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ASSESSMENT REPORT

**on compliance with international standards
in the anti-corruption (AC) area**

Cycle II

3 December 2014

¹ This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

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Abbreviations

CEC	Central Election Commission
CPA	Central Procurement Agency/Ministry of Finance
CSO	Civil Society Organisation
DCSA	Department of Civil Service Administration/Ministry of Public Administration
EC	European Commission
ECHR	European Convention on Human Rights
ETS	European Treaty Series
EU	European Union
EULEX	European Union Rule of Law Mission - Kosovo
EUOK	European Union Office to Kosovo
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit/Ministry of Finance
GRECO	Group of States against Corruption/Council of Europe
IPA	Institute of Public Administration/Ministry of Public Administration
ISC	Independent Supervisory Council for Civil Service
KA	Kosovo Assembly
KAA	Kosovo Anti-corruption Agency
KBRA	Kosovo Business Registration Agency/Ministry of Trade and Industry
KC	Kosovo Customs
KDI/TIK	Kosovo Democratic Institute/Transparency International Kosovo
KFOR	NATO Kosovo Force
KIPRED	Kosovo Institute for Policy Research and Development
KJC	Kosovo Judicial Council
KJI	Kosovo Judicial Institute
KOI	Kosovo Ombudsperson Institution
KP	Kosovo Police
KPC	Kosovo Prosecutorial Council
KTA	Kosovo Tax Administration
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism/Council of Europe
MP	Member of Parliament
MPA	Ministry of Public Administration
MTI	Ministry of Trade and Industry
NGO	Non-Government Organisation
OAG	Office of the Auditor General
OGG	Office for Good Governance, Human Rights, Equal Opportunities and Gender Issues/Prime Minister's Office
OSCE	Organisation for Security and Cooperation in Europe
PECK	EU/CoE Joint Funded Project against Economic Crime in Kosovo
PIK	Police Inspectorate of Kosovo
PMO	Prime Minister's Office
PPRC	Public Procurement Regulatory Commission
PRB	Procurement Review Body
SC	Supreme Court
SPO	State Prosecutor's Office
SPRK	Special Prosecution of Kosovo
UNMIK	United Nations Interim Administration Mission in Kosovo
WB	World Bank

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I. INTRODUCTION

1. The 1st assessment of Kosovo vis-à-vis international anti-corruption standards was undertaken under the Joint European Union/Council of Europe Project against Economic Crime in Kosovo (PECK), implemented over a period of 38 months starting from 1 February 2012 to 31 March 2015. The first assessment cycle (out of two) lasted from September 2012 to May 2013. The corresponding [Assessment Report](#) of the anti-corruption regime of Kosovo (hereafter "AR") was adopted on 10 June 2013. It was based on the following Council of Europe and other international standards and was prepared using the GRECO methodology and practice specifically tailored to Kosovo:

- Twenty Guiding Principles for the Fight against Corruption (CM Resolution (97) 24);
- Criminal Law Convention on Corruption (ETS No. 173) and its Additional Protocol (ETS No. 191);
- Civil Law Convention on Corruption (ETS No. 174);
- Recommendation on Codes of Conduct for Public Officials (CM Recommendation No. R (2000) 10);
- Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (CM Rec(2003)4);
- United Nations Convention against Corruption (UNCAC).

2. The objective of the present report is to assess the measures taken by the authorities of Kosovo to comply with the 62 recommendations issued in the AR, covering the following themes:

- Fundamental safeguards and corruption prevention in respect of the judiciary (judges and prosecutors), police, public administration, members of Parliament, financing of political parties and election campaigns and public procurement;
- Criminal law, law enforcement and criminal procedure: offences and sanctions, investigation and criminal procedure, confiscation and other deprivation of instrumentalities and proceeds of crime, immunities from investigation, prosecution or adjudication of corruption offences; and
- International cooperation.

3. Initial information on progress made to implement the AR recommendations was collected from competent authorities and open sources, as well as bilateral meetings and workshops with beneficiary institutions and other stakeholders organised by the PECK Project during the period from October 2013 to mid-February 2014.

4. The [Follow-up report](#) on compliance with international standards in the area of anti-corruption was finalised in April 2014 and made public in June 2014. It assessed the level of implementation of each individual recommendation and overall compliance with relevant international standards. The Follow-up report concluded that AR recommendations xxxiv and xxxviii had been implemented satisfactorily; recommendations iii, xvi, xvii, xx, xxi, xxv, xxvi, xxxi, xxxiii, xxxv, xxxvii, xxxix, xli, xliv and lv had been partly implemented and recommendations i, ii, iv, v, vi, vii, viii, ix, x, xi, xii, xiii, xiv, xv, xviii, xix, xxii, xxiii, xxiv, xxvii, xxviii, xxix, xxx, xxxii, xxxvi, xl, xlii, xliii, xlvi, xlvii, xlviii, xlix, l, li, lii, liii, liv, lvi, lvii, lviii, lix, lx, lxi and lxii had not been implemented.

5. In the framework of the project's 2nd assessment cycle, further information on progress made to implement the AR recommendations was collected from the competent authorities and other relevant stakeholders during the on-site visit organised by the PECK Project from 14 to 18 April 2014 and immediately afterwards. The draft report was submitted to the Kosovo authorities for comments on 15 September 2014 and discussed in detail with the relevant authorities at a face-to-face meeting on 3 and 4 November 2014 and updated in light of additional written information received.

6. The report was drawn up by the Assessment Team composed of the following Council of Europe experts: Mr Flemming Denker, expert on criminal law, law enforcement, criminal procedure and international cooperation (Denmark); Mr Drino Galičić, expert on fundamental safeguards and corruption prevention in respect of judges, prosecutors, police and public administration (Bosnia and Herzegovina); Mr Jean-Christophe Geiser, expert on corruption prevention in respect of members of Parliament and financing of political parties and electoral campaigns (Switzerland); and Mr Edmond Dunga, PECK Project Advisor.

7. The present report assesses the implementation of each individual recommendation (all AR recommendations except recommendations xxxiv and xxxviii which were considered to have been

implemented satisfactorily in the Follow-up report, see paragraph 4 above), and provides an overall final assessment of the level of Kosovo's compliance with these recommendations under the current PECK Project.

II. ANALYSIS

1. General overview of the current situation of corruption

Recommendations i and ii

8. *The Assessment Team recommended:*

(i) to undertake a periodical assessment of corruption risks, prior to any further revision of the strategic documents (Anti-corruption Strategy and Action Plan); (ii) to adopt a more integrated approach of ethical aspects through adequate integrity plans, with a view to extend preventive measures to the entire public sector, including local government; and (iii) to publish respective findings and thus, to further define/adapt strategic priorities (paragraph 62); and

to ensure proper and effective implementation and monitoring of the new strategic framework against corruption for the period 2013-2017, as well as to implement the key outstanding measures from the previous Action Plan 2010-2011 (paragraph 72).

9. Following delays in the adoption phase during 2013, the current Anti-corruption Strategy and Action plan (2013-2017) sets the general orientation for the prevention and fight against corruption throughout Kosovo institutions. The Kosovo Anti-corruption Agency (KAA) is periodically monitoring the status of implementation of the said Action Plan. Thus, in accordance with the latest available six-month report covering the period from January to June 2014, it appears that only around 43% of the total number of planned activities for that period received the status "implemented"; 11% are in process of implementation; while 46% are either reported as not implemented or are not reported at all. The reporting system to KAA supposes that responsible institutions and civil society organisations nominate contact points who will then be in charge of reporting to KAA about the level of implementation in each sector and institution. This latest report, as well as the 2013 annual report demonstrate, however, a considerable percentage of unimplemented and non-reported activities, a result of non-communication of civil society organisations, professional media associations, but also Procurement Regulatory Body and some key ministries with the KAA. Other institutions which do communicate through their contact points nevertheless report insufficiently on most of the anti-corruption activities. This indicates an extremely low degree of ownership and lack of mutual trust in the strategic framework, including the management structure in place.

10. In addition, the strategic planning and implementation of anti-corruption policies based on risk and integrity assessments has not yet become a reality in Kosovo. In fact, the assessment team has learned that an on-going UNDP project is actually providing assistance in drafting integrity plans and risk assessment in health, education and energy sectors. A while ago, drafting of cross-government guidelines for integrity plans has been initiated by the Office for Good Governance within the Prime Minister's Office (OGG), but this process has not yet been finalised. Regarding the risk assessments in planning further anti-corruption activities, there is also no indication that any common methodology for this type of exercise exist, despite the fact that KAA received international assistance and support in this aspect when drafting the current Anti-corruption Strategy and Action Plan.

11. In conclusion, the current generation of anti-corruption strategic documents has therefore been promoted showing little or no cost-effectiveness and lacking risk analysis.

12. In order to implement recommendations (i) and (ii), in the view of the Assessment Team, it is of utmost importance that new indicators for measuring success in the implementation of the Anti-corruption Strategy and Action Plan are developed so as to allow tracing progress by sector and over time. This could be done, for instance, during the revision of the current Anti-corruption Action Plan in 2015 by the KAA. Also, anti-corruption policies should be more evidence-based in the future. For this to happen, an agenda with a series of risk assessment exercises should be drawn up soon, also in the framework of the revision of the Anti-corruption Action Plan by the KAA. Thus, in addition to risk assessments in education and health that are being completed with UNDP assistance, other sectors such as public procurement, public finance etc. might be included. This activity would show the commitment towards implementing the relevant recommendation and might be planned for the period January-May 2015.

13. Furthermore, on the basis of findings and conclusions elaborated within the current UNDP project, the OGG/OPM should finally adopt the guidelines for integrity plans in the governmental

institutions, which could provide an example to other public bodies, including those at the local government level. KAA and OGG should also analyse the causes for the low percentage of implemented measures from the Anti-corruption Action Plan, and accordingly address these with the competent authorities. The Government could, at the proposal of OGG/PMO enact the regulations, for instance, which would set clear responsibility upon governmental institutions for (non)implementation of planned activities and ask to insert anti-corruption measures listed in the Action Plan in the annual working plans of each institution, as suggested in conclusions of the 2013-2017 Anti-corruption Strategy. This is because it is evident that the credibility of the entire reporting mechanism, from adoption up to implementation of the Action Plan, suffers from serious drawbacks.

14. Therefore, the Assessment Team suggest that the KAA, in co-operation with OGG and other responsible institutions, provide more analytical explanations, not only through figures and statistics, on the reasons for non-implementation of the majority of measures from the new Anti-corruption Action Plan.

15. The Assessment Team maintains that there should be one strong institution in the system that ensures ownership and credibility over the strategic planning and implementation of anti-corruption activities. Unless more robust responses to the lack of ownership are provided in the forthcoming period, e.g., through reinforcing the KAA or alternative institution, there will be no progress towards fulfilment of the goals and measures of the Anti-corruption Strategy and relevant recommendations of this report.

16. The Assessment Team concludes that recommendations i and ii have not been implemented.

Recommendation iii

17. *The Assessment Team recommended (i) to streamline the legal framework related to the prevention of conflicts of interest, by harmonising relevant legislation with the newly adopted Criminal Code; (ii) to review and clarify the institutional framework for the prevention of conflicts of interest, by adopting a set of guidelines which would enable efficient action during both the minor offence and criminal offence proceedings; (iii) to initiate debate on the re-definition of the KAA competencies, in light of the need for more efficient and effective prevention of corruption; and (iv) to progressively include tax authorities in the verification of declared assets, in order to improve the control of origin of assets and thus reduce the space for illegal enrichment (paragraph 79).*

18. The Kosovo authorities indicate that the Law on Prevention of Conflicts of Interest (hereafter "Conflict of Interest Law") is still in the process of harmonisation with the new Criminal Code, and that relevant amendments are pending in the Kosovo Assembly. The non-adoption of these amendments, and the existence of two different definitions of conflict of interest may have consequences for the efficiency of co-operation between the KAA and the Prosecutor. As the KAA annual report 2013 highlights, there is a relatively high number of cases of administrative investigations into conflicts of interest that are conducted by the KAA and then forwarded to the Prosecutor for further criminal investigation and possible indictment, but which are dropped by the latter. The reasons for suspending or dismissing further investigation are not sufficiently substantiated in neither the KAA's nor the Prosecutor's reports. This proves once again that co-operation between the KAA and the Prosecutor's Office could be improved, as recommended, in particular with the objective of delimitation of the respective roles when handling investigation on conflicts of interest after the criminalisation of this offence in 2013.

19. Since mid-2014, the Kosovo authorities report on some improvement in communication and co-ordination between the KAA and the Prosecutor in prosecuting cases of conflicts of interest and false declaration of assets: the signature of a document on 26 May 2014 by the Heads of the Prosecution, the Police and the KAA, following which the Chief-Prosecutor passed a decision on 30 June 2014 that for every case presented by the KAA a preliminary consultation amongst case prosecutors and KAA officials must take place. Also, on 23 October 2014 the KAA, the Prosecutor's and Judicial authorities met to discuss the follow-up of cases of false declaration of assets.

20. These are positive steps, but overall, processing and sanctioning of conflict of interest cases is still low. The statistics are not, yet, accurate and should be brought in order by the end of 2014 only, when the track record of investigations, prosecution and judicial adjudication of the cases of conflict of interest should be published.

21. Also regarding conflicts of interest, the relevant international standards refer to the concept of "public official" instead of "official person" in order to include persons employed by a public

authority as well as persons employed by private organisations and performing public services. Therefore, it is advised that the definition of the scope of the amended Conflict of Interest Law corresponds closer to the definition of "public official" under Art. 2 a) of the UN Convention against Corruption (UNCAC). Although broadly proposed, the UNCAC's definition is limited to what is contained in the "domestic law". Otherwise, the possible extension of conflict of interest rules to other levels of public officials raises concerns with regard to their implementation. There is a risk that the implementing body – the KAA -- becomes responsible for every single appointee in the public sector of the Kosovo institutions. If this were to be the case, new supervisory responsibilities should be followed by additional adequate resources; on the contrary, putting the exclusive burden on one institution for all public officials in Kosovo would seriously compromise the adequate implementation of the new rules.

22. As far as the declaration of assets is concerned, the Assessment Team notes that amendments to the Law on Declaration, Origin and Control of Assets of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials (hereafter "Asset Declaration Law") were adopted in April 2014 by the Kosovo Assembly, and thus the harmonisation with the new Criminal Code of 2013 was achieved. However, it is unknown to what extent these amendments will solve the overlap between administrative and criminal proceedings as well as whether the KAA will be overloaded with an extended number of requests for verification of assets due to the enlarged definition of "official person" and "trusted person" in the adopted text. The Kosovo authorities report, however, that the treatment of cases of false declaration of assets has changed since the evidence collected by the KAA is now used by the Prosecutor, who more often calls the KAA as witness in criminal proceedings. On 16 October 2014, the KPC obliged appeal prosecutor bodies to re-assess all cases in which the KAA brought the evidence, but the statistics on track record will be known only by the end of the year. For the time being, the statistics are kept manually, and in 2015, an automated management tool will be developed.

23. Furthermore, the Assessment Team finds that quite a narrow interpretation of the principle of "burden of proof" during the verification of the accuracy of assets prevents the relevant authorities to take more proactive action against suspicious and unexplained wealth of public officials. A proper balance between guarantees for fair trial and urgent tackling of this phenomenon must be found. To start with, authorities could take the guidance from the Council of Europe report *"Practitioner manual on processing and analysing income and asset declarations of public officials"*, prepared in the framework of the Eastern Partnership-Council of Europe Facility Project on Good Governance and Fight against Corruption in January 2014. It is strongly advised that a proper policy line is developed soon on this particular problem of unexplained wealth, which can be further on translated into a concrete regulation.

24. The generally weak track record of investigation and sanctioning of officials for violation of conflict of interest and declaration of assets rules even after the Criminal Code entered into force in 2013 calls, as recommended under (iii), for a discussion of the re-orientation of competences of the KAA, i.e., to re-assess whether (administrative) investigation powers should remain in its core competence or not, and whether the entire investigation of these criminal offences should be conducted by the prosecutorial authorities. For this to happen, the KAA can convene a conference or seek expert opinions with the objective to adopt conclusions that will lead to a revision of the legislation. The second aspect of this review could cover the scope of the verification of asset declarations, in order to know to what extent the KAA can verify the origin of assets, if at all. In view of strengthening the track record of processed cases of false declaration of assets, the Assessment Team reiterates its recommendation to establish a system of cross-checking of data, through automatic exchange of data between the Tax administrations, the KAA, the Cadastre (Land) Registry etc. Initially, it might be necessary that each of these databases be brought in order before being merged with each other. Only once put in order and merged, the various databases will allow for a more efficient tracing of the violations of the rules on declaration of assets.

25. The Assessment Team finds that amendments adopted in April 2014 as well as those pending before the Kosovo Assembly to the relevant legislation are necessary in order to harmonise further the conflict of interest and declaration of assets' relevant legislation with the 2013 Criminal Code. Despite positive steps taken to ensure better co-ordination of investigation, there is still a risk of persistent inefficiency in processing the offences of declaration of assets and conflict of interest even after their adoption. The actions of the competent authorities and final sanctions imposed seem to lack a dissuasive effect.

26. The Assessment Team concludes that recommendation iii has been partly implemented.

2. Fundamental safeguards and corruption prevention

2.1. Judges

Recommendations iv, v and vi

27. *The Assessment Team recommended:*

to review the composition of the Kosovo Judicial Council (KJC) in order to fully reflect the standards of independence of the judiciary as well as checks and balances between institutions (paragraph 114);

to adopt clear and transparent criteria based on which the President of Kosovo can refuse to appoint a judge or prosecutor as well as the grounds for appealing this decision (paragraph 119); and

to consider reviewing the probationary system of appointment of judges and prosecutors which envisages an initial 3-year term prior to final confirmation for tenure (paragraph 129).

28. The Kosovo authorities inform that implementation of recommendations iv and vi requires further amendments to the Constitution, as the composition of the KJC and the probationary system of appointment of judges and prosecutors are regulated by the Constitution. The Ministry of Justice attempted to introduce draft amendments last year, but this attempt has failed. The authorities also mentioned that Opinion No. 403/2006 of the Venice Commission on the Nomination of Judges had been applied and taken into account with regard to the nomination of judges after the probationary period. In the beginning, the Council approved the regulation for the evaluation of performance of judges which set forth criteria upon which this evaluation shall be performed. Afterwards, the Council established a Commission which deals with the evaluation of judges who have completed the initial three-year probation period. Up to now, 88 judges have been evaluated and given a permanent mandate.

29. As for recommendation v, the Kosovo authorities remind that pursuant to Article 18 paragraph 2 of the Law on the Kosovo Judicial Council, the President of Kosovo is obliged to give a reasoning, within 60 days, on the refusal of a candidate for judge who had been proposed by the KJC, whereas, as regards the grounds for appeal, provisions on the law on administrative disputes apply. According to practice after one refusal and repeated re-submission for appointment of a candidate, the President has followed the KJC's proposal.

30. The Assessment Team maintains that the level of fundamental safeguards for the prevention of corruption within the judiciary, i.e., the independence and accountability of judges ought to be increased. The current constitutional provisions and laws regulating the composition of the Kosovo Judicial Council (KJC), the appointments and dismissals in the judiciary as well as judicial careers have not, in the opinion of the assessment team, reached the level of guarantees that are required by European standards.

31. This refers in particular to the composition of KJC and the role of the President of Kosovo in the final appointment and the probationary period for judges and prosecutors who are appointed for the first time.

