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## **Project against Economic Crime in Kosovo<sup>1</sup> (PECK)**

### **KOSOVO**

#### **FOLLOW-UP REPORT**

**on compliance with international standards in the area of anti-money laundering and  
combating the financing of terrorism (AML/CFT)**

**April 2014**

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<sup>1</sup> 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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## **ACRONYMS**

AC	Anti-corruption
AE	Additional Element(s)
AR	Assessment Report
AML/CFT	Anti-Money Laundering / Countering or Combating the Financing of Terrorism.
AMSCA	Agency for Managing Seized and Confiscated Assets
CBK	Central Bank of Kosovo
CC	Criminal Code
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Countering or Combating the Financing of Terrorism
CLLP	Criminal Liability for Legal Persons for Criminal Offences Law
CPC	Criminal Procedures Code
CoE	Council of Europe
CTR	Cash Transaction Report
DNFBPs	Designated Non-Financial Businesses and Professions
DRLNGO	Department for Registration and Liaison with NGOs
EBRD	European Bank for Reconstruction and Development
EC	Essential Criteria/Criterion
ECID	Economic Crime Investigation Department
EU	European Union
EULEX	European Union Rule of Law Mission
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre (forerunner of the FIU)
FIU	Financial Intelligence Unit
FT or TF	Financing of Terrorism or Terrorism Financing
GDP	Gross Domestic Product
GP	General Partnership
IFC	International Finance Corporation
ILECU	Directorate for International Law Enforcement Co-operation
IMF	International Monetary Fund
IB	Individual Business
JSC	Joint Stock Company
KAA	Kosovo Anti-corruption Agency
KBRA	Kosovo Business Registration Agency
KCA	Kosovo Cadastral Agency

KFOR	Kosovo Force
KIA	Kosovo Intelligence Agency
KJC	Kosovo Judicial Council
KJI	Kosovo Judicial Institute
KP	Kosovo Police
KPC	Kosovo Prosecutorial Council
LIIS	Law on Implementation of International Sanctions
LLC	Limited Liability Corporation
LP	Limited Partnership
MFE	Ministry of Finance and Economy (also referred to as MoF)
MFI	Micro-Finance Institution
MIA	Ministry of Internal Affairs
ML	Money Laundering
MLA	Mutual Legal Assistance
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
MTI	Ministry of Trade and Industry
MVT	Money or Value Transfer
NCCEC	National Coordinator for Combating Economic Crime
NGO	Non-Government Organisation
NPO	Non-Profit Organisation
NRA	National Risk Assessment
PEP	Politically Exposed Person
SPRK	Special Prosecutor's Office of Kosovo
SR	FATF Special Recommendation
STR	Suspicious Transaction Report
TAK	Tax Administration of Kosovo
UN	United Nations
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSCR	United Nations Security Council Resolution

# 1. Analysis of progress made in respect of the 2003 FATF Core Recommendations

## 1.1. Introduction

1. The 1<sup>st</sup> assessment of Kosovo vis-à-vis international AML/CFT standards was undertaken under the Joint European Union/Council of Europe Project against Economic Crime in Kosovo (PECK), implemented over a period of 30 months starting from 1 February 2012 to 31 July 2014. The first cycle (out of two) lasted from September 2012 to May 2013. The Assessment Report (AR) of the AML/CFT regime of Kosovo was adopted on 10 June 2013. It was based on the FATF Recommendations 2003 and the FATF Special Recommendations on Terrorist Financing 2001 and was prepared using the AML/CFT Methodology 2004.

2. Kosovo was rated non-compliant (NC) on 13 recommendations and partially compliant (PC) on 12 recommendations, including Core and Key recommendations. Kosovo received the following ratings on the 29 assessed Recommendations:

Partially compliant (PC)	Non-compliant (NC)
<b>Core Recommendations</b>	<b>Core Recommendations</b>
R.1 - Money laundering offence	R.10 - Record keeping
R.5 - Customer due diligence	SR.IV - Reporting of Suspicions of Financing of Terrorism
R.13 - Suspicious transaction reporting	
SR.II - Criminalisation of financing of terrorism	
<b>Key Recommendations<sup>2</sup></b>	<b>Key Recommendations</b>
R.23 - Regulation, supervision and monitoring	R.3 - Confiscation and provisional measures
R.26 - The FIU and its functions	SR.III - Freezing and confiscating terrorist assets
R.36 - Mutual legal assistance	
<b>Other Recommendations<sup>3</sup></b>	<b>Other Recommendations</b>
R.2 - Liability for ML offence	R.14 - Protection and no tipping off
R.6 - Politically exposed persons	R.17 – Sanctions
R.18 - Shell Banks	R.20.2 - Use of cash
R.27 - Law enforcement authorities	R.29 - Monitoring and Supervisory Powers
R.33 - Legal persons– beneficial owners	R.30 - Resources, integrity and training (Financial Sector)
	R.31 - National co-operation and Co-ordination
	R.32 - Maintenance of Statistics
	SR.VI - AML requirements for money/value transfer services (alternative remittances)
	SR.VIII - Non Profit Organisations

<sup>2</sup> Recommendation R.35 and SR.I – Judicial International Cooperation (Ratification of Conventions and Other UN Instruments) has not been considered applicable in the context of Kosovo.

<sup>3</sup> The following recommendations will be assessed during the second cycle: SR.V – International Cooperation (Financing of Terrorism); R.34 – Legal Arrangements – Beneficial Owners; R.37 – Mutual Legal Assistance: Dual Criminality; R.38 - Mutual Legal Assistance on Freezing, Seizing and Confiscation; R.39 - Mutual Legal Assistance and Extradition; R.7 – Cross Border Correspondent banking; R.8 - New Technologies & Non Face-To-Face Business; R.9 – Third Party Reliance and Introduced Business; R.11 – Complex, Unusual Large Transactions; R.12 - DNFBP (R.5, 6, 8-11- Customer due diligence and record keeping); R.15 - Internal controls, compliance & audit; R.19 – Cash Transaction and Other Reporting; R.20.1 – Other Non-Financial Businesses and Professions and Use of Cash; R.21 - Special attention for higher risk countries (Business relationships and Transactions); R.22 - Foreign branches & subsidiaries; R.24 - DNFBP (regulation, supervision and monitoring); R.25 - Guidelines & Feedback; R.30 - Resources, integrity and training (DNFBP); SR.VII - Wire Transfers and R.16 - DNFBP (R.13-15 & 21 – Suspicious Transaction Reporting).

3. The present report assesses the level of compliance and progress made by the Kosovo authorities to implement the recommendations from the 1<sup>st</sup> Cycle AR based on information gathered and/or received up to mid-February 2014. However, it does not analyse the recommendations that will be assessed during the second assessment cycle (see their referencing at footnote 3 above), or the recommendations that have been rated as *LC (Largely Compliant)* and *C (Compliant)* by the AR, namely: **SR.IX** (Cross Border Declaration & Disclosure) - *LC (Largely Compliant)*<sup>4</sup> - and **R.28** (Powers of competent authorities) - *C (Compliant)*.

## **1.2. Detailed review of measures taken by Kosovo in relation to the Core Recommendations**

### **1.2.1. Main changes since the adoption of the AR**

#### Legal measures

4. On the legal side, two Core Recommendations were assessed in the AR, namely Recommendation 1 on the ML offence and Special Recommendation II on the criminalization of the FT.

5. In March 2013, Law No. 04/L-178 on Amending and Supplementing Law No. 03/L-196 on the Prevention of Money Laundering and Prevention of Terrorist Financing (hereafter the amendments to the AML/CFT Law) entered into force (Official Gazette No.5 of 8 March 2013). The amendments introduced by this law dealt with some issues related to the two Core Recommendations mentioned above and particularly to SR II.

#### Preventive measures – financial institutions

6. In respect of preventive measures for financial institutions four Core Recommendations were assessed in the AR: these are Recommendation 5 on customer due diligence, Recommendation 10 on record keeping, Recommendation 13 on suspicious transaction reporting and SR IV on reporting of financing of terrorism.

7. The amendments to the AML/CFT Law also addressed some issues concerning the four Core Recommendations assessed in the AR.

### **1.2.2. Review of measures taken in relation to the Core Recommendations**

#### Legal measures

8. The amendments to the AML/CFT Law related to areas relevant to the Core Recommendations on legal issues mainly addressed:

- some technical improvements related to the ML offence, such as the deletion of redundant paragraph 1 of Article 32 that dealt with court competence over ML cases (it is provided for elsewhere) as well as the insertion of a new paragraph 1.40 into Article 2 to define “criminal activity” and hence remedying the controversies raised by the application of this term;
- the introduction of a new FT offence in Article 36.B of the AML/CFT Law which, despite its apparent compliance with the respective FATF standards, was not harmonised with the pre-existent legal framework in the CC that provides, even if not as adequately, for the criminalization of FT (particularly in Article 138 CC). This resulted in the duplication of FT

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<sup>4</sup> In addition, **R.4** (Secrecy Laws) and **R.40** (Other Forms of International Cooperation) were both Largely Compliant (LC) as well, but they have been included below since they are among the listed key recommendations for which a sufficient action is normally required under the Moneyval Rules of procedure (§43).

offences in the two laws with much confusion and lack of clarity regarding their interconnection (whether and to what extent CC can be considered as an underlying legal framework to Article 36.B etc.)

9. As indicated above for the individual FATF Core Recommendations, while acknowledging the relatively limited and, as regards the adoption of Article 36.B controversial progress made by Kosovo (see paragraph 8 above), the assessment team notes that a number of the recommendations made in the AR for the Core Recommendations have not been adequately, if at all, addressed. This particularly refers to the deficiencies in the criminal substantive law (CC and CLLP Law No. 04/L-030) which are to some extent understandable (though not acceptable) considering the recent adoption of the legislation. Nevertheless, some of the identified shortcomings inevitably require further amendment of the CC and CLLP Law in order to be compliant with the FATF standards.

10. Furthermore, the assessment team could not assess the effective implementation of the relevant provisions due to the lack of statistical or other meaningful information regarding concrete ML cases investigated or prosecuted in Kosovo until now.

11. The main deficiencies identified in the AR for the Core Recommendations on legal issues are listed below. Progress achieved in addressing these deficiencies is analysed under Section 2 of this Report with relevant comments by the assessment team.

