public procurement, including some provisions of the 2014 EU Directives on public procurement⁴⁶⁸. However, the 2014 Directives are not yet fully transposed into the legislation. Fundamental public procurement policy aims, such as transparency, equal treatment, and free and undistorted competition, are enshrined in the Public Procurement Law⁴⁶⁹ (PPL). The Law on Public-Private Partnership (PPP Law)⁴⁷⁰ is in line with Directive 2014/25/EU⁴⁷¹, except for some inconsistencies, such as exclusion conditions, qualification requirements and technical specifications. The legal framework does not include legislation on defence procurement⁴⁷².

The institutional framework is in place, with clear allocation of competences, although the institutions' financial and human capacities limit their ability to exercise all their functions and duties. The Public Procurement Regulatory Commission (PPRC), the Procurement Review Body (PRB), the Central Procurement Agency (CPA), and the Public-Private Partnership (PPP) Committee, together with the Central PPP Department in the Ministry of Finance (MoF), are the main bodies in charge of public procurement. However, before the new appointments made in March 2016, the PRB was missing three of its five members and, to date, neither the CPA nor the PPP Department have appointed all of their staff members.

⁴⁶⁷ Medium-term expenditure framework is the formal title used in Kosovo for the medium-term budgetary framework.

⁴⁶⁸ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and Directive of 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities in the water, energy, transport and postal services sectors, *Official Journal of the European Union (OJEU)* No. L 94/243.

⁴⁶⁹ PPL No. 04/L-042, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092.

⁴⁷⁰ Law No. 04/L-045.

⁴⁷¹ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, *OJEU*, No. L 94.

⁴⁷² Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the co-ordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, *OJEU*, No. L 216/76.

As for the implementation of public procurement rules, the main challenges are associated with poor planning and the excessive use of the lowest price criterion (almost 99% of all procurement procedures). During the contract execution phase problems regularly occur, such as payment for unfinished works or undelivered services, and frequent failure to obtain value for money⁴⁷³. Contracting authorities do not evaluate systematically the public procurement procedures and the contract performance after the contracts have been closed. Although the public procurement process itself is open and transparent, the contracts and related information (amendments, invoices and payment documents) are not published online, which creates obstacles to monitoring and control by civil society.

The external audit function in Kosovo is anchored in the Constitution. The Law on the Auditor General and the National Audit Office⁴⁷⁴ regulates the independence and organisation of the National Audit Office (NAO), in line with the International Standards of Supreme Audit Institutions (ISSAIs). The NAO fully met its audit mandate in 2016, by completing a regularity audit of all budget organisations and the consolidated financial statements. The applicable audit manuals and internal quality control and assurance arrangements are in broad compliance with the ISSAIs. However, no external quality assurance has yet been carried out to assess the effectiveness of the external audit function, although a light assessment of the NAO was conducted by the National Audit Office of Sweden in the first half of 2017.

The Assembly uses the NAO's annual audit report to scrutinise the Government, in line with the legal procedures, and generally supports the audit recommendations. Nevertheless, the implementation rate of the recommendations is low.

1.2. Main developments

The following section describes key changes in the public administration for each key requirement⁴⁷⁵ and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement reports.

In Kosovo, the PFM system continues to improve gradually. Annual fiscal outcomes have slightly improved, and revenue forecasting, commitment control and effective in-year allocation of expenditure have increased budget credibility at the aggregate level. Reporting on public finances has become more comprehensive and systematic.

The Law on Public Financial Management and Accountability (LPFMA)⁴⁷⁶ was amended in 2016 to allow for more fiscal space. With the inclusion of the so-called "investment clause", capital investment expenditures outside the fiscal rule limits are now allowed if they are funded from foreign resources (including borrowing). This amendment, however, weakens the strength of the fiscal rules on public deficits.

⁴⁷³ This information was provided to SIGMA in an interview with the National Audit Office. See also for example the Audit Report of the National Audit Office (June 2017), "*Management of Procurement Process on Road Management*", <http://www.zka-rks.org/wp-content/uploads/2017/07/ProcurementProcessOnRoadMaintenance.808543.pdf>. Various reports of CSOs also note that the lack of proper contract management and contract implementation are serious problems, such as the report of the Kosovo Democratic Institution (March 2016), "*Road to Money – Public Procurement Monitoring at Ministry of Infrastructure*". See also the International Monetary Fund (IMF) findings (April 2016), "*Technical Assistance Report on Public Investment Management Assessment*", IMF Country Report No. 16/100, <https://www.imf.org/external/pubs/cat/longres.aspx?sk=43843.0>.

⁴⁷⁴ Official Gazette. No. 05/L-055.

⁴⁷⁵ OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, pp. 71-72, http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf.

⁴⁷⁶ Law No. 03/L-048, 2008, with subsequent amendments.

Many of SIGMA's recommendations in the 2015 Baseline Measurement Report⁴⁷⁷ have not been implemented, except for the comprehensive Public Financial Management Reform Strategy 2016-2020, which was adopted in June 2016 to provide additional guidance for further development of the system.

The National Public Procurement Strategy 2017-2021⁴⁷⁸ (the Strategy) and its Action Plan were adopted in January 2017, also as recommended by the SIGMA 2015 Baseline Measurement Report⁴⁷⁹. The Strategy serves as a coherent strategic framework for the longer-term development of the procurement system. However, gaps in the budgeting of 7 out of 34 actions are found in the Action Plan 2017-2019⁴⁸⁰.

The PPL was amended twice in 2016⁴⁸¹. These modifications introduced significant additions, such as the definition of a conflict of interest, the obligation of economic operators to seek preliminary resolution of disputes with the contracting authority, and provisions related to the expansion of the scope of centralised procurement. The clause on preferential treatment for domestic bidders has been removed. New provisions concerning the access of interested parties to procurement records have enhanced transparency and opportunities for civil society oversight.

The PRB became fully operational again on 1 April 2016, when a new President and two members of the PRB were appointed⁴⁸². The introduction of new provisions in the PPL with regard to the automatic suspension of a PRB member in the event of an indictment filed by the prosecutor is a positive step to further strengthen the integrity of the PRB. Towards the end of 2016, the PRB established an internal document management system, which facilitates the preparation of annual reports and the tracking of active PRB cases. The number of complaints submitted to the PRB fell slightly in 2016 from 2015.

The use of the e-procurement platform for centralised procurement by the CPA became mandatory from April 2016, for central-level contracting authorities from 1 September 2016 and for other contracting authorities (including municipalities) from 1 January 2017⁴⁸³. However, the PPRC has introduced a transition phase until the end of December 2017 which allows economic operators to decide whether to submit their bids electronically or in hard copy.

Key requirement: The budget is formulated in compliance with transparent legal provisions and within an overall multi-annual framework, ensuring that the general government budget balance and the ratio of debt to gross domestic product are on a sustainable path.

Although minor revisions were made to the legally binding fiscal rules, there have been no changes in the system of budget planning to modify the values of the qualitative indicators used in the 2015 SIGMA Baseline Measurement Reports. The procedures for medium-term and annual budgeting have remained largely the same, but for the 2017 budget the level of detail in annual budget planning has

⁴⁷⁷ OECD (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Kosovo.pdf.

⁴⁷⁸ The National Public Procurement Strategy 2017-2021 and its Action Plan are available at: <https://krpp.rks-gov.net/Default.aspx?PID=Home&LID=2&PCID=-1&CtlID=HTMLStatic&CID=PPRCNews&ID=234>.

⁴⁷⁹ OECD (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, p. 97, http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Kosovo.pdf.

⁴⁸⁰ Such as maintenance of the e-procurement platform, provision of training and increase in the number of staff members in the CPA. Of those seven actions, two actions have only a partial financial gap.

⁴⁸¹ Law No. 05/L-068 on Amending and Supplementing Law No. 04/L-042 on Public Procurement, amended and supplemented with Law No. 04/L-237, Official Gazette No. 1/2016 of 6 January 2016: <http://gzk.rks-gov.net/ActDetail.aspx?ActID=11332> and Law No. 05/L-092 on Amending and Supplementing Law No. 04/L-042 on Public Procurement, amended and supplemented with Law No. 04/L-237 and Law No. 05/L-068, Official Gazette No. 8/2016 of 1 March 2016, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12172>.

⁴⁸² From April 2015, the PRB had only three board members until January 2016, when the Chairman resigned and the PRB had only two active board members, one of whom was the acting Chairman. In accordance with its internal rules, the PRB then became unable to review cases with a value higher than EUR 50 000.

⁴⁸³ Government Decision No.12/79 of 15 March 2016.

been extensively ramped up. The economic classification previously used has been replaced by a detailed administrative classification. This has already increased the administrative burden for the budget organisations, as well as for the Ministry of Finance (MoF).

Nevertheless, performance in terms of the credibility of both the MTEF projections and of the budget estimates has greatly improved. Partly as a result of increased realism in the projection of revenues, improved commitment controls and effective use of in-year budget reallocations, the deviations between aggregate estimates and outturns have been significantly reduced since 2015.

The fiscal rules for public debt and deficit levels have been complied with, and some improvement has been made in the level of public deficit between 2014 and 2016.

Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports

	2015 Baseline Measurement Indicator	2015 value	2017 value
Qualitative	MTBF strength index.	3	3
	Fiscal rules strength index.	2	2
	Extent to which the annual budget proposal includes full information at the time of presentation to the parliament.	2	2
Quantitative	Percentage differences between the planned budget revenue in the MTBF (as approved two years before the latest available year) and the outturn of the latest available year.	-6.8%	1.4%
	Percentage differences between the planned budget expenditure in the MTBF (as approved two years before the latest available year) and the outturn of the latest available year.	+1.3%	-0.1%
	General government budget balance as share of GDP.	-2.3%	-1.6%
	Percentage differences between the planned budget revenue (as approved in the budget) compared to the outturn of the latest available year.	-8.6%	0.3%
	Percentage differences between the planned budget expenditure (as approved in the budget) compared to the outturn of the latest available year.	-8%	-0.4%

Key requirement: Accounting and reporting practices ensure transparency and public scrutiny over public finances; both cash and debt are managed centrally, in line with legal provisions.

Rules and procedures for budget execution have not changed significantly. However, compared to 2015, the MoF compiled monthly estimates for revenue and expenditure for the current year at the beginning of 2017. This has increased the value of the indicator on in-year reporting.

Arrears are persistent, but are at a lower rate than in previous years, when they arose because the Government did not comply with its commitment controls. In this assessment period, the reported arrears are caused by incomplete data in the Kosovo Financial Management Information System (KFMIS) during the mid-year review, which made it difficult to take the necessary corrective actions in time⁴⁸⁴.

Although the overall public debt level as a share of GDP has increased around 40% from the end of 2014⁴⁸⁵, the debt servicing costs have doubled in these two years⁴⁸⁶. The Government has not updated the Public Debt Management Strategy after 2015.

Table 2. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports

	2015 Baseline Measurement indicator	2015 value	2017 value
Qualitative	Extent to which in-year financial reporting provides full information and is made publicly available.	2	3
	Extent to which the annual financial report includes full information and is made available in time to the parliament.	2	2
	Accumulated arrears for central government measured as a percentage of total expenditure at the end of the latest available calendar year.	5.7%	3.5%
	Public-sector debt servicing costs as a share of gross domestic product.	0.7%	1.4%
	Difference of public-sector debt level outturn from target.	-8%	Not available ⁴⁸⁷

⁴⁸⁴ Information is based on two different interviews with the MoF.

⁴⁸⁵ From 10.6% of GDP in 2014 to 14.4% of GDP in 2016.

⁴⁸⁶ Economic Reform Programme 2017.

⁴⁸⁷ In 2016, the Government did not update the Public Debt Strategy. It is, therefore, not possible to calculate the indicator for public debt outturn compared to the target for 2017.

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

Progress in implementing the Public Internal Financial Control (PIFC) Strategy has been slow, with fewer than 60% of activities planned for 2016 implemented in practice. As shown in Table 3, there has been no change in the overall operational framework for PIFC since 2015, despite the preparations for the Law on Public Internal Financial Control⁴⁸⁸. The rate of alignment between budget structures and organisational structures at the central government level has decreased. Nevertheless, alignment is still at a high level compared to countries in the region.

Table 3. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports

	2015 Baseline Measurement indicator	2015 value	2017 value
Qualitative	Extent to which the operational framework for internal control is complete, in place and applied.	3	3
Quantitative	Share of first-level budget organisations where the budget structure is aligned with the organisational structure.	93%	77%

Key requirement: The internal audit function is established throughout the public sector and internal audit work is carried out according to international standards.

The legislative framework in the domain of IA has not changed in the last period. The new PIFC Law has not yet been adopted. Nevertheless, the Government has made progress in the training of internal auditors. Supported by the EU-funded PIFC project, the MoF, in co-operation with the Kosovo Institute for Public Administration (KIPA), has launched a national certification programme that has already trained and certified 52 internal auditors.

The number of budget organisations that are covered by a sufficiently staffed IA unit has increased since 2015, but the current coverage rate of 65% is still too low and remains a weak point in the implementation of the IA framework.

Table 4. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports

	2015 Baseline Measurement Indicator	2015 value	2017 value
Qualitative	Extent to which the operational framework for internal audit is designed and in place.	3	3
	Quality of internal audit reports.	2	2

⁴⁸⁸ The draft PIFC Law was approved by the Government in December 2016.

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Quantitative	Share of public administration organisations meeting national legal requirements for establishing and minimum staffing of internal audit units.	49%	65%
	Share of internal auditors with a national or international internal audit certificate.	45%	79%

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

On 21 January 2016, a comprehensive amendment of the PPL came into force, only 15 days from the date of publication⁴⁸⁹. A second amendment became necessary, as the amended PPL contained some technical omissions and inconsistencies, which were noticed only after the amended Law had been adopted. The 2016 amendments to the PPL have addressed some outstanding issues and in general have made the PPL more compliant with the *acquis*. The amendments abolished Article 60A of the PPL on the domestic preference system, in accordance with the requirements of the Stabilisation and Association Agreement⁴⁹⁰. They also introduced the competitive procedure with negotiation, the possibility for contracting authorities to divide a contract into lots, and the possibility for them to request additional documentation and information from economic operators during the examination of tenders. The price quotation procedure became more transparent through the introduction of the mandatory publication of a contract notice. The amended PPL abolished the requirement that had been imposed on contracting authorities to cancel a procurement procedure where fewer than two responsive tenders had been received. However, the lack of provisions transposing the new Directives 2014/24/EU and 2014/25/EU has created a compliance gap. The lack of regulation in the area of defence procurement remains a gap, as a secondary decree on defence procurement has still not been adopted.

The Strategy and the Action Plan for its implementation were adopted in January 2017⁴⁹¹. However, no strategy has been adopted for PPPs and concessions to replace the previous strategy⁴⁹², which expired in 2016. Secondary decrees as well as the Strategy were published on the PPRC website prior to their adoption, and 15 days were provided for the submission of opinions. Evidence of public consultations on draft regulations, in the manner prescribed by law, has been found for secondary legislation but not for all the amendments to the PPL⁴⁹³.

⁴⁸⁹ Law No. 05/L-068 on Amending and Supplementing Law No. 04/L-042 on Public Procurement, amended and supplemented with Law No. 04/L-237, Official Gazette No. 1/2016 of 6 January 2016: <http://gzk.rks-gov.net/ActDetail.aspx?ActID=11332>.

⁴⁹⁰ Kosovo signed the Stabilisation and Association Agreement with the EU on 27 October 2015.

⁴⁹¹ The Strategy and Action Plan are available at: <https://krpp.rks-gov.net/Default.aspx?PID=Home&LID=2&PCID=-1&CtlID=HTMLStatic&CID=PPRCNews&ID=234>. This measure was recommended in OECD (2015), *Baseline Measurement Report: Kosovo*, OECD, Paris, p. 97, http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Kosovo.pdf.

⁴⁹² The Strategy on Development of Public-Private Partnerships 2014-2016: http://www.kryeministri-ks.net/repository/docs/PUBLIC-PRIVATE_PARTNERSHIP_DEVELOPMENT_STRATEGY_FOR_THE_REPUBLIC_OF_KOSOVO_2014_2016.pdf.

⁴⁹³ <https://krpp.rks-gov.net/Default.aspx?PID=Home&LID=2&PCID=-1&CtlID=HTMLStatic&CID=PPRCNews&ID=234>.