32. Therefore, it is highly recommended that in the next period the relevant authorities (KJC, KPC, Ministry of Justice) convene an international conference on the independence of the judiciary and fundamental safeguards, during which principles of future constitutional and legal reform could be outlined. This conference could be attended by the Venice Commission experts, as well as GRECO evaluators in order to streamline the debate and focus on the required level of change that would be needed for Kosovo's Constitution and other fundamental laws on the judiciary. Moreover, the Kosovo Judiciary Strategic Plan 2014-2019 adopted by the KJC in April 2014 already foresees the revision of the Constitution with regard to the probationary appointments. If all the activities that are planned in the Strategic Plan are realised, in particular the Ministry of Justice's re-initiation of the procedure for amending the Constitution, this could represent a good basis for implementation of recommendation vi.

33. In particular, the focus should be on the following:

- Composition of the KJC: at least one half of those who sit in the KJC are judges elected by their peers. While the first condition is fulfilled at the moment, the second one is not: only 5 out of 9 judges of the KJC are elected by their peers, the remaining 4 are elected by the Kosovo Assembly, which makes their election subject to risk of political bargaining. The above principle set out in the European Charter on the Statute of Judges and echoed in the Council of Europe Recommendation (2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities, adopted on 17 November 2010, should therefore be fully enshrined.
- Role of the President of Kosovo regarding the final appointment: the Law on the KJC is silent on the fact that the President has full discretion to refuse a candidate for judicial/prosecutorial appointment. The refusal should be grounded on clearly set legal requirements and not be left at the discretion of the President whose role should be merely to confirm the KJC/KPC's proposals, unless he/she considers that legal prerequisites have not been respected. As to the right of appeal against the refusal of the President, the Presidential act ought to be reviewed through constitutional dispute rather than by applying the law on administrative dispute. The Assessment Team maintains that rejection of candidates for final appointment as judges by the President of Kosovo, as happened in the past on several occasions, undermines the fundamental safeguard of judicial independence as guaranteed in the Constitution. The reasons for these rejections were not made public, nor were they given to the nominees themselves. The lack of transparency in this aspect was evident. The Kosovo authorities should make all efforts to change the public perception of the appointment process and prescribe clear, objective and transparent criteria under which the President can refuse a candidate. The right of appeal against the President's decision must be enshrined at the same level of guarantees.
- 3-year probationary period: although the general international standards, such as the "Basic Principles on the Independence of the Judiciary, adopted by the 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders - later adopted by the United Nations General Assembly, UNGA Resolutions 40/32 and 40/146 (1985)" are silent as to probationary periods, these are not favoured with respect to Council of Europe standards, particularly those of the Venice Commission. In its Report on the Independence of the Judicial System Part I: The Independence of Judges, the Venice Commission strongly recommends that ordinary judges be appointed permanently until retirement and states that "probationary periods for judges in office are problematic from the point of view of independence"². The difficulty with such probationary periods is that they presumably apply a lower threshold for dismissal than those facing permanent judges; otherwise, there would be little need for the probationary period. And refusing to renew a judge's contract for reasons other than those set out in the law and the ethics code risks injecting a level of arbitrariness into the process which infringes judicial independence. Given that the probationary period is by definition of temporary nature, the recommendation is targeting the fact that the Constitution of Kosovo has made it permanent, which is contrary to fundamental safeguards on the independence of the judiciary. This is exactly the point that the Venice Commission has made in the above-mentioned Opinion and the relevant Kosovo authorities are once again called on to envisage launching the debate in light of the fact that the refusal to appoint/confirm a judge is not based on solid legal grounds, as recommended.

34. The Assessment Team is aware that this recommendation is obviously far more political and difficult to implement (it is more of a goal than an action itself), so it should not be necessarily considered as the centrepiece of any anti-corruption policy. However, it is fundamentally important that a proper public debate is scheduled in the next few months in order to address the key concerns and principles outlined in the recommendations (iv-vi), which will remain valid for Kosovo institutions all along the process of European integration.

² See Venice Commission, Report on the Independence of the Judicial System Part I: The Independence of Judges, 16 March 2010, available at [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)004-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)004-e.pdf), § 38.

In this respect, on 11 June 2014, the Committee of Minister of the Council of Europe decided to invite Kosovo to become a member of Venice Commission and to appoint a representative to sit on the Commission (for further information, see http://www.coe.int/t/cm/home_en.asp and <http://www.venice.coe.int/webforms/events/?id=1767>).

35. The Assessment Team strongly advises that this recommendation is addressed through launching public consultations regarding the level of safeguards and guarantees that Kosovo must have in the area of independence and accountability of the judiciary.

36. The Assessment Team concludes that recommendations iv to vi have not been implemented.

Recommendations vii and viii

37. *The Assessment Team recommended:*

to ensure the appropriate functioning of random assignment of cases as provided for in the Regulation on internal organisation of courts (paragraph 141); and

(i) to establish a transparent and unified system of maintaining and accessing information on case files which would include all stages of investigation, prosecution and adjudication; (ii) to enhance case management, reporting and accessibility of statistics in the judicial system, especially with regard to corruption and related offences, by notably ensuring better matching with prosecutorial services; and (iii) to improve the transparency of the criminal justice system vis-à-vis the wider public and media, in particular in the context of the prevention and fight against corruption (paragraph 144).

38. The Kosovo authorities continue to provide very little information with respect to this set of recommendations. The Kosovo Judicial Council is implementing the first phase of the Information and Communication Strategy 2012-2017. This strategy provides for the implementation of the so-called Informative System of Case Management, which will enable the electronic allocation of cases. It has also been noted that the new Regulation on internal organisation of courts has been adopted, which should make the "random allocation of cases" finally operational, hence the recommendation (vii) becomes likely to be implemented. However, as no electronic system is in place yet, the blind draw to allocate cases is still managed manually. It has also been noted that some difficulties with regard to this anti-corruption measure may be expected in specialised courts or departments with a small number of judges, where the principle of random allocation of cases might not achieve its purpose, i.e. to introduce more transparency in court management as well as to ensure objectivity in the handling of difficult and/or specialised corruption cases even though the number of judges that can deal with such cases remains limited.

39. In accordance with the Regulation, random allocation does not apply to urgent cases, which are allocated to judges on the basis of a rotation system. However, no authorisation is sought from the President of the Court of Appeal before the allocation of urgent cases takes place. This is not in accordance with the Regulation, which requires the "prior authorisation from the President or the Supervising Judge, respectively". Another shortcoming observed is that no minutes are taken/drafted with regard to the sessions during which the random allocation is taking place. A further anomaly has been identified with respect to the intra-court re-assignment of cases. Case re-assignment is needed to avoid conflicts of interest when an appeal is allocated to a judge who was involved in the first-instance proceedings related to the same case. Similar situations are likely to occur as a result of the recent reforms of the court system in Kosovo and the consequent transfer of judges from one court to another. It has been evidenced that re-assignment of such cases does not follow the general rule of random allocation set forth in the Regulation.

40. The Assessment Team notices further that there is no substantial information demonstrating that access to information on case files was improved. On the other hand, the "case management system" - an automated tool for managing the overall caseload is announced to become very soon operational as the result of a project financed by the Norwegian government. For this purpose, the Case Management Office was established. The case management, along with random allocation of cases is one of the pre-requisites for the efficient fight against corruption in both courts and prosecutors' offices.

41. The Assessment Team also takes note of the establishment of a "National Coordination Office" within the Kosovo Prosecutorial Council (KPC), which should coordinate statistics from the Police, the KPC and the KJC/Judiciary. It relies upon coordinators in each institution responsible for gathering and harmonising of statistics. Nevertheless, it still remains to be seen how such a coordinated approach can be used as a tool to combat corruption. The Assessment Team maintains that precise data on a number of corruption cases at all stages of the procedure is crucial for establishing a solid track record of investigations, prosecutions and adjudicated cases of corruption. In this respect, the authorities inform that the KPC approved standard operational procedures for the targeting of serious crime cases in the judicial system of Kosovo and selected decisions for 50

most serious cases. These 50 top cases will be registered in the database established by the KPC and which will provide detailed information regarding the follow-up of cases from the commencement of proceedings until the final court decision. Information will encompass the actions undertaken in every agency that reports the case, every action taken by the Prosecutor and the Court as well as the case duration.

42. The case re-assignment as a measure which is important to avoid conflicts of interest should follow the (manual) draw system in accordance with the Regulation on Internal Operations of the Courts, until the electronic assignment of cases becomes operational.

43. The electronic system of random allocation of cases must become fully operational throughout the Kosovo judiciary as soon as the case management system is in place. Smaller or specialised courts and chambers should adopt rules that do not put into question the principle of random allocation while maintaining a case distribution to a limited number of judges.

44. The Assessment Team finds that some legal and regulatory conditions for establishing random allocation of cases and case management system have been successfully adopted, but that regulation on internal court operation with regard to random allocation of cases is not fully respected. In order to implement this set of recommendations, the Kosovo authorities should start creating material conditions for electronic random allocation of cases immediately following the launching of the case management system throughout the judiciary.

45. The Assessment Team concludes that recommendations vii and viii have been partly implemented.

Recommendation ix

46. *The Assessment Team recommended to update rules of ethics and professional conduct for judges by including proper guidance specifically with regard to conflicts of interest and related areas (notably the acceptance of gifts and other advantages, incompatibilities and additional activities) (paragraph 148).*

47. The Kosovo authorities continue to provide very little information with respect to this recommendation and in general on the internal management of conflicts of interest within the judiciary. The only available information is that the Commission for Normative Matters of the Kosovo Judicial Council has completed the draft Code of Ethics for Judges and that this draft will go to the Council for approval, without further details. Nevertheless, to the question whether the draft Code of Ethics addresses concerns mentioned in the recommendation, notably the acceptance of gifts and other advantages, incompatibilities and additional activities, the Kosovo authorities reply that it does not.

48. Based on data generally available, the Assessment Team notes that implementation of existing codes of ethics as adopted by the KJC and the KPC remains weak, in particular regarding disciplinary proceedings. In order to improve the level of implementation, the disciplinary regulations in both Councils need to be adjusted to ensure that the disciplinary procedures and policies on the fight against corruption in the judiciary lead to concrete results.

49. In order to strengthen further disciplinary measures foreseen by the Laws on the KJC and the KPC, the KPC and KJC have requested to amend the legislation with regard to disciplinary proceedings and the functioning of the Office of the Disciplinary Prosecutor (ODP). The Ministry of Justice has already started to supplement these laws, including the drafting of a special law on the ODP. Furthermore, the KPC within the Prosecutors' Performance Assessment Unit (PPAU) has its own database and maintains files for all prosecutors. The database and files are updated with information and decisions brought by the Disciplinary Commission of the KPC and the KJC. In evaluating the performance of prosecutors, the PPAU also considers decisions with regard to disciplinary violations against prosecutors.

50. The Assessment Team takes note and welcomes this development. However, a thorough assessment of the disciplinary track record may precede this activity and serve as the basis to amend the current legislation or draft a new one. In that endeavour, KPC/KJC could take the positive example of the Kosovo Police Inspectorate, which established a periodically updated database with statistics on disciplinary measures (see paragraphs 104 and following *supra*).

51. In addition, and in line with the general legal framework on conflicts of interest in Kosovo, the KJC should pass a regulation on managing internal conflicts of interest within the KJC as well as across the judiciary.

52. Continuous legal education training on ethics for judges should become mandatory. This training should highlight practice and solutions to the observed negative phenomenon of judges' self-censorship and obedience to external influences. In that regard, judges should disregard requests from the executive or legislative branch to not proceed in the scheduling of cases before the court.

53. Moreover, disciplinary measures stemming from misconduct, up to and including removal from office should be applied regardless of life tenure guaranteed to judges.

54. The Assessment Team observes that overall, a stricter mechanism for monitoring the implementation of ethical rules and disciplinary proceedings is missing, but that recent developments may represent a step forward if properly followed up with legislative amendments or adoption of new laws.

55. The Assessment Team concludes that recommendation ix has been partly implemented.

Recommendation x

56. *The Assessment Team recommended that the KJC adopts transparent guidelines regarding the approval of exceptional outside engagement for judges, including clear justifications to be used when deciding to grant such exceptions (paragraph 157).*

(This also refers to recommendation xiv regarding Prosecutors and xviii regarding the Police).

57. The Kosovo authorities have not yet introduced rules governing the outside employment of judges, prosecutors and the Police. They inform that the current Conflict of Interest Law regulates "other activities" of all officials, including the judiciary and the police, allowing them to exercise non-managerial functions within a political party, or to exercise activities in the areas of science, sport, education, culture, etc. However, it was reported that the new Draft Code of Ethics for Judges foresees the cases of "outside employment" for which the KJC may grant permission.

58. The Assessment Team considers this development to be a first step towards more legal regulation of this sensitive issue, although the KAA believes that the Code of Ethics as secondary legislation should not govern the issue of "outside employment". It argues that the enforcement of the Code of Ethics is too weak, and proposes instead that such matter should be regulated by primary legislation.

59. To substantiate this argumentation, the KAA reports that there are cases of certain public officials, in particular from the judiciary, exercising simultaneously several remunerated functions outside working hours, either in public or private bodies, which may lead to a series of potential conflicts of interest.

60. The Assessment Team maintains that paid outside engagements must be allowed only on an exceptional basis and under precise and enforceable regulations, and leaves up to the competent authorities to decide which legal instrument (law or Code of Ethics) suits this matter best. In this respect, it reminds that a very relevant KAA recommendation regarding outside employment of all public officials has not been followed and may constitute the point of departure. It invites Kosovo to seriously consider this issue as one of the priorities in addressing conflicts of interest for both judges and prosecutors.

61. Therefore, it is necessary that the conditions for any "outside" activity are precisely set forth in the law and/or in the codes of conduct for judges, prosecutors and police.

62. In order to avoid multiplication of outside commercial activities potentially leading to conflicts of interest, it is strongly advised that ethical rules specify limitations of outside activities for judges, prosecutors and police in the areas of science, sport, education, etc. to public sector institutions only, while similar activities in the private sector should be forbidden as a rule, with a very limited number of exceptions.

63. In that respect it is advised that regulating the conditions for the exercise of public and private "outside activities" becomes a constitutive part of the future "integrity plans" for judicial institutions and the police, as recommended in the general section of this report.

64. The Assessment Team maintains that for all three sectors – judges, prosecutors and the police - clear rules and procedures must be adopted in order to establish conditions for performing outside activities.

65. The Assessment Team concludes that recommendation x has not been implemented.

Recommendation xi

66. *The Assessment Team recommended (i) to establish a formal relationship between the ODC and the State Prosecutor in order to enhance disciplinary and criminal investigation of judges and prosecutors and make mutual co-operation transparent; and (ii) to streamline and clarify the institutional framework and proceedings for disciplinary/criminal investigations against judges and prosecutors, including the establishment of a limitation period for disciplinary proceedings, in order to avoid unnecessary delays and overlapping of proceedings (paragraph 187).*

67. The Kosovo authorities have not provided information about the improvement of the track record of disciplinary and criminal cases against judges and prosecutors. The Ministry of Justice has reported that in October 2014, a working group was established to prepare a strategic document that will address core questions regarding the future of the Office of Disciplinary Council.

68. The Assessment Team urges to:

- strengthen the disciplinary system against judges and prosecutors, as well as improve the interface between the Office of the Disciplinary Council and the State Prosecutor;
- ensure that the KJC and the KPC develop the capacities to effectively deal with disciplinary measures for all courts and prosecution offices; and
- provide a consolidated track record of disciplinary and criminal investigations against judges and prosecutors, containing also analytical background (analysis of trends and obstacles for efficient disciplinary and criminal investigation) as well as update this track record periodically, on a 6-months basis.

69. The Assessment Team concludes that recommendation xi has not been implemented.

Recommendation xii

70. *The Assessment Team recommended that interaction between the KAA and the Prosecutor, as well as the judges in proceedings for minor and criminal offences is clarified through standard operating procedures on conflicts of interest, with regard to the entry into force of the new Criminal Code (paragraph 188).*

71. The Kosovo authorities inform that some concrete steps have been undertaken in order to strengthen the interaction between the KAA, prosecutors and courts with regard to the processing of conflicts of interest and declaration of assets as criminal offences. Namely, as mentioned under paragraph 19 above, a co-operation document was signed on 26 May 2014 between the Heads of the Prosecution, the Police and the KAA, following which the Chief Prosecutor passed a decision on 30 June 2014 that for every case presented by the KAA, a preliminary consultation amongst case prosecutors and KAA officials must take place. Also, on 23 October 2014 the KAA, prosecutors and judicial authorities met to discuss the follow-up of cases of false declaration of assets.

72. However, as previously stated more needs to be done in order that the criminalisation of conflicts of interest and false declaration of assets results in more efficient investigation, prosecution and adjudication of these offences.

73. The Assessment Team welcomes the efforts made by the competent Kosovo institutions in the reporting period to streamline their interaction in order to process more efficiently and vigorously conflicts of interest and false declaration of assets. In particular, the document signed on 26 May 2014 between the Heads of the KAA, the Police and the Prosecutor's Office may be considered instead of recommended "standard operating procedures". However, there was no further information on the follow-up of the meeting that took place in October 2014 including

courts, and whether the courts are also part of the new formalised co-operation mechanism. Moreover, the amendments to the Conflict of Interest Law are still pending before the Kosovo Assembly and its harmonisation with the Criminal Code has not been completed so far. Therefore, the Assessment Team suggests that once the amendments to the Conflict of Interest Law are adopted, the document providing the platform for co-operation between the KAA, the Police and Prosecutors is extended to include judicial authorities, without further delay, and that the track record of investigation, prosecution and adjudication of criminal offences of conflicts of interest and false declaration of assets is established and regularly maintained.

74. The Assessment Team expects that misunderstandings between the KAA and the Prosecutor regarding investigation of conflicts of interest and false declaration of assets will be solved in practice after the decision formalising their co-operation has been signed. It considers of utmost importance that this co-operation agreement between the KAA and the Prosecutor is formally extended to courts as well in order to complete the track record of investigations, prosecutions and adjudications.

75. The Assessment Team concludes that recommendation xii has been partly implemented.

2.2. Prosecutors

76. By its decision of 8 July 2014³, the Constitutional Court invalidated unanimously two challenged KPC decisions on the nomination of the candidate for Chief State Prosecutor and ordered the KPC to repeat the election procedure. The Court assessed that the election procedure conducted by the KPC constituted a violation of the right to fair proceedings, guaranteed by Article 31 of the Constitution and Article 6 ECHR.

Recommendations xiii, xiv and xv

77. *The Assessment Team recommended:*

that the KJC and the KPC adopt clear and comprehensive vetting procedures (i) based on objective and transparent criteria; (ii) known in advance and (iii) that every decision be motivated accordingly (paragraph 209);

that the KPC adopts guidelines concerning approval of exceptional outside engagement for prosecutors and establish a limit for the remuneration of such engagements (paragraph 220); and

to establish a formal relationship between the ODP and the KPC (with due consideration to the relationship between Chief Prosecutors and the ODC as well) in order to enhance disciplinary and criminal investigation of prosecutors, based on principle of transparency and openness, while keeping the secrecy of investigation and protection of personal data (paragraph 239).

78. The Kosovo authorities have informed that a prosecutorial assessment and vetting procedure has been put in place under the "Regulation no. 02/2013 on Prosecutors' Recruitment, Appointment and Reappointment Process" issued by the KPC. According to the Regulation, the vetting procedure is conducted by the KPC Office for Prosecutorial Assessment and Vetting and consists of a personal and professional verification of documents submitted by the candidates for a prosecutor's position who have been invited to an interview. This includes verification of the candidate's knowledge and skills, performance and background and criminal records, as well as security checks. The authorities also reported improvements in the management of statistics and co-ordination in the work of the KPC; however, the prevention of corruption within the prosecutorial service has still to bring tangible results.