*Recommendation 1 – Money laundering offence (rated PC in the AR)*

- Deficiency 1 - The offence of market manipulation is not covered among predicate offences to ML.
- Deficiency 2 - Unexplainable duplicate definition of “money laundering” in Article 2.1.23 and Article 32.2 of the AML/CFT Law.
- Deficiency 3 - Confusion and redundancy in definitions related to proceeds of crime as well as in terms of whether proceeds of criminal activity in general can be subject of ML.
- Deficiency 4 - Inadequate regulation of the required level of proof for the predicate crime in Article 32 paragraph 4.1 causing uncertainty and unfamiliarity with the respective provisions among practitioners.
- Deficiency 5 - Unclear and inadequate formulation of the provision that defines the coverage of self-laundering (Article 32 paragraph 4.2).
- Deficiency 6 - Harmonisation required between AML/CFT Law and CC in terms of concept and terminology as regards ancillary offences.
- Deficiency 7 - Effectiveness of the application of the ML offence could not be assessed due to conflicting statistics provided to the assessment team.

*Special Recommendation II – Criminalisation of terrorist financing (rated PC in the AR)*

- Deficiency 1 - Financing of an individual terrorist (for any purpose) is not clearly covered by the FT offence.
- Deficiency 2 - Unexplainable multiplication of definitions for “terrorist financing” first in Article 2.1.36 of the AML/CFT Law and Article 138 CC then also in Article 36.B of the AML/CFT Law.
- Deficiency 3 - Inconsistent and/or redundant terminology used in FT-related provisions in the CC.
- Deficiency 4 - Deficient coverage of “act of terrorism” as required by Article 2(1) of the FT Convention.
- Deficiency 5 - No complete and general coverage of the “generic” offence of terrorism as subject of FT.
- Deficiency 6 - Deficient coverage of the “treaty offences” as subject of FT by requiring an extra purposive element.

- Deficiency 7 - Unclear whether the definition of “terrorist act” in Article 135.1 CC extends to the terrorism-related offences (e.g. recruitment for terrorism) so that financing of these offences can also be considered a FT offence.

#### Preventive measures – financial institutions

12. The amendments to the AML/CFT Law related to the Core Recommendations for preventive measures for the purposes of financial institutions mainly addressed:

- a review of the definition of ‘suspicious act or transaction’ which however has not addressed all the concerns raised in the AR in this regard related to the reporting obligation under paragraph 1.35 of Article 2 of the AML/CFT Law (FATF Recommendation 13), and in particular the reporting of transactions that are suspected of being linked to the FT (FATF SR IV);
- A review of Article 17(1) on the definition and application of CDD which, while addressing the main concern for FATF Recommendation 5 raised in the AR on the applicability of full CDD measures, still requires an amendment in Article 18 to ensure legal clarity;
- A redefined text for ‘occasional transactions’ (Article 17(2)) which however does not address the concerns raised in the AR regarding occasional transactions that are wire transfers and the reapplication of full CDD measure where there is doubt on the veracity and adequacy of previously obtained information with regard to FATF Recommendation 5;
- Stronger prohibition of anonymous accounts and the applicability of full CDD measures for any existing anonymous accounts in accordance with FATF Recommendation 5;
- Introduction of clearer legal provisions for the application of a risk based approach complemented with the mandatory application of enhanced CDD measures for the purposes of FATF Recommendation 5.

13. As indicated above for the individual FATF Core Recommendations, while acknowledging the progress made by Kosovo in this regard, the assessment team notes that a number of the recommendations made in the AR for the Core Recommendations have not been addressed. The assessment team understands that the amendments to the AML/CFT Law were prepared prior to the adoption of the AR and therefore expects the Kosovo authorities to duly consider additional recommended actions and introduce further amendments to the AML/CFT Law with respect to the Core Recommendations for preventive measures.

14. The main deficiencies identified in the AR for the Core Recommendations on preventive measures are listed below. Progress achieved in addressing these deficiencies is analysed under Section 2 of this Report with relevant comments by the assessment team.

#### *Recommendation 5 – Customer due diligence (rated PC in the AR)*

- Deficiency 1 - No legal obligation to apply full CDD measures.
- Deficiency 2 - No explicit prohibition for keeping accounts in fictitious names.
- Deficiency 3 – Unclear threshold for wire transfers.
- Deficiency 4 - Where doubts arise on the veracity or adequacy of previously obtained customer identification data applies only for occasional transactions.
- Deficiency 5 - Insufficient legal obligation to identify beneficial owner.
- Deficiency 6 - Strengthening of the obligation to understand the ownership and control structure of the customer.
- Deficiency 7 - Strengthening of the obligation to understand the purpose and intended nature of the business relationship.
- Deficiency 8 - Strengthening of the obligation to exercise ongoing monitoring of business relationship and transaction in all circumstances beyond high risk customers.
- Deficiency 9 - Strengthening of the obligation for financial institutions to apply a risk-based approach.



- Deficiency 10 - Lack of guidance on implementing a risk-based approach.
- Deficiency 11 - Inconsistencies in the timing of the verification process against the timing of the identification process.
- Deficiency 12 - Failure to complete CDD process applies only to the verification process.
- Deficiency 13 - Failure to complete CDD where business relationship already exists is not adequately covered.
- Deficiency 14 – Timing obligation of CDD measures to existing customers is only provided under Rule X in relation to repealed UNMIK Regulations.
- Deficiency 15 - Better distribution and application of UN and other lists of designated persons.
- Deficiency 16 - Revision of Rule X and Advisory Letter 2007/1 of the CBK which should also take account of the publications on CDD of the Basel Committee on Banking Supervision.
- Deficiency 17 - Harmonisation of the definition of ‘financial institutions’;
- Deficiency 18 - Application of full CDD measure to any existing anonymous accounts.
- Deficiency 19 - Effectiveness issues with regard to the scope and extent of application of CDD, identification of the beneficial owner and application of the risk-based approach.

*Recommendation 10 – Record keeping (rated NC in the AR)*

- Deficiency 1 - Lack of provisions for the commencement retention period for linked occasional transactions.
- Deficiency 2 - Lack of guidance on methodology of record retention.
- Deficiency 3 - Lack of legal power for the extension of the five (5) year retention period for both transaction and identification records when necessary.
- Deficiency 4 - Legal inconsistency on the timing for the commencement of the retention period for identification records.
- Deficiency 5 - Ambiguity on the availability of records to competent authorities.
- Deficiency 6 - Effectiveness issues related to conflicting or missing legal provisions and uneven playing field among the entire reporting subjects.

*Recommendation 13 – Suspicious transaction reporting (rated PC in the AR)*

- Deficiency 1 - No reporting obligation in situations where available information indicates possible ML or FT activities.
- Deficiency 2 - No reporting obligation for financing of terrorism.
- Deficiency 3 - No reporting obligation of attempted suspicious acts or transactions.
- Deficiency 4 - Low number of STRs.
- Deficiency 5 - Concern over non-filing of suspicious CTRs as STRs.
- Deficiency 6 - Effectiveness issues with regard to quality and quantity of STRs reporting and reporting of suspicious CTRs and financing of terrorism)

*Special Recommendation IV – Suspicious transaction reporting related to terrorism (rated NC in the AR)*

- Deficiency 1 - No reporting obligation in situations where available information indicates possible ML or FT activities.
- Deficiency 2 - No reporting obligation for financing of terrorism.
- Deficiency 3 - No reporting obligation of attempted suspicious acts or transactions.
- Deficiency 4 - Low number of STRs.
- Deficiency 5 - Concern over non-filing of suspicious CTRs as STRs.
- *Deficiency 6 - Effectiveness issues with regard to quality and quantity of STRs reporting and reporting of suspicious CTRs and financing of terrorism.*

### **1.3. Main conclusions**

15. The key findings of the AR pointed out to serious concerns as regards the functioning of the AML/CFT system and its compliance with the FATF Core Recommendations analysed in Cycle 1.

16. The assessment team welcomes the measures taken by the Kosovo authorities to rectify the deficiencies identified in the AR and acknowledges that without any doubt different institutions were very keen to do their best to meet the recommendations – but a clearer and stronger coordination appears to be missing.

17. The analysis of the progress made by Kosovo authorities since the adoption of the Cycle 1 AR presented in Section 2 of this Report clearly demonstrates that the major concerns raised in the AR for the FATF Core Recommendations either have not been addressed or have been partially or inadequately addressed.

18. In addition to the remaining major deficiencies identified in the AR for the FATF Core Recommendations, the assessment team expresses serious concern on the issue of effectiveness of the system that needs to be further addressed.

## **2. Information submitted by Kosovo authorities**

### **2.1. General overview of the current situation and the developments in the AML/CFT field since the 1<sup>st</sup> assessment Cycle**

19. In November 2013 the Government of Kosovo published a document<sup>5</sup> on the ‘National ML and TF Risk Assessment of Kosovo 2013 (NRA).’ The document is complemented by two Annexes: Annex 1 providing an analysis and evaluation matrix for individual identified risks and Annex 2 providing an Action Plan for the treatment measures to be applied for the risk assessment. The document is part of the EU funded project for support to Kosovo institutions in combating financial and economic crime<sup>6</sup>. The NRA document was endorsed by the Government in December 2013.

20. The document identifies threats and vulnerabilities to which Kosovo is exposed while analysing and evaluating them to provide mitigating measures to be applied accordingly. The results indicate that ML, TF and other financial and economic crimes are considered to be mostly hidden crimes.

21. In January 2014 the NRA document was followed by the National Strategy of Kosovo and its Action Plan for the prevention of and fight against the informal economy, ML, TF and other economic and financial crimes for the period 2014-2018.

22. The goals, objectives and actions of the National Strategy and the Action Plan 2014-2018 are based on the National Risk Assessment 2013. The policy documents constitute a mechanism of managing risks in the informal economy, ML, FT and other economic and financial crimes in Kosovo. The primary goal of the National Strategy and the Action Plan 2014-2018 is to provide support in achieving the following objectives of the programme of the Government of Kosovo 2011-2014<sup>7</sup>

- Sustainable economic development;
- Good governance and strengthening the Rule of Law;
- Human capital development; and
- Social welfare

23. Under the same EU project a report on the Legal Framework Assessment on the AML/CFT Regime in Kosovo was prepared and disseminated in December 2013. The report’s aim is to assess compliance of Kosovo’s AML/CFT relevant legal framework with the 2012 FATF Standards.

24. The paragraphs and tables that follow provide information on measures taken by the Kosovo authorities to rectify the deficiencies identified in the AR in respect of the Core and Key Recommendations and other Recommendations rated as ‘PC’ or ‘NC’ and assess how these measures address the identified deficiencies.

25. Consequently the comments on measures taken should be read within the context of the analyses in the tables below for each of the assessed FATF Recommendation.

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<sup>5</sup> In September 2013, the Minister of Finance issued Administrative Instruction No. 04/2003 on National Money Laundering and Terrorist Financing Risk Assessment that tasked the FIU with its implementation in cooperation with concerned institutions and reporting entities.

<sup>6</sup> The project is managed by the EU office in Kosovo and implemented by B&S Europe.

<sup>7</sup> Refer to National Strategy 2014-2018, page 7.

## Legal measures

26. On the legal side, as far as ML/FT criminalisation is concerned introduction of the amendments to the AML/CFT Law has been the main development.

