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PECK – Project against Economic Crime in Kosovo*

Terms of Reference on the Assessment procedure

ECU/PECK-3/2012

*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

1. Scope

These Terms of Reference (ToR) set out the modalities of the assessments to be carried out in Kosovo with the objective to strengthen institutional capacities and improve the regulatory framework in the areas of combating corruption; money laundering and the financing of terrorism in accordance with international and European standards. The Project against Economic Crime in Kosovo (hereafter referred to as the Project) will consist of 2 components (component 1: anti-corruption; component 2: anti-money laundering and combating the financing of terrorism (AML/CFT)) with a separate assessment for each component.

2. European and international standards

The assessments will review the status in Kosovo with regards to a selected range of priority provisions within the following standards:

Component 1:

- Twenty Guiding Principles for the Fight against Corruption (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);
- United Nations Convention against Corruption (UNCAC)
- Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (CM Rec(2003)4).

Component 2:

- The 40+9 Financial Action Task Force (FATF) Recommendations;
- The UN Convention on Illicit Traffic of Narcotic, Drugs and Psychotropic Substances (Vienna Convention);
- United Nations Convention against Transnational Organised Crime (Palermo Convention);
- The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention);
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, (Warsaw Convention) CETS 198;
- United Nations Convention for Suppression of the Financing of Terrorism, relevant UN Security Council Resolutions for the Freezing of terrorist assets;
- Directive 2005/60/EC of the European Parliament and of the Council “on the prevention of the use of the financial system for the purpose of money laundering and terrorism financing”;
- European Commission Directive 2006/70/EC “laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the

definition of ‘politically exposed person’ and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis”.

- Directive 2007/64/EC of the European Parliament and the Council on payment services in the internal market.

3. Stakeholders

3.1. Assessment expert teams

Two expert teams will be formed for the respective Project components and will undertake the work to revise and assess the regulatory and institutional framework in Kosovo, identify gaps, provide recommendations and carry out a follow-up assessment of measures taken by authorities in Kosovo.

3.1.1. Composition

The assessment expert team for each component in general shall consist of five members. The experts are to be selected based on terms of reference for short term expertise, prepared by the Council of Europe. For each component the composition may include one key expert, up to two international experts, and up to two local experts.

The work of the expert teams can be complemented by additional Council of Europe experts when and if necessary at any stage of the assessments.

3.1.2. Independence

All members of the assessment expert teams, particularly the local ones, are not subject to any directive concerning their findings, neither from the Project nor from any authority, and are in this sense independent.

3.1.3. Key experts

For each assessment expert team a key expert is responsible, who coordinates the roll-out of the assessment within the team in line with the timetable and the assessment methodology.

3.2. Project team

Project staff based in Pristina, supported by Council of Europe Headquarters in Strasbourg, contribute to the assessments as follows:

- Function as secretariat of the assessment expert teams.
- Support the assessment expert teams in organising and carrying out the assessments.
- Support the institutions in Kosovo in enhancing their reporting capacities in line with the assessment methodology.
- Support the institutions in Kosovo in developing mechanisms of researching, collecting and processing of data necessary for the reporting on anti-corruption and anti-money laundering reforms.
- Ensure a unified understanding of the assessment, diagnostic approach, and recommendations of the assessment reports.

- Publish, translate, disseminate and promote awareness of the assessment (1st and 2nd cycles) and progress report in English, Albanian, and Serbian languages.

3.3. Local coordinators

The Anti-corruption Agency in Kosovo (KAA) and the Financial Intelligence Unit (FIU) will coordinate the assessment for each component respectively (flow of substance information, on-site visits, identification of interview partners, and the plenary sessions etc.). The Prime Minister's Office of Good Governance, Human Rights, Equal Opportunities and Gender Issues (OGG) will coordinate and ensure communication and support of the assessments.

3.4. Counterparts and beneficiaries in Kosovo

All institutions in Kosovo are beneficiaries of the assessments. The following counterparts in Kosovo – including above mentioned local coordinators – will provide information and documents in answer to the questionnaires and interviews during the assessment process, supported by the Project team, in particular, but not limited to:

- 3.4.1. Special Prosecutors Office of Kosovo (SPRK)
- 3.4.2. Kosovo Judicial Council (KJC)
- 3.4.3. Kosovo Prosecutorial Council (KPC)
- 3.4.4. Kosovo Police (KP)
- 3.4.5. Ministry of Justice (MoJ)
- 3.4.6. Ministry of Internal Affairs (MIA)
- 3.4.7. Ministry of Finance (MF)
- 3.4.8. Ministry of Public Administration (MPA)
- 3.4.9. Central Bank of Kosovo (CBK)
- 3.4.10. Agency for Managing Seized and Confiscated Assets (AMSCA)
- 3.4.11. Kosovo Customs (KC)
- 3.4.12. Office of Auditor General (OAG)
- 3.4.13. Procurement Review Body (PRB)
- 3.4.14. Public Procurement Regulatory Commission (PPRC)
- 3.4.15. Central Procurement Agency (CPA)
- 3.4.16. Kosovo Assembly (KA)
- 3.4.17. Central Electoral Commission (CEC)
- 3.4.18. Kosovo Ombudsperson (KO)
- 3.4.19. Kosovo Business Registration Agency (KBRA)
- 3.4.20. Kosovo Police Inspectorate (KPI)
- 3.4.21. Kosovo Intelligence Agency (KIA)