79. The Assessment Team reiterates that vetting procedures and eligibility criteria, including an initial legal education programme, which includes a strong emphasis on judicial ethics, must be fully observed by the candidates for both judge and prosecutor positions. While procedures for vetting of prosecutors are now in place, it is unclear whether or not the latest 2013 Regulation has replaced the previous 2012 Regulation on the same matter, which provided for vetting of both judges and prosecutors. Apart from vetting in the re-appointment process of judges, which was carried out by the temporary Independent Judicial and Prosecutorial Commission (IJPC), no other vetting procedure seems to exist for the process of appointment of judges after the general re-appointment occurred between 2008 and 2012.

80. Furthermore, the outside paid engagement of Prosecutors requires, similarly to judges, strict regulation. For the purpose of implementing the recommendation, the Office of Disciplinary Prosecutor (ODP), the KPC and the Chief Prosecutor need to initiate passing a regulation in a

³ Cases No.KI99/14 and KI100/14; see http://www.gjk-ks.org/repository/docs/KI99-14_ANG.pdf

As a result of the respective KPC call for applications for the position of Chief State Prosecutor in March 2014, out of 9 presented candidates 6 candidates were initially shortlisted. Upon received complaints and after the review process this number went to 8 eligible candidates for further selection procedure. The three highest ranking candidates resulting after the interview process and the final evaluation scores made public were eligible for further selection procedure. On 6 June 2014, the KPC composed of 7 members elected by secret ballot the nominee for the position of Chief State Prosecutor and sent afterwards to the President of Kosovo the proposal for the appointment of the Chief State Prosecutor nominee (his/her mandate is 7 years without the possibility of reappointment). Two candidates (the fifth shortlisted one and one of the 3 highest ranking candidates who received 3 votes in his favour) filed a complaint to the Constitutional Court for irregularities in the selection procedures including *inter alia* the lack of appearance of impartiality (one KPC member who participated in the voting of the Chief State Prosecutor nominee was among the 8 initial shortlisted candidates for the same position).

similar way to the Draft Code of Ethics for Judges, or possibly include a clause on outside employments in a law.

81. The KPC should clarify the applicable rules in terms of vetting of prosecutors, i.e., whether the Regulation of 2012 is still valid or not, because the latter has not been explicitly abrogated, although the authorities inform about the contrary. This is because the 2013 Regulation seems less prescriptive on the content of vetting, and does not contain any substantial elements, i.e., how the KPC's Office for Assessment and Vetting conducts its procedures, what happens to the refused documentation, right of appeal etc. All these aspects ought to be contained in detail either in the Regulation itself, or any other secondary act of the KPC and available to the public, and not only to interested parties as the authorities have informed.

82. Vetting of judges, apart from the general re-appointment process, must be enshrined in the KJC Regulations as well, and based on the same principles as the vetting of Prosecutors.

83. The same orientation with respect to external activities – strict regulation of exceptional secondary jobs that is valid for judges should also be strictly proscribed by the Prosecutors' ethical code.

84. The Assessment team acknowledges that some improvements regarding regulations on vetting for prosecutors have been made, yet it is still necessary to closely follow up the process of amendments to ethical codes and other KPC/KJC Regulations. It reiterates the need for establishing a solid track record of disciplinary and criminal proceedings against judges and prosecutors, in close co-operation with the ODP and the ODC.

85. With regard to establishing a formal relationship between the ODP and the KPC, the Kosovo authorities inform that the Law on the KPC determines in a formal way the cooperation between the ODP and the Disciplinary Commission of the KPC. Based on this law, the KPC implements this cooperation in practice.

86. The Assessment Team acknowledges that the formal communication between the ODP and the KPC is enshrined in law. However, such co-operation has still to result in a more solid track record of disciplinary/criminal proceedings for alleged corruption of judges or prosecutors. There is no evidence of functioning of this co-operation in practice (no. of common meetings, conclusions, and outcomes) and it is advised that the Kosovo authorities provide as much relevant information as possible in the next reporting period in order to be able to assess the performance of this formalised co-operation.

87. The Assessment Team concludes that recommendations xiii, xiv and xv have been partly implemented.

2.3. Police

Recommendations xvi and xvii

88. *The Assessment Team recommended:*

to introduce objective and transparent criteria for the appointment/dismissal of the General Director of the Police in order to ensure operational independence of the Police (paragraph 254); and

to introduce objective and transparent criteria for the appointment/dismissal of the Deputy Directors and other senior level officials of the Police (paragraph 255).

89. The Kosovo authorities have informed that the Law on Police No. 04/L-076 of 2 March 2012 regulates, in Articles 37, 38 and 39 the procedure and criteria for the selection of the General Director and the Deputy Directors of the Police. According to these rules, the Selection Committee (in which members of EULEX also participate as observers) proposes to the Minister of Interior the candidates for appointment to the position of General Director of the Police, whereas the Minister in one of the Government's meetings proposes to the Government the candidate for this position. The Government then recommends to the Prime Minister the candidate for General Director of the Police, who is finally appointed by the Prime Minister, through a formal signing-off decision. Similarly, the Law provides rules and conditions for the dismissal of the top management of police.

90. Furthermore, the Kosovo authorities argue that operational independence of the candidate for the senior level management of the police is ensured by the fact that he/she must come from the Police structures (professional officers) holding the highest police grade for at least 5 years.

91. The Kosovo authorities consider that such criteria for the selection, nomination and dismissal of the senior level officials of the Police are sufficiently objective and transparent to ensure the operational independence of the police.

92. The Assessment Team observes that the new regulations indeed incorporate the formal general requirements and minimum objectivity into the selection process of the senior police management. Namely, Article 38 of the Law on the Police specifies general conditions that a candidate for General Director and Deputy Directors of the Police must fulfil. However, the procedure where the Minister of Interior, the Government and the Prime Minister have each a separate role in the appointment/dismissal while formally being a part of a single Government structure could be more transparent, and the Selection Committee's role could be more enhanced in order to mitigate any risk of non-proportional interference from the political level. Actually, the Selection Committee's proposal is not binding because it is made of a short list of at least three candidates (but can be more or less); such a list, without preferential ranking (in particular when there are more than three candidates) has a rather low impact on the final choice made by the Government. When the Government "recommends" to the Prime Minister the appointment of one candidate, this session includes all three political actors involved – the Minister of Interior, the Government and the Prime Minister. As to the transparency of the work of the Selection Committee, so far it is restricted to the participation of EULEX police officers in observer capacity and one member of civil society as a member of the Committee. Therefore, the Assessment Team still argues that despite initial positive steps towards making the appointment/dismissal procedures more objective, there is a relatively high risk of overexposure to political discretion within the Government if additional safeguards to prevent potential interference are not in place.

93. In order to mitigate such risks, the Assessment Team considers that a higher level of transparency and objectivity must be guaranteed throughout the entire process of selection and appointment of the senior management in the Kosovo Police. This could be achieved for instance by amending the Administrative Instruction 12/2012 in order to ensure that the "short list" of selected candidates which is submitted by the Selection Committee to the Minister of Interior and then forwarded to the Government/Prime Minister must contain clear preferential ranking (first choice, second, etc.) or be restricted in a way to reduce the space of discretionary political decision-making instead of a professional one. So far, there is only the obligation of grading the candidates with regard to how they answer the respective questions during the interview, but not with regard to the entire file. Finally, the necessary level of publicity of sessions of the Government when the appointment/dismissal takes place as well as the introduction of the "hearing" of the candidate for appointment could also be envisaged as a measure of promoting additional transparency.

94. The same remark would apply for the appointment of the General Deputy Directors of the Police. In accordance with the Law and applicable Administrative Instruction, the Selection Committee proposes to the General Director of the Police several candidates for the two positions, who are then recommended to the Minister for appointment. The discretion of the General Director to choose and recommend from the list submitted by the Selection Committee must be based on a clear ranking established by the Committee and based on merit. By rule, in both situations the Selection Committee's lists should be considered as binding.

95. The Assessment Team finds that more substantiated reasoning of decisions on appointment or removal of senior police officials, as well as appropriate merit-based ranking in the appointment procedure should become standard practice so that such decisions become free from potential suspicion of corruption and may be challenged on clearer grounds through proper administrative and judicial review.

96. The Assessment Team concludes that recommendations xvi and xvii have been partly implemented.

Recommendations xviii and xix

97. *The Assessment Team recommended:*

to adopt guidelines for Police concerning the approval of exceptional outside engagement and to establish a limit for the remuneration on such engagements (paragraph 259); and

to establish post-employment restrictions for police officers at all levels and that appropriate arrangements be made for efficient supervision of the implementation of such regulations (paragraph 262).

98. The Kosovo authorities have informed about the possibility of "regular" in-service secondary occupation within the Kosovo Police, which is made possible in accordance with outside legal duties of the Police officers. Thus, the Administrative Instruction No. 07/2013 provides that Police officers can engage in secondary employment outside of regular working hours in the Kosovo Police, based on signed agreements between the Police and other organisations or institutions that *require enforcement of police authorisations* but not being limited only to cases as below: a) control of traffic and security of pedestrians; b) crowd control; c) security and protection of life and property; d) routine implementation of the law for public authorities.

99. When it comes to external employment *not involving the exercise of police authorisations*, the same Administrative Instruction sets criteria in order to limit such employment in a way that: 1. Employees of the Kosovo Police cannot engage in secondary activities until they have successfully completed their probationary period; 2) for secondary employment, the employee shall demonstrate good performance in the undertaking of duties in the Police; 3) employees of the Police cannot engage in secondary activities while they are under suspension with or without payment, and in all other cases where the police officer is under disciplinary measures for serious disciplinary violations foreseen by the Law on Police. The procedure for the review of requests, decision-making on the out-of-duty employment and secondary employment have also been regulated, as well as the procedures for annulment of decisions in case the police staff violated the law, sub-legal acts of the Police while he/she was employed out of duty or in secondary employment.

100. The Assessment Team considers that regulating the outside employment in the Police in this way represents the right approach and could be a good example to help solving the same problem for judges and prosecutors, too. The question of limitation of salaries for any secondary employment, the exceptional nature of such employment, and the practice of granting the authorisation must be further verified. It is of utmost importance that such employment remains rather exception than the rule and that it is strictly controlled. It is also unknown which authority verifies and sanctions possible infringement to conflict of interest rules, as set by Administrative Instruction No. 07/2012.

101. Regarding post-employment restrictions (recommendation xix), the Kosovo authorities have not provided relevant information.

102. The Assessment Team concludes that recommendation xviii has been dealt with in a satisfactory manner, while recommendation xix remains not implemented.

Recommendation xx

103. *The Assessment Team recommended to reinforce human capacity of the relevant police disciplinary and internal investigation bodies and to keep a reliable track record of disciplinary and other actions taken with regard to police officers (paragraph 276).*

104. The Kosovo authorities indicate that the Kosovo Police has sufficient capacities with human resources for internal investigation. Namely, the internal mechanisms available to ensure the discipline in the Police such as the Directorate for Professional Standards, and the Internal Disciplinary Commission for Complaints and Rewards have been staffed and are functional. However, they indicate that some of the key managerial positions in disciplinary structures are filled on a temporary basis by "acting" appointees and some positions are not staffed. The reason for that is the lack of the ranking system in the Kosovo Police since 2007. In fact, a number of positions are filled with police staff of a lower grade who has been nominated as "acting". According to the latest available data, there are 47 acting positions and 324 vacant positions in the Kosovo Police.

105. The Assessment Team welcomes the reinforcing of human capacities in the relevant disciplinary and investigation bodies of the Kosovo Police. It notes, however, that during 2013, the total number of vacant positions was 17 within the Internal Disciplinary Mechanisms for Professional Standards and only 4 were filled in 2014, while two on an "acting" basis.

106. With regard to statistical data, the Kosovo Police Inspectorate (KPI) as an independent external mechanism in charge of administrative investigations against the management level with the grade of colonel and senior executive positions, as well as against the entire police personnel for suspicions of their involvement in criminal offences keeps its own database. The KPI coordinates its activities with internal mechanisms within the Kosovo Police (the Directorate of Professional Standards and the Internal Disciplinary Commission for Complaints and Rewards). These databases, as well as reports of the Kosovo Police Inspectorate, are publicised in a well-structured way. Also, every complaint is registered in the database in order to have a more precise number of received complaints. As for the criminal cases which are forwarded by the KPI to the competent prosecution services, in order to give priority to these cases when they involve official persons, the KPI undertakes the necessary steps. It was agreed with the State Chief Prosecutor to appoint in each region a special prosecutor who will deal solely with the KPI cases. In case of final court decisions against police officers, the KPI is informed in the first place by the competent special prosecutor or judge, and it transmits this information further to the Kosovo Police in case further disciplinary measures are needed. However, the complete information on the case status or decisions which are taken by the Prosecutors or Judges will be available only by the end of 2014.

107. The Assessment Team notes that besides the improved maintaining of the disciplinary/criminal record database within the Kosovo Police Inspectorate and efforts to get more accurate information and feedback from relevant Prosecutors' Offices and Courts, a solid track record of investigation, prosecution and outcome of criminal proceedings has still to be established. Moreover, it will be important to know what the track record of implementation of Administrative Instruction No. 06/2012 issued by the Kosovo Police on Violations, Measures and Disciplinary Proceedings is.

108. The Assessment Team underlines that enforcement of disciplinary measures is still a challenge and criminal investigations should be better addressed. It also remains to be verified whether the relevant police disciplinary and internal investigation bodies have been (or are in the process to be) properly staffed in order to be able to conduct either efficient internal criminal investigations for allegation of corruption against police officers or to enforce disciplinary proceedings.

109. Based on the well developed and structured way of presenting the statistics regarding disciplinary or criminal investigation against Police officials that is annually prepared by the Kosovo Police Inspectorate, it would be of utmost importance to develop a methodology for presenting a "track record" of successful investigations. To this end, the appointment of regional contact points in prosecutor offices who deal only with KPI cases is welcome and may help determine the track record. Furthermore, the mere statistical presentation should be accompanied with more analytical assessment and explanation on the trends of disciplinary sanctions, as well as on criminal investigations against Police officers at all levels.

110. The “track record” methodology and forms of presentation could be a useful tool to draw necessary conclusions and improve the efficiency of disciplinary measures.

111. Therefore, the Assessment Team stresses the need to develop the “track record” methodology based on analytical examinations and aiming at providing concrete inputs for further processing of disciplinary measures or criminal investigations. After undertaking the concrete measures in 2014, the annual report should contain complete information on sanctions/decisions imposed against the Kosovo Police employees who were under investigations, both by the Professional Standards Department for disciplinary cases, and the Prosecutor’s Offices and Courts for Criminal Cases. If a statistical report is accompanied by some analysis on the given trends and presented as building a solid track record, such statistics may represent a concrete step towards full implementation of recommendation xx.

112. The Assessment Team concludes that recommendation xx has been partly implemented.

2.4. Public Administration

113. In the framework of simplification of administrative procedures, the recent Law No. 04/L-202 on the Permit and Licence System aims to establish the principles and rules for improvement of the environment to do business through reduction of administrative barriers.

114. With regard to external control of the public administration, the new draft Law No.04/L-236 on the Auditor General and the National Audit Office has been under process in the Assembly since November 2013. During the on-site visit, it underwent the second reading at the plenary session of 17 April 2014. Because of a lack of consensus on several aspects of organisation and operational independence of this institution, out of 29 amendments, 5 have not been adopted by the Assembly. The Assessment Team urges the Kosovo authorities to take into account relevant international standards and good practices and give high priority to the quick finalisation of this process.

Recommendation xxi

115. *The Assessment Team recommended i) to enhance transparency in the public administration (including "e-government") through implementation of a more proactive policy, proper strengthening of regulatory and institutional frameworks as well as periodical monitoring and reporting; and ii) that further steps should be undertaken to adequately implement access to public documents at both central and local levels (paragraph 288).*

116. The Assessment Team recalls the need to clearly enhance transparency measures in different public administration institutions despite different efforts already taken so far. Delays in the release and/or publication on respective web pages of documents that should be public or their absence of publication, including audit reports, expenditures, annual reports, budgets, sublegal acts, etc. has to be properly addressed. The Assessment Team believes that opacity may be a contributory factor to arbitrary, unfair decisions and abuse of discretionary power in decision-making. Moreover, access to public information is still at the early steps of implementation whereas the lack of awareness and effective use of such rights by citizens has as an immediate impact a wide lack of trust in public institutions as well as a very high perception of corruption. Guidelines and implementing tools, full setting-up of institutional infrastructure, the necessity to produce and manage well-elaborated statistics, further reduction of reluctance to report progress to the Government coordination body by other institutions, the still poor reporting system in place, uncertainties regarding lists of classified documents and/or administrative guidelines and lack of sufficient public awareness and knowledge followed by the relative low practical use of this right remain some of the identified shortcomings.

117. The Kosovo authorities inform that the Ministry of Public Administration is currently implementing an electronic "Managing Document System" (MDS) with the aim to enable registration, approval, classification, evaluation, maintenance, use and publication of documents of Kosovo institutions, as well as the management of these documents until their final submission to the electronic archive (e-archive). This system follows up and supervises deadlines for the performance of various activities, and the official in charge for implementing them. It also provides a hierarchy of approval of electronic documents according to the organisational chart of the respective institution. The system has a special module allowing for an on-line request for access to official documents and corresponding online response.

118. The DMS system is in the final stages and an internal classification is being made. It will operate at both central and local levels. The documents classification process has not been finalised yet. A commission was assigned to prepare areas and lists of documents that will not be the subject of access to information.

119. A new draft law on administrative procedures is being drafted. On-stop shop instruments and tacit approval of administrative acts are foreseen in this act.

120. Moreover, the Government has recently issued the annual Report 2013 concerning the implementation of legislation on access to public documents (including sublegal acts, in particular the implementing Regulation 04/2012). This report underlines some implementation difficulties and obstacles or denials on the right to access to public documents without any respective decision on the classification or a decision on refusing the request for access to public documents. While statistics provided in the report show an increase of requests for access to public documents up to 32.8%, however similar trends are noted concerning granting of access and a slight improvement in regard to the rate of refusals. But the lack of responses has increased. 48% of citizens, 37% of

journalists, 6.9% of economic operators and 6.9% of civil society were at the origin of requests during 2013. While 79% of requests addressed to the Government and dependent units concern budget and expenditure grounds and are addressed by journalists at around 85.5% of cases (this is 29.6% at the municipal level), however in independent institutions around half of the requests relate to decisions, reports or documents (and journalists represent only 31.8% of the total). Around 16 different institutions are not reporting on this issue to the relevant service in the Government. The aforementioned report also contains recommendations for further improvement based on difficulties faced so far and implementation shortcomings⁴.

121. The Assessment Team takes note of the information provided and welcomes the recent efforts made by the Kosovo authorities. However, in absence of more concrete information on implementation modalities and level of their coverage throughout the public institutions of Kosovo, the Assessment Team is not in a position to evaluate and comment on the progress achieved in respect of other important aspects of the recommendation.