Table 5. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports⁴⁹⁴

	2015 Baseline Measurement Indicator	2015 value	2017 value
Qualitative	Extent to which public procurement legislation is complete and enforced.	4	4
	Nature and extent of public consultations during the process of developing regulations for public procurement and monitoring their use and appropriateness.	3	3
	Extent to which policy framework for public procurement is developed and implemented.	2	4
	Extent of coverage by dedicated institutions of the central procurement functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources.	4	4
	Comprehensiveness of systems for monitoring and reporting on public procurement proceedings and practices.	3	3
	Clarity, timeliness, comprehensiveness and accessibility of information available to contracting authorities and entities, economic operators and other stakeholders.	3	3

Key requirement: In case of alleged breaches of procurement rules, aggrieved parties have access to justice through an independent, transparent, effective and efficient remedies system.

The 2016 amendments to the PPL have strengthened the review process and the role of the PRB by clarifying the process of appointing its members and by strengthening the legal safeguards for its integrity. Amendments have also introduced professional qualification criteria for board members and the possibility of reducing the salary of board members against whom criminal proceedings have been initiated. The Chairperson's role has been strengthened. The introduction of rules for filing complaints⁴⁹⁵ is also a positive step towards clarity and an encouragement to use the review mechanism. The introduction of the obligation to use a preliminary dispute resolution mechanism (to submit a complaint to the contracting authority first, before turning to the PRB) has contributed to the reduction of the PRB's workload and provided contracting authorities with an opportunity to rectify any mistakes. The number of complaints submitted to the PRB in 2016 (481) decreased slightly in comparison to 2015 (592)⁴⁹⁶. However, the decrease in the number of the complaints could be, at least partially, the result of an increase of the administrative fees in the 2016 amendments to the PPL. The PRB became fully operational again, after a one-year period during which it was lacking three members out of five (including the Chairperson). In late 2016, the PRB started the development of an internal document management system and further development of the functionality of its web page.

⁴⁹⁴ OECD (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Kosovo.pdf.

⁴⁹⁵ The rules for filing complaints are available on the website of the PPRC, https://krpp.rks-gov.net/Default.aspx?PID=StdForms&LID=2&PPRCMenu_OpenNode=62.

⁴⁹⁶ Annual Report of the PRB 2016 (February 2017), Pristina, p. 22.

Table 6. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports

	2015 Baseline Measurement indicator	2015 value	2017 value
Qualitative	Presence of procurement review and appeal bodies covering the functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources, including the integrity of their work.	3	3
	Presence of a user-friendly procurement review website including timely publication of decisions and statistics, with adequate search functions.	4	4
Quantitative	Actual processing time of complaints related to procurement compared with maximum legal requirements.	226% ⁴⁹⁷	Not available ⁴⁹⁸
	Number of cases in which the procurement review body exceeded the legal maximum processing time in relation to the total number of complaints.	0.5% ⁴⁹⁹	Not available ⁵⁰⁰
	Number of complaints in relation to the number of tender notices published.	11%	14% ⁵⁰¹
	Share of complaints in procurement that are challenged to the next judicial level.	1.5%	0.2% ⁵⁰²

Key requirement: Contracting authorities are adequately staffed and resourced and carry out their work in accordance with applicable regulations and recognised good practice, interacting with an open and competitive supply market.

The use of the e-procurement platform became mandatory for the CPA as of 1 April 2016. For central-level contracting authorities, it became mandatory as of 1 September 2016, and for other contracting authorities from 1 January 2017. However, the PPRC has introduced a transition phase until the end of 2017, which allows economic operators to decide whether to submit their bids electronically or in hard copy. The introduction of the e-procurement system has faced many challenges, including a lack of proper training for government institutions and economic operators on the use of the new e-procurement tool. Most of the guidelines, manuals and standard document templates developed by the PPRC were adopted or amended in 2016. However, these documents still concentrate more on the details of existing procurement regulations than on the strategic aspects of procurement. There is no progress with the greater use of the most economically advantageous tender criteria, as the lowest price criterion was used as the award criterion in 99.38% of the published tender notices in 2016. (In 2015, this proportion was 99.77%, and in 2014 it was 98.93%.) Co-operation mechanisms between central procurement institutions have still not been set up.

⁴⁹⁷ That is, 34 days on average, as opposed to the 15 days required by law.

⁴⁹⁸ Information on the average number of days spent by the PRB on processing complaints (from reception of the complaint to decision) was not provided to SIGMA.

⁴⁹⁹ The total number of complaints was 537. In three cases, the legal maximum processing time was exceeded.

⁵⁰⁰ This information was not provided to SIGMA.

⁵⁰¹ Based on data provided by the PRB.

⁵⁰² Ditto.

Table 7. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports

	2015 Baseline Measurement indicator	2015 value	2017 value
Qualitative	Extent of use of modern procurement techniques and methods.	1	Not available ⁵⁰³
	Nature and extent of clear, user-friendly guidelines and instructions, standard documents and other tools available to contracting authorities and procurement officials.	4	4
Quantitative	Share of contracts already announced in published procurement plans or indicative notices.	Not available ⁵⁰⁴	Not available ⁵⁰⁵
	Share of contracts awarded by competitive procedures.	80.8%	87.58% ⁵⁰⁶
	Share of contracts awarded based on acquisition price only.	98.3%	99.38% ⁵⁰⁷
	Share of contracts amended after award.	1.4%	1.4%
	Average number of tenders submitted per goods contract to be procured.	Not available ⁵⁰⁸	Not available ⁵⁰⁹
	Average number of tenders submitted per works contract to be procured.	Not available ⁵¹⁰	Not available ⁵¹¹
	Average number of tenders submitted per services contract to be procured.	Not available ⁵¹²	Not available ⁵¹³

Key requirement: The constitutional and legal frameworks guarantee the independence, mandate and organisation of the supreme audit institution to perform its mandate autonomously according to the standards applied for its audit work, allowing for high-quality audits that impact on public sector functioning.

A new Law on the Auditor General and the National Audit Office was adopted in April 2016. It regulates the functional, operational and financial independence of the NAO more clearly, which has consequently increased the value of the first qualitative indicator in comparison with the 2015 Baseline Measurement Report.

⁵⁰³ Information on the total value of framework agreements used in 2016 or the total value of centralised purchasing was not provided to SIGMA.

⁵⁰⁴ Information was not provided to SIGMA.

⁵⁰⁵ Ditto.

⁵⁰⁶ Data provided by the PPRC.

⁵⁰⁷ Ditto.

⁵⁰⁸ Separate data for goods is not available.

⁵⁰⁹ Ditto.

⁵¹⁰ Separate data for works is not available.

⁵¹¹ Ditto.

⁵¹² Separate data for services is not available.

⁵¹³ Ditto.

After a lengthy and rigorous procedure, a new Auditor General (AG) was appointed in 2016. For the first time, the duties of the AG are being performed by a Kosovar. The new AG has made significant changes in the management team of the NAO. The establishment of a Department for Audit Quality Control (DAQC) represents an attempt to place more institutional focus on internal quality control and assurance procedures. A designated department for auditing publicly owned enterprises has also been created.

The rate at which the NAO recommendations have been implemented has fallen slightly since 2015⁵¹⁴, although the auditees generally accept the findings of the NAO.

Overall, there have been both positive and negative developments since 2015, but these trends are marginal variations in the overall picture of an independent and effective supreme audit institution (SAI), in the context of the overall system of public governance in Kosovo.

Table 8. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports⁵¹⁵

	2015 Baseline Measurement Indicator	2015 value	2017 value
Qualitative	Extent to which the fundamental requirement for SAI independence, mandate and organisation is established and protected by the constitutional and legal framework.	4	5
	Extent to which the SAI management ensures the development of the institution.	4	4
Quantitative	Share of SAI budget in the state budget.	0.13%	0.12%
	Proportion of audit reports published on the SAI website compared with audit reports adopted.	100%	100%
	Share of audit recommendations accepted and implemented by auditees.	41%	32%

⁵¹⁴ Annual reports of the NAO.

⁵¹⁵ OECD (2015), *Baseline Measurement Report: Kosovo*, OECD Publishing, Paris, http://www.sigmaweb.org/publications/Baseline_Measurement_2015_Kosovo.pdf.

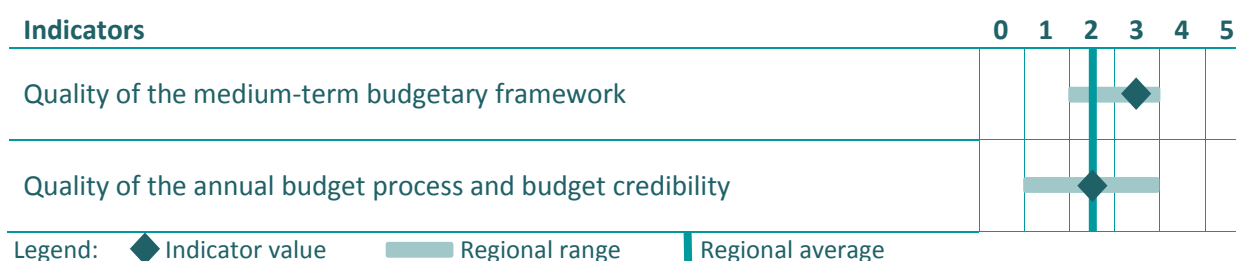
2. ANALYSIS

This analysis covers 16 Principles for the public financial management area grouped under 8 key requirements. It includes a summary analysis of the indicator(s) used to assess each Principle, including sub-indicators⁵¹⁶, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

Budget management

Key requirement: The budget is formulated in compliance with transparent legal provisions and within an overall multi-annual framework, ensuring that the general government budget balance and the ratio of debt to gross domestic product are on a sustainable path.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

Principle 1: The government publishes a medium-term budgetary framework on a general government basis that is founded on credible forecasts and covers a minimum period of three years; all budget organisations operate within it.

The MTEF 2017-2019 largely complies with the requirements of the EU Directive on Budgetary Frameworks⁵¹⁷. It presents a three-year, forward-looking time horizon, framed in the context of stated government priorities and the economic and fiscal outlook, in line with the Economic Reform Programme. The MTEF includes all revenues and planned expenditures at every level of government, but not all donor funds (including funding from the Instrument of Pre-accession Assistance [IPA]) are included in the estimates. The MTEF 2017-2019 distinguishes 12 main sectors. For each sector, it describes key developments and sectoral objectives, and provides three-year spending estimates. The sectors comprise various budget organisations, but the MTEF does not provide ceilings for budget organisations.

The MTEF is formally adopted by the Government before 30 April. It is then published and sent to the Assembly for information. Initial attempts to involve the Budget and Finance Committee in discussions on the MTEF have been made in the context of a donor-funded project⁵¹⁸, but the review of the MTEF by the Budget and Finance Committee is not yet systematic.

⁵¹⁶ OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

⁵¹⁷ Council Directive 2011/85/EU, 8 November 2011.

⁵¹⁸ Supported by *Gesellschaft für Internationale Zusammenarbeit* (GIZ).

Although the MTEF is well-presented, provides a medium-term outlook for public finances and is adopted by the Government, its usefulness in the preparation of the annual budget is limited by the considerable differences between the expenditure ceilings estimated in the MTEF and the ceiling in the annual budget. For the 2017 annual budget, the deviation amounted to around 9%. Although this deviation was justified by reference to the in-year amendment of the LPFMA introducing the “investment clause”, such deviations also occurred in previous years, and Kosovo has not yet adopted a practice of setting hard expenditure ceilings in the MTEF. It is still common practice to make significant reallocations after the MTEF is adopted. On the positive side, the medium-term projection has proven to be accurate, since the forecasts of revenues and expenditures did not deviate more than 2% from the actual figures.

Basic fiscal rules limit the budget deficit to 2% of GDP⁵¹⁹, and the total public debt ceiling to 40% of GDP⁵²⁰. In recent years, both the fiscal balance and the total debt have remained within these limits. The debt is still below 15% of GDP, and the public deficit was 1.8% in 2015 and 1.6% in 2016. However, the “investment clause” has had a major impact on the government deficit figure. This clause allows the Government to exclude investment expenditures funded by donor loans and privatisation proceeds when calculating the budget balance. If this rule had not been changed, the projected budget deficit for 2017 would be 4.6% of GDP.

Kosovo has not yet established a system for independent monitoring of compliance with fiscal rules and the MTEF. There are no automatic correction mechanisms in case of noncompliance, and media interest in whether the fiscal rule has been exceeded is limited.

The value for the indicator ‘Quality of the medium-term budgetary framework’ is 3.

Quality of the medium-term budgetary framework						
This indicator measures the quality of the medium-term budgetary framework (MTBF), focusing on the process of budget preparation and four areas that influence the quality of the budget documents.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Strength of the medium-term budgetary framework	7/12
2. Strength of the fiscal rules	3/5
3. Credibility of medium-term revenue plans (%)	4/4
4. Credibility of medium-term expenditure plans (%)	4/4
Total⁵²¹	18/25

The MTEF 2017-2019 has comprehensive coverage. The sectoral ceilings established within the MTEF have a role in framing the initial entity ceilings, but they are still renegotiated significantly before the annual budget is finalised. Budgetary outcomes in terms of the budget balance and debt-to-GDP

⁵¹⁹ Law on Public Financial Management and Accountability, Article 22A. Article 22B allows a temporary breach of the ceiling in certain exceptional cases, for a maximum of five years, but no strict correction procedure is stipulated in the Law.

⁵²⁰ Law on Public Debt, Article 5. The law includes, in Article 5.3, the following correction procedure: “In the event that the total debt exceeds forty percent (40%) of GDP, the Government will present to the Assembly a strategy to bring Total Debt back under the threshold of forty percent (40%) within one year. Such a strategy would be included in subsequent yearly budget laws.”

⁵²¹ Point conversion ranges: 0-3=0, 4-8=1, 9-13, 14-18=3, 19-22=4, 23-25=5.

ratio have remained within the limits of the fiscal rule. However, the transparency of the fiscal rule is reduced by the inclusion of the “investment clause” in the LPFMA.

Principle 2: The budget is formulated in line with the national legal framework, with comprehensive spending appropriations that are consistent with the medium-term budgetary framework and are observed.

The budgetary system is comprehensively laid out in the LPFMA⁵²². The Law contains the calendar dates for the key steps in the budget preparation process. These deadlines were respected in 2016. Based on the sector ceilings included in the MTEF, the MoF prepared ceilings for each budget organisation. These ceilings are not approved by the Government, but are communicated by the MoF to the budget organisations (BOs) through the first circular for the annual budget. In 2016, this was issued on 15 May. BOs submitted their budget proposals before 20 July, which provided sufficient time for analysis, co-ordination and preparation. The budget ceilings included in the MTEF were not, however, maintained during the budget process.

The annual budget documentation submitted to the Assembly includes basic information such as estimates of the budget balance, revenue and expenditure of the current year for comparison. It presents the BO appropriations using both an economic and a detailed “programme” classification⁵²³. Some basic information was lacking in the budget documentation for 2017, such as the macroeconomic and fiscal assumptions, the fiscal impact of new policy initiatives, the fiscal risks and contingent liabilities. The budget presentation is also entirely financial. Although it makes use of the terminology of programmes and sub-programmes, non-financial performance information is not included. Finally, the general government balance is not presented on the basis of European Statistical Accounts (ESA).

The budget presents the estimates both for recurrent and for capital expenditures. A very detailed picture is provided for capital expenditures, down to the level of small-scale investment projects. The capital budget for municipalities is particularly detailed, including projects whose expenditure is as low as EUR 5 000. One key issue is the incorrect classification of certain recurrent expenses, which continue to provide a distorted picture of the amount of public investments⁵²⁴. Two other issues are the absence of rigorous quality control for project appraisals and the failure to identify the recurrent costs associated with investment projects in the budget estimates. The risks are significant, given the fact that capital expenditures are 36% of the total expenditures, which is high by international standards. The methodology for project appraisal exists, but the BOs lack resources to undertake the required analysis and the role of the MoF is not defined in legislation and therefore not implemented⁵²⁵.