27. The amendments to the AML/CFT Law relevant to the ML and FT criminalization included:

- some technical improvements related to the ML offence (Article 32), such as the deletion of the redundant paragraph 1 of Article 32 as mentioned above, as well as the addition of paragraph 1.40 to Article 2 in order to define “criminal activity” and thus remedy the controversies concerning this term;
- the introduction of a new FT offence in Article 36.B of the AML/CFT Law which, as it will be described in more detail below might be more compliant with the respective FATF standards. However, it wasn’t harmonised with the pre-existent legal framework in the CC already providing for the criminalization of the same offence (even if it bears a slightly different name) which resulted in the duplication of FT offences in different pieces of legislation with all the potential risks that stem from such an unfortunate situation.

28. Apart from these, the AR made a number of other recommendations related to the AML/CFT Law (e.g. deletion of duplicate definitions of ML and FT) and the amendment of other relevant legal provisions related to the criminalization of ML and FT, in particular the CC (as regards the FT offence as well as the related legal framework and definitions thereto) and the CLLP Law (to clarify certain issues related to the limitations of corporate criminal liability). The assessment team is not aware of any changes to these laws since the adoption of the AR. It appears that the recommendations to amend these laws and the AML/CFT Law have not been addressed by the Kosovo authorities yet.

29. This might be, to some limited extent, understandable (though not acceptable) considering the recent adoption of some of these pieces of legislation. However, certain identified shortcomings would definitely require the modification of these laws in order to be compliant with the FATF standards. Likewise, the assessment team does not have any concrete information on the effective implementation of the relevant provisions e.g. statistical or other meaningful information regarding concrete ML cases investigated or prosecuted in Kosovo until now. Unfortunately, the authorities responsible for the implementation of ML/FT criminalization, namely, the law enforcement, prosecution and even the judiciary, have not provided any further information and hence the assessment team is not in a position to assess progress achieved in this regard.

30. In the field of MLA related to ML/FT cases, the main development was the adoption of new Law No. 04/L-213 (Official Gazette No.33 of 2 September 2013) on International Legal Cooperation in Criminal Matters that replaced old Law No. 04/L-031 of the same title from the year 2011.

31. As far as the MLA is concerned, the respective part of the new Law (Chapter VI in general, and particularly Sub-chapter II on MLA requests addressed by other states to Kosovo) does not differ significantly from the corresponding parts of the preceding legislation. In this Sub-chapter, the new provisions complete the list of grounds for refusal (Article 85.1.3 if the request is contrary to the Kosovo legal system) and give possibility to postpone or to partially execute a letter rogatory as an alternative to refusal (Article 87). In Sub-chapter IV (Other forms of cooperation) Article 98 allows for the set-up of joint investigation teams by mutual agreement with other states on the basis of the 2<sup>nd</sup> Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (CETS No.: 182).

32. On the other hand, the new Law does not address to any extent the issues raised by the assessment team in relation to Recommendation 36 namely, the provision for service standards on turnaround time (which should normally be, as it was discussed during the on-site visit, subject of secondary legislation) and the revision of the procedures to overcome the lengthy backlogs in this area (which is basically an effectiveness issue).

33. The FIU informed that upon receipt of the recommendations from Cycle 1 AR it immediately commenced their implementation. In order to address the identified deficiencies in the AML/CFT regime, the FIU proposed a range of measures aimed at bringing the Law on Prevention of ML and FT in line with FATF Recommendations by:

- Systemizing its structure and content;
- Amending provisions;
- Correcting technical errors;
- Approving secondary legislation.

34. These proposals have been included in the National Strategy on the prevention and fight against the informal economy, ML, TF and financial crimes for the period 2014-2018. They have also been included in the Action Plan under Objective 2.6, Activity 2.6.1 dealing with the development of national legislation in line with international standards and ensuring its effective implementation. The Action Plan is annexed to the National Risk Assessment of November 2013.

#### Law enforcement measures

35. On the law enforcement side, there have not been any major changes in the legislation since the adoption of the AR.

36. Law No. 04/L-140 on extended powers for confiscation of assets acquired by criminal offence promulgated on 26 February 2013 (Official Gazette No.5 of 8 March 2013) provides for extended powers for confiscation of assets acquired by the persons having committed a criminal offence in cases when the procedures foreseen in the CPC are not sufficient. However, this Law does not address the deficiencies identified in the AR regarding confiscation and provisional measures.

37. A majority of the shortcomings identified in this regard require modification of the CC or the CPC. However, the assessment team did not receive any information on future amendments of these texts.

38. In February 2013, the FIU signed a MoU on exchange of information with the KP with the aim of reinforcing the cooperation between competent authorities. The MoU covers the secondment of KP personnel to the FIU as a liaison officer in order to facilitate intelligence gathering, investigation and prosecution of persons suspected of ML and FT. It was extended in September 2013 in order to enhance cooperation between the two institutions and to link their respective databases.

39. A MoU between the KPC, KJC, MoJ, MoF, MIA, CBK, KIA and KAA was signed on 22 November 2013 establishing the basic principles for the set-up and functioning of the NCCEC. This entity will promote, coordinate, monitor, evaluate and report activities of all public and private institutions which are concerned with prevention, detection, investigation, prosecution and adjudication of crime that generates material benefits by protecting the Kosovo financial system from the risk of ML, FT and tax evasion.

40. Following the signature of this MoU, the Office of the NCCEC was established in January 2014, and a Prosecutor was appointed as the National Coordinator.

41. The FIU also issued Administrative Directive No. 001/2013 on Training for Preventing and Combating Money-laundering and Terrorist Financing in order to improve the quality of STRs. It allows the Director of the FIU to request reporting entities to undergo training sessions that are related *inter alia* to their reporting obligations and methods of ML and FT (see also further comments below under Preventive Measure: Financial Institutions).

42. With respect to the lack of statistics on the outcomes of FIU disseminations to law enforcement, on 31 October 2013 the FIU issued Administrative Instruction No. 001/2013 on compiling statistics, reports and recommendations on Money-laundering and Terrorist Financing. This document provides in particular that the FIU compiles statistics and reports regarding, *inter alia*, cases that were analysed and sent to law enforcement institutions, the number of requests for information received by law enforcement institutions, the number of investigated and convicted persons in relation to prevention of ML and TF, and confiscated or seized assets in relation to prevention of ML and TF. In addition, the assessment team was informed that the National Coordination Office within the KPC will coordinate statistics and collect information. KPC will manage the unified database on statistics covering prosecution services. However, due to the lack of statistics provided, the assessment team is not in a position to assess progress achieved in this regard – see further comments below under Preventive Measure: Financial Institutions.

43. In order to raise awareness about its activity, the FIU published its Annual Report for 2012 which, *inter alia*, provides information on ML typologies.

44. In the course of the Workshop of 30 October 2013 organised by the PECK project, the FIU informed about having filed official application for the membership in the Egmont Group. A questionnaire has been addressed by the Egmont Group Secretariat to relevant authorities and an assessment visit is expected to take place in Pristina by the end of March 2014 in order to determine if the FIU complies with the Egmont Group criteria and requirements, and is ready to become a member.

45. With reference to the imposition of sanctions, during the above-mentioned Workshop the FIU informed that it was in the process of issuing the Administrative Instruction on Procedures for Imposing Administrative Sanctions against Reporting Subjects which do not comply with the AML/CFT Law. This has now been issued – see further comments below under Preventive Measure: Financial Institutions.

46. The FIU further informed that it had participated in various Working Groups, such as the KPC Working Groups on inter-institutional cooperation against organised crime and corruption and on the Harmonisation of Statistics Reports, and the Secretariat of the Permanent Group on Prevention of Informal Economy 2014-2018. It contributed to the establishment and operation of the NCCEC and drafting of the Governmental Program for Prevention of informal economy 2014-2018.

47. By having issued in September 2013 Administrative Instruction MF No. 04/2013 on National Risk Assessment for ML and TF in accordance with Article 27 of the amended AML/CFT Law, the MoF established an overall process for the NRA including identification, analysis and evaluation of risks. It lays down the procedures to be followed and the criteria to be observed by the FIU to undertake and co-ordinate with other competent authorities a national risk assessment every five years. The first national risk assessment was completed by December 2013.

48. Kosovo authorities clarified that international co-operation might be refused on the grounds that it is related to a political offence through Article 85 of Law No. 04/L-213 of 31 July 2013 on International Legal Cooperation in Criminal Matters.

49. In reply to the comments made in the AR on the requirement to strengthen resources, the KP informed that 20 additional police officers joined the Economic Crimes Department as of 1 July 2013.

50. The Kosovo authorities also informed that in June 2013 all vacancies in the Law Enforcement Directorate of the Customs were filled. However, approximately 25 vacancies in other sectors still remained. The assessment team, while acknowledging the progress achieved in this regard, encourages the Kosovo authorities to continue assessing the human resource needs of the Customs in order to ensure its effective functioning.

## Preventive measures - Financial Institutions

51. The main development as regards the preventive measures for financial institutions since the adoption of the AR has been the amendment of the AML/CFT Law through Law No. 04/L-178 on Amending and Supplementing Law No. 03/L-196 as noted above.

52. Some of the main changes to the AML/CFT Law having impact on preventive measures and mainly applying to financial institutions include:

- A review of definitions, including a review of PEPs which still falls partly short of the international definition;
- The addition of new reporting subjects including NGOs which, while addressing some concerns raised in the AR regarding SR VIII, calls for further amendments in order to ensure the effective implementation of the supervisory role of the FIU for NGOs and the imposition of sanctions under the AML/CFT Law;
- A revision of the obligations of banks and financial institutions when effecting wire transfers enhancing harmonisation with international standards;
- Clearer legal provisions on the identification of PEPs that are domestic or foreign and the application of enhanced CDD accordingly;
- Clearer reporting obligations for dealers in precious metal and stones and construction companies;
- Application of the prohibition of disclosure (“tipping off”) to other entities subject to the AML/CFT Law, such as NGOs and Political Parties;
- A complete review of the additional obligations for casinos and other gaming houses;
- Compliance competences of the FIU for all reporting subjects, including the entire financial sector, but excluding ‘construction companies’ as reporting subjects. These amendments to Article 30 however do not address most of the concerns raised in the AR for Article 30;
- Review of Article 31 and the addition of new Article 31A and 31B on administrative and other sanctions applicable to subject persons. These amendments however do not address most of the main concerns expressed in the AR for FATF Recommendation 17, and in particular the introduction of an authority responsible to impose sanctions and the introduction of a range of graduated non-pecuniary administrative sanctions;
- The introduction of new Article 36A empowering the FIU to enter into written agreements with the CBK for the latter to supervise the entire financial sector, and with other authorities for the supervision of other reporting subjects. However, the new Article does not address all the concerns raised in the AR such as the authority for the CBK or other competent authority to issue mandatory rules and regulations for the purposes of the AML/CFT Law and the supervisory powers of such delegated authorities;
- New Article 36C imposing penalties on whoever uses force or serious threat, or any other means of compulsion, or a promise of a gift or any other form of benefit to induce another person to refrain from making a report required under Article 13 of this Law, or to make false statements. This Article is considered as a positive step to ensure that the reporting obligation is always fulfilled;
- The amendments to the AML/CFT Law provide an empowering clause for the MoF to issue Administrative Instructions for the National ML and TF Risk Assessment, to enforce the future new EU Directive for Prevention of ML and TF and other provisions for implementation of the AML/CFT Law.

