

## CONCEPT DOCUMENT

### ON INCREASE OF THE LEVEL OF IMPLEMENTATION OF INTERNATIONAL SANCTIONS

#### 1. Introduction

The scope of the implementation of international sanctions in the Republic of Kosovo is regulated by Law No. 03/L-183 on Implementation of International Sanctions, promulgated by the Decree No. DL-018-2010, date 04/05/2010 by the President of the Republic of Kosovo, that has entered into force on 03/06/2010 (hereinafter the Law on LIIS).

Based on the provisions of this Law, the Government of the Republic of Kosovo on 17/09/2014 has taken a decision to impose sanctions against the assets of individuals, entities, and authorities who have violated the sovereignty of Ukraine based on the Decision of the Government of United States of America and of the European Union Institutions of 16 July 2014. Namely, this was the only decision issued based on the Law on LIIS.

Threats to international peace and security caused by terrorist acts in recent years has affected in changing the international standards in this field and the adoption of specific resolutions by the Security Council of the United Nations such as Resolution 1373, but also other resolutions that have emerged in the implementation of resolution 1267, and other resolutions of the Security Council of the United Nations.

The implementation of international sanctions in the Republic of Kosovo may be considered as relatively new field, since the Law on LIIS is adopted for the first time in 2010. Taking in regard this fact, in one hand, and considering that this field in the recent years has undergone considerable changes within the international standards in the other hand, raised the necessity to treat this field with this Concept Document. In addition, the treatment is necessary also due to some problems encountered in the implementation of this Law.

Therefore, in order to address the problems faced by the institutions of law enforcement, including essential and technical problems of the Law on LIIS and challenges arising in further harmonization of this Law with international standards, the Ministry of Foreign Affairs has established the Working Group for drafting the Concept Document, composed by the institutions, as follows:

- The Ministry of Foreign Affairs (Head of the Working Group);
- National Coordinator for Combating Economic Crimes;
- Ministry of Justice;
- Agency for Administration of Sequestered or Confiscated Assets;
- Central Bank of Kosovo;

- Kosovo Police;
- Financial Intelligence Unit;
- Kosovo Customs;

The Working Group is also supported by international experts of the PECK Project "Project against Economic Crime" financed by the Council of Europe and the European Union who participated in the meetings of the working group.

## **2. Key issues taken into consideration**

The Working Group for drafting the Concept Document is mainly focused on the realization of the purpose of this concept document, by identifying the necessity to meet international standards for implementation of sanctions with the relevant local legislation, and in identifying whether the Law on LIIS has essential and technical problems that hinder the implementation.

**In terms of compliance with international standards**, it is concluded that the Law, in great extent, is in line with international standards such as United Nations Security Council Resolutions (UNSCR) and those of European Union, but some certain shortcomings have been identified in this regard, especially those concerning financial sanctions related to terrorism, financing terrorism and proliferation of weapons of mass destruction, which should be addressed.

**On the essential aspect**, it was concluded that the Law contains some problems related to the freezing of assets and resources, authorization given to the competent authority to freeze assets and other resources associated with these acts, the duration of freezing and unblocking of freezing, which should be treated.

**On the structural and systematic aspect**, the Law has a good structure but several articles have to be elaborated and amended in order to achieve proper systematization of the legal provisions including the necessary legal changes in order to facilitate its implementation.

According to the technical document for Legal Opinion on the revision of Law No. 03/L-196 on Prevention of Money Laundering and Financing of Terrorism in Kosovo drafted by experts of the Council of Europe<sup>1</sup> in the framework of PECK Project "Project against Economic Crime" financed by the Council of Europe and European Union, **the regime of Kosovo on implementation of Recommendation 6<sup>2</sup> of FATF of 2012 and the relevant United Nations Security Council Resolutions (UNSCR), requesting from the countries to freeze without delay the assets of terrorism and prohibit funds and other resources (including financial services) be made available to certain persons and entities, is incomplete and not always in accordance with standards.** The Law No. 03/L-183 on Implementation of International

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<sup>1</sup> Giuseppe Lombardo and Herbert Zammit LaFerla ECCU-PECK-eng-3/2015

<sup>2</sup> Previous Special Recommendation III.