In 2016, the draft budget was sent to the Assembly just before the end of October, which is in line with the LPFMA but short of good practice⁵²⁶ and the criteria established for the indicator. The Budget Law 2017 was voted on 24 December⁵²⁷. The scrutiny of the Assembly is led by the Budget and Finance Committee, and the involvement of the sector committees in the budget process is weak. Although the Assembly made significant amendments to the draft budget for 2017, these were largely informed by the Government. Furthermore, the role of Parliament is weakened, as the LPFMA allows a

⁵²² The Law has frequently been amended. The transparency of the legal framework is reduced by the absence of a version of the Law that consolidates all these amendments.

⁵²³ The programme classification is fully based on the administrative organisation: programmes are used for BOs and sub-programmes for its internal departments.

⁵²⁴ The Budget Law 2017, No. 05/L-125.

⁵²⁵ IMF (2016), *Public Investment Management Assessment*.

⁵²⁶ OECD (2002), “OECD Best Practices for Budget Transparency”, *OECD Journal on Budgeting*, Vol. 1/3, <http://dx.doi.org/10.1787/budget-v1-art14-en>. It promotes a three-month period for the parliaments to debate the annual budget.

⁵²⁷ The legal calendar allows the Assembly less than two months, given that the President is allowed eight days to promulgate the Budget Law and a grace period for each law of eight days after Assembly approval is required.

considerable margin (up to 25%) for reallocations during the budget year without the approval of the Assembly.

In 2016, the Assembly approved one revision of the original Budget Law following the mid-term review. Table 1 shows that the Government was more successful in 2016 than in previous years in executing the budget as originally approved by the Assembly. The relevant sub-indicator values are impacted by larger discrepancies in revenue and expenditure outcomes in 2015.

Table 9. Deviation between original estimates and outturns (2014-2016)

	2014	2015	2016
Revenues	-8.6%	-7.4%	0.3 %
Expenditures	-7.2%	- 4.0%	-0.4 %

Source: Annual budget bills and annual financial reports for 2014, 2015 and 2016.

The value for the indicator 'Quality of the annual budget process and budget credibility' is 2.

Quality of the annual budget process and budget credibility						
This indicator analyses the process of budget preparation and the level of transparency and quality of the budget documents. Quality parameters include the link between the multi-annual and annual budget, the budget preparation process, selection of priorities for new expenditures, comprehensiveness and transparency of budget documentation, scrutiny and oversight of the budget proposal and rules for in-year budget adjustment.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Operational alignment between the MTBF and the annual budget process	1/4
2. Reliability of the budget calendar	4/4
3. Transparency of the budget proposal before its adoption in parliament	2/8
4. Quality in the budgeting of capital investment projects	3/5
5. Parliamentary scrutiny of the annual budget	1/5
6. Transparency and predictability of procedures for in-year budget adjustments	2/4
7. Credibility of revenue plans in the annual budget (%)	2/4
8. Credibility of expenditure plans in the annual budget (%)	3/4
Total⁵²⁸	18/38

The budget is comprehensive and the budget classification is detailed. However, the annual budget process is not well-embedded in the medium-term financial framework and the budget documentation does not include all the basic information. Nevertheless, budget credibility has improved, given that the 2016 estimates deviated only marginally from the outturns.

⁵²⁸ Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-26=3, 27-32=4, 33-38=5.

Key recommendations

Short-term (1-2 years)

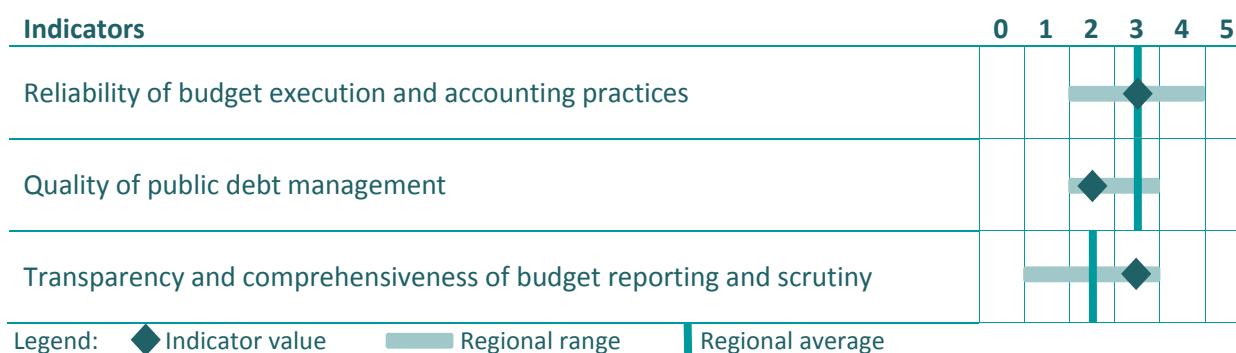
- 1) The MoF should prepare proposals for the Government that would strengthen the multi-annual budget ceilings in the MTEF, by establishing clear conditions for deviations within a given year and the precise procedure for explaining deviations from the ceilings.
- 2) The MoF should ensure that the budget documentation presented to the Assembly and published includes a detailed medium-term macroeconomic and fiscal outlook.
- 3) The MoF should organise a thorough review of current budgetary appropriations under the capital budget and, starting with the next annual budget, move any expenditure that is essentially current expenditure to the appropriate budget line.
- 4) The MoF should finalise and implement a comprehensive instruction for the appraisal and *ex ante* quality control of capital investment projects included in the budget.
- 5) The MoF should publish an updated version of the LPFMA (Law No. 03/L-048) consolidating all amendments into a single document.

Medium-term (3-5 years)

- 6) The MoF should reduce the number of in-year budget reallocations that are permitted without the approval of the Assembly.
- 7) The Government should reduce the number of first-level budget organisations and give line ministries responsibility for preparation of a sector budget, including the second-level BOs that are operational in that sector.

Key requirement: Accounting and reporting practices ensure transparency and public scrutiny over public finances; both cash and debt are managed centrally, in line with legal provisions.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

Principle 3: The ministry of finance (or authorised central treasury authority) centrally controls disbursement of funds from the treasury single account and ensures cash liquidity.

Cash management is organised by the Treasury Department, which controls all government receipts and payments through the treasury single account (TSA) system. To ensure the availability of sufficient cash liquidity during budget execution, the Treasury requires all BOs to prepare and submit their cash plans within 30 days of the adoption of the Law on Budget. These projections are then reviewed by the

Division of Cash Management in the Treasury. Based on their forecasts of total revenues and other financial resources, the Treasury then informs all BOs of the amount of funds that will be allocated to them during the year, and enters the data in the KFMIS.

All payments are recorded in the KFMIS, and regular reconciliation is carried out between the Treasury General Ledger, the BOs' accounting records and the bank account information. Once a payment request has been submitted to the Treasury through the appropriate authorised channels, and a prior commitment has been included in the system, disbursements can usually be made on the same day or the following morning.

In June, the Treasury carries out a comprehensive mid-term review to assess the actual spending of budget organisations. Based on the observed relative spending pressures, the Treasury revises the spending ceilings. This has helped contribute to the low deviation between projections and outturns of expenditures at an aggregate level (see Principle 2). The mid-term review is largely informed by the information on payments and commitments included in KFMIS. In 2016, the Treasury did not engage in prior consultations with the BOs⁵²⁹. However, as the information on commitments in the KFMIS is not always complete, owing to incomplete data entry, the Treasury has inadvertently reduced spending ceilings for which commitments already exist. This is one of the factors that explain the relatively large amount of outstanding liabilities by the end of 2016. The amount of payment arrears of the central and local government were around 3.5% of total expenditures in both 2015 and 2016. Overall perception among businesses is critical, with 26% of companies saying that late payment from government institutions cause cash flow problems⁵³⁰.

The value for the indicator 'Reliability of budget execution and accounting practices' is 3.

⁵²⁹ Confirmed by all officials interviewed on this topic in April 2017.

⁵³⁰ Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>, <http://www.rcc.int/seeds/results/3/balkan-business-barometer>.

Reliability of budget execution and accounting practices

This indicator measures the quality of cash and commitment management, controls in budget execution and accounting practices. These aspects ensure reliable information on government spending and thus a foundation for management decisions on government funds.

Effective cash flow and planning, monitoring, and management of commitments by the treasury facilitate predictability of the availability of funds for budgetary units. Reliable accounting practices that include constant checking and verification of the recording practices of accountants are important to ensure good information for management.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
1. Presence of a treasury single account (TSA)	2/2
2. Frequency of revenue transfer to the TSA	1/1
3. Frequency of cash consolidation	1/1
4. Credibility of cash-flow planning	1/2
5. Budget classification and chart of accounts	2/2
6. Frequency of bank-account reconciliation (for all central government bank accounts)	2/2
7. Availability of data on the stock of expenditure arrears	1/2
8. Expenditure arrears (%)	0/3
Total⁵³¹	10/15

All public funds are channelled through the TSA. The records in the Treasury's general ledger are regularly reconciled with BOs' accounting records and information on bank transactions. The Treasury system includes commitment controls, which have helped to ensure the low deviation between estimates and outturns. However, the high amount of payment arrears remains a weakness.

Principle 4: There is a clear debt management strategy in place and implemented so that the country's overall debt target is respected and debt servicing costs are kept under control.

The overall public debt level is low in Kosovo, at 14.5% of GDP at the end of 2016, but it is on an upward trajectory⁵³². Although overall debt is still low in the international context, debt-servicing costs have significantly increased, from 2.3% in 2014 to 4.8% of total expenditures⁵³³ in 2016.

Debt management thus constitutes a critical part of overall PFM operations. From this perspective, it is of concern that no projections and/or objectives for the debt-to-GDP ratio are currently included in any of the planning documents. Neither the MTEF, the annual budget, the State Debt Programme nor the Economic Reform Programme provide information on the planned debt level in the coming years. The last Public Debt Management Strategy (State Debt Programme) was published in April 2015, covering the years from 2016 to 2018. In 2016, a programme to cover 2017-2019 was not prepared. The Government does not set targets for public debt in any of the planning documents (MTEF, Economic Reform Programme).

Responsibilities for debt management are clearly set out in the Law on Public Debt, but the Law does not define public debt in line with ESA⁵³⁴. The MoF is the only entity to incur public debt, and the

⁵³¹ Point conversion ranges: 0-1=0, 2-4=1, 5-7=2, 8-10=3, 11-13=4, 14-15=5.

⁵³² In 2014, the debt-to-GDP ratio was 10.6%.

⁵³³ That is, 1.4% of GDP, Economic Reform Programme 2017.

Treasury's Debt Management Unit is responsible for debt management. This unit prepares quarterly reports on debt management, and the reports are made public. The reports provide information on the source of debt, the currency breakdown of the existing stock and the interest regime. However, clear, forward-looking information on the years when debt is maturing is unavailable.

Risks of unexpected debt movements are still small. The total debt portfolio is EUR 852 million, of which 11% is in foreign currency and 17% is maturing in 2017. The risks in the outstanding debt portfolio are largely mitigated⁵³⁵. Although the Law on Public Debt allows municipal authorities to contract debt and issue guarantees, municipalities have not begun to initiate borrowing⁵³⁶. Furthermore, publicly owned enterprises (POE)⁵³⁷ have not yet incurred any debt.

Annual reporting is conducted with the last quarterly report of the year⁵³⁸. The reports provide a good overview of the debt developments, although information on the time and amount of public debt maturing in future years is not available.

The value for the indicator assessing 'Quality of public debt management' is 2.

Quality of public debt management						
This indicator measures the procedures and organisation established for the management of public debt and the outcomes achieved, in terms of debt risk mitigation practices, the share of public debt to GDP, and the difference between public sector debt outturn and target.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Existence of requirements and limitations for borrowing in the legal framework	2/3
2. Existence and minimum content of a public debt management strategy	0/4
3. Clarity of reporting on public debt	2/4
4. Risk mitigation in the stock of public debt	3/6
5. Difference between public sector debt outturn from target (%)	0/3
6. Public debt as a share of GDP (%)	2/2
Total⁵³⁹	9/22

Although current levels of debt are still low, the importance of managing debt is increasing, as the level of public debt and debt servicing costs continue to grow. The reports on public debt are comprehensive and transparent, but there is no debt management strategy with clear forward projections. There are no objectives for the level of government debt.

⁵³⁴ The Law on Public Debt (Law No. 03/L-175, 2009) defines debt as: "Debt incurred on behalf of the Central Governmental Institutions that the Republic of Kosovo is obligated to pay, but shall not include any obligation of certain other governmental entities, including but not limited to municipalities, public enterprises or the Central Bank of Kosovo".

⁵³⁵ The debt portfolio misses the SIGMA benchmarks for the risks on maturity, currency and interest rate, but only by small margins.

⁵³⁶ Except for a guarantee from the municipality of Pristina for a loan from the European Bank of Reconstruction and Development to Pristina Urban Transport, local government has not so far incurred any debt.

⁵³⁷ In total, there are 43 POEs, which include 17 state-owned enterprises.

⁵³⁸ The fourth-quarter 2016 public debt report was published in January 2017 and includes data about the full calendar year.

⁵³⁹ Point conversion ranges: 0-2=0, 3-7=1, 8-12=2, 13-16=3, 17-19=4, 20-22=5.

Principle 5: Transparent budget reporting and scrutiny are ensured.

The Government publishes monthly reports of government revenues, expenditure and borrowing. These reports are at an aggregate level and provide no details of individual BOs. More detailed information is included in quarterly reports, which include actual budget execution performance (of both payments and commitments) against the original budget for each BO, and explain major variations. The quarterly reports also include local governments, because they are classified as first-level budget organisations, similar to central government institutions. Only the information on payment arrears is lacking. That information is reported on an annual basis in the annual financial statement (AFS).

In line with the LPFMA, the AFS is published before the end of March. In terms of the content of the AFS, comprehensive information is given covering all key budget headings (including local government). However, the information is mainly presented in quantitative tables, with no explanations of variations from the original budget allocation, either for recurrent or for capital expenditures. The information in the AFS is not at the same level of detail as the annual budget, as the AFS reports only at the programme and not at the sub-programme level. The financial statements of the POEs have also been published within the legal deadlines⁵⁴⁰. No consolidated report on the financial performance of the POE sector is published by the central government annually.

The accounting standards underlying the AFS are informed by International Public Sector Accounting Standards (IPSAS) for cash. In addition, it includes information on monetary assets, fixed assets and some liabilities. However, the information on (changes in) the balance sheet is not complete and does not include information on state guarantees, contingent liabilities and transfer/disposal of assets. The data is thus not yet fully compliant with the ESA 2010 for fiscal statistics.

Following publication of the AFS by the end of March, it is tabled for discussion by the Assembly in May. The AFS is not yet accompanied by the AG's audit report. This report is published only by the end of August. For the AFS 2015, the AG's opinion was qualified, due to misclassification of recurrent and capital expenditure. The Assembly, guided by the scrutiny of its Committee for Oversight on Public Finance (CoPF), discussed the AG's report on the AFS in November, as late as three months after its submission.

The value for the indicator 'Transparency and comprehensiveness of budget reporting and scrutiny' is 3.

⁵⁴⁰ The Financial Statements are made available on the website of the Ministry of Economic Development, <http://mzheks.net/en/>.

Transparency and comprehensiveness of budget reporting and scrutiny

This indicator measures the extent to which the government facilitates external monitoring of the execution of the budget through the publication of relevant information, as well as the credibility of that information and whether it is used effectively to ensure accountability. The degree of budget scrutiny on the basis of the published information is also assessed.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
Comprehensiveness of published information	
1. Quality of in-year reports of government revenue, expenditure and borrowing	6/7
2. Quality of the annual financial report of the government	2/7
3. Quality of annual reports of state-owned enterprises, extra-budgetary funds and local government	4/5
4. Clarity of national accounting standards and consistency with international standards	3/4
5. Existence of reporting on fiscal risks identified in the budget	0/1
Scrutiny and oversight using published information	
6. Quality of the annual financial reporting on the use of public finances	1/3
7. Timeliness of dissemination of the SAI report to the national parliament	1/2
8. Timeliness of parliamentary discussion on the report of the SAI	3/3
Total⁵⁴¹	20/32

The basic conditions for budget transparency are in place, with frequent and comprehensive in-year reporting and timely publication of the AFS. Parliamentary discussion on the AFS, which takes place in May, is not immediately linked with the AG's report, which is published in August. The AG's opinion on the AFS 2015 was qualified, as a result of material misclassification of recurrent expenditures as capital expenditures.