53. In addition to the recommendations calling for further amendments of the AML/CFT Law and not addressed by the February 2013 amendments, the AR made a number of recommendations for the amendment of other laws on the preventive side, namely Law No. 03/L-209 on the CBK (Official Gazette No.77 / 16 August 2010), and Law No. 04/L-093 on Banks, Micro-Finance Institutions and Non-Bank Financial Institutions (Official Gazette No.11 / 11 May 2012). The assessment team is not aware of any changes to these laws since the adoption of the AR. It does not therefore appear that the

recommendations calling for the amendment of these laws and the AML/CFT Law have been addressed by the Kosovo authorities. However, the FIU informed the assessment team that the recommended amendments were included as a special activity in the Action Plan of the National Strategy on the prevention and fight against informal economy, ML, FT and financial crimes 2014-2018.

54. On the positive side, the assessment team notes that various measures have been or are planned to be taken by the FIU, the CBK and the MoF bringing forward some of the main recommendations of the AR.

55. At the workshop held in Pristina on 30 October 2013, the FIU informed that it was in the process of drafting secondary legislation on PEPs, guidelines and ways of reporting for construction companies, and administrative instructions on training and the maintenance of statistics for reporting subjects. As indicated below some of the administrative instructions have now been issued and brought in force. Some other instructions on reporting procedures and indicators are also in the course of preparation, including the Standard Operation Procedures for Compliance.

56. The FIU issued Administrative Instruction No. 001/2013 dealing with the compilation of statistics, reports and recommendations on ML and TF. Its main objective is to define FIU's obligations under the AML/CFT Law to compile statistics and records and based thereon make recommendations to the competent authorities and Ministries and/or other relevant persons or bodies regarding measures to be taken and legislation to be adopted to combat ML and the financing of terrorist activities. In this context, the Instruction delineates the type of statistics that the FIU intends to maintain. It also defines the source of information for the compilation of statistical data that will be maintained by the FIU.

57. In January 2014, the FIU issued Administrative Instruction No. 02/2014 exempting from reporting four categories of transactions in terms of paragraph (3) of Article 22 of the AML/CFT Law: transactions relating to payment of municipal obligations; payment of taxes; payment of mandatory insurance policies; and payments for studying purposes.

58. Also in January 2014, in consultation with the MoF and in accordance with the relevant provisions of the AML/CFT Law, the FIU issued Administrative Instruction No. 03/2014 aimed at defining the procedures for applying the administrative sanctions against reporting subjects for non-compliance with the provisions of the AML/CFT Law. While establishing the FIU as the authority empowered to impose sanctions, the Instruction lays down the procedures for imposing sanctions and for an appeal mechanism thereto. The imposition of sanctions lies within the competence of the Compliance Unit of the FIU, while the appeal procedures in the first instance allow for an appeal to be made to the FIU and heard by a separate committee established *ad hoc* from the FIU officials for this purpose. For transparency purposes, officers of the FIU Compliance Unit are excluded from this committee. The appeal can be escalated to the Courts. The FIU is required to maintain a statistical database of such sanctions imposed. Despite the provisions in the Instruction for not involving the Compliance Unit in the appeals process, the assessment team sees strong, at least perceived, conflicts of interest and lack of transparency in the appeals mechanism involving the FIU itself, notwithstanding the escalation of the appeals process to the Courts.

59. Moreover, in January 2014, in consultation with the MoF and in accordance with the relevant provisions of the AML/CFT Law, the FIU issued Administrative Instruction No. 04/2014 dealing with PEPs. It defines a PEP in accordance with the Law while providing definitions of 'prominent public functions', 'immediate family members' and 'close associates'. The Instruction further defines the obligations of reporting subjects in cases when they identify a customer to have PEP status.

60. The FIU has also issued Administrative Directive No. 001/2013 on training for preventing and combating ML and TF. Its main objective is to define the legal responsibilities and powers of the FIU in providing training and in ensuring the participation of reporting subjects. The first part of the Directive deals with training for reporting subjects to be provided by the FIU and requires reporting subjects to respond positively to such training when invited to attend. The Directive also empowers the FIU to provide, in close cooperation and coordination with other institutions, training sessions for



institutions dealing with investigation, prosecution and adjudication of various criminal cases of ML and FT as well as other offences related to ML and FT. Finally, the Administrative Directive addresses internal procedures and employee training programmes that should be put in place by reporting subjects, requiring banks and financial institutions to have such programmes in place in accordance with the obligations deriving from Article 23 of the AML/CFT Law.

61. At the October workshop in Pristina, the CBK informed that the AR recommendations not requiring legislative amendments had been implemented and an action plan was prepared to comply with the remaining recommendations related to the CBK.

62. In this context, and in the light of the supervisory powers for the entire financial sector being vested in the CBK through the MoU signed with the FIU in terms of Article 36A of the AML/CFT Law as amended, the CBK intends to issue an Administrative Directive also dealing with training in the field of the prevention of ML and the FT specifically for the financial sector. The Administrative Directive proposed by the CBK does not provide a training programme for banks and financial institutions since the responsibility to develop training programmes for the prevention of ML and the FT in this area shall remain with the banks and financial institutions and may vary from one institution to another depending on a number of individual circumstances. The proposed Administrative Directive does however lay down principles for banks and financial institutions to develop their training programmes. The Directive will be applicable to the entire financial sector including subsidiaries and branches of similar foreign institutions licensed by the CBK to operate in Kosovo in terms of the Law on Banks.

63. Within the same context, the CBK intends to issue another Administrative Directive which will also be applicable to the entire financial sector. The proposed Administrative Directive would establish sets of statistics that are comprehensive and meaningful for banks and financial institutions, and the CBK itself, to allow the CBK and other authorities to understand and measure the effectiveness of the system for the prevention of ML and the FT with regard to the financial sector. The statistics detailed in the Directive are not exhaustive. Banks and financial institutions may collect and maintain additional information they consider necessary to fulfil their obligations in this regard. The Directive however does lay down the principles for the minimum sets of statistics that should be maintained and provided to the CBK. To this effect, the Directive is complemented with a template for the collection and maintenance of comprehensive and meaningful statistics which banks and financial institutions shall be required to complete and submit to the CBK on a periodical basis as established by the latter. The CBK will consolidate this information and share the results with the FIU.

64. The CBK further informed that it is in the process of replacing its Rule X and Advisory Letter 2007/1 by a new Regulation. The Regulation will be applicable to all banks and financial institutions. It will address most of the concerns raised in the AR which do not require legislative amendments. The aim of the Regulation is to provide direction and guidance to banks and financial institutions in fulfilling their responsibilities under the AML/CFT Law. The proposed Regulation applies the Risk-Based Approach and contains various appendices with risk matrices that include business related and customer-relationship based risk assessments; establishing the financial institution's risk appetite; and identifying PEPs, together with templates for a Customer Acceptance Policy and a Customer Business and Risk Profile.

#### Preventive Measures - NGOs

65. In respect of FATF SR VIII regarding NGOs, the AR made a number of proposals for amending the Law on Freedom of Association in Non-Government Organisations (Law no. 04-L-057 of 29/08/2011) - hereinafter Law on NGOs. To this effect, at the workshop held in Pristina on 30 October 2013, DRLNGO informed that certain amendments to the Law on NGOs have been drafted but are still at their initial stage. DRLNGO informed about its intention to include the proposed amendments in the Legislative Plan of the MoJ for 2014.

### Legal Persons – Beneficial owner and control information

66. Likewise, in assessing the business registration regime in Kosovo for the purposes of FATF Recommendation 33 on access to beneficial ownership and access to control information on legal persons, the AR makes various recommendations both for legal amendments and for procedural ones in order to make the business registration regime more effective and better harmonised with international standards. In this respect, the Head of the KBRA has informed the assessment team that a working group was established to amend and supplement the Law on Business Organizations, and that all the recommendations of the AR will be taken into consideration. The KBRA could not provide any further information.

67. Consequently the assessment team is not in a position to assess progress achieved in this regard with reference to beneficial ownership and control information of legal persons.

## 2.2. Core Recommendations<sup>8</sup>

<b>Recommendation 1 (Money laundering offence)</b>	
<b>Rating: Partially Compliant (PC)</b>	
Recommendation of the Assessment Report	<p><i>1. Revise the legal definitions related to proceeds of crime so as to eliminate confusion and redundancy in this field.</i></p> <p>See also §§ 240-242, 244 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>The Kosovo authorities addressed this issue in the recent amendments to the AML/CFT Law by adding a new paragraph 1.40 to Article 2 that provides for the definition of “criminal activity” - the legal term applied in the ML offence (Article 32.2) that had previously caused confusion.</p> <p>The formulation and the potential impact of Article 2 paragraph 1.40 (then in draft stage) as already discussed in detail in the AR, remains valid as the new paragraph was not amended upon adoption. As it could be foreseen, the introduction of paragraph 1.40 practically eliminates the controversies raised by the reference to “criminal activity” in the ML offence. On the other hand, the legal framework continues to suffer from redundancy to which no solution is offered by the amended legislation - EC 1.1.</p>
Recommendation of the Assessment Report	<p><i>2. Eradicate the bifurcation of definitions for “money laundering” in the AML/CFT Law by deleting paragraph 1.23 of Article 2 so that Article 32.2 remains the one and only definition of ML for any purposes.</i></p> <p>See also § 242 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>The recent amendments to the AML/CFT Law did not address the duplication of definitions criticised in the AR and thus both Article 2 paragraph 1.23 (ML definition) and Article 32.2 (ML offence definition) remained unaffected. As a result, this shortcoming is still valid as already identified in the AR - EC 1.1.</p>
Recommendation of the Assessment Report	<p><i>3. Redefine the required level of proof for the predicate crime (Article 32 paragraph 4.1) and/or provide for adequate guidance to practitioners in this respect.</i></p> <p>See also §§ 245-246 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>The recent amendments to the AML/CFT Law neither addressed the required level of proof and nor affected paragraph 4.1 of Article 32 for any other reasons – EC 1.2.1.</p> <p>Furthermore, the assessment team is not aware of any sort of guidance provided to practitioners in this respect. As a result, the issue remains as identified in the AR.</p>
Recommendation of the Assessment Report	<p><i>4. Reformulate the provision that defines the coverage of self-laundering (Article 32 paragraph 4.2) so as to remedy its current inadequacy.</i></p> <p>See also § 249 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>The recent amendments to the AML/CFT Law neither addressed the coverage of self-laundering nor affected paragraph 4.2 of Article 32 for any other reasons – EC 1.6.</p>

<sup>8</sup> References to the FATF Recommendations in this report refer to the 2003 FATF Forty Recommendations and the Nine Special Recommendations on Terrorist Financing (2001).