Standards (Law on LIIS) sets the basis for the implementation of “*international sanctions*”, determined as “*the restrictions and obligations imposed by resolutions, conventions, agreements, statements or any other act of the United Nations Organization or any other international organization*” of the economic, financial, political, of communication and public nature (paragraph (1.2) of Article 2). Although there is no specific reference for “*freezing*” or “*forbiddance of delivery of funds or other assets for the benefit of persons or certain entities*”<sup>3</sup>, these could be included by the determination of “*Financial Sanctions*” (paragraph (1.4) of Article 2 of Law on LIIS): “*restrictions of the rights of entities, against which international sanctions are implemented to manage, use or dispose cash money, securities, goods, other assets and property rights; restrictions of payments for entities against which international sanctions are implemented; other restrictions on financial activities*”. However there are some problems with the Law on LIIS, among others:

- Law on LIIS is supported on a Government decision for its implementation, which has not been issued;
- It lacks a mechanism to identify persons and entities, targeted for listing according to the designated criteria set out in the United Nations Security Council Resolutions (UNSCR - 1267/2001 and its subsequent resolutions), and to make request for listing the persons and entities to the competent committee for sanctions within the UN;
- It does not provide a mechanism for identifying persons and entities targeted for listing, based on the designated criteria set out in Resolution 1373/2001, as well as their determination in accordance with this Resolution.
- It does not foresee authority or mechanisms and procedures to examine and give effect to actions initiated according to the freezing mechanisms of other countries in accordance with the Resolution 1373;
- It is not clear that “financial sanctions” will cover all the cases foreseen by the FATF.

### **3. Objectives and the report of proposals with Government priorities**

The program of the Government of the Republic of Kosovo 2015-2018 consists of five main pillars, pillars which are defined as priority for the Government of the Republic of Kosovo and are as follows:

1. Sustainable economic growth, employment and welfare;
2. The Rule of Law;
3. European agenda and foreign policy;
4. Education, science, culture, sport and development of youth; and
5. Modern Healthcare

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<sup>3</sup> Glossary of the FATF Recommendations, the definition of “targeted financial sanctions”.

Achieving these government goals in general, especially the rule of law, gives importance and special priority to the fight against terrorism where the Government of the Republic of Kosovo vows that in a very quick timeframe will adopt appropriate legislation and will develop consistent policies to prevent and combat terrorism. Furthermore, the Republic of Kosovo aspires to become an integral part of regional and global security structures, in particular NATO, EU, OSCE and the UN, and is committed to increase cooperation with all countries to combat terrorism.

Therefore, for this purpose, the Government has drafted the Law No. 05/L -002 on Prohibition of Joining the Armed Conflicts Outside State Territory, promulgated by Decree No. DL-003-2015 dated 25/03/2015, Law No. 05/L-096 on Prevention of Money Laundering and Combating the Financing of Terrorism promulgated by Decree No. DL-015-2016 dated 13/06/2016, the National Counter-Terrorism Strategy 2012-2017, the Strategy on Prevention of Violent Extremism and Radicalization that Leads to Terrorism 2015 – 2020, through which is aimed for Kosovo to be part of the global coalition in the fight against terrorism.

On the other hand, the aim of this concept document is to raise the level of law enforcement for the Law on LIIS, in particular the sanctions determined in United Nations Security Council Resolutions (UNSCR-1267/2001 and its successive resolutions) and in the Resolution 1373/2001, the purpose of which is intended to be implemented through three objectives:

- Proper systematization of applicable legal provisions;
- Further harmonization of legislation with international standards; and
- Avert the obstacles in implementing the legislation.