122. The Assessment Team concludes that recommendation xxi has been partly implemented.

Recommendation xxii

123. *The Assessment Team recommended (i) to implement uniform rules for the transparent and impartial recruitment and promotion of public servants through, inter alia, proper announcement of vacant posts, fair competition between candidates and avoidance of conflicts of interest; (ii) to increase the supervision and monitoring of the selection and promotion procedures of public officials; and (iii) to introduce appropriate screening procedures for checking data and the integrity of candidates to positions in the public administration (paragraph 304).*

124. The Assessment Team recalls the necessity to address different aspects of this recommendation that would have a clear impact on the improvement of the credibility of the recruitment system in the public administration. Firstly, measures to be undertaken for merit-based recruitment to the civil service include primarily tangible steps to ensure compulsory and prior advertisement of vacancies; and conduct fair and objective examination procedures, including real and impartial functioning of selection committees, and due transparency of the process. Concrete efforts are needed in order to enforce existing procedures and ensure their regular publicity as well as transparency of the process so as to reduce the scope for discretion, and alleged and actual nepotism, favouritism and political patronage. The practice of retaining 'acting civil servants' on vacant positions for periods longer than the maximum duration of three months provided for by law must be discontinued. Secondly, the introduction and or increase of regular, proper supervision and monitoring of the selection and promotion procedures will add value. Lastly, the authorities should work on the introduction of proper vetting procedures so that the integrity of candidates can be checked, as well as possible past criminal records, ongoing investigations or disciplinary sanctions or pending procedures. As yet, no systematic requirements and procedures are in place in the current legal framework (Civil Service Law No. 03/L-149 and Regulation No. 02/2010 on Recruitment Procedures in Civil Service) in particular for senior positions⁵. Although the Kosovo authorities refer to Article 25, paragraph 3 of Regulation No. 02/2010 that refers to possible refusal of applications made by candidates who had criminal records, no other practical information is provided. In addition, this provision does not address other aspects related to integrity checks and vetting procedures.

⁴ See for further information at:

http://www.kryeministri-ks.net/repository/docs/Raporti_Gjithprfshirs_Final_Anqisht_final_7_Prill.pdf

⁵ At the last moment, the Kosovo authorities brought to the attention of the Assessment Team the following information and argued that "the recruitment in the civil service is carried out on the basis of the annual recruitment plan that is submitted to the MPA. The DCSA supervises and monitors the implementation of the recruitment plan through the mechanism of granting authorisation for the publication of the competition. They explained furthermore that recruitments are made in full respect of legal procedures (internal advancement and external procedures) through publication in daily newspapers and websites of institutions. The selection is done by an independent committee through a competition (oral and written tests) and on the basis of transparent ways of publication. Finally, the Kosovo authorities argue that candidates have the right to appeal against any recruitment step/decision to the Independent Supervisory Council of the Civil Service if they consider that a violation has occurred."

Taking note of the previous and rather general information provided, the Assessment Team expected to receive in due time more concrete and consistent information on measures taken to address different aspects of the recommendation.

125. According to the Kosovo authorities, during the period from June to August 2014, central and local level institutions have submitted 209 requests (corresponding to 345 positions) which were reviewed in relation to internal and external recruitment advertisements for filling vacancies in the framework of implementation of civil service policies and legislation as well as oversight of recruitment procedures.

126. The Civil Service Law is currently in the process of being amended. Four steps are proposed to be introduced for the recruitment and advancement of civil servants: internally in the involved institution; from one institution to another; through advancement scheme; and by using external and open recruitment. Questions related to the status of civil servants, students and clarification on disciplinary measures are other examples of proposed changes. Some amendments are also planned to be made to the Law on Salaries.

127. In general, there are implementation difficulties with regard to both laws. The classification of positions in the civil service is not yet finalised. A joint commission of the MPA-MoF is in charge of this process and has, so far, reviewed around 75% of the institutions' proposals in accordance with the Regulation No. 05/2012 on the Job Classification in the Civil Service. Several sublegal acts can still not be applied because of this ongoing process. A UNDP-supported initiative aims at amending and supplementing the Law on State Administration. The planned amendments to the Law on Salaries of Public Servants will *inter alia* set rules on salaries of categories of officials that are not covered by the civil service legislation (education, health, customs, police, etc.) as more than 50% of those categories are not clearly regulated. A Human Resources Management Information System (HRMIS) project supported by the World Bank aims to set up an electronic system for the civil service. All relevant modules of the HRMIS have been developed, in accordance with project requirements, including the launch of the pilot phase of the application, as well as piloting it in the real environment in the premises of the Ministry of Public Administration.

128. According to publicly available sources, the Declaration of mid-term policy priorities was adopted by the Government in April 2013 (decision 02/123 of 5 April 2013). Besides legislative amendments, this document requires to focus the reforms on enforcing legislation and substantial reforms, and on improving working conditions in the administration (page 18). In addition, creating a new apolitical, professional, merit-based and well-managed civil service is one of the priorities related to public administration. The report on the situation of the civil service in Kosovo for 2012 was adopted by the Government on 26 June 2013 (decision 02/136)⁶. Moreover, through decision No. 11/141 of 26 July 2013 the Government reviewed the organisation and the functioning of structures responsible for the implementation of the Action Plan of the Strategy of Public Administration Reform. The report on the implementation of this Action Plan was adopted by the Government on 5 November 2013 (decision No. 02/155). However, the Assessment Team could not obtain a copy of any of the aforementioned documents from publicly available sources, nor from the authorities.

129. The Assessment Team would appreciate to receive further concrete and more detailed information, including on practical implementation aspects, with regard to this recommendation. So far, the information collected is limited to statements or limited data provided as well as some referrals without detailed information on implementing measures.

130. The Assessment Team concludes that recommendation xxii has not been implemented.

Recommendation xxiii

131. *The Assessment Team recommended (i) to adopt the Code of Ethics for civil servants as soon as possible; (ii) to consider extension of its application to uncovered categories of officials in the public administration; and (iii) to increase familiarity of the public administration at all levels with ethical professional standards (through, inter alia, regular training, guides and advice) (paragraph 308).*

132. The Kosovo authorities inform that in 2011 the OGG prepared, published and disseminated the Manual on Ethics and Transparency in the Public Administration to all relevant institutions. The Manual is a summary of what is considered to be ethics and transparency in the public administration. It is also a collection of international and national documents that determine rights

⁶ The authorities inform that the draft report on the situation of civil service in Kosovo for 2013 is under adoption process.

and obligations of public administration, namely civil servants, including delivery of public services and their quality.

133. At the end of 2013, the draft Code of Ethics in the Public Administration has been processed for approval by the Government, but it was withdrawn to incorporate further supplements.

134. The Assessment Team notes that the information concerning the Manual on Ethics and Transparency in the Public Administration refers to developments that occurred before the adoption of the Assessment Report; these were not brought to the attention of the Assessment Team earlier. In addition, the Manual does not directly address the first part of the recommendation. Also, more information is needed on the content (including making available a copy) and status of the draft 'Code of Ethics', stakeholders' involvement and expected adoption period. No progress is noted for other aspects of this recommendation.

135. The Assessment Team concludes that recommendation xxiii has not been implemented.

Recommendation xxiv

136. *The Assessment Team recommended to develop guidelines about the behaviour and conduct of public officials when they receive gifts in order to complete the rules laid down in Article 11 of Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials (paragraph 311).*

137. The Kosovo authorities inform that Law No. 04/L-228 amending and supplementing the Asset Declaration Law No. 04/L-050 was adopted by the Parliament on 20 March 2014 (see also paragraphs 18 and following above).

138. The Assessment Team is of the opinion that this Law does not specifically address the content of this recommendation. Moreover, the introduction of exceptions to the general rule of prohibition of gifts to public officials (casual gifts up to 25 EUR per gift and up to 500 EUR per official per year) seems to be a step back with regard to the previous legal framework.

139. The Assessment Team concludes that recommendation xxiv has not been implemented.

Recommendation xxv

140. *The Assessment Team recommended (i) to strengthen the control of the declarations of assets and interests in order to ensure proper implementation and monitoring; (ii) to intensify efforts to build capacity in individual institutions to prevent and detect conflicts of interest through close supervision and coordination mechanisms, as well as by means of specific reference materials, guidelines and training; and (iii) an adequate and enforceable conflict of interest standard, including improper migration to the private sector ("pantouflage") be extended to every person who carries out a function in the public administration (including managers and consultants) at every level of government (paragraph 320).*

141. As already mentioned above, two draft laws aiming to amend and supplement Asset Declaration Law No. 04/L-050 and Conflict of Interest Law No. 04/L-051 were under process in the Assembly at the beginning of 2014. While amendments to the Asset Declaration Law No.04/L-050 have been adopted, no consensus was reached concerning amendments to the Conflict of Interest Law No.04/L-051, which subsequently was not adopted.

142. The Assessment Team notes that amended Article 3 of the Law No.04/L-050 provides for extension of asset declaration obligations to more officials (those appointed by the President; equivalent positions of managers in public agencies and their deputies; chief executives, deputies and secretaries of public-owned enterprises at central and local level; heads of departments, directorates or equal units, including heads of finance and procurement units of public institutions and enterprises; members of the Steering Board in the Public University; Deputy Chief Inspectors, Chairperson and Members of the Central Election Commission). Also, the definition of family members has been clarified and extended (spouse, partner, parents and dependent children living in the same household). In addition, a requirement to identify the origin of assets has been introduced in paragraph 5 of the amended Article 15 of the law, which according to the KAA had thus far been mentioned in the title of the Asset Declaration Law but not substantiated in a proper and coherent way in other relevant provisions of the Law (see Articles 1, 2, 13 and 16 using the term "origin" as well as Article 5, paragraph 3 and amended Article 15, paragraph 5 containing the term "source").

143. An obligation has been introduced in Article 15 to fully check each year at least 20% of declarations. Public officials whose declarations will be checked will be selected through a random procedure. This procedure, and the list of selected officials, are open to the public. It is also possible to check a specific declaration(s) upon request of the public or interested persons.

144. An unclear and problematic amendment has been made to Article 16.3 of Asset Declaration Law No. 04/L-050. It concerns the information provided to the KAA by banks and financial institutions. The introduction of the wording "in compliance with the Criminal Procedure Code" may have as legal and practical consequence the limitation or impossibility to provide information to the KAA by banks and other financial institutions concerning data related to deposits, accounts or transactions held or made by public officials who are subjects of the law.

145. As regards sanctions, amended Article 17 obliges the KAA to submit a criminal report to the competent prosecution office; to inform the head of the institution; and to publish the names of public officials who fail to declare their assets. Hence, fines and the misdemeanours procedure of the previous Article 17 have been abrogated in order to ensure harmonisation with the Criminal Code.

146. The Assessment Team learnt during the on-site visit that 71 criminal charges have been filed by the KAA during 2013 for failure to declare assets or for false declaration of assets (this includes charges against around 20 MPs; 36 criminal reports concern non-declaration cases; with the remainder being false statements that mostly relate to business, income and real estate related data). According to the feedback provided by the prosecution offices, 28 indictments were filed. 28 other criminal reports were submitted by the KAA during the first months of 2014. The Assessment Team would appreciate to receive follow-up information on these cases.

147. From the perspective of non-governmental stakeholders met during the on-site visit, the priority areas to be addressed by the public administration institutions include the necessity to ensure clear performance plans as well as improved accountability; and to provide leadership rather than just addressing legislative and institutional issues.

148. Amendments to the Conflict of Interest Law show some positive trends:

- Extension of the scope of the law to all public officials;
- Harmonisation and streamlining of the terminology and definition of public officials (the term used is "official person" - the same as in Article 120 CC - instead of "public official");
- Amendment of the definition in Article 4 (Articles 120 and 424 CC);
- Article 9 (paras. 1.7 to 1.9): introduction of some rules aiming to address "pantouflage" for a period of 5 years;
- Possibility provided to the KAA to seek a review of the decision taken in a conflict of interest case by the body that rendered it (Article 18, paragraphs 13 to 15) – suspension of actions;
- Article 19 (paragraphs 2 to 4): KAA's participation as an observer in all public procurement activities and the possibility to issue recommendations;
- Conflict of interests register to be maintained by the KAA;
- Article 20 - Harmonisation with the CC and other sanctions.

149. However, there are still issues of concern in the current provisions as well as in some proposed amendments to the Conflict of Interest Law. These issues were discussed with the KAA Director and an Advisory Paper has been prepared by the PECK Project for further consideration by decision-makers (see also paragraphs 18 and following above):

- The definition of "official persons" and extension of conflict of interest rules to other levels of official persons without due consideration to implementation capacities and implementing bodies;
- The definition of "trusted persons" and difficulties occurring in practice;
- The issue of multiplication of additional activities of public officials;
- The necessity to clearly distinguish conflict of interest vs. incompatibility notions; and
- Specifically, the relationship between conflict of interest as a criminal offence vs. an administrative offence, as well as a clear delineation and independence between criminal and administrative conflict of interest proceedings to prevent any impunity in relation to violations of conflict of interest provisions.

150. After a first reading at the competent parliamentary committee and several subsequent meetings, the draft law aiming to amend the Conflict of Interest Law No.04/L-051 was shelved and could not be adopted. Political sensitivities seem to be at the origins of this lack of needed consensus.

151. The issue of the so-called "double employment" has been subject of broad debate among stakeholders and the public, including the media. It seems that more than half of public officials continue to have at least two paid jobs/positions. What causes considerable concerns and public reactions is the proportion of judges, prosecutors and different senior officials and civil servants who have more than one job. The media has reported a number of cases where senior officials hold up to four or five paid jobs.

152. It would appear that while further aspects of the recommendation are not yet addressed, the first aspect is still in the early stages of implementation and the Assessment Team can therefore only conclude that this recommendation has not yet been fully addressed.

153. In light of these developments, the Assessment Team concludes that recommendation xxv has been partly implemented.

Recommendation xxvi

154. *The Assessment Team recommended to consider making wider use of rotation in those sectors of the public administration that are particularly exposed to a risk of corruption (paragraph 322).*

155. The Kosovo authorities inform that rotation is used in some sectors of the public administration where there is a risk of corruption, such as the Tax Administration, and the Customs and Border Department of the Kosovo Police.

156. The Assessment Team takes note of the information provided and encourages the authorities to consider the use of periodical rotation or similar measures in other sectors and for public officials and civil servants that remain most exposed to corruption risks or are particularly vulnerable to risks of corruption. This could include *inter alia* other services of the Kosovo Police (e.g. traffic police staff); public procurement authorities and institutions dealing with the awarding of contracts, including privatisation; any staff responsible for the delivery of public services that involves frequent contact with the public; staff from the inspection, audit and control functions; and specific staff in the education and health sectors. In addition to the consideration of relevant risks that public officials might be exposed to, other considerations (founded suspicions, undue contacts, etc.) may guide managers in the application of rotation measures or other similar solutions.

157. Consequently, the Assessment Team concludes that recommendation xxvi has been partly implemented.

Recommendation xxvii

158. *The Assessment Team recommended to establish and maintain a central periodical reporting of statistics on the use of disciplinary proceedings and sanctions in the public administration (paragraph 332).*

159. The Assessment Team recalls the necessity and benefit for the Government of systematically collecting - at central level - periodical statistics from other public institutions concerning the use of disciplinary proceedings and measures. Notwithstanding the importance of periodical reporting and collection of such data and statistics for assessing the efficiency of the system and assisting other public administration processes, needs or reforms, in the light of the main focus of this report, such data provide useful orientation to identify shortcomings in existing legislation, regulations and policies or in their practical implementation in public administration activities. Regular collection and evaluation of such data and statistics contribute to take adequate measures and make the necessary changes for better and more efficient prevention of corruption and management of ethical rules.

160. The Kosovo authorities provided the following statistics that are maintained by the Independent Oversight Board for the Civil Service of Kosovo for 2013: 137 approved appeals; 11 partly approved appeals; 152 rejected appeals; 31 dismissed appeals; 22 cases where it declared not being competent on the subject matter; 26 reversals; 7 terminated proceedings; 12 suspended appeals; and 4 withdrawals from appeal.

161. The Assessment Team notes, however, that the information provided does not address any aspect of the recommendation above. The Assessment Team has learnt that there are no accurate statistics on disciplinary proceedings. Practical experience with the legislation is understandably

limited. In addition, in the current situation, the Ministry of Public Administration has little possibility to be informed on a periodical basis⁷ as the current decentralised system without possibilities of centralised comprehensive information and statistics on disciplinary investigations, measures and sanctions is not helpful at all in deciding policy, legal, regulatory or management matters relating to ethics and prevention of corruption in the public administration. The Assessment Team would like to emphasise that the central civil servants' registry could be an opportunity in the future to consider the feasibility of management and reporting of statistics by public institutions. The introduction of procedures for the systematic collection through the line ministry or administration, and evaluation at central level of information on breaches of ethical rules and the outcome of disciplinary proceedings in the civil service system would be a necessary model to be further extended to other public administration institutions.

162. Therefore, the Assessment Team concludes that recommendation xxvii has not been implemented.

⁷ Based on the draft report on the situation in the civil service for 2013 (data provided from institutions that employ civil servants), it results that 228 disciplinary measures were imposed against civil servants in 2013, against 372 similar measures in 2012 (less 37.8% or 144 pronounced measures).

2.5 Fundamental safeguards and corruption prevention – Members of Parliament

163. Kosovo held general elections on 8 June 2014 after the decision of 7 May 2014 to dissolve the Assembly. The democratic nature of this poll, in broad conformity with European standards, as well as the absence of manifest violence or organised, systemic manipulation anywhere were welcome and lauded by the international community and domestic stakeholders. The turn-out at 42% was higher compared to previous elections in 2010, but lower than in the more recent municipal elections.

164. According to official certified election results released on 4 July 2014, the Democratic Party of Kosovo (PDK), led by outgoing Prime Minister Hashim Thaçi, had 30.38% (37 seats); the Democratic League of Kosovo (LDK), led by Isa Mustafa, 25.24% (30 seats); Vetëvendosje ('Self-Determination') Movement, led by Albin Kurti, 13.59% (16 seats); the Alliance for the Future of Kosovo (AAK), led by Ramush Haradinaj, won 9.54% (11 seats), the newly established Nisma Initiative, led by Fatmir Limaj, 5.15% (6 seats) and Srpska Lista got 5.22% (9 seats). The 11 other seats were distributed among other represented minorities.

165. In an unexpected move for the PDK, LDK, AAK and Nisma proposed on the day after the elections a coalition to form a new government, led by Ramush Haradinaj (AAK) and informed the President on their decision to form a unique parliamentary group, LDK-AAK-Nisma. Vetëvendosje agreed to be part of the announced coalition through an additional subsequent written agreement signed with three other parties.

166. On 1 July 2014, the Constitutional Court of Kosovo delivered its decision on the President's request for clarification of the constitutional action of the President related to the compatibility of Article 84.14 (competencies of the President) with Article 95 (election of the Government) of the Constitution, i.e. her Office's competencies in proposing (to the Assembly) a candidate to form the future government⁸.

167. On 7 July 2014, the President of Kosovo convened the inaugural constitutive session of the recently-elected Assembly for 17 July 2014. After a failure to vote the PDK candidate as Assembly Speaker and the decision to adjourn the session, 83 MPs from other political parties started a meeting few minutes later, voted a motion to replace the oldest Chair by the second oldest MP and elected Isa Mustafa as Speaker of the Assembly with 65 votes in favour. On 18 July 2014, 30 MPs from the Democratic Party of Kosovo (PDK) submitted four questions to the Constitutional Court contesting the legitimacy of the Constitutive session of the Assembly the previous day and the subsequent election of its Speaker. On 23 July 2014, the Constitutional Court granted an interim measure⁹ suspending the Assembly's decision to elect Isa Mustafa (Democratic League of Kosovo – LDK) as the Speaker and prohibiting any continuation of the constitutive process within the Assembly. This rules out any possibility to form a Government until the Court issues its final ruling. In its final decision No KO119/14 of 26 August 2014¹⁰, the Constitutional Court considered the meeting, procedure and decision to elect the Speaker of the Assembly unconstitutional, arguing that the President of the Assembly was not proposed by the largest parliamentary group (i.e. PDK). It also urged the Assembly to complete the constitutive session by electing its President and deputy presidents in accordance with the Constitution.

168. The political stalemate lasted around 6 months, during which no concrete arrangement between leaders of political parties was achieved. On 21 November 2014, leaders of PDK and LDK (Thaçi and Mustafa) announced their intention to form a coalition, and thus putting an end to the long deadlock.