<b>Recommendation 1 (Money laundering offence)</b>	
	As a result, the issue remains as identified in the AR.
Recommendation of the Assessment Report	<p><i>5. Harmonize the respective provisions of the AML/CFT Law and the CC, both in terms of concept and terminology, as regards ancillary offences.</i></p> <p>See also §§ 253-254 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The recent amendments made to the AML/CFT Law did not affect paragraph 2.7 of Article 32 that deals with ancillary offences of ML – EC 1.7.</p> <p>Likewise, the assessment team is not aware of any draft amendment to the CC in proceeding that would address this issue, which therefore remains as identified in the AR.</p>
Recommendation of the Assessment Report	<p><i>6. Provide for the adequate criminalization of the offence of market manipulation and include it among predicate offences to ML.</i></p> <p>See also § 247-248 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Criminalization of market manipulation falls beyond the scope of the AML/CFT Law. Therefore its recent amendment did not have any impact on this field - EC 1.3 &amp; EC 1.4.</p> <p>The assessment team is not aware of any draft amendment to the CC nor any other relevant draft legislation in proceeding that would address this issue, which consequently remains as identified in the AR.</p>
(Other) changes since the last evaluation	

<b>Recommendation 5 (Customer due diligence)</b>	
<i>Regarding financial institutions</i>	
<b>Rating: Partially Compliant (PC)</b>	
Recommendation of the Assessment Report	<p><i>1. A review of Rule X, incorporating Advisory Letter 2007/1, of the CBK within the context of the new legislation and the repeal of the UNMIK Regulations</i></p> <p>See also §§ 571, 776 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The CBK has carried out a major overhaul in redrafting Rule X, incorporating Advisory Letter 2007/1 as a new Regulation upon which the CBK has sought the opinion of the Council of Europe. The revised draft takes into account not only the legal amendments to the AML/CFT Law but also recommendations and proposals made in the AR where such recommendations do not call for legislative amendments as otherwise the proposed Regulation would go beyond the requirements and obligations under the Law. Some of the major proposals for Regulation 16 can be summarised as follows:</p> <ul style="list-style-type: none"> <li>- Legal basis for the issue of the Regulation;</li> <li>- Designation;</li> <li>- Integration of Advisory Letter 2007/1;</li> <li>- Sanctions;</li> <li>- Supervisory powers;</li> <li>- Internal responsibilities;</li> <li>- Appointment of Head of AML/CFT Unit;</li> <li>- Measurement of effectiveness;</li> <li>- Risk assessments;</li> </ul>

<b>Recommendation 5 (Customer due diligence)</b> <b><i>Regarding financial institutions</i></b>	
	<ul style="list-style-type: none"> <li>- Risk-based approach;</li> <li>- Customer Due Diligence</li> <li>- Beneficial ownership;</li> <li>- Mandatory and other high risk situations;</li> <li>- Reporting of suspicious and currency transactions; and</li> <li>- Instructions issued by the FIU.</li> </ul> <p>Moreover, the proposed Regulation thoroughly addresses the Risk-Based Approach. To this effect it includes various appendices with risk matrices that include business related and a customer-relationship based risk assessments; establishing the financial institution's risk appetite; and identifying PEPs, together with templates for a Customer Acceptance Policy and Customer Business and Risk Profile.</p> <p>Although it appears that the CBK has carried out a thorough review of Rule X addressing the main issues raised in the AR, this is still in draft form and has not been viewed by the assessment team. Consequently no comments can be made by the assessment team at this stage.</p>
Recommendation of the Assessment Report	<p><i>2. Harmonisation of the definition of 'financial institution' in the respective laws and regulations;</i></p> <p>See also § 777 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The CBK intends to identify the main divergences and review the various definitions accordingly. Consequently to date no amendments to the respective pieces of legislation (Law on Banks, Law on CBK and AML/CFT Law) have yet been undertaken.</p>
Recommendation of the Assessment Report	<p><i>3. Legal obligation for the application of the full CDD measures as defined in the AML/CFT Law as opposed to the application of the identification and verification processes which only form a component of the CDD concept.</i></p> <p>See also §§ 570, 580, 591, 592, 598, 603, 729, 737, 746, 752, 764, 770 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>As it was identified in the AR, Article 17 of the AML/CFT Law at the time defined CDD in terms of the FATF international standards but then Article 18 only applied the identification and verification processes. With the amendments of the AML/CFT Law Article 17 has been replaced whereby while maintaining some of the main elements of CDD, makes it mandatory on reporting subjects to apply these requirements. Article 17 as amended requires all reporting subjects to apply a risk-based approach in customer acceptance with the application of enhanced measures for higher risk; the identification of the beneficial owner and verification thereof with an understanding of the ownership and control structure of the customer; and obtaining information on the nature and intended purpose of the relationship together with ongoing monitoring.</p> <p>Notwithstanding the amendments to Article 17(1) of the AML/CFT Law, which is a positive step forward, Article 17(2) still refers to the identification and verification requirements rather than the application of the full CDD measures as now defined in Article 17(1) – FATF Recommendation 5.</p>
Recommendation of the Assessment Report	<p><i>4. Amend Article 18(1) of the AML/CFT Law to prohibit the opening and maintenance of accounts in fictitious names through the addition of the word 'and accounts in fictitious names' at the end of the paragraph.</i></p> <p>See also § 580 of the AR.</p>

<b>Recommendation 5 (Customer due diligence)</b> <b>Regarding financial institutions</b>	
<b>Measures taken to implement the Recommendation of the Report</b>	<p>According to the Kosovo authorities, Article 18 of the basic AML/CFT Law, paragraph (1) is reformulated as follows – EC 5.1:</p> <p><i>1. Banks, financial and credit institutions are prohibited from maintaining fictitious accounts. Banks and financial institutions shall apply measures determined by this law for clients and their accounts that are fictitious, and such accounts cannot be used for transaction purposes unless the owners or beneficiaries of fictitious accounts are subjected to those measures as soon as possible.</i></p> <p>According to the English version of the amended AML/CFT Law available to the assessment team, the new text of Article 18(1) refers to ‘anonymous’ accounts similar to previous Article 18(1). The assessment team understands that the amendments to Article 18(1) were more intended to extend the application of CDD measures to ‘anonymous’ accounts. There is a difference between ‘anonymous accounts’ and ‘accounts in fictitious names’. As defined in the AR, accounts in fictitious names could be similar to numbered accounts but carry a fictitious name as opposed to a predetermined number. However numbered accounts are easily identified and allowed under both the EU and the FATF Standards provided that full CDD measures are applied accordingly. Numbered accounts are mainly used in private banking and should be subject to enhanced monitoring both by the institution and the supervisory authorities. Accounts in fictitious names are allowed under the EU Third AML Directive with similar conditions as for numbered accounts but such accounts are prohibited by the FATF Standards. Therefore, in the light of the above, the assessment team is of the opinion that this issue has not been addressed and again urges the Kosovo authorities to reconsider this proposal.</p>
<b>Recommendation of the Assessment Report</b>	<p><i>5. Review paragraph (2.2.2 – threshold for wire transfers) and paragraph (2.2.3 – doubts on veracity of previously obtained identification data) of Article 17 of the AML/CFT Law to remove their subjectivity to interpretation and ensure that the measures there-under are applied in the appropriate circumstances.</i></p> <p>See also § 592 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Although parts of Article 17 of the AML/CFT Law have been recently amended, no amendments were introduced to its paragraphs (2.2.2) and (2.2.3), hence the ambiguity and subjectivity to interpretation of these two paragraphs as identified in the AR remain – EC 5.2.</p> <p>The assessment team strongly urges the Kosovo authorities to reconsider this recommendation aiming to remove any legal ambiguity and subjectivity to interpretation and thus improve compliance of the AML/CFT Law with the international standards.</p>
<b>Recommendation of the Assessment Report</b>	<p><i>6. A review of the distribution and application of the United Nations and other lists of designated persons and entities.</i></p> <p>See also §§ 593, 778 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not provided any information on measures taken in this regard – EC 5.2.</p>
<b>Recommendation</b>	<p><i>7. A review of Rule X and the Advisory Letter 2007/1 of the CBK, should</i></p>

<b>Recommendation 5 (Customer due diligence)</b> <b><i>Regarding financial institutions</i></b>	
of the Assessment Report	<p><i>make references to the two publications of the Basle Committee on Banking Supervision on customer due diligence which should serve as the source documents for procedures for customer identification and verification of that identification.</i></p> <p>See also § 598 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>The proposed Regulation 16 to be issued by the CBK, repealing and replacing the previous Rule X, in providing guidance for the identification and verification processes when opening new accounts or when reassessing existing accounts, makes reference to the publications of the Basel Committee on Banking Supervision and encourages banks and financial institutions to consult these publications in addition to the guidance given in the Regulation – EC 5.3.</p>
Recommendation of the Assessment Report	<p><i>8. A general review of the AML/CFT Law in specific areas related to enhanced and reduced CDD within the context of the application and guidance on the risk based approach and the harmonisation of provisions as indicated in the respective Essential Criteria.</i></p> <p>See also §§ 621, 634, 644, 654, 663, 670, 681-683, 690, 693, 697, 698, 704, 710 and 764, 715, 718-719, 729, 746, and 752 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p><u>Paragraph 621 (EC 5.5) – identification of beneficial owner:</u> Amended Article 17(1) of the AML/CFT Law now requires reporting subjects to identify the beneficial owner and/or a natural person or persons who directly or indirectly control 20% or more of a legal person. Where reporting entities consider that the risk of ML or TF is high, they shall take reasonable measures to verify his or her identity so that the institution or person covered by this law is satisfied that it/he/she knows who the beneficial owner is. It is understood that in its new Regulation replacing Rule X the CBK will be providing guidance accordingly.</p> <p>While the FATF Standards require that financial institutions take reasonable measures to verify the identity of the beneficial owner in all circumstances, the amended Article 17(1) of the AML/CFT Law limits this obligation only to instances where the reporting subject determines that the risk of ML or the FT is high.</p> <p>While the CBK guidance in this respect is a positive step, the Kosovo authorities should note that it covers only the financial sector and hence all other sectors of reporting subjects under Article 16 of the AML/CFT Law remain without guidance.</p> <p><u>Paragraph 634 (EC 5.5.2) – ownership and control structure:</u> Further to the identification of the beneficial owner in the case of legal persons and legal arrangements, the amended Article 17(1) of the AML/CFT Law requires that as regards legal persons, trusts and similar legal arrangements, reporting subjects take risk-based and adequate measures to understand the ownership and control structure of the customer.</p> <p><u>Paragraph 644 (EC 5.6) – purpose and intended nature of business relationship:</u> The amended Article 17(1) of the AML/CFT Law, which is mandatory to all reporting subjects, requires all reporting entities to obtain information on the purpose and intended nature of the business relationship.</p>