3.5. International organizations

The international organizations with a role in rule of law, justice and home affairs and combating corruption, money laundering and terrorism financing in Kosovo will be encouraged to provide information for the purposes of the assessments.

3.6. Private sector and civil society

The assessment expert teams would seek to carry out interviews with the private sector and civil society (organisations) during the on-site visits. The participation of representatives of civil society will be considered whenever seen fit (workshops etc.).

4. Timetable

The assessment will consist of two cycles. The 1st cycle of the project will aim to assess the existing institutional and regulatory framework, as well as the effectiveness of measures, identify risks, deficiencies and formulate short-medium and long term recommendations. The 2nd cycle will aim to ensure sustained implementation through follow-up of actions undertaken by authorities in Kosovo so to assess any progress made and any remaining deficiencies/additional recommendations. A detailed timetable, including key deadlines, is included in the Project Workplan.

5. Assessments

The assessment process will follow the overall approach taken by GRECO² and MONEYVAL³ in conducting such exercises, but will be tailored to the specific purposes of the project, with an emphasis on priority and high-risk areas and local ownership of outcomes.

5.1. Questionnaire

A written questionnaire based on existing international and European standards (see above para. 2) and GRECO- and MONEYVAL-methodology is prepared and adopted by Council of Europe Secretariat. The Project will provide for an introduction to authorities in Kosovo on data collection, reporting, and questionnaire replies.

5.2. Answers

The answers to the questionnaires for each of the two components are prepared by way of self-assessment of each relevant institution. These self-assessments are subsequently integrated by the liaison structures (KAA and FIU) and presented to the assessment teams. Authorities in Kosovo may hold coordination meetings to discuss the relevance of produced and outstanding information, and to bring information and answers into cross-sector agreement. Answers are submitted in writing. Answers should be accompanied by the relevant regulatory and other documents, as well as statistical information.

Based on the answers received members of the assessment expert teams can direct additional questions to representatives of institutions in Kosovo before and after the on-site visit.

5.3. On-site visits

² GRECO – Group of States against Corruption - a monitoring body of the Council of Europe which aims to improve its members' capacity to fight corruption by monitoring the compliance of States with their undertakings in this field. www.coe.int/greco

³ MONEYVAL – The Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the financing of terrorism. www.coe.int/moneyval

The assessment expert teams will carry out on-site visits of up to one week duration, in order to interview representatives on the implementation of international standards and follow-up on the answers provided to the questionnaire. The assessment expert teams will coordinate the timetable of their on-site visit with the liaison structures (KAA and FIU).

5.4. Communication

All communication of authorities in Kosovo with the experts teams is coordinated through the Project and with KAA or FIU.

5.5. Assessment reports

The assessment reports contain:

- Summary
- Description of the current situation
- Analysis (diagnosing the current framework against all relevant international and European standards)
- Recommendations on regulatory, institutional, and policy related areas (indicating short-term, medium-term, and long-term timeline)
- Approximation matrix (a table with the standards in one column, a short description of their implementation/citation of the respective local framework and key deficiencies in a second column, and an indicator of the status of approximation “yes/no/partial”)

6. Implementation

The counterparts in Kosovo will consider the recommendations, and for their implementation will review and reform legislation, the institutional framework and policies. The Project will support the process of data collection and reporting on the status of implementation.

7. Working language and translations

The two assessment reports will be translated and published in English, Albanian, and Serbian languages. Translation and interpretation during the assessment from Albanian and Serbian into English and vice versa will be provided for by the Project. The first working language of the assessment will be English.

8. Confidentiality

Information gathered by the assessment expert team in relation to the assessment, including replies to the questionnaire, shall remain confidential, unless decided otherwise according to para. no. 9 of these TORs. The same shall apply to all considerations among the assessment members.

9. Acceptance and endorsement

Each assessment report will be adopted in plenary sessions by the assessment expert teams and endorsed finally by the authorities in Kosovo. All above mentioned stakeholders (see above at no. 3) and representatives of civil society are invited to be present at the plenary as observers, and provide feedback and comments. The publication of all reports is intended, and will be done so in

agreement with the highest authorities in Kosovo. The decision to publish the reports will be communicated to the CoE Secretariat by the local coordinators (KAA and FIU) no later than 3 weeks after the adoption of the reports in plenary sessions.