Recommendations xxviii, xxix and xxx

169. *The Assessment Team recommended:*

that the Code of Conduct for members of parliament be revised and complemented with practical measures for its implementation, such as dedicated training, counselling and advice regarding ethical and corruption-related issues (paragraph 351);

⁸ See for further information at http://www.gjk-ks.org/repository/docs/gjkk_ko_103_14_ang.pdf

⁹ The interim measure along with a useful summary of the facts can be found here: http://www.gjk-ks.org/repository/docs/KO119-14_VMP_ANG.pdf

¹⁰ See for further information at http://www.gjk-ks.org/repository/docs/gjk_ko_119_14_ang.pdf

to give to the KAA – or to another official body, in collaboration with the tax administration - the competence to make an adequate assessment of declared assets (paragraph 367); and

that measures be taken to ensure supervision and enforcement of the existing rules on conflicts of interest and disclosure of outside ties by members of parliament (paragraph 379).

170. The Kosovo authorities have not reported any progress in respect of these recommendations.

171. In the absence of information, the Assessment Team concludes that recommendations xxviii, xxix and xxx have not been implemented. The Assessment Team strongly urges the Kosovo authorities to show greater determination in implementing recommendations xxviii to xxx regarding members of parliament. More needs to be done to prevent nepotism and favouritism and to ensure that clear ethical rules are to be followed. There is a gap between the legislation in place and its implementation in practice. For example, the KAA did not take any measures in the case of a Deputy Prime Minister who, for about two years, was also member of the board of the privatisation agency¹¹. In another case, the CEO of a public company was, at the same time, a member of the CEC, in violation of the Article 61.8 of Law No. 03/L-073 on General Elections¹².

172. The Assessment Team considers that the Parliament itself needs to take responsibility for promoting a culture of ethics among its members. For an ethics and conduct regime to work properly, MPs must themselves take a stake in the success of that regime. Putting values into effect needs communication of core standards as well as education and regular training to raise awareness and to develop skills which will assist in confronting and then solving ethical dilemmas. The content of the code of conduct will remain words on paper, if not adequately communicated and inculcated. The provision of dedicated counselling (including of a confidential nature) may further assist in making MPs more comfortable with the current system to prevent conflicts of interest and to address integrity dilemmas.

173. The question of the adequate assessment of declared assets is of key importance. An independent body (for example the KAA) must be in a position to evaluate and, if necessary, correct the value of the declared assets. Currently, the declared values of assets are not subject to any correction. In that context, the "Practitioner Manual on Processing and Analysing Income and Asset Declarations of Public Officials" prepared in the framework of the "Eastern Partnership-Council of Europe Facility Project on Good Governance and Fight against Corruption" could be very helpful in providing advice in methodology.

174. A last point to underline is the problem of the so-called "inexplicable wealth" of MPs: some very important fluctuations in the wealth of MPs, according to their asset declarations, have no consequences at all: neither the KAA, nor the Prosecutor's office, nor any law enforcement authorities undertake any measures to get explanations about these changes¹³. As already mentioned under paragraph 24 above, the Assessment Team reiterates its recommendation to establish a system of cross-checking of data, through automatic exchange of data between the tax administrations, the KAA, the Cadastre (Land) Registry etc. In a first step, the already existing databases might need to be consolidated and harmonised; in a second step, they should be merged. As a result, the various databases should allow for a more efficient tracing of the violations of the rules on declaration of assets.

¹¹ Pursuant to Article 96.7 of the Constitution, the incompatibilities of the members of the Government as to their functions shall be regulated by law. However, no relevant legislation is yet in place in this regard.

¹² According to this provision, a person is not eligible to be a CEC member whether he/she is holder of a senior public office.

¹³ Cf. KIPRED, The impunity in Kosovo, inexplicable wealth, Policy paper no 5/13, November 2013, p. 9. "In stark violation of the requirements of the law, the current declarations of wealth by Kosovo's current legislature are not represented in a transparent manner. The declared forms by MPs contain incomplete data especially when it comes to the origin of their wealth. From 41 MP's, 22 MPs (or more than half) for real estate have declared the origin of wealth as family inheritance or joint family property without enlisting the years of property acquirement. Similarly for government cabinet officials 12 out of 22 analysed have declared inheritance for several of their assets, mainly real estate. KIPRED looked into the declaration of assets for 41 MPs, choosing half of the deputies from each of the parliamentary groups of 4 major political parties. In majority of cases mentioned above the total wealth increase is inexplicable if calculated with their annual income."

2.6 Financing of political parties and election campaigns

175. According to the information provided by the Central Election Commission, there has not been much progress in the field of financing of political parties and election campaigns, other than the recent amendments to the Law on Financing of Political Entities (Law No. 04/L-212 of 31 July 2013).

Recommendation xxxi

176. *The Assessment Team recommended to harmonise the legal provisions on political entities and campaigns financing in line with the legislation applicable to other candidates for election (local and national level, presidential election) (paragraph 403).*

177. According to the information provided by the Central Election Commission, new Law No. 04/L-212 of 31 July 2013 amended and supplemented the "basic" Law No. 03/L-174 on Financing of Political Entities (adopted on 16 September 2010, hereafter "LFPE") which had already been amended and supplemented by Law No. 04/L-058 of 21 December 2011.

178. The Assessment Team takes note of the information provided and welcomes the new Law No. 04/L-212, given that its provisions address some of the recommendations issued under this section.

179. However, the purpose of recommendation xxxi is to proceed to a general harmonisation of the legislation regarding political entities, candidates for elections on local and national levels, and presidential elections, and to draft a new law to coordinate all the legal provisions and the resulting set of laws regulating political finance into one law. It is not clear to the Assessment Team if new Law No. 04/L-212 really harmonises the complete field of political funding.

180. The absence of an Electoral Code is often mentioned as an issue to be considered for a comprehensive, clear and harmonised legal framework.

181. Another important issue is the draft law on electing the President. There have been no recent developments in this respect since the AR and until April 2014.

182. In light of the available information, the Assessment Team concludes that recommendation xxxi has been partly implemented.

Recommendation xxxii

183. *The Assessment Team recommended to develop a comprehensive and unique website setting out the legal and regulatory framework, and providing relevant information on political entities' periodical reports and other relevant information (paragraph 404).*

184. The Kosovo authorities make reference to reworded Article 19, paragraph 10, of the amended LFPE, which obliges the CEC to publish and keep published all annual financial reports of political parties, together with the final audit report of political parties on its official website no later than 30 June of the following year.

185. The Assessment Team takes note of this new wording and considers that it addresses all issues raised in recommendation xxxii.

186. The Assessment Team concludes that recommendation xxxii has been implemented satisfactorily.

Recommendation xxxiii

187. *The Assessment Team recommended to ensure that the definition of a 'contribution' to a political party as foreseen in Rule 01/2008 on Registration and Operation of Political Parties is consistently used in the legislative and regulatory framework concerning funding of political entities and electoral campaigns in order to include indirect resources (such as services or in-kind donations) (paragraph 420).*

188. The Kosovo authorities make reference to reworded Article 2, paragraph 1.5 of the amended LFPE: "1.5. Contributions - gifts (donations) or any kind of assistance that implies a conscious act of donating economic or similar economic goods to a political entity, whether in cash, services, sale of items below the market price, delivery of services below the market price or other material goods."

189. The Assessment Team notes that this new wording is in line with the AR recommendation. Nevertheless, it is not clear whether it covers the whole legislative and regulatory framework concerning the funding of political entities and electoral campaigns, and, for example, if it is also mandatory for presidential elections.

190. In the absence of further information addressing the issue above, the Assessment Team concludes that recommendation xxxiii has been partly implemented.

Recommendation xxxv

191. *The Assessment Team recommended to set more precise conditions for requirements of the financial reports and the deadline(s) of their publication (paragraph 436).*

192. The Kosovo authorities make reference to the new paragraph 5 of Article 15 of the amended LFPE: "5. Political entities should publish and hold public at least one (1) year on their official websites the Annual Financial Report of the previous year and Campaign Contribution Disclosure Reports of the previous elections, and publish their own short version in one of the daily national newspapers. The CEC shall determine the short version format on publication through a bylaw.

- 5.1 The Annual Financial Report of a political entity shall be published in the media foreseen in paragraph 5 of this Article till July 30 of the following year.
- 5.2 Campaign Contribution Disclosure Reports of the political entity shall be published in the media foreseen in paragraph 5 of this Article, no later than six (6) months after the date of the elections".

193. In the opinion of the Assessment Team, the CEC must define a standardised format for reporting to be used by political parties to disclose all required information that would allow the public to compare reports. The reports must be easily understandable for an average citizen and should distinguish between income and expenditure. In addition, the reports must properly itemise private and public donations into standardised categories. The reports should include annual party finance and campaign financing (where applicable).

194. Regarding the first part of the recommendation (more precise conditions for requirements of the financial reports), the Assessment Team notes with satisfaction that amendments of Article 4, paragraphs 2 to 5 of the basic LFPE introduce new rules that deal with the question of a mandatory single bank account for political entities. However, no further precise conditions have been introduced for the requirements of the financial reports themselves.

195. Regarding the second part of the recommendation (more precise conditions for deadline[s] of the publication), the Assessment Team notes with satisfaction that provisions of new paragraph 5 of Article 15 of the amended LFPE are in accordance with its requirements.

196. The Assessment Team concludes that recommendation xxxv has been partly implemented.

Recommendation xxxvi

197. *The Assessment Team recommended to give to the Central Electoral Commission/the Office or the Anti-corruption Agency the mandate and the appropriate authority as well as the financial resources and specialised staff to effectively and proactively supervise the funding of political parties and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions (paragraph 442).*

198. The Kosovo authorities have not provided information on this important issue.

199. The Assessment Team urges the Kosovo authorities to deal with this recommendation as a matter of priority, as its implementation is essential for effective supervision of the political financing regulations.

200. The Assessment Team concludes that recommendation xxxvi has not been implemented.

201. Kosovo lacks mechanisms of control over the financing of political parties. The Office responsible for reviewing and scrutinizing the financial reports of political parties has not enough resources to investigate and examine the financial reports of the political parties. These tasks could be extended to other institutions and bodies, such as the KAA, in order to scrutinize the political parties' incomes, and to detect fraudulent financial practices.

Recommendation xxxvii

202. *The Assessment Team recommended (i) to unify parties' reporting forms, in particular regarding content, periodicity of their submission and publication; and (ii) to determine the procedure for monitoring of established standards (paragraph 443).*

203. For the reasons already elaborated under recommendation xxxv, the Assessment Team concludes that recommendation xxxvii has been partly implemented.

Recommendation xxxix

204. *The Assessment Team recommended to introduce more dissuasive, effective and proportionate sanctions in respect of violations of political financing rules, and to provide the Central Electoral Commission with the necessary powers to investigate such cases and to apply the appropriate sanctions (paragraph 454).*

205. The Kosovo authorities state that reviewed Article 21 (Punitive provisions) of the amended LFPE introduces a more coherent system of sanctions in line with recommendation xxxix. Article 21 requires that a political entity shall be fined with 10% of the basic amount realised by the Fund for support to political subjects (hereafter "the Fund") in the previous year if the entity does not submit the Annual Financial Report and Campaign Contribution Disclosure Reports by the deadline prescribed by law, and with a daily fine of 0.01% of the amount of the basic fine, until the report is submitted. A political entity not receiving funding from the Fund is penalised with a basic penalty of one thousand (1,000) Euros with a daily penalty of 0.01 % of the amount of the basic penalty, until the submission of the report. A political entity which does not submit the Annual Financial Report and Campaign Contribution Disclosure Reports within the time specified by law loses eligibility to benefit from Fund allocations for the next year.

206. A political entity will be penalised for failing to meet the criteria of the financial report set forth by law as follows: for inaccurate and incomplete data on the balance sheet, profit and loss statement on the value of payment of five thousand (5,000) Euros made to other persons, the political entity shall be fined with five thousand (5,000) Euros and daily fine of 0.01% of the base amount until the correction of this data.

207. The political entity will be penalised with a basic penalty of two thousand (2,000) Euros for the lack of documentation copies of the financial report foreseen in paragraph 3, Article 15 of the basic Law.

208. Political entities will be penalised with a basic penalty of five thousand (5,000) Euros for failing to publish the Financial Reports foreseen under Article 15, paragraph 5 of the basic Law and with a daily penalty of 0.01% of the value of basic penalty until their publication.

209. A political entity shall be fined twice of the value received, while the candidate for a mayor; member of the parliament; municipal councillor; and independent candidate are fined with the same amount received if they accept and execute donations by a natural person in contradiction to Article 5, paragraph 1, subparagraph 1.1 of the basic Law, or accept and execute donation by a legal person in contradiction to Article 5, paragraph 1, subparagraph 1.2 of the basic Law, or accept and execute donations in contradiction with Article 11 of the basic Law; or accept and execute donations up to twenty thousand (20,000) Euros, the origin of which cannot be proved.

210. A political entity which cannot prove the origin of the received and executed incomes over twenty thousand (20,000) Euros shall be fined three times that amount.

211. Natural or legal persons who are providing contributions in contradiction to Articles 5 and 11 of the basic Law will be penalised with twenty percent (20%) of the provided value.

212. All income realised by the political entities, apart from the prescribed sources according to Article 4 of the basic Law, shall be paid into the Budget of Kosovo and the political entities will be fined ten percent (10%) of the amount realised.

213. Political entities shall be fined double of the funds spent in contradiction to Articles 8 and 10 of the basic Law.

214. A political entity shall be fined with a basic fine of five thousand (5,000) Euros for keeping active two or more bank accounts, and a daily fine of 0.01% of the amount of the basic fine until the closure of these accounts.

215. A political entity shall be fined for the amount of one thousand (1,000) Euros for not informing the CEC within the time prescribed by Article 3, paragraph 5 of the basic Law, for the funds received in contradiction to this law.

216. If funds are misused by a candidate or the political entity, and it can be verified that the winning of mandate/s is the result of misuse of funds in contradiction to the provisions of this Law and applicable legislation, the mandate of the candidate or political entity may be revoked.

217. Political entities shall have rights to appeal against the imposed sanctions. Appeals shall be addressed to the Election Panel on Complaints and Appeals according to the legislation in force.

218. Revenue from fines paid under this Law shall be deposited to the budget of Kosovo.

219. The Assessment Team takes note of this new very detailed and precise regulation. However, the Assessment Team considers that in some respects, the penalties are relatively minor and are not sufficiently dissuasive. In addition, the investigative capacities of the Central Election Commission have to be demonstrated in practical terms.

220. Consequently, the Assessment Team concludes that recommendation xxxix has been partly implemented.

Recommendation xl

221. *The Assessment Team recommended to provide the Office with appropriate authority to carry out, as needed, a material verification (in addition to the existing formal review) of the information provided by election candidates and other political entities (paragraph 455).*

222. The Kosovo authorities have not provided information in respect of this recommendation.

223. In the absence of information, the Assessment Team concludes that recommendation xl has not been implemented.

Recommendation xli

224. *The Assessment Team recommended to introduce compulsory periodic publication of political parties' reports on a public website (paragraph 456).*

225. The Kosovo authorities refer to the new paragraph 5 of Article 15 of the amended LFPE which reads as follows: "Political entities should publish and hold public at least one (1) year on their official websites, the Annual Financial Report of the previous year and Campaign Contribution Disclosure Reports of the previous elections and publish their own short version in one of the daily national newspapers." [...]. As already mentioned under recommendation xxxii (see paragraph 180 above), the Kosovo authorities make also reference to reworded Article 19, paragraph 10, of the amended LFPE, which obliges the CEC to publish and keep published all annual financial reports of political parties together with the final audit report of political parties on its official website no later than 30 June of the following year.

226. The Assessment Team takes note of the information provided. It recognises that the current regulation provides for a compulsory and periodic publication of political entities' reports, and that accounts have to be published on the official website of the CEC.

227. For this reason, the Assessment Team concludes that recommendation xli has been implemented satisfactorily.

2.7 Public Procurement

Recommendation xlii

228. *The Assessment Team recommended to create conditions for enhanced transparency and equality in competition, in order to minimise the risk of corruption opportunities in public procurement and privatisation fields (paragraph 467).*

229. The Kosovo authorities indicate that on the basis of any unequal treatment or discrimination according to Article 7 of the Public Procurement Law No. 04/L-042 (PPL), domestic and foreign economic operators have the right pursuant to Article 109 to complain at any stage of procurement activity. Also, the secondary legislation that is published on the website (www.krpp.rks-gov.net) of the Public Procurement Regulatory Commission (PPRC) and which includes around 81 sublegal acts, creates conditions for equality in competition. In addition, they argue that according to statistics, contracting authorities have developed a large number of procurement activities through an open procedure that is transparent and allows economic operators a free competition.

230. The respective authorities argue that the PPRC webpage contains publications of all notifications for contracting authorities, while the PRB webpage periodically publishes all decisions on review of appeals filed by procurement operators. Moreover, the PPRC electronic webpage is regularly visited and it records for 2013 an average of approximately 24,405 items visited per day¹⁴. According to the PPRC Annual Report for 2013, there is an increase of published awarded notices during 2013: 5,256 contract notices that were published in 2013 represent a slight increase compared to 2012, whereas 6,919 published awarded notices constitute an increase of 10.8% against 2012. Although publication of awarded contracts of small value (price quotation) is not a legal obligation as for contracts, their factual publication influenced this increase. In addition, PPRC has provided professional advice in around 1,476 cases through electronic means or over the phone (35 written interpretations, 368 electronic answers and 1,073 interpretations through phone calls).

231. The public procurement authorities furthermore refer to statistics which show that a large number of procurement activities are carried out according to the open procedure (87.86% of cases), enabling commercial operators to compete freely and in a transparent way, in comparison to the negotiated procedure, which represents only 5.60%¹⁵.

232. The authorities further argue that the average number of bidders for the period from 2008 to 2013 varies from 5 to 5.9 and constitutes an average of 5.43 economic operators per tender (that is higher compared to some neighbouring countries that count an average between 3 to 4 bids per tender). Finally, according to the PRB, 90% of its hearings are public.

233. The Assessment Team takes note of the information provided and further progress made by the Kosovo authorities in ensuring a satisfactory level of transparency and equality in competition. It remains, however, concerned about the periodicity, continuity and sustainability of efforts in this respect and urges respective authorities to pay priority attention to all transparency and equality-related measures in their daily activities. Further and clear progress in this area will mitigate risks of corruption, enhance integrity and increase competitiveness. On the other side, while several positive trends have been noticed in the public procurement area, nevertheless no concrete measures have been reported to address transparency and equality in competition in the privatisation field.

234. The Assessment Team concludes that recommendation xlii has been partly implemented.

Recommendation xliii

235. *The Assessment Team recommended (i) with a view to minimise corruption risks and opportunities, to ensure further streamlining of public procurement rules and procedures, including*

¹⁴ The above correlated figure represents 8.400 visitors per day (19% higher compared to 2012), 12.560 daily consulted notices (12.8% higher), 3.360 daily downloaded notices (11% higher) and 85 daily consulted regulations (or 22.6% higher than 2012).

¹⁵ Out of a total value of signed contracts amounting to 444,181,399.10 EUR, signed contracts carried out through open procedure amount to 390,277,502.17 EUR (87.86%) against negotiated contracts without publication of the contract notice (5.61%) and price quotation (5.78%).

a quick introduction of central purchasing; (ii) to enhance monitoring, supervision and review capacities and mechanisms; (iii) to revise the Public Procurement Law concerning the scope and procedures related to reporting of public procurement violations and offenders; and (iv) to enhance the exchange and treatment of information and horizontal interagency cooperation, notably between public procurement, audit, anti-corruption, tax and other law enforcement bodies (paragraph 489).