<b>Recommendation 5 (Customer due diligence)</b> <b><i>Regarding financial institutions</i></b>	
	<p><u>Paragraph 654 (EC 5.7) – ongoing due diligence on business relationship:</u> The amended Article 17(1) of the AML/CFT Law obliges reporting entities to monitor the business relationship, including scrutiny of transactions made during the relationship to ensure that the transactions being conducted are consistent with the reporting entity's or person's knowledge of the customer.</p> <p><u>Paragraph 663 (EC 5.7.1) – ongoing scrutiny of transactions:</u> please refer to reply to Paragraph 654 above.</p> <p><u>Paragraph 670 (EC 5.7.2) – ongoing maintenance of CDD documents, data and information:</u> With respect to enhanced due diligence, Article 21(1) of the amended AML/CFT Law requires reporting subjects to ensure that records and other information are kept up to date. The proposed Regulation replacing the current Rule X, under Article 11, shall require that banks and financial institutions collect information, on an ongoing basis, regarding the anticipated purpose and intended nature of the business relationship. Documents, data, or information collected under the CDD process shall be kept up to date and relevant by undertaking periodic reviews of existing records, including transaction records. Thus, whereas the financial sector is required to undertake ongoing maintenance of documents, data and information under CDD process, in the case of other sectors of reporting subjects the obligation remains applicable only under enhanced due diligence circumstances.</p> <p>The assessment team urges the Kosovo authorities to reconsider this proposal and ensure that the obligation for reporting subjects to guarantee that records and other information are kept up to date is clearly applicable to all reporting subjects under the AML/CFT Law.</p> <p><u>Paragraphs 681 to 683 (EC 5.8) – Risk: enhanced due diligence:</u> Article 17(1) of the amended AML/CFT Law requires that all reporting subjects shall determine, on an ongoing basis, the risk of ML and TF presented by their customers and any other persons to whom they provide financial services. Where reporting subjects determine that the risk of ML and TF is elevated, they shall take the measures set out in paragraph (1) of Article 21, in addition to the measures set out in this Article. Moreover, Article 21 requires that when the reporting subjects determine, in accordance with paragraph (1) of Article 17, that the risk of ML or TF is elevated, they shall apply reasonable enhanced measures to monitor the business and risk profile, including the source of funds, and ensure that records and other information are kept up to date. The competent regulator may issue binding instructions in connection therewith. In this respect, the proposed Regulation which will replace Rule X and be only applicable to banks and financial institutions incorporates various sections that deal with risk. To this effect, the proposed Regulation includes various appendices with risk matrices that include business related and a customer-relationship based risk assessments; establishing the financial institution's risk appetite; and identifying PEPs, together with templates for a Customer Acceptance Policy and Customer Business and Risk Profile.</p> <p>While acknowledging the measures being taken by the CBK with regard to the implementation of a risk-based system, the assessment team emphasis the</p>



<b>Recommendation 5 (Customer due diligence)</b> <b><i>Regarding financial institutions</i></b>	
	<p>need for the CBK as the delegated competent body for AML/CFT purposes to ensure the effective implementation of its Regulation once this is published and comes in force.</p> <p><u>Paragraph 690 (EC 5.9) – Risk: application of simplified or reduced measures:</u> The amended AML/CFT Law has remained silent on the application of simplified or reduced CDD measures under specific circumstances. As identified in the AR the application of simplified due diligence is not mandatory. The only reference to simplified CDD is however found under Article 31A of the amended law which deals with offences and the imposition of pecuniary penalties. In item 1.14 the Law states that a pecuniary penalty may be imposed for failure to obtain the required customer data within the framework of the <i>simplified</i> CDD or failure to obtain such data in the prescribed manner with this Law.</p> <p>The provisions for the imposition of a pecuniary penalty in circumstances that are not covered as an obligation – application of simplified due diligence - are ambiguous and create legal uncertainty in the AML/CFT Law as amended.</p> <p><u>Paragraph 693 (EC 5.10) - Risk: application of simplified or reduced measures to customers from other jurisdictions:</u> The option for applying simplified or reduced measures has not been provided for in the amended AML/CFT Law and therefore there is no requirement for dealing with customers from other jurisdictions.</p> <p><u>Paragraph 697 &amp; 698 (EC 5.11) - Risk: Applying reduced or simplified measures where there is suspicion or higher risk scenarios:</u> The option for applying simplified or reduced measures has not been provided for in the amended AML/CFT Law and therefore there is no requirement for dealing with situations where there is a suspicion. The AML/CFT Law is however mandatory in applying enhanced CDD measures in higher risk scenarios.</p> <p><u>Paragraph 704 (EC 5.12) – Risk: Guidance issued by competent authorities:</u> The proposed Regulation replacing Rule X to be issued by the CBK provides adequate and effective guidance for banks and financial institutions on the risk-based approach on the basis of best practices on developing risk methodologies. To this effect, the proposed Regulation includes various appendices with risk matrices that include business related and a customer-relationship based risk assessments; establishing the financial institution’s risk appetite; and identifying PEPs, together with templates for a Customer Acceptance Policy and Customer Business and Risk Profile.</p> <p>The proposed Regulation to be issued by the CBK shall be applicable to all banks and financial institutions. Consequently all other sectors that fall within the definition of reporting subject under Article 16 of the AML/CFT Law remain uncovered with no guidance for developing and implementing effective risk-based methodologies to assess risks imposed by their customers.</p> <p><u>Paragraph 710 (EC 5.13) – Timing of verification:</u> The AR raises concerns on the timing of the verification of the identification of the beneficial owner as,</p>

<b>Recommendation 5 (Customer due diligence)</b> <b><i>Regarding financial institutions</i></b>	
	<p>consequent to the absence of the application of full CDD measures, the identification of the beneficial owner itself is questioned. Pursuant to amended Article 17 of the AML/CFT Law all reporting subjects are now required, among other obligations therein, to identify the beneficial owner and/or a natural person or persons who directly or indirectly control 20% or more of a legal person. Moreover, where reporting entities consider that the risk of ML or TF is high, they shall take reasonable measures to verify his or her identity so that the institution or person covered by this law is satisfied that it/he/she knows who the beneficial owner is.</p> <p>The assessment team notes that while the FATF Standards require that financial institutions take reasonable measures to verify the identity of the beneficial owner in all circumstances, the amended Article 17(1) of the AML/CFT Law limits this obligation only to instances where the reporting subject determines that the risk of ML or the FT is high.</p> <p><u>Paragraph 764 (EC 5.13 and Article 7b EU Directive) – timing of verification:</u> The AR recommends that the provisions of both articles 17 and 18 be harmonised in terms of the threshold and timing for verification of occasional transactions. The objective of this recommendation was twofold. First to address the threshold - Article 17 referred to single occasional transactions or linked occasional transactions <i>in an amount equal to or above ten thousand (10,000) Euro</i> for identification purposes while Article 18 referred to the verification process for such transactions that are of <i>more than ten thousand (10,000) Euro</i>. The recent changes to the AML/CFT Law for both articles 17 and 18 have addressed this issue. Second, while Article 17 imposes the identification obligation for linked occasional transactions where the total amount is not known <i>as soon as the amount becomes known or the threshold is reached</i>, Article 18 imposes the verification obligation for linked occasional transactions on behalf of one person or entity if these <i>total more than ten thousand (10,000) Euro in a single day</i>. The recent changes to the AML/CFT Law for both articles 17 and 18 have not addressed this issue. Indeed, if anything, the amendments have confirmed this issue.</p> <p>The Kosovo authorities are again urged to harmonise articles 17 and 18 of the AML/CFT Law to ensure that both the identification and verification processes for linked occasional transactions that reach the established threshold are undertaken simultaneously when the established threshold is reached either in a single day or over a period – refer also to FATF Recommendation 5 (EC 5.13). Moreover, this anomaly has an impact on the reporting obligation under Article 22 of the AML/CFT Law which requires reporting of suspicious occasional transactions whether single or linked when the threshold is reached <i>within a single day</i>.</p> <p><u>Paragraph 715 (EC 5.14) - Timing of verification: Option to complete the verification process following the establishment of the business relationship:</u> This option has not been adopted by the Kosovo authorities in the latest amendments to the AML/CFT Law and hence Article 18 remains silent on this issue.</p> <p><u>Paragraphs 718 &amp; 719 (EC 5.14.1) - Timing of verification: Risk management procedures:</u> Since the option to complete the verification process following the establishment of the business relationship has not been</p>

<b>Recommendation 5 (Customer due diligence)</b> <b><i>Regarding financial institutions</i></b>	
	<p>adopted, there is no need to require reporting subjects to develop risk management procedures in this respect.</p> <p><u>Paragraph 729 (EC 5.15) – Failure to satisfactorily complete CDD:</u> The AR notes that in the context of applying the full CDD measures through Article 17, the provisions of Article 18(6) should be reviewed accordingly and brought in line with the requirements under the FATF Standards for failure to complete full CDD measures by referring to the relevant items of the CDD process as opposed to the verification process only. The assessment team is informed that there have been no amendments to Article 18(6) of the AML/CFT Law in this respect and therefore reporting subjects are only required to terminate the business relationship, close any account and return the property to its source and report to the FIU if the reporting subject is unable to verify the identity.</p> <p>The Kosovo authorities may wish to reconsider this proposal through the necessary amendments to Article 18(6) of the AML/CFT Law thus enhancing harmonisation of the preventive measures under the Kosovo legislation to those under the international standards.</p> <p><u>Paragraph 746 (EC 5.17) – ongoing application of CDD to existing customers:</u> The assessment team has recommended that as part of the review of the application of the full CDD measures under Article 17, the AML/CFT Law should include a specific provision that the CDD requirements are to be applied on an ongoing basis to existing customers, on the basis of materiality and risk. Paragraph (1.1) of Article 17 of the AML/CFT Law as recently amended now requires all reporting subjects to determine, on an ongoing basis, the risk of ML and TF presented by their customers and any other persons to whom they provide financial services. A broad interpretation of this amendment in the light of the requirement to be <i>on an ongoing basis</i> should cover this obligation.</p> <p>The assessment team however encourages the FIU and other competent authorities under the AML/CFT Law to ensure that they provide guidance to the reporting subjects in this respect.</p> <p><u>Paragraph 752 (EC 5.18) – application of CDD measure to existing anonymous accounts:</u> According to the analysis of Recommendation 5 in the AR, it is advisable that a revision of the AML/CFT Law includes provisions for the application of full CDD measures to any existing anonymous accounts as well. Paragraph (1) of Article 18 of the AML/CFT Law as amended, in prohibiting the maintenance of anonymous accounts or anonymous passbooks, requires banks and financial institutions to apply the measures set out in the Law to customers and their accounts who are anonymous, and prohibits such accounts from being used to process transactions until the owners and beneficiaries of existing anonymous accounts or anonymous passbooks are identified and subjected to the CDD measures.</p> <p>The assessment team welcomes this amendment to Article 18, even though in the course of the Cycle 1 assessment the authorities informed that in Kosovo there were no anonymous accounts as the opening and maintaining of such accounts has always been prohibited.</p>
(Other) changes	The AR commented on the requirement for banks and financial institutions to