Therefore, the purpose and objectives of the proposal of this Concept Document are in accordance with international obligations of the Republic of Kosovo, including Stabilization Association Agreement (SAA) signed between Kosovo and the EU and our state interest for Euro-Atlantic Integration, Government Programme 2015-2018, Law on Prohibition of Joining the Armed Conflicts Outside State Territory, Law on Prevention of Money Laundering and Combating the Financing of Terrorism, the National Counter-Terrorism Strategy and the Strategy on Prevention of Violent Extremism and Radicalization that Leads to Terrorism, and will contribute to the realization of the obligations arising from these documents.

#### **4. The recommended option**

In the meetings of the Working Group three options were reviewed, through which the objective of this Concept Document could be addressed, which aims at raising the level of prevention the money laundering and financing the terrorism, as follows:

- 1.1. The option of addressing problems by drafting sublaw acts;

1.2. The option of addressing the problems by changing the approach of implementation and maintenance of status quo; and

1.3. The option of supplementing and amending the existing Law or drafting of the new Law.

By reviewing the first and the second option, the Working Group agreed that these options can not address identified problems associated with the law enforcement on LIIS and its further harmonization with international standards. Therefore, raising the level of implementation of international sanctions can not be done simply by changing the approach regarding the implementation of current Law, by creating secondary legislation or by using similar instruments without revision or amendment of the Law on LIIS.

Therefore, the only option for the Working Group and the option recommended to the Government of the Republic of Kosovo remains the option of drafting the Draft Law on supplementing and amending the existing Law or drafting the new Law (Draft Law), **depending** on the content of the amendments.

## **5. Justification of the proposal**

1. The relevant legislation in the field of implementation of international sanctions in the Republic of Kosovo should be in accordance with international and European standards, and enable the implementation of United Nations Security council Resolutions, as defined.

2. Although largely the Law on LIIS is in compliance, this law is not in full line with international standards and United Nations Security Council Resolutions. This has mostly to do with the lack of mechanism to identify persons and entities targeted for listing based on the designated criteria set out in the United Nations Security Council Resolutions (UNSCR - 1267/2001 and its successive resolutions), and to make request for listing the persons and entities to the competent committee for sanctions within the UNO; also does not provide a mechanism to identify the persons and entities targeted for listing, based on the designated criteria set out in the Resolution 1373/2001, and for their determination in accordance with this Resolution, and does not foresee authority or mechanisms and procedures to examine and give effect to actions initiated according to the freezing mechanisms of other countries in accordance with the Resolution 1373;

3. On the other hand, even though the Law in its vast majority is in accordance with international standards, the institution competent for administration and implementation of international sanctions, and institutions which monitor the implementation of international sanctions consider the Law on LIIS difficult to be applied, therefore this requires for the Law to be systematized. Moreover, the identified shortcomings may be addressed only by drafting the Draft Law, which aims to provide an easier and clear application of provisions of the Law on LIIS.

4. Amendments are also necessary to ensure that the Republic of Kosovo will continue its efforts to become an integral part of regional and global security structures, especially of the UN, and is committed to increase cooperation with all countries to combat terrorism.

5. Amendments will address the structure of the Law with the objective of addressing the shortcomings of the Law on LIIS and easier application. Such amendments include the compilation of general provisions when possible, and specific provisions only when general provisions are not sufficient. Amendments would also clarify certain provisions of the applicable Law on LIIS, and provisions will be added in order to meet international standards. Finally, amendments to the Law on LIIS will also further clarify its application.

### **6. Main elements of the proposed policy**

The main elements of the proposed policy that should be handled by the Draft Law will focus on the essential and technical aspect.