Key recommendations

Short-term (1-2 years)

- 1) The MoF needs to establish an operational plan to reduce the stock of unpaid liabilities and to strengthen internal controls, to avoid an increase in arrears in the future.
- 2) The MoF should consider options for harmonising the presentation of the annual budget and the annual financial statement.
- 3) The MoF should ensure compliance with the Law on Public Debt and prepare the State Debt Programme annually.
- 4) The Government should formulate clear objectives for the intended development of government debt in the key fiscal policy planning documents, including the MTEF and the Economic Reform Programme.

Medium-term (3-5 years)

- 5) The MoF should propose amendments to the LPFMA to limit the authority of the Government to make amendments to the annual budget during the calendar year.

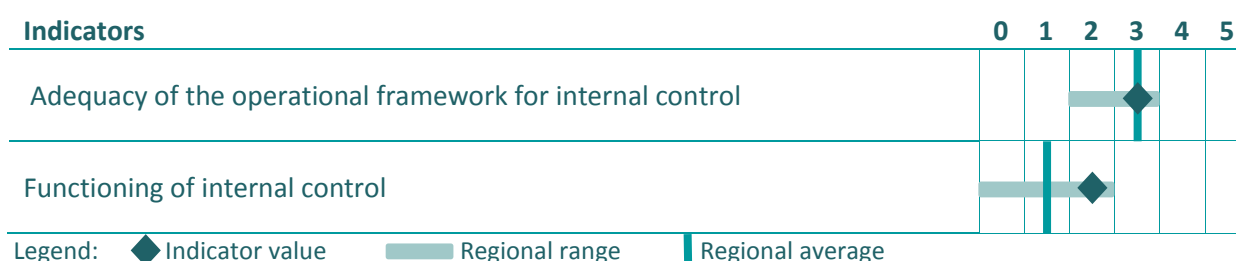
⁵⁴¹ Point conversion ranges: 0-7=0, 8-12=1, 13-17=2, 18-22=3, 23-27=4, 28-32=5.

- 6) The Government, in consultation with the AG, should draw up a plan to bring the AG's audit report on the Annual Financial Statement forward, so that the publication of the AFS is co-ordinated with the publication of the audit opinion.

Internal control and audit

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

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

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

The operational framework for financial management and control (FMC) consists of legislation⁵⁴², secondary legislation and more detailed procedural guidance. This framework applies to ministries, agencies and municipalities, but not to POEs⁵⁴³. The five elements of the Committee of Sponsoring Organizations of the Treadway Commission (COSO) are mentioned in Treasury Regulations⁵⁴⁴ and explained in more detail in the FMC manual⁵⁴⁵.

Although a new draft law on PIFC has been prepared, the current PIFC requirements are not fully harmonised with the overall administrative framework⁵⁴⁶. For example, compared to internal control requirements, there are inconsistencies in the roles and responsibilities of the head of a BO, the Chief Administrative Officer (CAO), the Authorising Officer, Certifying Officer and Chief Financial Officer (CFO). These issues are to be addressed through a new Law on PIFC, replacing separate legislation covering internal control and IA provisions in the LPFMA and in the Law on Internal Audit. The new legislation was planned to be adopted by the end of 2015, but the legislative process has been delayed⁵⁴⁷.

The Public Internal Financial Control Strategy 2015-2019 (PIFC Strategy) is based on a thorough assessment of weaknesses and has comprehensive coverage. For internal control, the objectives of the Strategy focus on managerial accountability and risk management. The Strategy is accompanied by an

⁵⁴² Law No. 3/L-048 on Public Financial Management and Accountability of 13 March 2008, with subsequent amendments.

⁵⁴³ POEs are subject to separate specific legislation (Law No. 3/L- 087 on POEs of 15 June 2008) that does not include a requirement for FMC to be implemented or mention COSO principles.

⁵⁴⁴ MoF, Treasury Financial Rule 01/2010.

⁵⁴⁵ FMC Manual of 30 July 2010.

⁵⁴⁶ MoF (2016), *Concept Paper for Improving the Legal Framework for the PIFC System*.

⁵⁴⁷ Currently, the draft Law is in its second reading in the Assembly.

Action Plan, including an extensive range of proposed actions. Most of these involve the Co-ordination and Harmonization Unit (CHU) for PIFC, but the Plan also includes actions involving other units of the MoF. A significant number of the proposed actions up to 2016 were conditional upon the endorsement of the new PIFC Law, and its delay has held back the implementation rate of the Strategy⁵⁴⁸. However, in 2016, the MoF completed a comprehensive overview of its different business processes, including their internal controls in the areas of budget planning, budget implementation, public procurement and asset management, based on current legislation. The business processes have not yet been formalised.

Another action item in the PIFC Strategy concerns the information technology (IT) infrastructure at the MoF. The Ministry uses numerous IT systems for managing the budget: the Budget Development and Management System (BDMS), the Public Investment Planning system, the KFMIS, the payroll information system, e-procurement and e-assets. These IT systems are not sufficiently linked (for example, e-assets and the assets module in KFMIS are not integrated with the other PFM software). This increases the workload and the risk of error, requiring multiple manual insertions of data. The PIFC Strategy acknowledged the challenges, but little progress has been made in addressing the problem.

In line with Article 6 of the LPFMA, the CHU has prepared an annual report on the progress of PIFC development⁵⁴⁹. This report includes comprehensive information, including statistics and the state of play in implementing internal control in public sector organisations. The information is largely derived from a self-assessment survey of the progress in implementing internal control (and IA) each year. Completion of the survey is mandatory for BOs, and 95 out of 105 BOs have completed the questionnaire. The reliability of the information is questionable, however, as the self-assessment data is generally over-optimistic. For example, the BOs provide a fairly positive self-assessment of the risk management framework in their entities. SIGMA's findings demonstrate, however, that the application of risk management is still at a low level⁵⁵⁰. Nevertheless, the report also includes conclusions on weaknesses in internal control implementation and was adopted by the Government and reported to the Assembly's Committee for Oversight of Public Finances. No corrective action has been issued by the Government to address the report's conclusions on the weaknesses.

Kosovo does not have management and control systems for EU funds. The European Commission undertakes the necessary tendering, contracting and payments for all IPA-funded programmes.

The value for the indicator 'Adequacy of the operational framework for internal control' is 3.

⁵⁴⁸ The rate of implementation is calculated to be 57% (8 out of 14 activities were implemented by the end of 2016).

⁵⁴⁹ Annual Report on the Functioning of the PIFC System in the Public Sector, Kosovo 2015, May 2016.

⁵⁵⁰ See also Principle 7.

Adequacy of the operational framework for internal control

This indicator measures the extent to which the operational framework for internal control (financial management and control) is established, in terms of policy and strategic content, the regulatory framework, and adequate review and reporting mechanisms

A separate indicator measures the implementation of the operational framework for internal control.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
1. Policy for the development of internal control	4/6
2. Completeness of the regulatory framework for internal control	5/5
3. Comprehensiveness and regularity of the annual review and reporting on internal control	3/5
4. Alignment between national budget management and control systems and those for EU-funded programmes	0/4
Total⁵⁵¹	12/20

The overall framework for internal control is in place and in 2016 the CHU reported comprehensively on its implementation. Deficiencies are to be addressed through the PIFC Strategy for 2015-2019, but a significant part of the Action Plan is delayed. Although the Government has approved the conclusions in the annual report on PIFC implementation, it has not taken specific decisions on corrective measures.

Principle 7: Each public organisation implements internal control in line with the overall internal control policy.

In 2016, there were 55 first-level BOs. Twenty-five of those were ministries and constitutional bodies. The remaining 30 were so-called “independent agencies” directly accountable to the Assembly or the Prime Minister, with no authority granted to a sectoral line ministry. This high number of the “independent agencies” reduces the ownership of senior civil servants within line ministries over these respective policy areas, since the budget management, among other issues, is handled directly by the MoF. This also means that the CHU has a direct role in monitoring and supervising the implementation of internal control in all those organisations.

Managerial accountability within BOs can be facilitated by budget delegation to line managers within institutions. There is nevertheless a high level of consistency between budget and managerial structures. A comparison of the administrative structure of five large BOs with the breakdown of the approved annual budget indicates that more than 70% of department managers have been allocated their own budgets (78% of organisations have aligned their budget and management structures). All these organisations can provide detailed financial information to their operational managers. BOs have internal rules and procedures, but these are still evolving. Credibility of controls for avoiding commitments above the expenditure ceilings are not completely functional, as evidenced by the high level of arrears (3.5% of total expenditure⁵⁵²).

In practice, delegation of decision-making authority within central government organisations is not widely used. Analysis of five ministries to assess the scope of delegation of decision-making authority reveals inconsistency and lack of authority among directors of departments on such issues as annual

⁵⁵¹ Point conversion ranges: 0-2=0, 3-6=1, 7-10=2, 11-14=3, 15-17=4, 18-20=5.

⁵⁵² Annual Financial Statement of 2016.

leave, business trips and staff training. Mechanisms for managerial accountability between ministries and agencies are in place, but in some cases the focus on performance within the annual plans and reports of the agencies is weak, and there is lack of information on scrutiny by ministries in planning and monitoring of the work of their subordinate bodies.

Based on a review of practices in five organisations, risk management in internal control operations follows the guidance issued by the MoF. In 2016, the CHU initiated training on risk management and provided support to pilot BOs in drafting risk registers. Training of this kind is now provided by KIPA, along with other professional and technical training programmes for public servants.

Finally, implementation of whistle-blower policy or procedures to report irregularities, as an internal control measure to address risks of fraud and/or other irregularities, is not widespread. The procedures for reporting on irregularities do not exist, and only one of the five BOs that were part of SIGMA's sample reported any irregularities in 2016.

The value for the indicator 'Functioning of internal control' is 2.

Functioning of internal control						
This indicator measures the extent to which internal control systems are implemented in practice within the budget organisations and between ministries and their subordinate organisations, and the immediate results in terms of improved managerial accountability and governance arrangements between ministries and subordinated bodies.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Number of first-level budget organisations that are neither ministries nor constitutional bodies	1/3
2. Alignment between organisational and budget structures (%)	1/3
3. Credibility of controls for avoiding commitments above the expenditure ceilings	0/2
4. Availability of reporting of total cost and physical progress of major investment projects	2/2
5. Effectiveness of basic managerial accountability mechanism for central government bodies	2/4
6. Delegation of decision-making authority within ministries	0/4
7. Regularity and completeness of risk management practices	3/3
8. Existence of reporting on irregularities	0/2
Total⁵⁵³	9/23

Implementation of the rules and procedures for internal control in budget organisations lags behind the development of the overall framework. There is a good level of formal budget delegation to budget organisations, supported by management information, but delegation of decision-making authority within central government organisations is not widespread. Furthermore, key internal controls, such as risk management and procedures to report irregularities, are not yet common practice.

⁵⁵³ Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-15=3, 16-19=4, 20-23=5.

Key recommendations

Short-term (1-2 years)

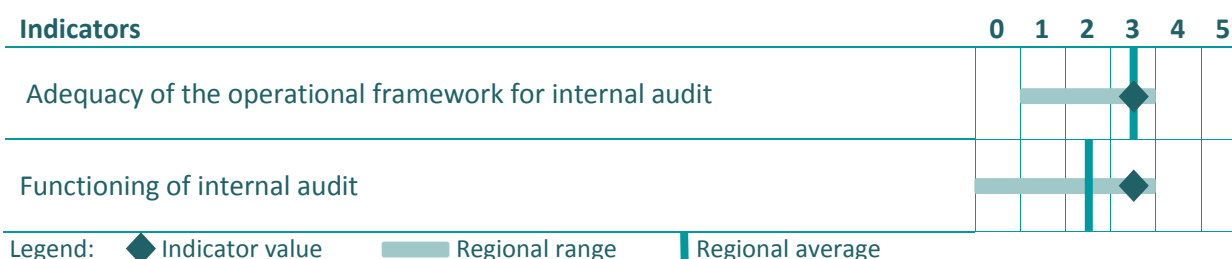
- 1) The MoF should start regular reviews on internal control in individual budget organisations to carry out detailed follow-up on its questionnaire and gather evidence and practical lessons directly from public institutions on a sample basis.
- 2) The MoF should clarify, simplify and, where necessary, restructure roles and responsibilities in financial management for heads of budget organisations, CAOs, authorising officers, certifying officers and CFOs, to ensure effective internal control.

Medium-term (3-5 years)

- 3) In co-operation with the MPA, the MoF should analyse existing agencies in terms of structure and reporting arrangements. Where appropriate, their activities should be co-ordinated with those of the parent ministry. It should also ensure there is rigorous monitoring of overall performance and of FMC implementation.
- 4) In co-operation with the MPA, the MoF should ensure, through close monitoring, that arrangements for delegating authority are put into practice in budget organisations.

Key requirement: The internal audit function is established throughout the public sector and internal audit work is carried out according to international standards.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

Principle 8: The operational framework for internal audit reflects international standards, and its application by the budget organisations is consistent with the legislation governing public administration and public financial management in general.

The operational framework for internal auditing in Kosovo is comprehensive and applies to all public sector entities, including local government and POEs. The framework centres around the Law on Internal Audit⁵⁵⁴, which is complemented by various subsidiary administrative instructions. These cover such issues as the size of IA units⁵⁵⁵ and licensing of internal auditors⁵⁵⁶, and the establishment of audit committees⁵⁵⁷.

⁵⁵⁴ Law No. 03/L-128 2009 on Internal Audit.

⁵⁵⁵ Administrative Instruction 23 2009 on the Establishment of Internal Audit Units in the Public Sector.

⁵⁵⁶ Administrative Instruction 22 2009 on Criteria and Procedures for the Temporary Licensing of Internal Auditors in the Public Sector.

⁵⁵⁷ Administrative Instruction 11-2010 on the Establishment and Functioning of Audit Committees in the Public Sector.

Each BO is required to have arrangements for the IA function. Minimum standards for the size of the IA units are conditional upon the budget size of the entity⁵⁵⁸. The framework recognises the importance of independence, audit standards, code of ethics and certification. An audit manual consisting of two parts is in place. The first part of the manual provides guidance on managing the IA function, introducing the role of the main stakeholders, outlining the guiding principles and policies, and supporting the formulation of strategic and annual audit plans. The second part details the activities of the audit team as it proceeds through an individual audit and is useful as a pocket guide to auditors as they work on their audit assignments. No significant inconsistencies with the guidelines of the Institute of Internal Auditors (IIA) are observed.

The legal requirements are not fully met in practice. Twenty-four out of ninety-five BOs at the central and local level do not have their own operational IA unit⁵⁵⁹. Ten agreed to make use of the IA unit of the MoF, but for 14 of them, no IA function was established at all⁵⁶⁰. Of the total of 71 IA units, 40% are operated by a single auditor⁵⁶¹. On the positive side, all established IA units have also agreed upon an Audit Charter with the entity's management. In addition, 80% of BOs that have established an IA function are also covered by an audit committee.

Further improvement of the IA framework is guided by the implementation of the PIFC Strategy and Action Plan. Not all activities planned for 2016 were carried out, given the delay in the new PIFC Law, but in 2016, a national certification programme for auditors was established. Before the establishment of this national programme, Kosovo relied on external funding and (temporary) licenses from the Chartered Institute of Public Finance and Accountancy (CIPFA). Of the total of 157 auditors in 2016, 61 were certified by CIPFA before 2016, 12 gained certification from CIPFA in 2016 and 52 were certified under the national certification programme. It is expected that in 2017, more than 90% of the auditors will be certified. The programme is developed with the objective of certifying auditors. It is not yet equipped to function as a continuous training programme that will keep the expertise of certified auditors up to date.

The CHU is also performing its role of improving quality assurance in the IA function. It carries out reviews of the performance of the IA units in terms of governance, management, performing IA engagements and impact⁵⁶². The review's coverage included three IA units in 2015 and five IA units in 2016. The CHU often holds meetings with the heads of individual IA units. However, these meetings are not held on a regular basis and do not necessarily involve all heads of IA units.

The value for the indicator 'Adequacy of the operational framework for internal audit' is 3.

⁵⁵⁸ A BO with an annual budget of up to EUR 1 million needs to have 1 auditor; a budget between EUR 1 million and EUR 5 million requires 2 auditors, and a budget exceeding EUR 5 million at least 3 auditors.

⁵⁵⁹ Annual Report on Functioning of PIFC (2015), confirmed in interviews with CHU staff in March 2017.