236. The Kosovo authorities inform that the Public Procurement Law is almost completely harmonised with EU requirements and has been highly rated in the EU Progress Report 2013. PPRC issued and approved all necessary secondary acts (81 in total) to implement the PPL, and they are published in the three official languages on the website of the PPRC.

237. In addition, besides monitoring of procurement activities in the contracting authorities as required by the PPL, the PPRC has started to monitor the management of public contracts/agreements under Article 87.2.1 of the PPL. With the aim of enhancing monitoring and supervisory mechanisms and capacities, the PPRC has, as of 1 January 2014, reorganised the Supervision and Monitoring Department, by establishing two divisions within this department: the Division for Monitoring of Procurement Activities (covering the process until the signature of contracts), and the Division for Monitoring the Implementation of Contracts (covering the process from after the signature of contracts onwards). The PPRC has also started to monitor notices of contracts in order to avoid double and incomprehensible criteria. In this regard for the period from May to October 2014, 260 corrections were made to these notices. In close cooperation with the World Bank Project, the PPRC has also introduced monitoring of the performance measurement in public procurement.

238. The PPRC issued a Draft National Strategy on Public Procurement 2015-2020, which underwent a stakeholder consultation process during October 2014¹⁶. No other information was provided to the Assessment Team concerning next steps, timeline and its expected adoption.

239. In view of increasing cooperation and exchange of information with different institutions, the PPRC has so far signed memorandums of understanding with the Public Procurement Agency (now Central Procurement Agency) and with the Kosovo Anti-Corruption Agency. A memorandum of understanding is being prepared between the PPRC, the PRB and the Kosovo Tax Administration.

240. According to audits conducted by the Office of the Auditor- General, public procurement continues to be a risky and vulnerable sector in Kosovo. Audit activities and reports demonstrate little progress in the public procurement system. Typical infringements encountered include favours granted to specific operators by tender files (also because of technical specifications' deficiencies), incorrect management of contracts, excessively frequent changes of contracts, failure to inform unsuccessful/eliminated economic operators and illegal and irregular selection of operators.

241. Four projects are currently being implemented in the public procurement area. An EU-funded project assists the development of the national public procurement strategy and a training strategy; it also provides assistance in centralised procurement and public awareness. Three other projects that are supported by the World Bank are focused on e-procurement, performance measurement and reference prices of goods, works and services.

242. Lack of proper functioning of the CPA continues to be an issue of concern. According to Article 95 of the PPL, the CPA is responsible for carrying out specific procurement activities for and on behalf of contracting authorities following a decision of the Minister of Finance as well as centralised procurement of certain commodities in accordance with a list approved by the Government. It may also perform procurement of any good, work or service if so requested by the contracting authorities. Although the legislative framework provides for the possibility of centralised procurement by the CPA, so far, neither the Ministry of Finance nor the Government had not approved yet such procedures thus enabling the CPA to sign framework contracts that would achieve economy of scale and cost savings for the public sector. The only reported case of a central procurement activity concerns the supply with fuel for 42 institutions in the amount of 15 million EUR.

¹⁶ Some of the strategic objectives foreseen in this Draft Strategy concern, inter alia, the enhancement of efficiency and transparency of the public procurement system (including monitoring of rules and practices), central procurement, enhancement of capacities and access to information, e-procurement as well as further harmonisation with relevant international standards.

243. The Assessment Team refers to the most recent Law No 04/L-237 amending and supplementing PPL No. 04/L-042, which was submitted to the Assembly in November 2013, and which was adopted on 20 March 2014. In this regard, the Assessment Team finds that the current amendments do not address point (iii) of the recommendation. Consequently, it recalls the necessity to revise the reporting regime of public procurement violations and offenders. The reorganisation of the Supervision and Monitoring Department is a positive attempt to enhance monitoring and supervision capacities and mechanisms, as well as monitoring of contracts. However, no concrete information is available with regard to the monitoring process itself and recorded progress in this regard. Likewise, the fact that members of the Procurement Review Body have not been elected since August 2013¹⁷ has seriously undermined the normal functioning of this important review body. The main consequence of this gap is that procurements carried out during this period have not been subject of examination by the PRB. Around 250 complaints that were filed during the afore-mentioned period remain unexamined and were refused by decision No. 174/14 of 27 March 2014 because of statute of limitation constraints within the PP Law (Article 117 and 79 of PPL in relation to Article 131 of the Law on Administrative Procedure)¹⁸.

244. Furthermore, other aspects of the recommendation have not been addressed since no significant measures have been reported in relation to them. Finally, the information provided to the Assessment Team with regard to the fourth part of the recommendation (increased cooperation and inter-agency exchange of information) does not contain concrete measures.

245. In light of the above information, the Assessment Team concludes that recommendation xliii has been partly implemented.

Recommendation xliv

246. *The Assessment Team recommended (i) to introduce coherent staff policies and treatment in the public procurement system in order to avoid changes of staff; (ii) to clarify and strengthen procedures in order to have objective criteria for the conclusion of contracts; (iii) to introduce conflict of interest prevention rules in the public procurement, including compulsory declaration of conflict of interest situations by members of procurement panels; and (iv) to promote further training and specialisation focused on prevention and detection of corruption practices (paragraph 498).*

247. According to the Kosovo authorities, besides relevant provisions of PPL No. 04/L-042 that clarify criteria for the selection of economic operators, the PPRC has issued Administrative Instruction No. 01/2014 on drafting technical specifications for work contracts which contains instructions for contracting authorities in defining technical specifications for contracts of works in accordance with Articles 27.1 (Tender Dossier) and 28 (Technical Specifications) of the PPL. Moreover, the Administrative Instruction No.02/2014 on Tender Security, Performance Security and Application of Economic and Financial Selection Criteria clarifies selection criteria for awarding contracts to the contracting authorities.

248. The Kosovo authorities inform that coherent treatment of the staff in the public procurement system is governed by the Civil Service Law. With the aim of protecting procurement officers and of avoiding change of personnel who work in the public procurement field, the PPRC has prepared some amendments to the PPL that will address this issue.

249. The Procurement Code of Ethics as part of secondary legislation (Part D), includes an obligation to declare conflict of interest situations by members of the procurement panels¹⁹. In addition, the PPRC is close to finalising the issuance of a regulation on conflict of interest in public procurement.

250. The PPL provides for basic and advanced trainings for public officers who are involved in procurement activities. These trainings are also focused on prevention and detection of corrupt practices. During 2013, 576 procurement officers underwent the advanced training, whereas 428 passed the test, and were given valid certificates for public procurement for a duration of three years. 111 other participants (9 from minorities) are expected to be certified, while 60 participants

¹⁷ Due to end of the term for its members, the PRB Board ceased to exist as of 31 July 2013. The Assembly could elect new members only on 21 March 2014 (around 8 months later).

¹⁸ As of the constitution of the new PRB Board, all received complaints lodged after 21 March 2014 (around 450 cases) have been reviewed pursuant to legal provisions.

¹⁹ With regard to PRB, this issue is regulated by Article 12 of PRB Rules of Procedure.

are to be certified under the basic component. Furthermore, the PPRC has adopted a training strategy in the public procurement field for 2014-2018.

251. The PPRC adopted a memorandum of understanding with the Kosovo Chamber of Commerce with the aim of provision of public procurement trainings for commercial operators. The PPRC is also organising trainings for commercial operators, judges, prosecutors, NGOs, media, auditors etc.

252. The Assessment Team takes note of the information provided and some measures aiming to address different aspects of the recommendation. However, it cannot fully assess the implementation of the first two aspects of the recommendation in the absence of more relevant information. In addition, the Assessment Team observes that more concrete information would be needed to assess the remaining aspects of the recommendation.

253. Therefore, the Assessment Team concludes that recommendation xliv has been partly implemented.

3. Criminal law, law enforcement and criminal procedure

3.1 Offences and sanctions

Recommendation xlv

254. *The Assessment Team recommended that legislative measures are taken to make third beneficiaries directly covered in Articles 429 and 430 CC about active bribery (paragraph 525).*

255. The Assessment Team recalls that the reason for this recommendation was that the articles concerning active bribery (Articles 429 and 430 CC) do not directly cover situations where third party beneficiaries are involved – for example where the bribe is given not to the official person himself, but to his wife or another person contrary to the Criminal Law Convention on Corruption (ETS No. 173) “for himself or herself or for anyone else” and contrary to Article 428 CC concerning passive bribery, “for himself, herself or for another person”.

256. The Kosovo authorities have reported that for the time being, according to the respective framework regulating the drafting of the applicable legislation in Kosovo (in particular the Regulation on Rules and Procedures of the Government No. 09/2011) the bodies which deal with the implementation of the legislation can submit concrete proposals aiming to amend the applicable legislation, or to draft new laws.

257. In relation to this, on 24 September 2014, the authorities addressed, in writing, all the judicial institutions (No. 147/2014) and asked them to undertake concrete actions to draft the concept documents in compliance with Article 29 of the aforementioned Regulation. The authorities are waiting for these actions to be undertaken in the field of justice.

258. As the authorities have declared previously, it is reiterated that in case of changes/amendments to the applicable legislation upon the proposals of the competent bodies for their implementation, the Ministry of Justice will take into consideration recommendations of the Project and will welcome the contribution of the PECK experts.

259. The Assessment Team takes note of the information provided and welcomes the actions taken. It trusts that careful consideration will also be given to the content of the recommendation and necessary measures will be taken to promptly implement it. The Assessment Team recalls, however, that this recommendation *requires amendments/changes in the Criminal Code*.

260. The Assessment Team concludes that recommendation xlv has not been implemented.

Recommendation xlvi

261. *The Assessment Team recommended that the authorities ensure that there are no loopholes in the system and if necessary to take the legislative measures that the offence of active and passive bribery in the public sector covers all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official’s duties (paragraph 526).*

262. The Assessment Team recalls that the type of acts to be performed or omitted by the public official in the context of a bribery offence have to fall “within his or her official duties” - Articles 428, 429 and 430 of CC. Articles 428 and 429 use the wording: “acting in accordance with his or her official duties” and Article 430 uses: “acting in the exercise of his or her official duties”. Article 120.2.2 defines a public official as follows: a domestic official person is a person who exercises public authority, and a foreign official person is any person holding a legislative, executive, administrative or judicial office of a foreign State. According to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173), the type of acts to be performed should be in the exercise of **his or her functions**. The question is if acts and omissions which are completely outside the official’s duties or his/her statutory remit, but which s/he has the opportunity to commit because of the function s/he occupies, would be covered directly by the bribery provisions (e.g. granting access to confidential information to which the public official has access in the exercise of his/her function in situations where the gathering or disclosure of such information is not strictly within the scope of the duties of the official concerned). Therefore, the Assessment Team *invites the authorities to further study this recommendation and potential amendments/changes in the Criminal Code*.

263. The Kosovo authorities have not provided information in this respect.

264. The Assessment Team concludes that recommendation xlvi has not been implemented.

Recommendation xlvi

265. *The Assessment Team recommended that necessary legislative steps are taken to ensure that private corruption is criminalised in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS No. 173) (paragraph 539).*

266. The Assessment Team recalls that the reason for this recommendation was that Articles 315 and 316 about bribery in the CC were not in accordance with the requirements of the Convention (ETS No. 173). For example, the elements "offering" and "acceptance of an offer or promise" are missing, "for himself or herself or for anyone else" is missing in Articles 315 and 316 CC, but it appears that in paragraph 2 of Article 315 CC ("for himself or another person"), the notion of "directly or indirectly" is missing in both provisions. With regard to the Convention wording "to act or refrain from acting in the exercise of his or her functions", it is expressed by the words "in order to neglect the interests of his or her business organisation or legal person or to cause damage to such business organisation or legal person when concluding a contract or performing a service [or agreeing to perform a service - 315.1 CC]" that appear only in articles 315.1 and 316.1 CC. Concerning the intentional element of both offences, it is inferred by the words "in order to... cause damage..." or "in order to acquire any unjustified advantage". Furthermore the wording used in both provisions is "a person engaged in an economic activity." It is not clear if this includes any person working for a private sector entity, in any capacity.

267. The Kosovo authorities have not provided concrete information in respect of this recommendation.

268. The Assessment Team concludes that recommendation xlvi has not been implemented.

Recommendation xlvii

269. *The Assessment Team recommended to consider abolishing the requirement of dual criminality in Articles 115 and 116 CC in respect of bribery offences when committed abroad (paragraph 561).*

270. The Assessment Team recalls that in Kosovo, the dual criminality principle is required and the act must constitute a criminal offence under the law in force in the country of perpetration (see Articles 115.3 and 116, 1.2 CC). In Article 17 (Jurisdiction) of the Criminal Law Convention on Corruption (ETS No. 173) a series of criteria is established concerning the jurisdiction over the criminal offences. According to this Article, the requirement of dual criminality should not be an obstacle to prosecute bribery offences.

271. The Kosovo authorities have not provided concrete information in respect of this recommendation.

272. The Assessment Team concludes that recommendation xlvii has not been implemented.

Recommendation xlviii

273. *The Assessment Team recommended to take the necessary legislative steps to ensure that time-limits for investigation do not hinder the effective combating of corruption (paragraph 569).*

274. The Assessment Team recalls that the maximum two and a half-year deadline for the investigations of large bribery cases appears rather short, given the complexity of the cases and the difficulty in identifying perpetrators. While recognising that a short time limit might be desirable in the context of petty corruption, the *two and a half-year time-limit seems clearly insufficient in large and complex cases*, especially where these cases have links abroad. This could be avoided by increasing the time-limit for investigations in large cases of corruption.

275. The Kosovo authorities have not provided concrete information in respect of this recommendation.

276. Nevertheless, having regard to a recent monitoring report on the statute of limitations for criminal investigation and execution of decisions in the Kosovo basic courts for the period 2001-

2013²⁰, the Assessment Team is concerned by a critical trend and a high number of cases that fall under the statute of limitations (2,230 criminal cases in 2013, only, representing the highest annual number followed by 1,860 cases in the 2011 – 2012 period)²¹. Among the identified cases, there are corruption-related cases that are covered by Chapter 29 CC on “Criminal Offences against Official Duty” (11 cases under the relative statute of limitation, and 24 cases under the absolute one). Within the Office of Disciplinary Prosecutor, out of 72 cases investigated during 2013 against judges who did not initiate proceedings, 64 were dismissed because those under whose responsibilities the cases fell no longer perform the function of judge. Around half of the total number of those cases belongs to two basic courts and one branch, only. There is also a risk of continuity of trend in the future.

277. The Assessment Team concludes that recommendation xlix has not been implemented.

Recommendation I

278. *The Assessment Team recommended to take the necessary legislative steps to ensure that the possibility provided by the special defence of effective regret to return the bribe to the bribe-giver who has reported the offence before it is uncovered be abolished (paragraph 572).*

279. The Assessment Team recalls that according to Article 316(4) CC, the reward or gift is given back in cases of active private bribery, when the court finds that the requirements for effective regret have been met, which is against the GRECO practice in this area.

280. The Kosovo authorities have not provided concrete information on changes in respect of this recommendation.

281. The Assessment Team concludes that recommendation I has not been implemented.

Corporate liability

Recommendation li

282. *The Assessment Team recommended to strengthen the controlling functions of the Registry of Enterprises in order to ensure that both natural and legal persons establishing companies be checked and monitored with respect to possible criminal records and professional disqualifications or any other pertinent information on legal persons in the registration process (paragraph 580).*

283. The Assessment Team recalls that in order to make the combating of corruption more effective, anyone applying for an enterprise to be registered should be checked in the Kosovo Business Registration Agency for any potential past criminal records, limitation of rights i.e. temporary deprivation or any other pertinent information making such a registration problematic.

284. The Kosovo authorities report that the Kosovo Business Registration Agency has not undertaken any step in implementing the Recommendations li, par. 262, 264, 265, 266, hence the Agency does not have any amendment of the Law on Business Organisations, and no action has been undertaken to ensure that natural and legal persons who establish a business are monitored with regard to their potential criminal background and professional disqualifications or other information.

285. The Assessment Team takes note of the information provided. It trusts that careful consideration will be given to the content of the recommendation and necessary actions will be taken to promptly comply with it.

286. Given that no concrete progress has been achieved so far apart from the setting up of a working group to amend the law, the Assessment Team concludes that recommendation li has not been implemented.

²⁰ See for further information at www.cohu.org

²¹ 10,504 cases appear to have been prescribed by the statute of limitations for the period 2001 to 2013: 55% of cases belong to the absolute form, 31% to the relative form of limitation whereas the remaining 14% are cases that were not categorised or refer to executions.

Recommendation lii

287. *The Assessment Team recommended to take the necessary legislative steps to ensure that legal entities can be held liable not only in situations where a responsible natural person can be punished including situations where the liability is based on lack of supervision but also in situations where it is not possible to find a natural person liable for the offence (paragraph 584).*

288. The Assessment Team recalls that in Kosovo, the liability of a legal person is based on the culpability of the responsible natural person. It is therefore not clear whether a legal entity will be responsible in situations where the liability is based on lack of supervision and it will be impossible to assign liability to the legal entity in cases where the natural person responsible for the criminal act is not identified.

289. Apart from the information referred to in paragraphs 252 to 254 above, the Kosovo authorities have not provided concrete information in respect of this recommendation. This recommendation *requires amendments/changes in the Criminal Code*.

290. The Assessment Team concludes that recommendation lii has not been implemented.

Recommendation liii

291. *The Assessment Team recommended that the Kosovo authorities undertake necessary steps to ensure and enhance the practical application of this measure (criminal liability of legal persons) as a means to sanction criminal activity (paragraph 585).*

292. The Assessment Team recalls that this recommendation requires that the authorities have to ensure that every time a physical person is indicted, consideration also be given to holding the legal person criminally liable.

293. The Kosovo authorities have not provided information in respect of this recommendation.

294. The Assessment Team concludes that recommendation liii has not been implemented.

Recommendation liv

295. *The Assessment Team recommended that Kosovo considers requiring external auditors to report suspected acts of bribery to management or, if the management do not react or if the management itself is involved, to report to the competent authorities independent of the company, such as law enforcement or regulatory authorities, and, where appropriate, ensure that auditors making such reports reasonably and in good faith are protected from legal action (paragraph 593).*

296. The Assessment Team recalls that it was the opinion of interlocutors met during the on-site visit that the auditors did not have an obligation to report criminal activity in the company to the police.

297. The Assessment Team recalls that this recommendation requires considerations and *potential amendments/changes in the legislation*.

298. The Kosovo authorities have not provided information in respect of this recommendation.

299. In the absence of information, the Assessment Team concludes that recommendation liv has not been implemented.

3.2. Investigation and criminal procedure

Recommendation Iv

300. *The Assessment Team recommended to take steps to collect appropriate and detailed information and statistics including all angles of a corruption case from the beginning to the end (including the outcome of the case) in order to assess the efficiency of the investigation/prosecution (paragraph 612).*

301. The body responsible for collection, processing and publication of official statistical data is the Kosovo Agency of Statistics (KAS). The agency operates since 1948 and is currently regulated by Law No. 04/L-036 on Official Statistics of Kosovo. The KAS Strategic Development Plan 2009-2013 sets out mid-term goals and priorities for the improvement of the quality and consistency of the statistical system by harmonising domestic methodologies and standards with the European Union's statistical standards (EUROSTAT).