<b>Recommendation 5 (Customer due diligence)</b> <b>Regarding financial institutions</b>	
since the last evaluation	<p>undertake a risk assessment of their vulnerabilities and risks related to ML and FT with respect to the services, products, transactions and geographical location where they do business. Such requirement will be included as part of the CBK revised Rule X into a new Regulation with an obligation to this effect and which will also include a risk matrix template that banks and financial institutions will apply according to their business model and business profile which includes products, services, transactions and geographical locations.</p> <p>The assessment team looks positively on this obligation under the new Regulation but emphasises that it should be followed with a thorough assessment by the CBK to ensure its effective implementation.</p>

<b>Recommendation 10 (Record keeping)</b> <b>Regarding financial institutions</b>	
<b>Rating: Non-Compliant (NC)</b>	
Recommendation of the Assessment Report	<p><i>1. Amending paragraph (6.2) of Article 17 in connection with the timing of the retention period for a series of linked occasional transactions.</i></p> <p>See also § 871 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue in the recent amendments to the AML/CFT Law.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order for the industry to be guided on the retention of records for occasional transactions - EC 10.1.</p>
Recommendation of the Assessment Report	<p><i>2. Inserting a new paragraph (7) to Article 17 empowering the FIU to extend the retention period in specific cases.</i></p> <p>See also § 872 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue in the recent amendments to the AML/CFT Law.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order for the FIU to have the legal background for extending the retention period in accordance with international standards – EC 10.2.</p>
Recommendation of the Assessment Report	<p><i>3. Further guidance on the method of retaining records – electronic, physical, or otherwise – would further benefit the system.</i></p> <p>See also § 878 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The CBK has informed that the proposed Regulation replacing Rule X will retain and further strengthen the previous guidance under the Rule taking account of the recommendations in the AR – EC 10.1.1.</p>
Recommendation of the Assessment Report	<p><i>4. Amending paragraph (6.1) of Article 17 consistent with paragraph (6) of Article 18.</i></p> <p>See also §§ 892-893 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue in the recent amendments to the AML/CFT Law – EC 10.2.</p> <p>The assessment team urges the authorities to address this issue at the earliest</p>

<b>Recommendation 10 (Record keeping)</b> <b><i>Regarding financial institutions</i></b>	
	in order to ensure legal consistency within the same law. The assessment team further calls upon the authorities to amend the law in order to provide the FIU with legal authority to extend the retention period for identification documents, account files and business correspondence.
Recommendation of the Assessment Report	<p><i>5. Harmonising Article 17 and Article 20 on the availability of retained records to competent authorities.</i></p> <p>See also § 900 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>The Kosovo authorities have not addressed this issue in the recent amendments to the AML/CFT Law and hence the inconsistency of provisions within the same law remains – EC 10.2.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order to ensure legal consistency within the same law.</p>
(Other) changes since the last evaluation	

<b>Recommendation 13 &amp; Special Recommendation IV</b> <b>(Suspicious transaction reporting)</b> <b><i>Regarding financial institutions</i></b>	
<b>Rating: R.13 - Partially Compliant (PC); SR.IV - Non-Compliant (NC)</b>	
Recommendation of the Assessment Report	<p><i>1. Amending the definition of ‘suspicious acts and transactions’ to include situations where information available indicates that a person or entity may be involved in criminal activities.</i></p> <p>See also § 924 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>Although the recent changes to the AML/CFT Law have amended the definition of ‘suspicious acts and transactions’ they have not however taken into account this proposal. Moreover, changes to Article 22 of the AML/CFT Law still require the reporting obligations for ‘suspicious acts and transactions’ and do not separately take account of the proposal to include situations where information available indicates that a person or entity may be involved in criminal activities – EC 13.1.</p> <p>The assessment team urges the Kosovo authorities to address this issue at the earliest in order to ensure legal clarity when defining ‘acts’ within the definition of ‘suspicious acts and transactions’.</p>
Recommendation of the Assessment Report	<p><i>2. Amending Article 22 to introduce the reporting obligation for the financing of terrorism.</i></p> <p>See also §§ 938-939 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>The AR identified and determined that the reporting obligation for reporting subjects to report acts or transactions that may be related to the FT is missing from the AML/CFT Law. While some minor amendments have been introduced to Article 22, which establishes the reporting obligation under the AML/CFT Law, the major amendment required for Kosovo to comply with the international standards for the reporting of acts or transactions suspected to be related to the FT has remained unaddressed – EC 13.2 and EC SRIV.1.</p> <p>This is a major shortcoming in the AML/CFT Law and preventive regime in Kosovo. Therefore, the assessment team strongly urges the Kosovo</p>

<b>Recommendation 13 &amp; Special Recommendation IV</b> <b>(Suspicious transaction reporting)</b> <i>Regarding financial institutions</i>	
	authorities to address this issue urgently, even though the FIU believes that in practice such reporting would still be done.
Recommendation of the Assessment Report	<p>3. <i>Amending the definition of ‘suspicious acts or transactions’ to include attempted acts and transactions.</i></p> <p>See also §§ 950-951 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>Pursuant to Article 2 paragraph 1.35 of the amended AML/CFT Law the definition of ‘suspicious act and transaction’ has been modified to mean: <i>an act or transaction, or an attempted act or transaction, that generates a reasonable suspicion that the property involved in the act or transaction, or the attempted act or transaction, is proceeds of crime and shall be interpreted in line with any guidance issued by the FIU on suspicious acts or transactions.</i> The assessment team is not aware of any guidance being issued by the FIU since the AR – EC 13.3 and EC SRIV.2.</p>
Recommendation of the Assessment Report	<p>4. <i>FIU to undertake measures to ensure that CTRs that raise suspicions are also reported as STRs and to create awareness accordingly</i></p> <p>See also § 926 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>Given that the FIU has issued no guidance on the reporting obligation since the AR, it can be concluded that the FIU has taken no measures to address this issue – EC 13.1.</p> <p>Although no evidence to this effect has been identified by the assessment team in the course of the Cycle 1 assessment, experience has shown that this is often the case particularly when considering a wide gap in the number of CTRs and STRs filed and the use of CTRs as information, as is the case with the FIU in Kosovo. The assessment team therefore strongly urges the FIU to assess this situation and provide guidance to the reporting subjects accordingly.</p>
(Other) changes since the last evaluation	<p>During the workshop held in Pristina on 30 October 2013, the FIU informed that reporting had improved especially from banks. Indeed, there is an increase in STRs coming from banks.</p> <p>Administrative Instruction No 02/2014 was issued by the FIU in January 2014 dealing with the exclusion from reporting of certain categories of transactions in terms of paragraph (3) of Article 22 of the AML/CFT Law. The Instruction exempts four categories of transactions related to payment of municipal obligations; payment of taxes; payment of mandatory insurance policies; and payments for studying purposes.</p> <p>The FIU reminded that compliance inspections are now possible since March 2013 following the amendments to the AML/CFT Law appointing the FIU as the supervisory authority for all reporting subjects, with the exception of construction companies, and the subsequent MoU signed by the FIU with the CBK delegating to the latter supervisory powers for the entire financial sector in terms of the new Article 36A of the AML/CFT Law.</p> <p>Finally, the FIU informed that its capacities have been also enhanced (in particular IT improvements). However, the FIU still lacks necessary capacity to check STRs.</p>

<b>Special Recommendation II (Criminalisation of terrorist financing)</b>	
<b>Rating: Partially Compliant (PC)</b>	
Recommendation of the Assessment Report	<p><i>1. The duplicate criminalization of FT (in the CC on the one hand and in the recently amended AML/CFT Law on the other) should urgently be addressed by Kosovo legislation (involving both the Ministry of Justice and the Ministry of Finance) so as to provide for a single, autonomous and comprehensive FT offence that meets all aspects of SR.II.</i></p> <p>See also § 339 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>The duplicate criminalization of FT is an exceptional issue in this Report inasmuch as it is an example of how a moderately applicable legal framework can get more complicated and less, if at all, functional following the adoption of the AR – EC SR.II.1.</p> <p>The crucial measure that was taken in relation to SR II is the introduction of a new, separate FT offence in Article 36.B of the AML/CFT Law by virtue of the recent amendment. While from a certain aspect it could be considered as a positive development given that the new offence is significantly more in line with the relevant FATF standards, it seems to have been inserted into the <i>corpus juris</i> of Kosovo without the necessary circumspection, paying no attention to the harmony and mutual applicability of the respective legal framework.</p> <p>The new Article 36.B was already described and analysed, in advance, by the AR as it had already been provided in its draft version to the assessment team and its text has not changed upon adoption. The assessment team expressed concerns on the then draft legislation, underlining that there had already existed a range of terrorism-related provisions (offences and definitions) in the CC that provided for a comprehensive coverage of the area, including the criminalization of terrorist financing in Article 138 and the fact that the new FT offence would be out of this context would inevitably lead to a situation where the FT offence can be found in one piece of legislation whereas all terrorism-related offences and the definitions in another.</p> <p>Despite the warnings, the amending legislation was adopted as it had been drafted and hence all concerns the assessment team had harboured became reality. What is more worrisome, the amendment of the AML/CFT Law, while introducing the new FT offence, did not amend or repeal any of the competing and/or overlapping CC articles. As a result, the existing CFT framework in the Special Part of the CC remained intact and now there are two competing criminal offences, one in the CC and the other in the AML/CFT Law, under which FT activities could equally be subsumed. It is an explicit case of legal uncertainty that pose a serious risk to the effective application of the respective provisions. The new FT offence in Article 36.B is an entirely “foreign body” within the AML/CFT Law both in terms of its location and applicability within the law: the new Article 36.B and the other three new articles are put at the end of Chapter IV (Sanctions and offences) in a seemingly random order (e.g. Article 36.A deals with CBK’s compliance inspection and Article 36.C with the consequences of intimidation regarding reporting suspicious activity or transactions...) using legal terms that would require proper explanation or definition (such as “individual terrorist”) that is entirely missing.</p> <p>It should have been carried out beforehand, but it is still not too late for the Kosovo authorities (involving both the MoJ and the MoF) to urgently start communication and coordination in this field, to analyze the situation, explore the overlapping or redundant areas in the respective pieces of</p>