⁵⁶⁰ Permitted in accordance with Article 4 of the Administrative Instruction 23-2009.

⁵⁶¹ The number of single-person IA units is 29, of which 13 are in compliance with legal requirements; 16 do not have the requisite number.

⁵⁶² Pursuant to Article 7 of the Law No. 03/L-128 on Internal Audit.

Adequacy of the operational framework for internal audit

This indicator measures the extent to which the operational framework for internal audit (IA) has been established, assessing the adequacy of the regulatory framework, the institutional set-up, and co-ordination and quality assurance mechanisms.

A separate indicator measures the implementation of the framework and the results achieved.

Overall indicator value 0 1 2 **3** 4 5

Sub-indicators	Points
1. Adequacy of the regulatory framework for internal audit	5/5
2. Organisational capacity for internal audit	1/5
3. Co-ordination, development and guidance of the internal audit system	2/5
4. Existence of a system for quality assurance for internal audit	2/3
Total⁵⁶³	10/18

Most elements of a solid framework for IA are in place, including legislation, guidelines, certification and quality assurance. However, the legislation is not fully complied with. Not all organisations required to set up IA units have yet done so, and many IA units are staffed by a single person.

Principle 9: Each public organisation implements internal audit in line with the overall internal audit policy documents, as appropriate to the organisation.

The Annual Report on PIFC 2015 reports that around 95% of the IA units complied with the requirement to submit a strategic and annual audit plan. The high level of compliance is confirmed by SIGMA's sample of five IA units, all of which had strategic and annual audit plans in place.

In 2015, a total of 489 audit reports were prepared. An increasing number of audits were prepared at the request of the management during the year. However, the share of audits requested by management is still below 10%, and audit plans were generally implemented.

SIGMA's analysis of a sample of audit reports show that, although the quality of the reports varies, all reports follow a logical structure, including an executive summary and an introduction explaining the objective and scope of the audit. Details included in the main body of the report vary, but always include its findings, followed by conclusions and recommendations. None of the reports include a methodological section explaining the size of the samples in relation to the entire scope of analysis. The reports do not constitute a system audit providing sufficient evidence to draw conclusions about any systemic weaknesses.

IA units routinely follow up on the implementation of audit recommendations and duly report in their annual report to the CHU. The latest annual PIFC report summarises an implementation rate of 54% across all IA units, which is an increase from 49% in 2014.

The value for the indicator 'Functioning of internal audit' is 3.

⁵⁶³ Point conversion ranges: 0-2=0, 3-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

Functioning of internal audit					
This indicator measures the extent to which internal audit is implemented and whether activities effectively contribute to improved management of public finances within the budget organisations.					
Overall indicator value	0	1	2	3	4 5

Sub-indicators	Points
1. Annual planning of IA work in budget organisations	5/7
2. Quality of audit reports	3/6
3. Follow-up and implementation of audit recommendations	2/3
Total⁵⁶⁴	10/16

Where IA units are established, IA work is generally carried out following the annual IA plans. Individual audit reports mostly meet the guidelines laid down, but the focus is primarily on compliance with existing rules and procedures.

Key recommendations

Short-term (1-2 years)

- 1) The MoF/CHU should make arrangements for the heads of IA units to meet at least twice a year to discuss overall concerns, bottlenecks and progress.
- 2) The MoF/CHU should select good practices identified in the IA reviews and distribute lessons learned to other IA units.

Medium-term (3-5 years)

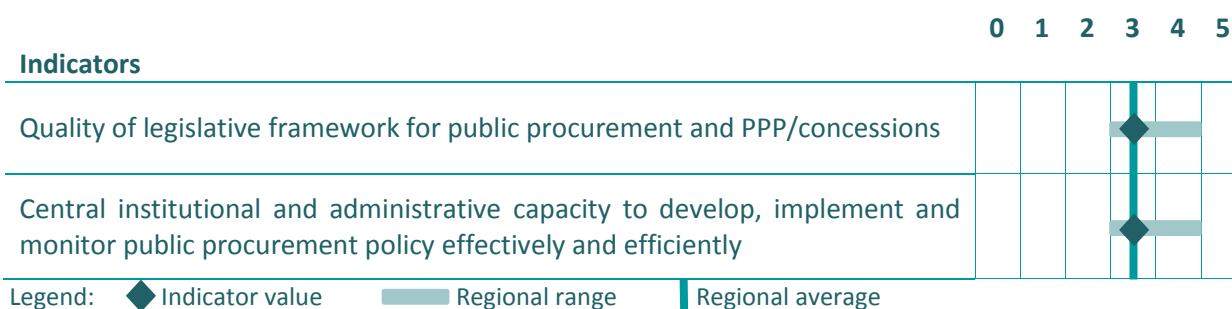
- 3) The MoF should establish arrangements for IA to be provided on a shared-service basis. This would help compensate for the risks and inefficiencies of the present number of single-person IA units.

⁵⁶⁴ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

Public procurement

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

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

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

The PPL entered into force on 5 October 2011 and was amended twice in 2016⁵⁶⁵. The 2016 amendments to the PPL have addressed some outstanding issues and in general made the PPL more compliant with the *acquis*. The amendments abolished Article 60A on the domestic preference system, in accordance with the requirements of the Stabilisation and Association Agreement. The PPL covers both classical and utilities sectors and regulates the award of contracts both above and below the EU thresholds. It also regulates the procurement process, from the early stages of planning to the contract management stage. The PPL is largely compliant with the 2004 EU Public Procurement Directives⁵⁶⁶, but the provisions of Directives 2014/24/EU and 2014/25/EU have not yet been fully transposed⁵⁶⁷. The PPL ensures the possibilities of using the competitive negotiated procedure and of referring to social and environmental aspects of procurement. It also introduces a turnover cap. However, the innovation partnership procedure, the concept of the best price/quality ratio and the possibility of taking into account full product life-cycle considerations, are not included in the PPL. Also, the rules regarding grounds for exclusion are not fully transposed. Contracting authorities may use the open or restricted procedure as the main procurement procedure. However, the rules for the shortlisting of candidates in the restricted procedure do not fully comply with the 2014 Directives. The use of the competitive negotiated procedure, according to the PPL, depends on certain conditions, although those conditions are not established explicitly in either the PPL or secondary legislation. The PPL

⁵⁶⁵ Law No. 05/L-092 on Amending and Supplementing Law No. 04/L-042 on Public Procurement amended and supplemented with Law No. 04/L-237 and Law No. 05/L-068.

⁵⁶⁶ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 co-ordinating the procurement procedures of entities operating in the water, energy transport and postal services sectors.

⁵⁶⁷ In the Strategy, the full harmonisation of the national legislation with the provisions of the 2014 EU Directives is anticipated in 2017.

contains strict rules for using the negotiated procedure without prior publication of a contract notice. Price quotation can only be used for low-value contracts.

The PPL contains some exceptions that are not in line with the *acquis*, such as procurement aimed at representation in the form of offering food and beverages⁵⁶⁸. The rules on mixed procurement are also not fully compatible with the provisions of Directive 2014/24/EU. Obligations to notify tenderers on the outcome of the tender evaluation and reporting are introduced by the PPL and secondary decrees. The January 2016 amendments to the PPL introduced the definition of a conflict of interest, but the Law still fails to provide clear and detailed guidance on how to avoid conflicts of interest in public procurement operations⁵⁶⁹. However, secondary decrees⁵⁷⁰ and standard document templates⁵⁷¹ provide some guidance in this regard.

No updates of secondary legislation had been made by the time the 2016 amendments to the PPL came into force in January 2016⁵⁷². Some of the secondary decrees have still not been adopted, such as the decree on defence procurement⁵⁷³. The legislative development process has suffered from other shortcomings. The 2016 comprehensive amendment to the PPL came into force only 15 days after the PPL's publication⁵⁷⁴. This did not allow contracting authorities, bidders and other stakeholders the time to prepare for the implementation of the modified legislative framework. Furthermore, a second amendment became necessary, as the amended PPL contained some technical omissions and inconsistencies, which were noticed only after the amended Law had been adopted. This second amendment concerned, in particular, the lack of provisions regarding the procedure for appointment of board members of the PRB⁵⁷⁵. To remedy this situation, the Assembly adopted a second amendment to the PPL on 19 February 2016⁵⁷⁶. Some of the amendments were inserted into the draft amendments of the PPL late in the adoption process, without a proper analysis of their impact on the procurement system in general or on the capacity of stakeholders to implement them⁵⁷⁷.

The provisions of the EU Defence Procurement Directive 2009/81/EC have not been transposed at all. The PPL provides for exceptions related to the purchase of sensitive military equipment. However, no further provisions on how to procure these items are provided in either primary or secondary legislation.

The PPP Law is in compliance with the basic standards set out in the *acquis*. It promotes the use of the procedure with prior publication of a notice as a general approach to the contract award. However, the Law contains only general rules regarding exclusion conditions, qualification requirements and

⁵⁶⁸ PPL, Article 3, point 6.

⁵⁶⁹ No guidance is provided, for instance, on the obligations of tender evaluation committee representatives who find themselves involved in a conflict of interest.

⁵⁷⁰ As an example of such guidance, see point 4.4 of the Rules and Operational Guidelines on Public Procurement. <https://krpp.rksgov.net/krpp/PageFiles/File/STRforms2016/English/A01%20Rules%20and%20Operational%20Guidelines%20for%20Public%20Procurement.pdf>.

⁵⁷¹ The templates of declaration under oath: <https://krpp.rks-gov.net/krpp/PageFiles/File/STRforms2016/English/A01%20Rules%20and%20Operational%20Guidelines%20for%20Public%20Procurement.pdf>.

⁵⁷² OECD (2016), *Monitoring Report: Kosovo*, OECD Publishing, Paris, p. 32, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-Kosovo.pdf>.

⁵⁷³ PPL, Article 3 (4).

⁵⁷⁴ Law No. 05/L-068 on Amending and Supplementing Law No. 04/L-042 on Public Procurement, amended and supplemented with Law No. 04/L-237, Official Gazette No. 1/2016 of 6 January 2016. <http://gzk.rks-gov.net/ActDetail.aspx?ActID=11332>.

⁵⁷⁵ Law No. 05/L-068, Article 57.

⁵⁷⁶ Law No. 05/L-092 on Amending and Supplementing Law No. 04/L-042 on Public Procurement, amended and supplemented with Law No. 04/L-237 and Law No. 05/L-068. Official Gazette No. 8 of 1 March 2016, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12172>.

⁵⁷⁷ This information was provided to SIGMA in an interview with the PPRC.

technical specifications. In addition, it envisages a procedure in which it is possible to change the initial request for proposals⁵⁷⁸. Such an approach may lead to violations of the principle of equal treatment.

Overall, the value for the indicator 'Quality of the legislative framework for public procurement and PPPs/concessions' is 3.

Quality of legislative framework for public procurement and PPP/concessions					
This indicator measures the quality of the legislative framework for public procurement and public-private partnerships (PPPs)/concessions, above and below EU thresholds. Opportunities for participation of SMEs in public procurement are assessed, as well as whether practical measures are taken to allow for proper implementation of the legislation. The other indicators in the public procurement area analyse the actual implementation of laws and regulations and the results thereof.					
Overall indicator value	0	1	2	3	4 5

Sub-indicators	Points
Compliance of public procurement legislation with the <i>acquis</i> above EU thresholds	
1. Level of alignment of public procurement legislation with the EU Directives	2/6
2. Scope of public procurement legislation	2/6
3. Public procurement procedures	1/4
4. Publication and transparency	3/5
5. Choice of participants and award of contracts	2/5
6. Availability of procedural options	2/4
Public procurement procedures below EU thresholds	
7. Advertising of public procurement procedures	3/3
8. Contract award procedures	7/7
Opportunities for participation of SMEs in public procurement	
9. Opportunities for participation of SMEs in public procurement	2/5
Availability of measures for the practical application of the legislative framework	
10. Availability of measures for the practical application of the legislative framework	5/5
Quality of legislation concerning PPPs/concessions	
11. Coverage of legislation on PPPs/concessions	2/2
12. Value for money, free competition, transparency, equal treatment, mutual recognition and proportionality for PPPs/concessions	4/8
Total⁵⁷⁹	35/60

A detailed legal framework for public procurement (including PPPs and concessions) is largely aligned with the 2004 Directives on public procurement, including some provisions of the 2014 EU Directives on public procurement. However, the framework shows deficiencies and inconsistencies in comparison with the 2014 Directives, which have not been transposed, and the new instruments and tools provided for in those directives are lacking. The legal framework does not include legislation on defence procurement.

⁵⁷⁸ PPP Law, Article 30.

⁵⁷⁹ Point conversion ranges: 0-10=0, 11-20=1, 21-30=2, 31-40=3, 41-50=4, 51-60=5.

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

The PPRC is the central public procurement body. Its competences are provided in the PPL and include, among other tasks, procurement monitoring; elaboration and dissemination of procurement manuals, guidelines and standard templates; provision of support and advice to procurement actors; raising of awareness of public procurement regulations; and supervision of the functioning of the procurement system. The PPRC also issues secondary decrees. PPRC is led by the Board, composed of a Chairperson and two members, all proposed by the Government and appointed by the Assembly. The PPRC has an independent budget line approved by the Assembly, and it is reasonably staffed to exercise its basic functions⁵⁸⁰. The total number of staff was 26 in 2015 and 31 in 2016. However, existing and forthcoming challenges, such as the transition to e-procurement and the extension of the scope and content of training for procurement actors, suggest the need for the PPRC to engage additional professional employees. The 2016 amendments to the PPL have assigned additional duties to the PPRC, such as the responsibility for developing training models and curricula for procurement qualifications⁵⁸¹. The training of procurement officers and training in the area of e-procurement are overburdening the capacity of the PPRC, which has a shortage of resources to provide training in additional areas⁵⁸². Since the amendment of the PPL in 2016, the Kosovo Institute for Public Administration (KIPA) has been responsible only for providing training facilities and for co-issuing procurement certificates. The PPRC currently provides training to contracting authorities only. Training of economic operators is currently provided only by the private sector.

The PPRC uses a database system to collect and disseminate procurement-related information. However, in practice, significant issues remain, as contract management is not sufficiently monitored⁵⁸³, even though this obligation is explicitly laid out in the PPL⁵⁸⁴. The amount of information available for this phase of the procurement cycle therefore remains scarce, despite the efforts of the PPRC⁵⁸⁵. Furthermore, contracting authorities often fail to submit their yearly reports on time⁵⁸⁶. The PPRC's financial and human capacities also limit its ability to conduct thorough monitoring of the implementation of contracts. The above-mentioned issues constitute obstacles to the application of a timely and targeted procurement policy and offer room for abusive practices.

The public procurement function is partially centralised. Each contracting authority procures goods, services and works for its own needs. However, centralised procurement is mandatory for procurement in subject matters included in the list issued by the MoF⁵⁸⁷ and for agencies accountable to the Assembly with fewer than 50 employees⁵⁸⁸ (currently 16 agencies). Centralised procurement is carried out by the CPA, an agency established under the MoF. The CPA is severely understaffed. It has

⁵⁸⁰ This view was expressed by PPRC representatives during interviews with SIGMA.

⁵⁸¹ PPL, Article 25 (1).

⁵⁸² This information was provided to SIGMA in interviews with the PPRC, contracting authorities and non-governmental organisations (NGOs).

⁵⁸³ The PPRC's 2016 Annual Report itself recognises the deficiencies in contract monitoring and points to the necessity to enhance monitoring efforts in the future, pp. 72-73.

⁵⁸⁴ PPL, Article 81 (3).

⁵⁸⁵ PPRC issued secondary legislation and operational guidelines on contract management. See: Rules and Operational Guidelines for Public Procurement, pp. 132-137; <https://krpp.rks-gov.net/krpp/PageFiles/File/STRforms2016/English/A01%20Rules%20and%20Operational%20Guidelines%20for%20Public%20Procurement.pdf> and Standard form for Contract Management Plan; https://krpp.rks-gov.net/Default.aspx?PID=StdForms&LID=2&PPRCMenu_OpenNode=62.

⁵⁸⁶ Not all the reports had been submitted as of April 2017. This information was provided by PPRC representatives during interviews with SIGMA.

⁵⁸⁷ PPL, Article 95 (2); Administrative Instruction No. 03/2017 to Supplement and Amend the Administrative Instruction No. 05/2016 on Implementation of Central Public Procurement Procedures, approved by the Government on 24 February 2017 in Decision No. 02/133.