Some of the required essential amendments, but not limited to, are as follows:

1. Establishment of a mechanism for identifying the persons and entities targeted for listing, based on the designated criteria set out in the United Nations Security Council Resolutions (UNSCR - 1267/2001 and its successive resolutions), and to make request for listing the persons and entities to the competent committee for sanctions within the UN; Immediate correction of this shortcoming should be done by drafting a decision based on Article 5 of the Law on LIIS which will immediately enter into force until the required amendments take effect;
2. Establishment of a mechanism for identifying persons and entities targeted for listing, based on the designated criteria set out in Resolution 1373/2001, as well as their determination in accordance with this Resolution.
3. The determination of the authorities or mechanisms and procedures to examine and give effect to actions initiated according to the freezing mechanisms of other countries in accordance with the Resolution 1373 and the measures that has to be taken with temporary congestion, with administrative sequestration of the assets, unblocking, the procedures of undertaking these actions and the rights to appeal towards such decisions.
4. Clarification of the financial sanctions that would cover all cases foreseen by the TFVF4;
5. The Draft Law should also address the concerns raised during the public consultation and the comments which will be taken as defined in the part 10 of this Concept Document.

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<sup>4</sup> Task Forca e Veprimit Financiar

## **7. The consequences of all considered options**

The amendment of Law on LIIS through a Draft Law is considered to be the best option and recommended for the Government of the Republic of Kosovo. This amendment aims to address all the needs for realization of the objectives set out in this concept document. Amendments that will be targeted within the recommended option are foreseen to facilitate and enhance the effectiveness of implementation of the Law, which is intended to reduce the costs associated with implementing the legislation. Specifically, the effects expected to be produced by this option are the easier implementation of legislation, clarification of procedures and competences and possible reduction of judicial processes.

On the other hand, addressing the purpose through bylaw acts and by changing the approach through maintaining “status quo” would not be sufficient solution to address the shortcomings and to meet international obligations of the Republic of Kosovo in the fight against terrorism. Certain provisions have to do with human rights as well, which according to the principle of legality cannot be regulated by secondary legislation and certainly not by changing the approach to implementation. These options could only offer partial and temporary addressing of the purpose.

## **8. Assessment of the financial impact for each proposal**

The proposals reviewed by the Working Group have not foreseen additional financial costs or may have minimal financial costs. Also, budgetary expenditures between different options are not noticed.

The option to address the problems through bylaw acts and the option of changing the approach to implementation by maintaining status quo is not foreseen to have additional financial costs, given that these activities may be covered by the current capacities of the institution that administers the implementation of international sanctions and institutions which supervise the implementation of international sanctions according to the current Law on LIIS.

The option recommended by the Working Group, namely the drafting of the Draft Law is foreseen not to have additional financial costs, given that the main amendments that needs to be made are mainly focused on the problems of harmonizing the Law with technical and international standards, as well as to avert other problems of implementation, and considering that the recommended option would not require establishment of new functions of additional tasks for public institutions.

## **9. Consultations**

Following the decision dated 17/09/2014 to impose sanctions against the assets of individuals, entities and authorities who have violated the sovereignty of Ukraine, based on the Decision of the Government of the United States of America and of the European Union Institutions dated 16

July 2014, the institutions responsible for implementation of this decision, met on 03/12/2014 in order to consult about the implementation of these sanctions, it was discussed the issue about the problems concerning the implementation of the decision and the Law on LIIS in general.

Project PECK I – Joint Project of the EU and EC has requested to take into consideration Recommendations from the Assessment Report of this Project related to the Law on LIIS.

The inclusion of the comments of the Working Group

The inclusion of the comments received during the public and preliminary consultations

The inclusion of the comments from experts

#### **10. The method of communication of the new policy to the public**

In the context of drafting the Draft La, thus, in the context of public and preliminary consultations, the new policy will be communicated to the actors involved in this consultation. Also, debates and round tables that will be held will be used for communicating the new policy to the public.

Following the adoption of the Draft Law in the assembly of the Republic of Kosovo, in principle, MFA and other subjects in charge with the Draft Law will take care of communicating the new policy with the public, either through the formal reports and meetings for certain entities, or through various campaigns on notifying the general public.