302. The mission of the Agency is to: meet the needs of users for high quality, objective statistical data and delivered in time so that users have a reliable base upon which to conduct regular analysis in the interest of planning and project development at the municipal and country levels; support government institutions, scientific institutes, research academies, businesses in order to provide proper information for decision-makers and other users in Kosovo. According to Regulation No.01/2013 on the Internal Reorganisation and Systematisation of Job Positions in the Kosovo Agency for Statistics, Division of Social Statistics within the Agency is *inter alia* responsible for collecting, processing, analysing and publishing statistics on: 2.4. *Data on health, social welfare, education, jurisprudence, unemployment and other data in the social sphere.*

303. Besides that, the newly appointed National Coordinator for Combating Economic Crime within the KPC will coordinate statistics and collect information. In November 2013, the KPC approved a strategic plan for inter-institutional cooperation for fighting corruption and organised crime. A database (tracking mechanism) was set up in cooperation with the Judicial Council, police and other agencies. The aim is to ensure an overview of investigations, prosecutions and final court rulings in cases related to criminal offences of organised crime, corruption, trafficking in human beings, arms trafficking, trafficking of drugs and money laundering. KPC manages the unified database on statistics covering the prosecution services. Each basic prosecution office has a coordinator responsible for statistics. Moreover, the KPC provided a harmonisation report on more than 20 criminal offences dealt with in a coordinated manner. The report is a first important step although further measures are necessary.

304. On 26-27 February 2014, the PECK Project organised in Pristina a two-day workshop on data collection, maintenance and reporting of statistics for assessment purposes. The need for such a workshop stemmed from the findings of the PECK 1st Cycle Assessment Reports on Kosovo's compliance with international standards in AC and AML/CFT areas. The workshop brought together about 50 representatives of all relevant institutions, including 7 basic courts and prosecution offices in Kosovo and allowed for a discussion and exchange on the current state of play with regard to statistics in each respective institution, and good practices of producing reliable and unified statistics on economic crime based on the Dutch and UK practice. So far the various agencies are generally counting information about crimes and cases in different ways. They produce their own data at different periodic frequencies and to different timetables. To allow proper and meaningful comparisons to be made it is important that the statistical institution determines the frequency and reporting period coverage for all official statistics publications and agrees with all the other bodies those frequencies and periods. Moreover, the involved institutions need to agree on the same methodology and unit basis for counting.

305. A case management system (CMS) will be introduced with the financial support of Norway; however it has as yet to be purchased and implementation will last until 2017. The use of the CMS will be mandatory, and its enforcement could be ensured through disciplinary measures. In addition to the streamlined management of statistics, it is expected that CMS will cover the assignment of cases to judges. Furthermore, the CMS could be valuable for the publication of court decisions having in mind the fact that currently only Supreme Court decisions are published. This system can be an essential tool to evaluate both crime trends and the effectiveness of the system.

306. The Assessment Team takes note of the information provided. It is however unclear which data is going to be collected, which institution(s) is (are) going to handle the information and according to which rules. In addition, it observes that the cooperation between the different

institutions responsible for statistics has to be clarified to ensure *inter alia* matching of statistical data, avoidance of conflicts of competence, increased cooperation and proper supervision. It is the opinion of the Assessment Team that the responsibility for the implementation of this recommendation should be considered and clarified. *The responsibility of the implementation should be concentrated in one institution, which should have the exclusive power to give the other entities responsible for collecting data binding instructions concerning their duties in this area.*

307. The Assessment Team welcomes the measures taken by the authorities to comply with the recommendation. However, it notes that as these measures are at the very beginning of their implementation or are intended to be implemented in the future, it remains to be seen how they will address the identified shortcomings.

308. The Assessment Team concludes that recommendation lv has been partly implemented.

Recommendation lvi

309. *The Assessment Team recommended to strengthen the Special Anti-corruption Department both in relation to the competence of this department but also in relation to increasing the resources and the cooperation between prosecutors, investigators and experts (paragraph 615).*

310. The Assessment Team recalls that many different institutions are dealing with the investigation and prosecution of corruption cases. It is not obvious whether a case shall be dealt with within the ordinary police/prosecution system, or whether it should be dealt with at the Kosovo Special Prosecution Office, and if so, whether it should be the Special Anti-corruption Task Force. According to Article 442 CC, the EULEX judges and prosecutors assigned to criminal proceedings will have jurisdiction and competence over any case that can be investigated or prosecuted by the Special Prosecution Office of Kosovo. As regards corruption offences, it follows from Article 441 CC that the Special Prosecution Office has subsidiary competence to investigate and prosecute criminal offences contained therein.

311. The Assessment Team further recalls that Article 20 of the Council of Europe Criminal Law Convention on Corruption (ETS No. 173) requires States Parties to adopt the necessary measures to ensure that persons or entities be appropriately specialised in the fight against corruption. The requirement of specialisation is not meant to apply to all levels of law enforcement. It is not required in particular that in each prosecutor's office or in each police station there should be a special unit or expert for corruption offences. One single specialised entity dealing with severe/complex corruption cases will meet the requirement of the Convention. This provision underlines the necessity of an effective fight against corruption by sufficiently trained law-enforcement units or personnel. Further, according to Article 21 of the Convention, co-operation with the authorities in charge of investigating and prosecuting criminal offences is an important aspect of a coherent and efficient action against those committing the corruption offences defined therein. This provision introduces a general obligation to ensure co-operation of all public authorities with those investigating and prosecuting criminal offences.

312. The Kosovo authorities report that on 4 November 2013, an Action Plan on Increasing the Effectiveness of the Prosecutorial System in the Fight against Corruption was issued in Kosovo. The purpose of this Action Plan was to support the implementation of the Strategic Plan on Inter-institutional Cooperation in the Fight against Organised Crime and Corruption, through defining activities and concrete actions by the Special Prosecution of Kosovo and basic prosecutions concerning corruption cases. Other action plans may also be prepared for further implementation of the Strategy on Inter-institutional Cooperation in the Fight against Organised Crime and Corruption.

313. The Kosovo authorities have further reported that on 4 November 2013, prosecution offices throughout Kosovo have the following number of cases that are at the investigation stage of the criminal procedure (e.g. are still waiting for the actions of the prosecutor to dismiss the criminal report; terminate; suspend investigations; or file the indictment): 482 cases involving 1 396 persons and 164 information reports involving 342 persons. In 2013, throughout Kosovo, the courts have brought verdicts in cases of corruption against 23 persons, 22 of them were declared guilty, whereas the court has dismissed the indictment against one person following the main trial. It is not possible to get more information about the cases or about the sanctions.

314. An Instruction of 13/11/2013 issued by the State Prosecutor of Kosovo deals with the question of whether a corruption case shall be considered as high-level corruption and determines that such a corruption case shall be dealt with within the SPRK.

315. The Kosovo authorities report that the SPRK, a permanent and specialised prosecutorial body functioning within the Kosovo State Prosecutor, is a unique prosecutorial office composed of prosecutors and supporting staff both local and EULEX. At the beginning of May 2013, the SPRK was composed of 10 local and 5 EULEX prosecutors. According to information reported in October 2013, the SPRK was composed of 18 prosecutors (5 being EULEX prosecutors). 6 new prosecutors joined the SPRK as of 1 November 2013. The SPRK communicates with the Police, customs, KTA, KAA, FIU and other related persons or entities on cases that are reported to the SPRK. A further increase of resources is planned²².

316. Since the very beginning, the Special Prosecution has been located in one of the Police facilities with insufficient office space for its employees. Additional space was (still is) required in order to have all local and EULEX prosecutors and staff located under one roof. Taking into account the KPC Decision to increase the number of prosecutors, legal secretaries and legal associates, additional equipment for these persons shall be provided as well. In the meeting held on 5 September 2014 KPC decided that SPO together with the national staff and EULEX staff should be accommodated in the building E of the Palais of Justice, which should provide for adequate working conditions for the SPO. Relocation is planned to take place in 2015.

317. A Cooperation Agreement on basic principles regarding establishment and operation of the National Coordinator for Combating Economic Crime was signed on 22 November 2013, with the aim of increasing the efficiency of the prosecution of perpetrators, and sequestration and confiscation of assets derived from criminal activity. This cooperation agreement was signed by the Minister of Justice, the Kosovo Prosecutorial Council, the Kosovo Judicial Council, the Ministry of Finance, the Ministry of Internal Affairs, the Central Bank of Kosovo, the Kosovo Anti-Corruption Agency, and the Kosovo Intelligence Agency.

318. The Assessment Team takes note of the information provided and welcomes the actions taken in particular to increase resources and cooperation with the other actors in the fight against corruption.

319. However, in the Assessment Team's opinion, cases of corruption are generally handled by too many different entities. There is the local police/prosecutor, Kosovo Police/prosecutor or the Kosovo Special Prosecution Office, as well as the investigations units in the Kosovo Customs and Kosovo Tax Administration. When the Assessment Team compares the figures concerning the pending cases with the figures of court decisions, the discrepancy between those two numbers is so obvious that the Team has severe concerns that the aforementioned Action Plan in itself can solve the problems about the effectiveness of the fight against corruption (see paragraphs 308 and following above). When corruption cases are dealt with by so many entities compared with the size of the population, it is impossible to have all the necessary specialisation and experience in every body to tackle those difficult and complex cases. The Assessment Team is of the opinion that the specialised body in the SPRK, the Special Anti-corruption Task Force, should therefore deal with corruption cases to a greater extent than today, instead of having them dealt with in so many different entities. There is no doubt that the effectiveness of the fight against corruption would be greater if staff worked together on a daily basis continuing to develop specialisation in accordance to specific areas and respective skills or experience. This department should then have the competence throughout Kosovo to deal with corruption cases, i.e. not only in cases considered as high-level corruption cases²³ but also in any serious case such as for example complex cases in

²² The KPC increased the number of domestic prosecutors to 18. Out of these 13 positions are filled. KPC announced a job vacancy for three other additional prosecutors. The announcement was closed on 3 October 2014.

²³ The Joint Administrative Instruction of 13 November 2013 that was co-signed by Chief State Prosecutor, Chief EULEX Prosecutor and Head of SPRK has defined the high-level corruption. This instruction provides for cases which shall trigger the subsidiary competence of SPRK in accordance with articles 9, 10 and 11 of the Law on SPRK. The same instruction was sent to all law enforcement agencies in Kosovo.

According to the text of this Instruction, a high-level corruption offence is considered:

1. One of the offences mentioned therein (namely those contained in articles 291(2), 316, 405(2), 406(2), 422, 425 to 432, 435 and 436 of Criminal Code – they include all forms of bribery, abuse of official position or authority, misappropriation in office, fraud in office, unauthorised use of property, trading in influence, issuing unlawful judicial decisions, unlawful collection and disbursement and unlawful appropriation of property during a research or execution of a court decision); and one of the followed conditions in subsequent points 2, 3 or 4;
2. The subject suspected for committing this offence is President of Kosovo, Assembly Speaker or member, Prime Minister, Deputy Prime Minister and Minister, Mayor, judge of the Supreme Court or Court of Appeal, Chief State Prosecutor, Chief Prosecutor – regardless of the value of the offence or benefit gained;

which important amounts or other considerations are at stake, or cases with links to organised crime, or cases involving politicians or the use of special business methods, or cases that require extensive investigation abroad, or any other serious cases.

320. There seems to be *no development concerning the strengthening of a central entity dealing generally with cases of corruption throughout Kosovo (clarification of the SPRK competence), there has been no sufficient increase of resources and no concrete information has been provided on closer cooperation between prosecutors, investigators and experts in cases of corruption.*

321. The Assessment Team concludes that recommendation Ivi has not been implemented.

Recommendation Ivii

322. *The Assessment Team recommended that necessary legislative steps are taken to ensure that the injured party has the right to file a complaint about the termination of an investigation (paragraph 617).*

323. The Assessment Team draws attention to the question about terminating a case. If the prosecutor decides to terminate an investigation, the injured party does not have the possibility to make a complaint to a higher ranked Prosecutor/the Chief State Prosecutor. Terminating a case is an important decision with wide-ranging consequences. Any system is also more vulnerable in relation to corruption when it is only up to one person to decide on the termination of a case.

324. The Kosovo authorities have not provided information in respect of this recommendation.

325. Therefore, the Assessment Team concludes that recommendation Ivii has not been implemented.

3. The subject suspected for committing this offence is Deputy Minister, civil servant of senior level (General Secretary and equivalent positions), employee of ministries and public institutions in decision-making and advisory positions; and whether the benefit or damage caused exceeds 500.000 EUR;

4. A corruption offence will be considered as high-level corruption in any case where the benefit or damage caused exceeds 1.000.000 EUR.

This Instruction thus has to be changed in order to meet the requirements in the recommendation.

3.3. Confiscation and other deprivation of instrumentalities and proceeds of crime

Recommendation lviii

326. *The Assessment Team recommended (i) to establish an entity within the existing structure with particular reference to identification, tracking and freezing proceeds of crime; and (ii) to enhance the effectiveness of the system through introducing mandatory benchmarks for law enforcement in pursuing illicit funds in the case of any investigation of a proceeds-generating offence (paragraph 636).*

327. The Kosovo authorities report that the Chief State Prosecutor has issued, on 14 January 2014 a Directive regarding the actions of all state prosecutors related to temporarily sequestered and confiscated assets, or property for which a freezing order was issued. At the same time, a simplified guide for prosecutors has been made concerning confiscation in Kosovo. In this guide, the duties of the prosecutors are described. There are three areas of confiscation that prosecutors must consider: first, any instrumentality used in the commission or contemplation of the offence; second, any prohibited items discovered (weapons, contraband); and third, any criminal benefits that have been identified. In all cases, the guide advises the prosecutor to follow the steps of identification, immobilisation and confiscation.

328. The Assessment Team welcomes the actions taken and urges the authorities to ensure, that this very valuable guide is followed. *However no information is provided about actions taken to establish a special entity within the existing structure with particular reference to identification, tracking and freezing proceeds of crime.*

329. The Assessment Team concludes that recommendation lviii has been partly implemented.

Recommendation lix

330. *The Assessment Team recommended to ensure that objects intended to be used in a criminal offense can be confiscated and to enlarge the scope of the provisions on confiscation of instrumentalities and proceeds of crime in order to provide for better possibilities of using confiscation effectively in cases of corruption (paragraph 637).*

331. The Kosovo authorities report that new Law no. 04/L-140 on Extended Powers for Confiscation of Assets Acquired by Criminal Offence (hereafter "Law on Extended Powers for Confiscation") entered into force on 11 February 2013. It provides for the possibility to confiscate:

- Assets subject to extended powers of confiscation which are not a material benefit of the criminal offence described in the indictment (Article 6).
- Assets subject to extended powers of confiscation acquired by a defendant who has died (Article 7).
- Assets subject to extended powers of confiscation acquired by a defendant who has left Kosovo (Article 8).

Provisions of this law may be applied to assets which have been transferred to another party from a person who is or becomes a defendant or convicted person. That party shall have the right to demonstrate that he or she is a *bona fide* purchaser of the asset. An asset may not be confiscated from a *bona fide* purchaser of that asset.

332. The Assessment Team takes note of the information provided. However, this law does not address issues raised in the PECK Assessment Report (paragraph 637) about *the restrictions imposed by Article 278 CPC compared to the opportunities to confiscate in accordance with Article 96 CC (confiscation of material benefit transferred to a third person), confiscation only of material, when it is found (in rem), and confiscation of objects intended to be used.* Furthermore, the wording of Article 13 of the Law on Extended Powers for Confiscation is not clear: "With the entry in force of this Law, provisions which contradict this Law shall be repealed." For the sake of legal clarity, specific repealed provisions should have been directly identified and mentioned in this provision.

333. The Assessment Team concludes that recommendation lix has not been implemented.

3.4. Immunities from investigation, prosecution or adjudication of corruption offences

Recommendation Ix

334. *The Assessment Team recommended that steps be taken to ensure that the period where investigation cannot be carried out is not taken into account in the limited period for investigation (paragraph 647).*

335. The Assessment Team recalls that *this recommendation requires amendments/changes in the legislation*. As mentioned in paragraph 647 of the Assessment Report, Article 157 of the CPC provides the legal basis for the suspension of an investigation. Besides temporary mental disorder or disability, or some other serious disease, and escape of the defendant, it is not clear whether the wording: "other circumstances which temporarily prevent successful prosecution of the defendant" can provide a basis for suspension of the limited time for investigation.

336. The Kosovo authorities have not provided information in respect of this recommendation.

337. The Assessment Team concludes that recommendation Ix has not been implemented.

4. International cooperation

Recommendation Ixi

338. *The Assessment Team recommended (i) to take steps to collect appropriate and detailed information and statistics including all angles of a request for mutual legal assistance from the beginning to the end in order to assess the efficiency of the rendering of mutual legal assistance; and (ii) to introduce service standards on turnaround times of foreign requests in order to guarantee the effectiveness of the system (see AML assessment report) (paragraph 659).*

339. The Kosovo authorities inform that some international agreements have been signed during 2013/2014:

- Extradition Agreement with Italy (published on 19 November 2013);
- Agreement on mutual legal assistance in criminal matters with Italy (published on 19 November 2013);
- Agreement with Hungary on cooperation in the prevention and combating of crime (published on 6 September 2013);
- Agreement on Police Cooperation in Combating Crime with Switzerland (Kosovo's parties: KP, KC and FIU) on 13 March 2014.

340. The Kosovo authorities further inform that statistics have been collected concerning mutual legal assistance during 2013, where Kosovo has received and processed a total of 8,778 requests and replies concerning open cases and new cases including questions of extradition. The cases are specified in different categories and the countries in question have been listed.

341. The Assessment Team welcomes the measures taken and the statistics collected, however it takes the view that they do not address all the deficiencies identified in the Assessment Report (paragraph 659). *The information provided does not contain all angles of a request for mutual legal assistance from the beginning to the end in order to assess the efficiency of the rendering of mutual legal assistance, neither does it introduce new possible service standards on turnaround times of foreign requests in order to guarantee effectiveness of the system.*

342. The Assessment Team concludes that recommendation Ixi has been partly implemented.

Recommendation Ixii

343. *The Assessment Team recommended that steps are taken to ensure that mutual legal assistance in accordance with the rules in the Criminal Law Convention on Corruption (ETS No. 173) be rendered in cases of corruption in spite of Kosovo having no such a legal obligation (paragraph 660).*

344. The Kosovo authorities report that new Law No. 04/L-213 on International Legal Cooperation in Criminal Matters entered into force on 31 July 2013.

345. The Assessment Team takes note of the information provided. Article 1, paragraph 3 of the law sets the principle of reciprocity as the basis for international legal cooperation. It states that "[i]n the absence of an international agreement between Kosovo and another state, international legal cooperation shall be administered on the basis of the principle of reciprocity." However, this law does not contain any exception from the general rule with respect to corruption cases. Moreover, *no information has been provided on whether an internal exception should have been made in these situations.*

346. The Assessment Team concludes that recommendation Ixii has not been implemented.

III. CONCLUSIONS

347. In view of the above and based on the conclusions of the Follow-up report (two implemented recommendations - xxxii and xxxviii), the Assessment Team concludes that the Kosovo authorities have implemented satisfactorily or dealt with in a satisfactory manner only 5 out of 62 recommendations contained in the PECK Assessment Report (Cycle I). Recommendations xxxii, xxxiv, xxxviii and xli have been implemented satisfactorily and recommendation xviii has been dealt with in a satisfactory manner; recommendations iii, vii, viii, ix, xii, xiii, xiv, xv, xvi, xvii, xx, xxi, xxv, xxvi, xxxi, xxxiii, xxxv, xxxvii, xxxix, xl, xlii, xliii, xliv, lv, lviii and lxi have been partly implemented and recommendations i, ii, iv, v, vi, x, xi, xix, xxii, xxiii, xxiv, xxvii, xxviii, xxix, xxx, xxxvi, xl, xlv, xlvi, xlvii, xlviii, xlix, l, li, lii, liii, liv, lvi, lvii, lix, lx and lxii have not been implemented.