⁵⁸⁸ PPL, Article 21A.

15 employees and according to the Strategy, at least ten additional employees are needed⁵⁸⁹, especially as the function of procurement on behalf of agencies was introduced in 2016 without any new employees being recruited.

The Anti-Corruption Agency is also involved in procurement processes, mainly in monitoring the quality of tender documents. However, the Agency does not possess the market knowledge required for the *ex ante* monitoring of technical specifications⁵⁹⁰. No co-operation has been established between the Agency and other central procurement institutions⁵⁹¹.

The Strategy, adopted in January 2017, is the first of its kind in Kosovo. It serves as a coherent strategic framework for the longer-term development of the public procurement system. However, it does not cover some important aspects, such as green procurement, social procurement or innovations. The Strategy includes provisions on implementation of the monitoring process. The actors in charge of this process are the PPRC and the National Public Procurement Strategy Monitoring Group⁵⁹². The Action Plan, published on the website of the PPRC⁵⁹³, envisages activities during the period 2017-2019 for the implementation of the Strategy. However, the Action Plan indicates gaps in the budgeting of 7 actions out of 34⁵⁹⁴. It is premature to assess the implementation of the Strategy.

The PPP Committee, which has the leading role in the development of PPP policies, consists of five permanent members: the Minister of Finance (acting as chairperson) and four other members appointed by the Government⁵⁹⁵. The PPP Committee oversees, co-ordinates and approves PPP projects. The Central PPP Department within the MoF assists and advises the PPP Committee and the Minister of Finance. Among the competences of the Central PPP Department are also advisory services to contracting authorities, the verification of budget affordability of planned projects, and the development and promulgation of best practices in the field⁵⁹⁶. The Department reports directly to the PPP Committee. It currently has 5 employees, which is anticipated to increase to 11. Following the recommendations of a 2014 audit report⁵⁹⁷ of the Office of the Auditor General, the PPP Committee revised its internal rules of procedure, in particular regarding the annual reporting obligations of contracting authorities of PPP projects. However, the PPP Committee still needs to reinforce its internal structures and capacities regarding the monitoring of implementation of ongoing contracts⁵⁹⁸. No new strategy for PPPs and concessions has been adopted following the expiration of the previous Strategy⁵⁹⁹ in December 2016. Intergovernmental and public consultations have been conducted for

⁵⁸⁹ The Strategy, p. 15.

⁵⁹⁰ This information was provided to SIGMA in interviews with representatives of the Anti-Corruption Agency.

⁵⁹¹ According to interviews by SIGMA with representatives of the Anti-Corruption Agency, the elaboration of a memorandum of co-operation is under consideration.

⁵⁹² The Strategy, p. 5.

⁵⁹³ <https://krpp.rks-gov.net/krpp/PageFiles/File/Objektivat%20e%20Krrp%20se/2017/Plan%20for%20the%20implemenattion%20of%20the%20NPPS1.pdf>.

⁵⁹⁴ Of the 34 actions in the Action Plan, budgetary gaps are found for 7 actions (such as maintenance of the e-procurement platform, provision of training and increase in the number of CPA staff members). Of those seven actions, two actions have only a partial financial gap.

⁵⁹⁵ PPP Law, Article 16 (2).

⁵⁹⁶ PPP Law, Article 18.

⁵⁹⁷ *Audit Report on Supervision of Implementation of the Pristina International Airport Adem Jashari – Public/Private Partnership Agreement over the Construction Period 2010-2013*, Office of the Auditor General, Pristina, August 2014; http://www.zka-rks.org/repository/docs/RaportiAuditimit_ANP_AJ_2013_Eng_965057.pdf.

⁵⁹⁸ *Audit Report on the Implementation of Recommendations on the Public-Private Partnership Agreement for Piaadem Jashari*, Office of the Auditor General, Pristina, March 2016, <http://www.zka-rks.org/wp-content/uploads/2017/06/RaportiAuditimit.ANP.AJ.2015.Eng.343588.pdf>

⁵⁹⁹ http://www.kryeministri-ks.net/repository/docs/PUBLIC-PRIVATE_PARTNERSHIP_DEVELOPMENT_STRATEGY_FOR_THE_REPUBLIC_OF_KOSOVO_2014_2016.pdf.

the draft concept paper for the new draft PPP Law⁶⁰⁰.

The website of the PPRC⁶⁰¹ provides a wide range of useful information, such as legal acts, guidelines, standard templates and contract notices. This information can be searched by various criteria, such as notice type, contract type and contract value⁶⁰². Information on contract execution is not available, however.

Overall, the value for the indicator 'Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently' is 3.

Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently						
This indicator measures to what extent public procurement policy is systematically developed, implemented and monitored, how central public procurement functions are distributed and regulated, and to what extent the preparation and implementation of policies are open and transparent.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
Quality of the policy framework for public procurement	
1. Quality of the strategy for development of public procurement and PPPs/concessions	3/5
2. Quality of the operational action plan	4/5
3. Implementation of the strategy and the action plan	0/5
4. Monitoring of strategy implementation	0/5
Capability of central procurement institutions and their performance	
5. Adequacy of the legal framework to ensure capable institutions	10/10
6. Clarity in definition and distribution of central procurement functions in the legislation	8/10
7. Performance of the institutions involved, their capacity and resources	12/20
Comprehensiveness and efficiency of systems for monitoring and reporting on public procurement	
8. Presence and quality of monitoring and data collection	6/10
9. Accessibility of public procurement data	8/10
Total⁶⁰³	51/80

Overall, an institutional framework for developing and implementing public procurement policy is in place. The competences of the institutions involved in procurement activities are clearly allocated. At present, challenges lie in implementation of the oversight and monitoring function. These challenges are mostly related to insufficient institutional capacity to react to changes in the legal framework, absence of co-operation between institutions, and lack of qualified employees. These challenges are recognised by the Strategy adopted in January 2017.

⁶⁰⁰ These consultations were noted in written information given to SIGMA by the Central PPP Department. For example, a roundtable was organised on 16 February 2017 to discuss the concept paper with representatives of the Office of the Prime Minister and of the Association of Kosovo Municipalities, municipal representatives and members of civil society.

⁶⁰¹ https://krpp.rks-gov.net/Default.aspx?PID=Home&LID=2&PPRCMenu_OpenNode=60.

⁶⁰² https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=2&PCID=-1&CtIID=SearchNotices&ind=1&PPRCMenu_OpenNode=63.

⁶⁰³ Point conversion ranges: 0-12=0, 13-25=1, 26-39=2, 40-53=3, 54-67=4, 68-80=5.

Key recommendations

Short-term (1-2 years)

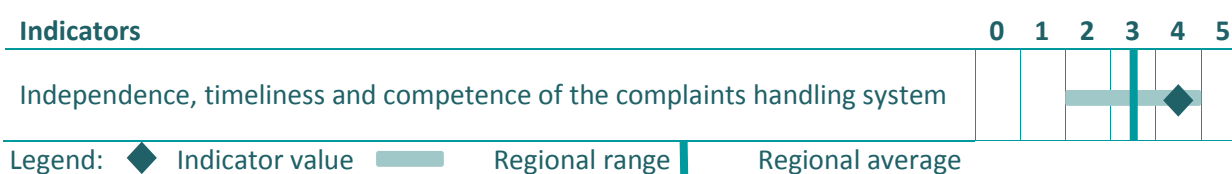
- 1) The PPRC should review and revise the PPL so that it is fully compliant with the 2014 EU Public Procurement Directives, and it should submit the corresponding draft legislative amendments to the Government, following appropriate and full consultation.
- 2) The Government should transpose the provisions of the EU Defence Procurement Directive into the national law.
- 3) The Government should adopt a PPP development strategy.
- 4) The Government should grant the CPA the necessary resources.
- 5) The relevant institutions, such as PPRC, PRB, CPA, MoF, the Anti-Corruption Commission, Competition Agency, KIPA and the National Audit Office should put in place mechanisms for more effective co-ordination of key procurement functions.

Medium-term (3-5 years)

- 6) The MoF, together with the CPA, based on experience from the start-up phase, should revise and confirm the regulation governing the centralised purchasing system (including an update of the list of items). The CPA's capacity should be enhanced, including targeted training of CPA's key staff.
- 7) The PPRC should improve its system for monitoring and reporting on public procurement proceedings and practices, as well as the comprehensiveness and accessibility of information available to contracting authorities, economic operators and other stakeholders.

Key requirement: In case of alleged breaches of procurement rules, aggrieved parties have access to justice through an independent, transparent, effective and efficient remedies system.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

Principle 12: The remedies system is aligned with the European Union acquis standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions.

The PPL provisions on the scope of the review and remedies system, the time limits for challenging decisions, the effects of filing a complaint (automatic suspension of the concerned procurement procedure), and the mechanism for ensuring the effectiveness of contracts are to a large extent in line with the requirements of the *acquis*. The approach to alternative penalties, however, is not fully in line with the *acquis*. According to the PPL⁶⁰⁴, alternative penalties may take the form of compensation for damages, but compensation for damages does not constitute an alternative penalty, according to the

⁶⁰⁴ PPL, Article 132(2).

relevant provisions of the Directives⁶⁰⁵. The PRB's authority to impose a fine of EUR 5 000 on a complainant if the complaint is deemed frivolous may be considered a limitation on the complainant's access to justice. However, the PRB does not use this option in practice⁶⁰⁶.

Economic operators are obliged to submit a complaint to the contracting authority before initiating a review process before the PRB. They are entitled to seek a review before the PRB only if the contracting authority has rejected the complaint. However, the PPL is not clear on how the standstill period⁶⁰⁷ is incorporated into the process of complaining before the contracting authority. Provisions also appear to be lacking regarding the standstill period between the rejection of the complaint by the contracting authority and the reception of an appeal against such a decision by the PRB. The introduction of this preliminary dispute resolution by the 2016 amendment to the PPL may have contributed to the reduction of the PRB's workload. The number of complaints submitted to the PRB fell slightly in 2016, from 592 complaints in 2015, to 481 in 2016⁶⁰⁸. However, this drop could partly be the result of an increase in the administrative fees. The 2016 amendments to the PPL increased these fees to 1% of the value of the estimated contract value or, in some cases, of the bid, but to not less than EUR 100 and not more than EUR 5 000.

The PRB is the first-instance review body for complaints related to public procurement (including PPPs). The Board has five members, one of whom serves as the Chairperson. All members are appointed for a term of five years, without the possibility of reappointment. The number of board support staff is 18. The Assembly appoints the members of the Board based on the recommendations of an independent selection body, composed of three judges appointed by the Judicial Council. Members of the Board can be removed from office only if they are found guilty of a criminal offence through a final court judgement or if they have acted contrary to the professional ethics associated with their duties. The latter provision is vague and entails the risk of inappropriate application. If the Chairperson or a member of the PRB is indicted for a criminal offence, he or she is to be suspended and paid 50% of his/her salary.

The PRB makes its decisions in panels consisting of three or five members, depending on the complexity of the case and the value of the contract⁶⁰⁹. Cases related to low value contracts can be decided by one member. As of April 2015, the PRB had only three appointed Board members. Since January 2016, when the Chairperson resigned from his position, the PRB had only two active Board members. Under the PRB's internal rules, the PRB was then unable to review cases with a value of more than EUR 50 000. This limitation entailed delays and backlogs in the processing of complaints. Of the 592 complaints filed by economic operators with the PRB in 2015, 25 complaints were pending in 2016 because of the lack of a quorum. However, the appointment of a new Chairperson and the full quorum of the Board as from April 2016 have considerably improved the situation.

In the second half of 2016, the PRB created an internal document management system, which facilitates the preparation of annual reports and improves the tracking of active cases. Previously, the PRB did not have any internal system to track cases. The possibility of oral hearings is provided for in the PPL. These hearings are used when the PRB considers them necessary⁶¹⁰. In practice, the PRB holds

⁶⁰⁵ Article 2e, paragraph 1, of Directive 89/665/EEC on the co-ordination of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts provides for alternative penalties where Member States might consider ineffectiveness to be inappropriate. An alternative penalty can be either the imposition of a fine or the shortening of the contract's duration.

⁶⁰⁶ According to interviews by SIGMA with NGOs and economic operators.

⁶⁰⁷ Article 2a and 2b of Directive 89/665/EEC and Article 2a and 2b of Directive 93/12/EEC.

⁶⁰⁸ Annual Report of the PRB 2016, February 2017, Pristina, p. 22.

⁶⁰⁹ Article 21(1) of Regulation No. 01/2017 of the Work of the PRB of Kosovo, available at: https://oshp.rks-gov.net/repository/docs/200-17work-regulation_1.pdf.

⁶¹⁰ Article 26(1) of Regulation No. 01/2017 of the Work of the PRB of Kosovo.

oral hearings in 90% of cases. All of the decisions of the PRB are published and available on its website⁶¹¹, without any significant delays.

The competences of the PRB also include decision making on the disqualification of an economic operator due to submission of false information, at the request of the contracting authority. In 2016, five such requests were made, three of which were refused, one approved and one is currently under review⁶¹².

Table 10 provides data on the complaints submitted, reviewed and approved during the last three years.

Table 10. Complaints to the Procurement Review Body 2014-2016

	Complaints submitted	Complaints reviewed	Complaints approved
2014	537	519	181
2015	592	567	166
2016	481	481	158

Source: Procurement Review Body (February 2017), Annual Report of the Procurement Review Body 2016, Pristina, p. 22.

As for the execution of the PRB's decisions, contracting authorities are given a five-day deadline to comply with those decisions. Economic operators have the right to submit a request to the PRB to issue an ordinance against a contracting authority. The PRB issued 7 such ordinances in 2015 and 14 in 2016⁶¹³. However, in practice, some caveats apply regarding the execution of the PRB's decisions. The most important issue is that the Treasury has refused to execute fines imposed by the PRB on the grounds that it should execute only the final decisions of competent courts, not the decisions of administrative bodies⁶¹⁴. This practice seriously undermines the effectiveness of the remedies system that the PRB has been mandated to maintain and preserve. Some contracting authorities have also refused to execute the legal obligations imposed by the PRB⁶¹⁵.

An analysis of a sample of PRB decisions indicates that the decisions based on the applicable legislation to resolve complaints and introduce sanctions where appropriate. However, the decisions do not always contain a clear rationale, as they tend to concentrate on the arguments expressed by the parties rather than adequately explaining the reasoning for the decision. The inconsistency of PRB decisions is frequently mentioned by end users⁶¹⁶. However, no particular examples of its decisions were provided to SIGMA.

Appeals against the decisions of the PRB can be made to the Basic Court. In 2016, ten administrative appeals were submitted to the Basic Court in this regard. Of the ten PRB rulings appealed by economic operators before the Basic Court of Pristina, seven were found by the court to be justified⁶¹⁷.

The PRB website contains a search engine that allows the search of cases according to the following criteria: free text entry, year and month of the decision, and name of the contracting authority. The website also provides a basic search engine regarding the decisions of the PRB⁶¹⁸. In late 2016, the PRB started to further develop the functionality of the website, but an improvement in the search engine should be considered, so as to introduce search functions according to additional criteria, such as CPV code, subject matter of the contract and name of the economic operator.

⁶¹¹ <https://oshp.rks-gov.net/?cid=2,71>.

⁶¹² Annual Report of the PRB 2016, February 2017, Pristina, p. 25.

⁶¹³ *Idem*, p. 24.

⁶¹⁴ *Ibid.*

⁶¹⁵ *Idem*, p. 23.

⁶¹⁶ Interviews with the representatives of contracting authorities, the business sector and NGOs.

⁶¹⁷ Annual Report of the PRB 2016, p. 24.

⁶¹⁸ <https://oshp.rks-gov.net/?cid=2,71>.

The value for the indicator 'Independence, timeliness and competence of the complaints handling system' is 4.

Independence, timeliness and competence of the complaints handling system						
This indicator measures the effectiveness of the system for handling complaints on public procurement. First, the quality of the legislative and regulatory framework is assessed, specifically in terms of compliance with the EU Directives. Then, sub-indicators measure the strength of the institutional set-up for handling complaints. Next, the actual performance of the review system is measured using a combination of qualitative and quantitative indicators. Finally, the performance of the remedies system for PPP/concessions is evaluated.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
The legislation sets out the mechanisms for handling complaints in compliance with EU Directives	
1. Right to challenge public procurement decisions	5/5
2. Time limit for challenging decisions taken by contracting authorities/entities	2/2
3. Transposition of mechanisms to avoid ineffectiveness of contracts and impose penalties	2/3
4. Mechanisms to ensure implementation of resolutions	0/2
5. Right to challenge decisions of the review body	3/3
The institutional set-up for handling complaints	
6. Legal provisions establishing the review body ensure independence of the institution and its members	6/7
7. Adequacy of the organisational set-up and procedures of the review body	2/4
8. Public availability and timeliness of data on the review system	3/4
Performance of the review system	
9. Fairness of fee rates for initiating review procedures	1/3
10. Actual processing time of complaints	2/3
11. Complaint submission in practice	3/4
12. Quality of decision making by the review body	3/4
13. Cases changed or returned after verification by the court (%)	0/2
Performance of the remedies system in PPPs/concessions	
14. Right to challenge lawfulness of actions/omissions in PPP/concessions procedures	5/5
15. Legal provisions ensure independence of the review body for PPPs/concessions and its members	5/5
16. Timeliness and effectiveness of complaints handling system for PPPs/concessions	1/5
Total⁶¹⁹	43/61

The regulatory framework and the institutional set-up for review are in place. The review system covers public procurement, including PPPs. The review body is striving to improve its work capacity and quality, although some implementation weaknesses remain, such as its capacity to deal with complex cases. The decisions of the review body are based on the applicable legislation and resolve the cases, but they tend to lack a clear rationale.

⁶¹⁹ Point conversion ranges: 0-8=0, 9-19=1, 20-30=2, 31-41=3, 42-52=4, 53-61=5.

Key recommendations

Short-term (1-2 years)

- 1) The PRB should further develop the functionality of its website, including the incorporation of an easily navigable search engine to enable the browsing of decisions by the type of problem (such as by the legal provisions involved), for example by free text search.
- 2) The PRB should strengthen its electronic case management system so that it is fully operational.
- 3) The PRB should improve the quality of the decisions by establishing a mechanism to ensure the consistency of its decisions.
- 4) The capacity of the PRB should be further strengthened.

Medium-term (3-5 years)

- 5) The PRB should fully integrate its website into the e-procurement system, and it should develop the additional capacity to introduce any changes in normative acts or in the needs of system users.

Key requirement: Contracting authorities are adequately staffed and resourced and carry out their work in accordance with applicable regulations and recognised good practice, interacting with an open and competitive supply market.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

Principle 13: Public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring the most efficient use of public funds and making best use of modern procurement techniques and methods.

The public procurement share of GDP amounted to 13.48% in 2015 and 13.7% in 2016. The total value of signed public procurement contracts was EUR 401.8 million in 2015 and EUR 424.5 million in 2016. In 2015, 170 contracting authorities registered with the PPRC, and 180 in 2016⁶²⁰.

According to the PPL, contracting authorities are obliged to draft a procurement plan⁶²¹, and they comply with this obligation. However, the main reason for the preparation of this plan is to inform the CPA of expected purchases. Based on these plans, the CPA decides which goods, services and works would be suitable for centralised purchasing. The obligation to publish the procurement plans is not stipulated in the PPL, and in practice, these plans are not published. As a result, economic operators do not have access to the plans and cannot benefit from the information they provide.

⁶²⁰ Annual Report of the PPRC 2015, p. 17. and Annual Report of the PPRC 2016, p. 19.

⁶²¹ PPL, Article 8 (1).

The rules of the PPL with regard to the determination of estimated value are comprehensive and in compliance with the *acquis*. However, significant problems with budgeting persist in practice. Budget allocations and estimated value of a contract, for example, are often determined by using an outdated budgetary forecast instead of realistic market prices⁶²². Contracting authorities are therefore often unable to establish the estimated value of a contract based on the market price.

The PPL requires, as a general approach, the usage of the procedure with prior publication of a contract notice. Single-source procurement or the negotiated procedure without prior publication of a notice can be applied only in cases stipulated by the PPL. In 2016, contracts awarded by negotiated procedure without prior publication represented 11.76% of total value of awarded contracts⁶²³. This proportion was 16.1% in 2015⁶²⁴ and 12.8% in 2014⁶²⁵. In 2015, the proportion of open procedures was 76.35%, while it was 84.55% in 2016. The share of the restricted procedure was low both in 2015 (1.85%) and in 2016 (0.52%). The participation in procedures under the price quotation was 5% in 2015 and 2.39% in 2016.

The average number of participants in competitive procurement procedures remains fairly high. The average number of bidders submitting a tender was 6.1 in 2014, 5.8 in 2015 and 5.4 in 2016.

Using the e-procurement platform⁶²⁶ became mandatory for the CPA on 1 April 2016. For central-level contracting authorities, it became mandatory on 1 September 2016 and for other contracting authorities on 1 January 2017, based on a decision of the Government in March 2016⁶²⁷. However, the PPRC has introduced a transition phase until the end of 2017, allowing economic operators to decide whether they will submit their bids electronically or in hard copy. As of January 2018, at both central and municipal levels, economic operators will be obliged to use e-procurement exclusively. The introduction of the e-procurement system is a positive development. However, this process has run into many difficulties, such as a lack of awareness and capacity building on the new e-procurement tool for government institutions and economic operators⁶²⁸. In addition, not all supporting secondary decrees had been adopted by the time of the introduction⁶²⁹. The PPRC provided trainings on e-procurement in December 2016 and January 2017 to a total of 220 procurement officers⁶³⁰, but no trainings were organised for the business sector. Also, the e-procurement system does not function smoothly, and sudden breakdowns often interrupt the flow of procurement procedures⁶³¹.

As the 2014 EU Directives have not yet been transposed and the e-procurement system is still in the initial stages, contracting authorities and economic operators cannot yet fully benefit from modern procurement procedures and tools.

With regard to the implementation of public procurement rules, the main challenges are linked to poor planning and the excessive use of the lowest-price criterion. Approximately 99% of public contracts are

⁶²² This information was provided in SIGMA's Interviews with representatives of the National Audit Office (NAO). This practice was also confirmed in interviews with contracting authorities and NGOs

⁶²³ Annual Report of the PPRC 2016, p. 32.

⁶²⁴ Annual Report of the PPRC 2015, p. 26.

⁶²⁵ Annual Report of the PPRC 2014, p. 30.

⁶²⁶ <https://e-prokurimi.rks-gov.net>.

⁶²⁷ Government Decision No.12/79 of 15 March 2016.

⁶²⁸ This information was provided in SIGMA's Interviews with contracting authorities and representatives of the business sector. The National Audit Office (NAO) also confirmed the lack of proper planning and execution of training programmes in this regard in its follow-up audit report, *Implementation of the Contract for the Electronic Procurement System*, Pristina, February 2017, p 12.
See also NAO (July 2016): The audit report *Implementation of the Contract for the Electronic Procurement System*, Pristina July 2016.

⁶²⁹ Such as secondary decrees on the use of electronic procurement methods and on the rules regarding devices for the electronic submission and receipt of tenders.

⁶³⁰ Annual Report of the PPRC 2016, p. 60.

⁶³¹ This information was provided in SIGMA's Interviews with representatives of the contracting authorities and business sector.

awarded according to the lowest-price criterion (in 2014, the proportion was 98.93%, in 2015 it was 99.77%, and in 2016 the proportion was 99.38%)⁶³². The most economically advantageous tender criterion is hardly ever used, even though the PPL contains no limitations or restrictions on its use. To date, the PPRC has not promoted the use of this criterion. Major price differences are found for the same items between the various contracting authorities⁶³³. The contract execution stage is not properly monitored⁶³⁴ and is a significant source of problems, such as payment for unfinished work or undelivered services⁶³⁵. The PPL allows contract amendments only in limited cases⁶³⁶, but indications are that in practice, contracts are often amended outside the framework of the PPL⁶³⁷. Contracting authorities generally do not use contract management systems. The application of previously acquired experience in contract management to future transactions is not a common approach.

Amendments to the PPL during 2016 entrusted the PPRC, in co-operation with the KIPA, with the tasks of developing training modules and issuing certificates of qualification. The fulfilment of these tasks requires significant resources from the PPRC, in addition to the resources required to fulfil its obligation to provide general training.

Overall, the value for the indicator 'Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations' is 2.

⁶³² *Report on Public Procurement Activities in Kosovo in 2015 – PPRC Annual Report*, Pristina, p. 32.

⁶³³ *Annual Audit Report of Kosovo National Audit Office 2015*, Pristina, p. 37.

⁶³⁴ This information was provided to SIGMA in an interview with the National Audit Office. See also for example the Audit Report of the National Audit Office (June 2017), *Management of Procurement Process on Road Management*, <http://www.zka-rks.org/wp-content/uploads/2017/07/ProcurementProcessOnRoadMaintenance.808543.pdf>. Various reports of CSOs also noted a lack of proper contract management and contract implementation as serious problems, such as the report of the Kosovo Democratic Institution (March 2016), *Road to Money: Public Procurement Monitoring at Ministry of Infrastructure*. See also the findings in IMF (April 2016), "Technical Assistance Report on Public Investment Management Assessment", IMF Country Report No. 16/100, <https://www.imf.org/external/pubs/cat/longres.aspx?sk=43843.0>.

⁶³⁵ *Annual Audit Report of Kosovo National Audit Office 2015*, Pristina, p. 37. This situation was confirmed by the PPRC, businesses and NGOs.

⁶³⁶ See Article 35 of PPL that refers to a contract where a negotiated procedure without prior publication of a contract notice is used and Article 38 (2) of the PPL, which refers to the increase or decrease in the value of a framework agreement. If this latter option has been clearly provided in advance and if the conditions for this action are also established, such amendments would in principle be compliant with the *acquis*.

⁶³⁷ Kosovo Democratic Institute, *Road to Money: Public Procurement Monitoring at Ministry of Infrastructure*, March 2016, Pristina, page 8. The 2016 report of the NAO will provide some indications in this regard.

Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations

This indicator measures the extent to which public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring most efficient use of public funds. It measures performance in the planning and preparation of public procurement, the transparency and competitiveness of the procedures used, the extent to which modern approaches and tools are applied, and how the contracts are managed once they have been concluded.

Overall indicator value 0 1 **2** 3 4 5

Sub-indicators	Points
Planning and preparation of the public procurement procedure	
1. Due attention is given to the planning process	3/5
2. Presence and use of cost estimation methods and budgeting	2/2
3. Perceived quality of tender documentation by contracting authorities and economic operators (%)	2/4
Competitiveness and transparency of conducted procedures	
4. Perceived fairness of procedures by businesses (%)	3/4
5. Contracts awarded by competitive procedures (%)	4/5 ⁶³⁸
6. Contracts awarded based on acquisition price only (%)	0/5 ⁶³⁹
7. Average number of tenders submitted per competitive procedure	2/3
8. Contracts awarded when one tenderer submitted a tender (%)	0/2 ⁶⁴⁰
Use of modern procurement methods	
9. Adequacy of regulatory framework for and use of framework agreements	2/5
10. Adequacy of regulatory and institutional framework and use of centralised purchasing	1/5
11. Penetration of e-procurement within the procurement system	2/5
Contract management and performance monitoring	
12. Presence of mechanisms requiring and enabling contract management	0/6
13. Contracts amended after award (%)	4/4
14. Extent of <i>ex post</i> evaluation of the procurement process and of contract performance	0/6
Risk management for preserving the integrity of the public procurement system	
15. Existence of basic integrity tools	0/4
Total⁶⁴¹	25/65

The legal provisions establish a sufficient framework for conducting procurement transactions in accordance with the principles of transparency and free and undistorted competition. However, effective implementation remains a challenge, in particular in the areas of procurement planning and contract management. Deficiencies in the area of budgeting regulations and practice negatively affect procurement practice. Procurement transactions are mostly used to achieve formal legal compliance, and considerations of value for money are not being met.

⁶³⁸ This sub-indicator value is based on information in the Annual Report of the PPRC 2016, p. 32.

⁶³⁹ This sub-indicator value is based on information in the Annual Report of the PPRC 2016, p. 35.

⁶⁴⁰ No data provided.

⁶⁴¹ Point conversion ranges: 0-12=0, 13-23=1, 24-34=2, 35-45=3, 46-56=4, 57-65=5.

Principle 14: Contracting authorities and entities have the appropriate capacities and practical guidelines and tools to ensure professional management of the full procurement cycle.

Under the PPL, the PPRC is in charge of the preparation and dissemination of procurement manuals, guidelines, standard tender and contract documents, standard forms and models (in accordance with the provisions of the PPL) for the benefit of contracting authorities and economic operators. Guidelines, manuals and standard templates available on the PPRC's website⁶⁴² reflect the current approach, which regulates every aspect of procurement in detail. In general, guidelines and other materials are exhaustive and explanatory. All stages of the procurement cycle are dealt with, although some stages are not covered exhaustively, with special regard to contract management. Guidelines and other materials are of a general nature and do not cover the specificities of procurement for key sectors, such as construction, the health sector or IT supplies and services. However, the materials have been evaluated positively by end users⁶⁴³.

A dedicated phone number (published on the PPRC's website) is available to contracting authorities and economic operators, which can be used in the event that consultation is needed. Written requests for interpretation and guidance on application of normative provisions can also be submitted. These options are widely used in practice, but according to the end users, the answers are often difficult to interpret. Public procurement officers are also concerned that PPRC's opinion does not always guarantee that the PRB will find the procurement process conducted in accordance with the PPRC's lawful opinion⁶⁴⁴.

Table 11. The replies provided by the PPRC for the contracting authorities and economic operators in 2015 and 2016

	Number of given responses		Answers for contracting authorities		Answers for economic operators	
	2015	2016	2015	2016	2015	2016
Written interpretation (through the PPRC archive)	86	58	61	44	25	14
Interpretation via electronic address of the PPRC	1 302	1 021	950	609	352	412
Interpretations through the official telephone of the PPRC	1 278	1 243	1 201	1 120	77	123
Meetings (consultations)	150	46	110	26	40	20
Total:	2 816	2 368	2 322	1 799	494	569

Source: Public Procurement Regulatory Commission, Annual Report of the PPRC 2015, p. 44 and Annual Report of the PPRC 2016, p. 47.

According to the PPL, each contracting authority must employ a public procurement officer. A person may serve as a procurement officer if he/she holds a university degree as well as a valid basic or advanced procurement professional certificate. The PPRC, in co-operation with KIPA, organises training to obtain the relevant certificates (basic and advanced).

In 2016, contracting authorities cancelled 1 573 procurement procedures, which represents 24% of the total number⁶⁴⁵. This is fewer than in previous years (34% in both in 2015 and 2014), but remains a

⁶⁴² https://krpp.rks-gov.net/Default.aspx?PID=StdForms&LID=2&PPRCMenu_OpenNode=62.

⁶⁴³ This view was expressed by representatives of the contracting authorities and the business sector in interviews with SIGMA.

⁶⁴⁴ This view was expressed by representatives of the contracting authorities in interviews with SIGMA.

⁶⁴⁵ This calculation is based on the statistics on the amount of contract notices and cancellation notices, Annual Report of the PPRC 2016, p. 49.

high percentage. Weak planning may be one of the main reasons for the frequent cancellations of the procedures⁶⁴⁶. As contracting authorities told SIGMA in interviews, and the supervisory authorities confirmed, contracting authorities lack skills in procurement planning and needs assessment as well as in drafting technical specifications and evaluating tenders. These weaknesses are especially apparent when defining the criteria for the most economically advantageous tender, rather than just the price, and when applying these criteria during the tender evaluation. This problem appears to be one of the main reasons why the lowest price was used in 2016 as the award criterion for 99.38% of the published tender notices. This is not a new trend. In 2015, this proportion was 99.77%, and in 2014 98.93%.

The value for the indicator ‘Availability and quality of support to contracting authorities and economic operators to strengthen the professionalisation of procurement operations’ is 3.