348. Overall, the level of compliance with the Assessment Report recommendations is low. The Kosovo authorities have not at all or only partly implemented the majority of the recommendations, most of which require revision and adoption of core relevant legislation, while several others call for the efficient implementation in practice of the relatively new legislation. However, certain efforts have been made to address the identified shortcomings. In particular, recent legal requirements obliging the CEC to publish and keep published all annual financial reports of political parties together with the final audit report of political parties on its official website contribute to an improved level of transparency, provided they will be implemented. Similarly, the publication of annual financial reports together with the final audit report as a mandatory obligation for political parties; the introduction of a definition and regulation for entities related to a political party; the establishment of rules concerning specialisation, independence and know-how/expertise of auditors called upon to audit the accounts of political parties and candidates; as well as the introduction of compulsory periodic publication of political parties' reports constitute some of the positive measures undertaken. Furthermore, the Kosovo authorities have taken measures to adopt guidelines for the police concerning the approval of exceptional outside engagement.

349. The Kosovo authorities have undertaken partial steps to review and clarify the legal framework for the prevention of conflicts of interest, although the legal review process is not yet fully finalised. With regard to measures aiming to reinforce fundamental safeguards and *corruption prevention in relation to judges and prosecutors*, partly implemented measures concern, among others, the following: steps to ensure the appropriate functioning of random assignment of cases in courts; measures to establish a transparent and unified system of maintaining and accessing information on case files; efforts to update rules of ethics and professional conduct for judges; attempts to enhance interaction between the KAA and the Prosecutor, as well as the judges in proceedings for minor and criminal offences through standard operating procedures; adoption and implementation of vetting procedures for judges; guidelines concerning approval of exceptional outside engagements and activities; and establishment of a better relationship between the ODP and the KPC in connection with the disciplinary and criminal investigation of prosecutors.

350. As far as *prevention measures in the Police* are concerned, the Kosovo authorities have undertaken steps to introduce objective and transparent criteria for appointment/dismissal of the senior level management and officials of the Kosovo Police as well as to reinforce human capacity of the relevant police disciplinary and internal investigation bodies and maintain a reliable track record of disciplinary and other actions taken with regard to police officers.

351. Likewise, some ongoing measures and initiatives partly address transparency in the *public administration* (in particular instruments related to e-government and access to public documents), the strengthening of the declaration of assets and interests and extension of adequate and enforceable conflict of interest standards to every public official, as well as rotation measures in sectors of the public administration particularly exposed to a risk of corruption.

352. Furthermore, concerning *political party funding*, the Kosovo authorities have undertaken some partial measures aiming *inter alia* to harmonise the legal provisions on political entities and campaigns financing in line with the legislation applicable to other candidates for election; to review the definition of a 'contribution' to a political party; to set more precise conditions for requirements of the financial reports and the deadline(s) of the publication; to unify parties' reporting forms, in particular regarding content, periodicity of their submission and publication and to introduce more dissuasive, effective and proportionate sanctions in respect of violations of political financing rules.

353. In the *public procurement* area, some measures are taken to create conditions for enhanced transparency and equality in competition; to enhance monitoring and supervision capacities and mechanisms; to introduce conflict of interest prevention rules in the public procurement; to include compulsory declaration of conflict of interest situations by members of procurement panels; and to promote further training and specialisation focused on prevention and detection of corruption practices.

354. Finally, with regard to the *criminal field*, certain steps have been taken to collect appropriate and detailed information and statistics including all angles of a corruption case from the beginning to the end; to enhance the effectiveness of the system through introducing mandatory benchmarks for law enforcement in pursuing illicit funds; as well as the partial progress made in collecting and maintaining appropriate and detailed information and statistics on mutual legal assistance and other related issues.

355. Despite the above-mentioned positive developments, much more needs to be done. The Kosovo authorities are strongly urged to make vigorous and sustainable efforts in order to comply with the recommendations contained in the PECK Assessment Report. This would require strong political commitment in addition to co-ordinated, prioritised and effective measures that need to be taken without any further delay.

356. The Kosovo authorities are invited to continue paying due attention to measures that are ongoing or will be taken in the future to implement the pending recommendations.

Annex I: Compliance Matrix – Cycle II

AR Cycle 1 - Recommendation	Implemented satisfactorily	Dealt with in a satisfactory manner	Partially implemented	Not implemented
1. General overview of the current situation of corruption				
i. (i) to undertake a periodical assessment of corruption risks, prior to any further revision of the strategic documents (Anti-corruption Strategy and Action Plan); (ii) to adopt a more integrated approach of ethical aspects through adequate integrity plans, with a view to extend preventive measures to the entire public sector, including local government; and (iii) to publish respective findings and thus, to further define/adapt strategic priorities (<i>paragraph 62</i>) ²⁴ ;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii. to ensure proper and effective implementation and monitoring of the new strategic framework against corruption for 2013-2017, as well as to implement the key outstanding measures from the previous Action Plan 2010-2011 (<i>paragraph 72</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii. (i) to streamline the legal framework related to the prevention of conflicts of interest, by harmonising relevant legislation with the newly adopted Criminal Code; (ii) to review and clarify the institutional framework for the prevention of conflicts of interest, by adopting a set of guidelines which would enable efficient action during both the minor offence and criminal offence proceedings; (iii) to initiate debate on the re-definition of the KAA competencies, in light of the need for more efficient and effective prevention of corruption; and (iv) to progressively include tax authorities in the verification of declared assets, in order to improve the control of origin of assets and thus reduce the space for illegal enrichment (<i>paragraph 79</i>).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.1 Fundamental safeguards and corruption prevention - Judges				
iv. to review the composition of the KJC in order to fully reflect the standard of independence of the judiciary as well as checks and balances between institutions (<i>paragraph 114</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
v. to adopt clear and transparent criteria based on which the President can refuse a nomination of a judge or prosecutor as well as the grounds for appealing this decision (<i>paragraph 119</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
vi. to consider reviewing the probationary system of appointment of judges and prosecutors which envisages an initial 3-year term prior to final confirmation for tenure (<i>paragraph 129</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
vii. to ensure the appropriate functioning of random assignment of cases as provided in the Regulation on internal organisation of courts (<i>paragraph 141</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
viii. (i) to establish a transparent and unified system of maintaining and accessing information on case files which would include all stages of investigation, prosecution and adjudication; (ii) to enhance case management, reporting and accessibility of statistics in the judicial system, especially with regard to corruption and related offences, by notably ensuring better matching with prosecutorial services; and (iii)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

²⁴ Paragraph numbers are those referred in the PECK [Assessment Report](#) on compliance with international standards in the anti-corruption area (Cycle 1); 10 June 2013.

AR Cycle 1 - Recommendation	Implemented satisfactorily	Dealt with in a satisfactory manner	Partially implemented	Not implemented
to improve the transparency of the criminal justice system vis-à-vis the wider public and media, in particular in the context of the prevention and fight against corruption (<i>paragraph 144</i>);				
ix. to update rules of ethics and professional conduct for judges by including proper guidance specifically with regard to conflicts of interest and related areas (notably the acceptance of gifts and other advantages, incompatibilities and additional activities) (<i>paragraph 148</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
x. that the KJC adopts transparent guidelines regarding the approval of exceptional outside engagement for judges, including clear justifications to be used when deciding to grant such exceptions (<i>paragraph 157</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xi. (i) to establish a formal relationship between the ODC and the State Prosecutor in order to enhance disciplinary and criminal investigation of judges and prosecutors and make mutual co-operation transparent; and (ii) to streamline and clarify the institutional framework and proceedings for disciplinary/criminal investigations against judges and prosecutors, including the establishment of a limitation period for disciplinary proceedings, in order to avoid unnecessary delays and overlapping of proceedings (<i>paragraph 187</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xii. that interaction between the KAA and the Prosecutor, as well as the judges in proceedings for minor and criminal offences is clarified through standard operating procedures on conflicts of interest, with regard to the entry into force of the new Criminal Code (<i>paragraph 188</i>).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.2 Fundamental safeguards and corruption prevention - Prosecutors				
xiii. that the KJC and the KPC adopt clear and comprehensive vetting procedures (i) based on objective and transparent criteria; (ii) known in advance and (iii) that every decision be motivated accordingly (<i>paragraph 209</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
xiv. that the KPC adopts guidelines concerning approval of exceptional outside engagement for prosecutors and establish a limit for the remuneration of such engagements (<i>paragraph 220</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
xv. to establish a formal relationship between the ODP and the KPC (with due consideration to the relationship between Chief Prosecutors and the ODC as well) in order to enhance disciplinary and criminal investigation of prosecutors, based on principle of transparency and openness, while keeping the secrecy of investigation and protection of personal data (<i>paragraph 239</i>).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.3 Fundamental safeguards and corruption prevention – Police				
xvi. to introduce objective and transparent criteria for the appointment/dismissal of the General Director of the Police in order to ensure operational independence of the Police (<i>paragraph 254</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
xvii. to introduce objective and transparent criteria for the appointment/dismissal of the Deputy Directors and other senior level officials of the Police (<i>paragraph 255</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
xviii. to adopt guidelines for Police concerning the approval of exceptional outside engagement and to establish a limit for the remuneration on such engagements (<i>paragraph 259</i>);	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AR Cycle 1 - Recommendation	Implemented satisfactorily	Dealt with in a satisfactory manner	Partially implemented	Not implemented
xix. to establish post-employment restrictions for police officers at all levels and that appropriate arrangements be made for efficient supervision of the implementation of such regulations (<i>paragraph 262</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xx. to reinforce human capacity of the relevant police disciplinary and internal investigation bodies and to keep a reliable track record of disciplinary and other actions taken with regard to police officers (<i>paragraph 276</i>).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.4 Fundamental safeguards and corruption prevention – Public Administration				
xxi. i) to enhance transparency in the public administration (including “e-government”) through implementation of a more proactive policy, proper strengthening of regulatory and institutional frameworks as well as periodical monitoring and reporting; and ii) that further steps should be undertaken to adequately implement access to public documents at both central and local levels (<i>paragraph 288</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
xxii. (i) to implement uniform rules for the transparent and impartial recruitment and promotion of public servants through, <i>inter alia</i> , proper announcement of vacant posts, fair competition between candidates and avoidance of conflicts of interest; (ii) to increase the supervision and monitoring of the selection and promotion procedures of public officials; and (iii) to introduce appropriate screening procedures for checking data and the integrity of candidates to positions in the public administration (<i>paragraph 304</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xxiii. (i) to adopt the Code of Ethics for civil servants as soon as possible; (ii) to consider extension of its application to uncovered categories of officials in the public administration; and (iii) to increase familiarity of the public administration at all levels with ethical professional standards (through, <i>inter alia</i> , regular training, guides and advice) (<i>paragraph 308</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xxiv. to develop guidelines about the behaviour and conduct of public officials when they receive gifts in order to complete the rules laid down in Article 11 of Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials (<i>paragraph 311</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xxv. (i) to strengthen the control of the declarations of assets and interests in order to ensure proper implementation and monitoring; (ii) to intensify efforts to build capacity in individual institutions to prevent and detect conflicts of interest through close supervision and coordination mechanisms, as well as by means of specific reference materials, guidelines and training; and (iii) an adequate and enforceable conflict of interest standard, including improper migration to the private sector (“pantouflage”) be extended to every person who carries out a function in the public administration (including managers and consultants) at every level of government (<i>paragraph 320</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
xxvi. to consider making wider use of rotation in those sectors of the public administration that are particularly exposed to a risk of corruption (<i>paragraph 322</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
xxvii. to establish and maintain a central periodical reporting of statistics on the use of disciplinary proceedings and sanctions in the public	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

AR Cycle 1 - Recommendation	Implemented satisfactorily	Dealt with in a satisfactory manner	Partially implemented	Not implemented
administration (<i>paragraph 332</i>).				
2.5 Fundamental safeguards and corruption prevention – Members of Parliament				
xxviii. that the Code of Conduct for members of parliament be revised and complemented with practical measures for its implementation, such as dedicated training, counselling and advice regarding ethical and corruption-related issues (<i>paragraph 351</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xxix. to give to the KAA – or to another official body, in collaboration with the tax administration - the competence to make an adequate assessment of declared assets (<i>paragraph 367</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xxx. that measures be taken to ensure supervision and enforcement of the existing rules on conflicts of interest and disclosure of outside ties by members of parliament (<i>paragraph 379</i>).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2.6 Financing of political parties and election campaigns				
xxxi. to harmonise the legal provisions on political entities and campaigns financing in line with the legislation applicable to other candidates for election (local and national level, presidential election) (<i>paragraph 403</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
xxxii. to develop a comprehensive and unique website setting out the legal and regulatory framework, and providing relevant information on political entities periodical reports and other relevant information (<i>paragraph 404</i>);	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
xxxiii. to ensure that the definition of a 'contribution' to a political party as foreseen in Rule 01/2008 on Registration and Operation of Political Parties is consistently used in the legislative and regulatory framework concerning funding of political entities and electoral campaigns in order to include indirect resources (such as services or in-kind donations) (<i>paragraph 420</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
xxxiv. to introduce a definition and regulation of the entities related to a political party (possibly) (<i>paragraph 422</i>);	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
xxxv. to set more precise conditions for requirements of the financial reports and the deadline(s) of their publication (<i>paragraph 436</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
xxxvi. to give to the Central Electoral Commission/the Office or the Anti-corruption Agency the mandate and the appropriate authority as well as the financial resources and specialised staff to effectively and proactively supervise the funding of political parties and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions (<i>paragraph 442</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xxxvii. (i) to unify parties' reporting forms, in particular regarding content, periodicity of their submission and publication; and (ii) to determine the procedure for monitoring of established standards (<i>paragraph 443</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
xxxviii. to establish clear rules ensuring the specialisation, independence and know-how/expertise of auditors called upon to audit the accounts of political parties and candidates (<i>paragraph 444</i>);	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
xxxix. to introduce more dissuasive, effective and proportionate sanctions in respect of violations of political financing rules, and to provide the Central	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

AR Cycle 1 - Recommendation	Implemented satisfactorily	Dealt with in a satisfactory manner	Partially implemented	Not implemented
Electoral Commission with the necessary powers to investigate such cases and to apply the appropriate sanctions (<i>paragraph 454</i>);				
xi. to provide the Office with appropriate authority to carry out, as needed, a material verification (in addition to the existing formal review) of the information provided by election candidates and other political entities (<i>paragraph 455</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xli. to introduce compulsory periodic publication of political parties' reports on a public website (<i>paragraph 456</i>).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.7 Public Procurement				
xlii. to create conditions for enhanced transparency and equality in competition, in order to minimise the risk of corruption opportunities in public procurement and privatisation fields (<i>paragraph 467</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
xliii. (i) with a view to minimise corruption risks and opportunities, to ensure further streamlining of public procurement rules and procedures, including a quick introduction of central purchasing; (ii) to enhance monitoring, supervision and review capacities and mechanisms; (iii) to revise the Public Procurement Law concerning the scope and procedures related to reporting of public procurement violations and offenders; and (iv) to enhance the exchange and treatment of information and horizontal interagency cooperation, notably between public procurement, audit, anti-corruption, tax and other law enforcement bodies (<i>paragraph 489</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
xliv. (i) to introduce coherent staff policies and treatment in the public procurement system in order to avoid changes of staff; (ii) to clarify and strengthen procedures in order to have objective criteria for the conclusion of contracts; (iii) to introduce conflict of interest prevention rules in the public procurement, including compulsory declaration of conflict of interest situations by members of procurement panels; and (iv) to promote further training and specialisation focused on prevention and detection of corruption practices (<i>paragraph 498</i>).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.1 Criminal law, law enforcement and criminal procedure – Offences and sanctions				
xlv. that legislative measures are taken to make third beneficiaries directly covered in Articles 429 and 430 CC about active bribery (<i>paragraph 525</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xlvi. that the authorities ensure that there are no loopholes in the system and if necessary to take the legislative measures that the offence of active and passive bribery in the public sector covers all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's duties (<i>paragraph 526</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xlvii. that necessary legislative steps are taken to ensure that private corruption is criminalised in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS No. 173) (<i>paragraph 539</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xlviii. to consider abolishing the requirement of dual criminality in Articles 115 and 116 CC in respect of bribery offences when committed abroad (<i>paragraph 561</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
xlix. to take the necessary legislative steps to ensure that time-limits for investigation do not hinder the effective combating of corruption (<i>paragraph 569</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

AR Cycle 1 - Recommendation	Implemented satisfactorily	Dealt with in a satisfactory manner	Partially implemented	Not implemented
I. to take the necessary legislative steps to ensure that the possibility provided by the special defence of effective regret to return the bribe to the bribe-giver who has reported the offence before it is uncovered be abolished (<i>paragraph 572</i>).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Corporate liability				
ii. to strengthen the controlling functions of the Registry of Enterprises in order to ensure that both natural and legal persons establishing companies be checked and monitored with respect to possible criminal records and professional disqualifications or any other pertinent information on legal persons in the registration process (<i>paragraph 580</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii. to take the necessary legislative steps to ensure that legal entities can be held liable not only in situations where a responsible natural person can be punished including situations where the liability is based on lack of supervision but also in situations where it is not possible to find a natural person liable for the offence (<i>paragraph 584</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iiii. that the Kosovo authorities undertake necessary steps to ensure and enhance the practical application of this measure (criminal liability of legal persons) as a means to sanction criminal activity (<i>paragraph 585</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
liv. that Kosovo considers requiring external auditors to report suspected acts of bribery to management or, if the management do not react or if the management itself is involved, to report to the competent authorities independent of the company, such as law enforcement or regulatory authorities, and, where appropriate, ensure that auditors making such reports reasonably and in good faith are protected from legal action (<i>paragraph 593</i>).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3.2 Criminal law, law enforcement and criminal procedure – Investigation and criminal procedure				
Iv. to take steps to collect appropriate and detailed information and statistics including all angles of a corruption case from the beginning to the end (including the outcome of the case) in order to assess the efficiency of the investigation/prosecution (<i>paragraph 612</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ivi. to strengthen the Special Anti-corruption Department both in relation to the competence of this department but also in relation to increasing the resources and the cooperation between prosecutors, investigators and experts (<i>paragraph 615</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ivii. that necessary legislative steps are taken to ensure that the injured party has the right to file a complaint about the termination of an investigation (<i>paragraph 617</i>).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3.3 Criminal law, law enforcement and criminal procedure – Confiscation and other deprivation of instrumentalities and proceeds of crime				
Iviii. (i) to establish an entity within the existing structure with particular reference to identification, tracking and freezing proceeds of crime; and (ii) to enhance the effectiveness of the system through introducing mandatory benchmarks for law enforcement in pursuing illicit funds in the case of any investigation of a proceeds-generating offence (<i>paragraph 636</i>);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

AR Cycle 1 - Recommendation	Implemented satisfactorily	Dealt with in a satisfactory manner	Partially implemented	Not implemented
<p>lix. to ensure that objects intended to be used in a criminal offense can be confiscated and to enlarge the scope of the provisions on confiscation of instrumentalities and proceeds of crime in order to provide for better possibilities of using confiscation effectively in cases of corruption (<i>paragraph 637</i>).</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3.4 Immunities from investigation, prosecution or adjudication of corruption offences				
<p>lx. that steps be taken to ensure that the period where investigation cannot be carried out is not taken into account in the limited period for investigation (<i>paragraph 647</i>).</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. International cooperation				
<p>lxi. (i) to take steps to collect appropriate and detailed information and statistics including all angles of a request for mutual legal assistance from the beginning to the end in order to assess the efficiency of the rendering of mutual legal assistance; and (ii) to introduce service standards on turnaround times of foreign requests in order to guarantee the effectiveness of the system (see AML assessment report) (<i>paragraph 659</i>);</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>lxii. that steps are taken to ensure that mutual legal assistance in accordance with the rules in the Criminal Law Convention on Corruption (ETS No. 173) be rendered in cases of corruption in spite of Kosovo having no such a legal obligation (<i>paragraph 660</i>).</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>