Availability and quality of support to contracting authorities and economic operators to strengthen professionalisation of procurement operations					
This indicator measures the availability and quality of support given to contracting authorities and economic operators to develop and improve the knowledge and professional skills of procurement officers and to advise them in preparing, conducting and managing public procurement operations. This support is usually provided by a central procurement institution.					
This indicator does not directly measure the capacity of contracting authorities and entities. The assessment is of the scope of the support (whether all important stages of the procurement cycle are covered), its extent, and its quality and relevance for practitioners (whether it provides useful, practical guidance and examples). Surveys of contracting authorities and economic operators are used to gauge the relevance and practical applicability of the support.					
Overall indicator value	0	1	2	3	4 5

Sub-indicators	Points
Availability and quality of manuals, guidelines, standard tender documents and other operational tools	
1. Availability and quality of manuals and guidelines	3/5
2. Availability and quality of standard tender documents, standard forms and standard contract models	4/5
Availability and quality of training and advisory support	
3. Access to quality training for procurement staff	5/5
4. Availability of advice and support for contracting authorities and economic operators	2/5
Procurement procedures cancelled	
5. Procurement procedures cancelled (%)	1/5
Total⁶⁴⁷	15/25

Procurement manuals, guidelines and standard templates are elaborated and published on the website of the PPRC. They include, not always in detail, all stages of the procurement process. However, these documents are general in nature and do not cover the specificities of public procurement for key sectors, such as construction, health or IT. The PPRC also provides consultations

⁶⁴⁶ The Technical Paper on “Corruption risk assessment of the public procurement area in Kosovo” (May 2017) came to the same conclusion. See page 23.
https://eeas.europa.eu/sites/eeas/files/20170503_corruption_risk_assessment_in_public_procurement.pdf

⁶⁴⁷ Point conversion ranges: 0-4=0, 5-8=1, 9-12=2, 13-16=3, 17-20=4, 21-25=5

by telephone, as well as answers and legal opinions in response to written requests. The number of cancelled procurement procedures in 2016 was 24% of the total number.

Key recommendations

Short-term (1-2 years)

- 1) The Government should introduce an obligation for contracting authorities to publish their procurement plans on their websites.
- 2) The PPRC should supplement the current guidelines with information on good practice in procurement for key sectors, such as the health sector, construction and IT supplies and services. Consideration should also be given to the elaboration of standard evaluation matrixes and tools.
- 3) The PPRC should organise a thorough assessment of the legal framework and internal workflow concerning e-procurement, and revise the current system if the assessment findings require that it be further developed.
- 4) The Government should strengthen the capacity of the PPRC and KIPA for providing training and support to the contracting authorities and economic operators. In addition to existing efforts, training activities should concentrate on specific important areas of procurement, such as the health sector, construction and IT supplies and services.
- 5) The PPRC should increase the monitoring of public procurement activities, with special regard to contract amendments and implementation, by introducing a monitoring functionality in the e-procurement system, to reduce the risks of noncompliance significantly and increase value for money.

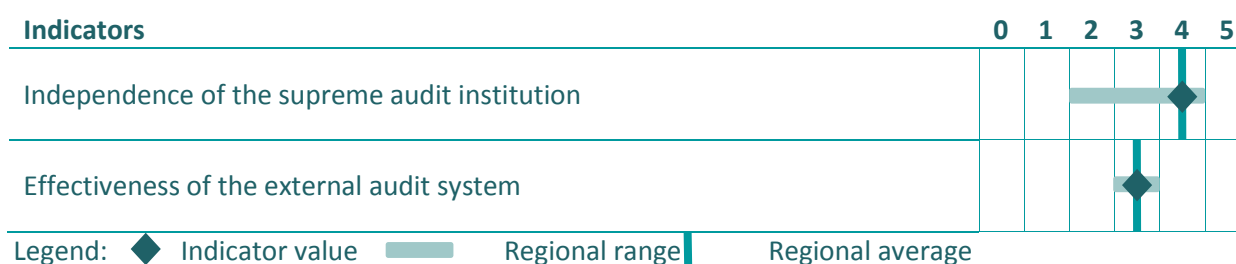
Medium-term (3-5 years)

- 6) The PPRC should ensure that e-procurement is widely used.
- 7) The Government should further develop the e-procurement system, to make modern purchasing tools and techniques, such as electronic auctions and dynamic purchasing systems, available to contracting authorities and economic operators.
- 8) The PPRC should develop guidelines focusing on the new approaches promoted by the 2014 EU Directives, such as life-cycle costing and social aspects of procurement. Guidelines should also encourage contracting authorities, where appropriate, to use the best price/quality ratio criterion instead of the lowest-price criterion.

External audit

Key requirement: The constitutional and legal frameworks guarantee the independence, mandate and organisation of the supreme audit institution to perform its mandate autonomously according to the standards applied for its audit work, allowing for high quality audits that impact on public sector functioning.

The values of the indicators assessing Kosovo's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



Analysis of Principles

Principle 15: The independence, mandate and organisation of the supreme audit institution are established, protected by the constitutional and legal frameworks and respected in practice.

The Constitution⁶⁴⁸ provides the legal basis for the AG and the AG's Office as an independent institution with the mandate and the right to report on the management of public funds in Kosovo. In addition, a new Law on the Auditor General and the National Audit Office was promulgated in 2016. The Law regulates more clearly the functional, operational and financial independence and mandate of the AG and the organisation of the NAO. For example, the approval of the NAO's budget is clearly protected against interference by the Government. Article 13 (2) states that "If the Government amends or in any other way modifies the budget proposal of the NAO, it must inform the Assembly about the budget proposal of NAO at the same time as the draft budget is submitted to the Assembly".

Whether the new Law provides adequate legal protection by the Supreme Court against any interference with the NAO's independence and audit mandate has yet to be seen. Neither the Constitution nor the new Law on the Auditor General and the National Audit Office refer to protection by the Constitutional Court or the Supreme Court. However, the AG's independence has not been challenged in practice.

Law No. 05/L-055 also provides the AG with a broad mandate allowing financial, compliance and performance audits across all budget organisations (whether of the central or local government) and all publicly owned enterprises (POEs). It stipulates further that the AG shall not be subject to any restrictions in access to information or to any explanations that he/she deems are necessary for audit purposes. It also stipulates that the AG should not face any restrictions in publishing its reports. Interviews conducted with the staff of the NAO all confirmed that in recent years, there have been no restrictions in accessing data in practice.

The 2017 Balkan Barometer survey shows that 48% of the population agree that the NAO is independent of political influence. This is the second-highest rate within the region (the average is 31%).

The overall value for the indicator 'Independence of the supreme audit institution' is 4.

⁶⁴⁸ Articles 65(1) and 136-138 of the Constitution.

Independence of the supreme audit institution						
This indicator measures the extent to which external audit by the supreme audit institution (SAI) is conducted independently and the internationally recognised conditions for the effective functioning of the SAI are found in law and practice.						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Constitutional and legal independence of the SAI	3/4
2. Organisational and managerial independence of the SAI	5/5
3. Adequacy of the SAI mandate and alignment with International Standards of Supreme Audit Institutions (ISSAIs)	3/3
4. Access to information and premises	1/1
5. Perceptions of SAI independence by population	1/3
Total⁶⁴⁹	13/16

The new Law on the Auditor General and the National Audit Office regulates the independence and organisation of the OAG in line with the ISSAIs. The OAG has a wide mandate and can fulfil it without restrictions.

Principle 16: The supreme audit institution applies standards in a neutral and objective manner to ensure high quality audits, which positively impact on the functioning of the public sector.

The legal framework obliges the NAO to conduct annual statutory regularity audits of the Government's Report on the Kosovo Budget. All budget organisations that have directly received a budget in the Annual Budget Law are required to produce annual financial statements. In the latest audit year, covering the fiscal year 2015, the NAO fulfilled this audit task and carried all 90 mandatory audits. In addition, it published the Annual Audit Report in August 2016, which reports on the consolidated funds and summarises findings from the entity audits.

It mainly carries out regularity audits in combination with compliance audits. While the NAO has no mandatory performance audit requirements, it ensures wide coverage of policy areas. In 2016, the NAO submitted five performance audit reports to the Assembly, covering the sectors for environment, social protection, public administration, education and infrastructure. In addition, the NAO has set up a department for the audits of POEs, consisting of six auditors. In 2016, it carried out audits of four POEs.

In total, the NAO published 104 reports in 2016. The reports refer to the ISSAIs as the applied audit standards. The NAO has translated the ISSAIs into Albanian. It has also updated the regularity audit manual and performance audit manuals in line with the ISSAIs supported by the British and Swedish SAIs, respectively. The manuals are consistent with the ISSAIs.

The NAO has internally established quality control and quality assurance procedures to ensure compliance with its audit standards. As per the Regularity Audit Quality Control Guide, the quality-control procedures require directors of audit departments and audit team leaders to individually fill out quality-control checklists at the planning, fieldwork and reporting phases. The checklists are sent to the Department for Audit Quality Control (DAQC), together with the audit plan or audit report, for a separate review. This review has been conducted since 2014, but efforts were intensified during the 2016 audit year. With the establishment of the DAQC, an increased number of audit files were reviewed. For the fiscal year 2016, the NAO confirmed the audits included: review of 70 planning files,

⁶⁴⁹ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

50 fieldwork files, 30 intermediate report files and 50 final audit reports (planned). The internal quality assurance reports indicate compliance with the audit standards in general, but the audit evidence is not always sufficiently documented.

The NAO has an active plan for the development of its capacity⁶⁵⁰, but it has not been adjusted since the significant changes in the NAO's management in 2016 (a new Auditor General has taken office and there are new persons in place in all senior management positions). Law No. 05-L-055, Article 19.2, allows the Assembly to initiate, at least every fifth year, a professional assessment of the work of the NAO, to be conducted by a peer SAI or any relevant international partner. So far, no external peer review has been carried out, but it is included as an action item in the PFM Reform Strategy, 2016-2020.

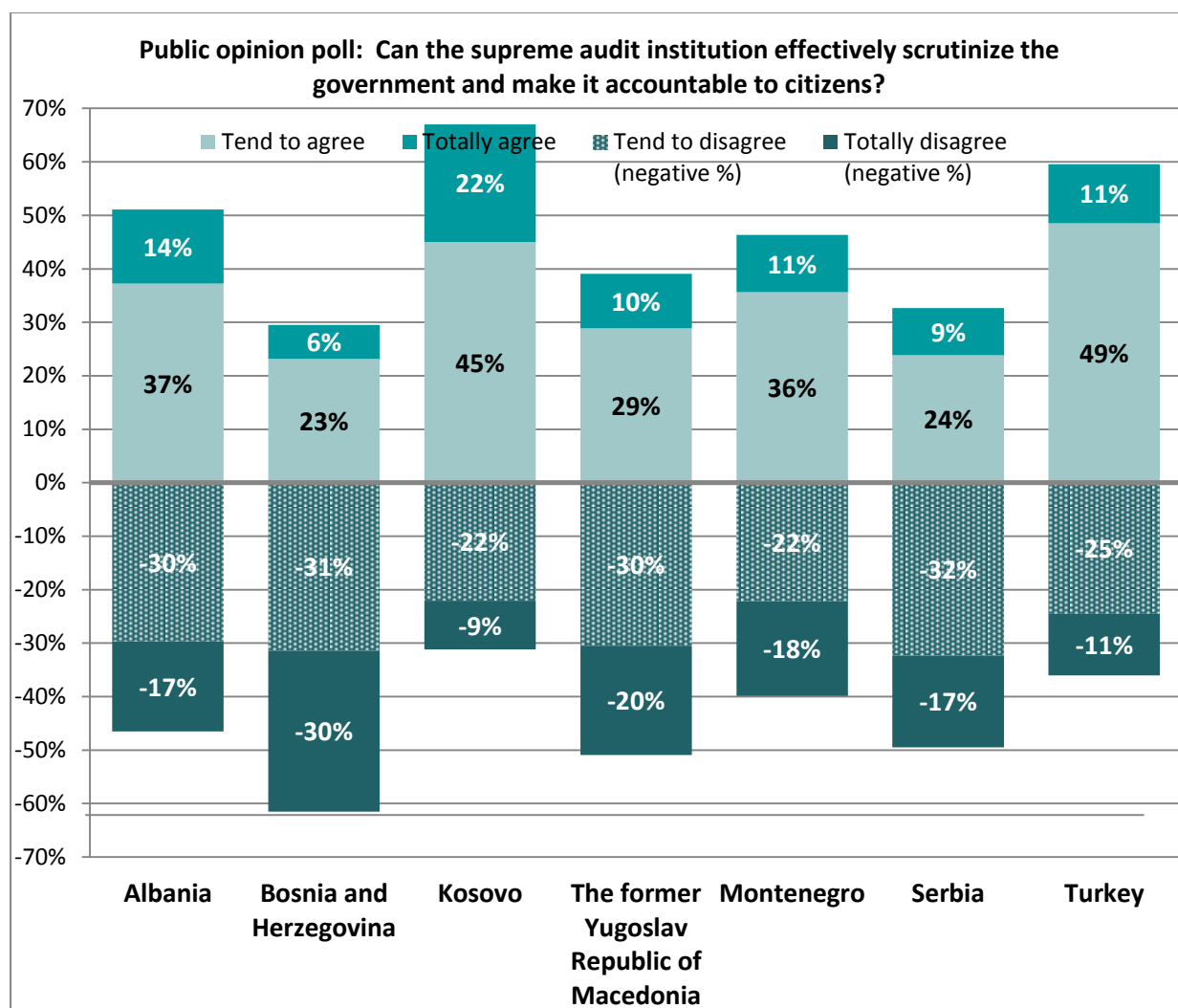
The AG reports are published on the NAO's website at the same time as they are sent to the Assembly. The Committee on Oversight of Public Finance (COPF) is established as the subcommittee within the Assembly charged with handling the NAO's reports. The COPF deals with the Annual Audit Report within three months (it is submitted in August and debated in November), but this period has not been maintained with the individual audit reports. For its scrutiny of the Annual Audit Report, the COPF regularly requests ministers and mayors to come to the Assembly. The COPF also prepares recommendations for the Annual Report. These recommendations are for the most part adopted by the Assembly. However, implementation of the NAO recommendations is modest. The NAO's Annual Report reports a declining implementation rate of 32%, although a similar share of audit recommendations are partially addressed⁶⁵¹.

The general public appears to recognise that the NAO can bring about positive change in the Government's financial management. The 2017 Balkan Barometer survey shows that 48% of the respondents trust the NAO in Kosovo, and 67% of the respondents agree that the SAI can effectively scrutinise the Government and make it accountable. Both rates are high in comparison to countries in the region.

⁶⁵⁰ The Corporate Development Strategy 2015-2020.

⁶⁵¹ Data provided by the NAO.

Figure 1. Perception of SAI's effectiveness



Source: 2017 Balkan Barometer survey, the Regional Cooperation Council

The value for the indicator 'Effectiveness of the external audit system' is 3.

Effectiveness of the external audit system						
This indicator measures the extent to which external audits contribute to improved management of public finances and how the supreme audit institution applies standards to ensure high-quality audits. (e.g. through its manuals and quality assurance system).						
Overall indicator value	0	1	2	3	4	5

Sub-indicators	Points
1. Coverage of mandate by external audit	6/6
2. Compliance of audit methodology with ISSAIs	3/6
3. Quality control and quality assurance	5/6
4. Implementation of SAI recommendations	1/6
5. Use of SAI reports by the legislature	5/6
Total⁶⁵²	20/30

The OAG fully meets its audit mandate by completing a regularity audit of all budget organisations and the consolidated statement. The applicable audit manuals and internal quality control and assurance arrangements should ensure compliance with the international standards (ISSAIs). The Assembly uses the OAG's annual audit report to scrutinise the Executive in line with the legal procedures and, generally, supports the audit recommendations. Nevertheless, the implementation rate of the recommendations is low.

Key recommendations

Short-term (1-2 years)

- 1) The OAG should review and update its corporate development strategy to ensure that it reflects the new initiatives and objectives introduced following the change in management in 2016, for example regarding quality control.
- 2) The OAG should consider separating compliance audits from financial audit work in order to concentrate on implementing efficient, evidence-based financial audits and to carry out government-wide thematic compliance audits.

Medium-term (3-5 years)

- 3) The OAG should implement the new corporate development strategy and report on progress on its implementation in the annual activity report.
- 4) The OAG should consider programming specific follow-up audits on recommendations in order to identify and address the root causes for the high rate of non-implementation, with a view to improving the implementation rate.

⁶⁵² Point conversion ranges: 0-5=0, 6-10=1, 11-15=2, 16-21=3, 22-25=4, 26-30=5

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