<b>Special Recommendation II (Criminalisation of terrorist financing)</b>	
	legislation and to find an effective legislative solution by which the duplicate criminalization of FT can be eliminated and a single, autonomous and comprehensive FT offence can be achieved.
Recommendation of the Assessment Report	<p>2. <i>Eradicate the bifurcation of definitions for “terrorist financing” in the AML/CFT Law on the one hand and the CC on the other by deleting Article 2 paragraph 1.36 of the AML/CFT Law so that Article 138 CC (the FT offence) remains the one and only definition of FT for any purposes (even if the name of the offence is not exactly “terrorist financing”).</i></p> <p>See also §§ 340 - 341 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The recent amendments made to the AML/CFT Law did not address the duplication of definitions criticised in the AR. On the contrary, the introduction of the new FT offence in Article 36.B as a third source of definition just added to the confusion and uncertainty in this field, as a result of which the issue is more valid now than it was in the AR – EC SR II.1.</p>
Recommendation of the Assessment Report	<p>3. <i>Revise the current coverage of “terrorist act” (“act of terrorism” etc.) and redefine it in full compliance with Article 2(1) of the FT Convention, including</i></p> <ul style="list-style-type: none"> <li>• <i>providing for the complete and general coverage of the “generic” offence of terrorism</i></li> <li>• <i>abandon requiring the extra purposive element to the “treaty offences” as subject of FT</i></li> <li>• <i>make it clear that the definition of “terrorist act” in Article 135.1 extends to the terrorism-related offences (e.g. recruitment for terrorism) so that financing of these offences can also be considered a FT offence</i></li> </ul> <p>See also §§ 334-336 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>One of the earlier draft versions of the recent amendment to the AML/CFT Law still included a detailed definition for “terrorist act” which was then intended to be added as new paragraph 1.42 to Article 2 of the basic law. Considering that this term and a number of closely related issues had already been covered and defined by the CC, the assessment team did not support the introduction of a competing, alternative definition into a different piece of legislation. Finally, the lawmakers of Kosovo came to the same conclusion. As a result, the final version of new paragraph 1.42 when defining “terrorist act” simply makes reference to this term as it is defined in the CC. In its present format, the new paragraph is rather neutral (it has no influence on the compliance).</p> <p>The scope of the recently amended AML/CFT Law does not go beyond providing for the core FT offence (Article 36.B) while the underlying legislation including all the relevant definitions and related offences continue to be provided by the CC. However, the Code has not been amended, to any extent, since the beginning of the year 2013 and therefore no changes could have been made to the parts that are relevant in the context of this recommendation. Likewise, the assessment team is not aware of any draft amendment in proceeding that would address this issue, which consequently remains as identified in the AR – EC SR II.1.</p>
Recommendation of the Assessment	<p>4. <i>The actions listed below all refer to the FT criminalization as it is</i></p>



<b>Special Recommendation II (Criminalisation of terrorist financing)</b>	
Report	<p><i>currently provided by the CC :</i></p> <ul style="list-style-type: none"> <li><i>criminalize the financing of an individual terrorist (for any purpose) in the FT offence</i></li> <li><i>revise and reformulate the inconsistent and/or redundant terminology used in FT-related provisions</i></li> </ul> <p>See also §§ 337-338, 333, 340, 347 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The deficiencies addressed by this recommendation can be found in the CC which, however, has not been amended, to any extent, since the beginning of the year 2013 and therefore no changes could have been made to the respective parts either – EC SR.II.1 &amp; EC SR.II.3.</p> <p>Certainly, at least the first bullet point of this recommendation (covering the financing of an individual terrorist) is, from a technical aspect, addressed by the new FT offence in Article 36.B of the AML/CFT Law but it suffers, as described more in details above, from structural and conceptual deficiencies that preclude, at least for the time being, its effective applicability.</p> <p>The assessment team suggests that these issues should be revisited and resolved in the framework of the indispensable intergovernmental coordination in this matter, as recommended above. (It is yet to be decided which FT offence remains and which will be abandoned etc.) Until then, however, neither of the competing pieces of legislation should be amended with no consideration to the other.</p>
(Other) changes since the last evaluation	

### 2.3. Key recommendations<sup>9</sup>

<b>Recommendation 3 (Confiscation and provisional measures)</b>	
<b>Rating: Non-Compliant (NC)</b>	
Recommendation of the Assessment Report	<p><i>1. The Criminal Procedure Code should be amended to include provisions that indicate the standard of proof required to allow for the confiscation of instrumentalities intended for the use in a criminal offence.</i></p> <p>See also § 351 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue yet – EC 3.1.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order to indicate the standard of proof required to allow for the confiscation of instrumentalities intended for the use in a criminal offence and therefore clear the doubts about the possibility of their final confiscation.</p>
Recommendation	<i>2. Kosovo should harmonize the norms of the CC and CPC with regard to</i>

<sup>9</sup> References to the FATF Recommendations in this report refer to the 2003 FATF Forty Recommendations and the Nine Special Recommendations on Terrorist Financing (2001).

The key Recommendations as defined in the FATF procedures are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR.I, SR.III and SR.V.

<b>Recommendation 3 (Confiscation and provisional measures)</b>	
of the Assessment Report	<p><i>third party confiscation. In this case priority should be given to the framework set out in the CC, which is generally in line with international standards, and would not pose effectiveness problems in terms of implementation, contrary to the norms of the CPC.</i></p> <p>See also §§ 354, 357 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue yet – EC 3.1.1.b.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order to resolve the conflict of the CPC provisions with the CC which creates a hindrance to the implementation of the norms contained in the CC, by setting a higher standard of proof, which could ultimately impact the effectiveness of law enforcement as and when they undertake confiscation measures.</p>
Recommendation of the Assessment Report	<p><i>3. Kosovo should revise the provisions of the CPC regulating the protection of the rights of bona fide third parties. The standard of proof required from the bona fide to prove their legitimate rights and intentions with regard to property should be lowered.</i></p> <p>See also §§ 371-372 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue yet – EC 3.5.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order to lower the standard of proof required from the bona fide to prove their legitimate rights and intentions with regard to property as the actual standard oftentimes makes it impossible.</p>
Recommendation of the Assessment Report	<p><i>4. Kosovo should institute mechanisms prevent or void actions, contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.</i></p> <p>See also § 373 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue yet – EC 3.6.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order to prevent or void actions, contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.</p>
Recommendation of the Assessment Report	<p><i>5. The judiciary should be allowed and encouraged to take a proactive approach in taking the necessary measures, where the prosecutor has clearly failed in an obvious setting of a specific case to follow through with seizure and confiscation of known instrumentalities/proceeds of crime.</i></p> <p>See also § 401 of the AR</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Law No. 04/L-140 on extended powers for confiscation of assets acquired by criminal offence promulgated on 26 February 2013 specifies extended powers for confiscation of assets acquired by the persons who have committed a criminal offence when the procedures foreseen in the CPC are not sufficient.</p> <p>This addresses the cases where, after a final judgment, the state prosecutor can demonstrate that the defendant has acquired other assets that have not been material benefits of the criminal offence for which the defendant has been convicted, that those assets were obtained after 31 December 1999, that</p>

<b>Recommendation 3 (Confiscation and provisional measures)</b>	
	<p>the defendant's legitimate incomes was insufficient to enable the purchase of those other assets, that the defendant was engaged in a pattern of activity similar to that with which he was convicted and that this pattern of activity would enable the purchase of those assets.</p> <p>This Law also defines the conditions under which assets owned by a deceased defendant or a fugitive may be confiscated and how attachment order or temporary confiscation may be used during suspension of an investigation.</p> <p>When a criminal proceeding may not be continued due to the death of the defendant, but assets are subject to an Attachment Order, Temporary Confiscation, or an indictment has been filed which lists assets subject to confiscation, the Court upon the proposal of the state prosecutor or the injured party may continue the confiscation proceeding if the value of the asset subject to confiscation exceeds €1,000; and it is in the interest of justice to continue the proceedings</p> <p>If an indictment has been filed which lists assets subject to confiscation and the defendant according to this indictment is a fugitive or becomes a fugitive, the Court upon the proposal from the state prosecutor may continue the criminal procedure if the state prosecutor has grounded suspicion that the defendant is a fugitive, the value of the asset subject to confiscation is more than €5.000; and it is in the interest of justice to continue the proceedings.</p> <p>If the State Prosecutor renders a ruling to suspend an investigation under Article 157 of the CPC, but if during the criminal proceeding assets were attached by an Attachment Order or were made subject to Temporary Confiscation, the State Prosecutor shall ask the pre-trial judge to continue those measures. The pre-trial judge shall authorize the attachment order or temporary confiscation against the defendant for 6 months if the prosecutor has grounded cause that the defendant committed the criminal offence and that the asset was acquired by that criminal offence, if the value of the asset subject to confiscation exceeds €10,000; and if it is in the interest of justice to continue the proceedings. The state prosecutor may renew his request to the court once again for 6 months. If the investigation has not been resumed by the expiration of the court's authorization, the defendant's attorney may request the pre-trial judge to terminate the Attachment Order or Temporary Confiscation.</p> <p>The assessment team welcomes the adoption of the new Law. However, it considers that this act does not allow the judiciary to take a proactive approach in taking the necessary measures where the prosecutor has clearly failed in an obvious setting of a specific case to follow through with seizure and confiscation of known instrumentalities/proceeds of crime.</p> <p>Therefore, the assessment team urges the Kosovo authorities to take the necessary measures in order to address this issue.</p>
Recommendation of the Assessment Report	<p><i>6. Kosovo should implement the relevant components of the AML/CFT strategy as soon as possible, particularly to enhance the role of financial investigations, asset recovery mechanisms and interagency coordination and cooperation in these fields.</i></p> <p>See also § 402 of the AR</p>
Measures taken to implement the Recommendation of the Report	<p>The Department for Investigation of Economic Crimes within the KP stated that regular meetings were held at the central and local levels to better manage cases and to have a better confiscation regime by creating a joint system regarding better systematization and management of cases. However,</p>

<b>Recommendation 3 (Confiscation and provisional measures)</b>	
	<p>it will take more time to improve the relevant legislation.</p> <p>The assessment team takes note of this information. However, no information on the outcome of these meetings or any time frame has been provided.</p> <p>Therefore, the assessment team reiterates its recommendation and encourages the Kosovo authorities to continue the implementation of the relevant components of the AML/CFT strategy, particularly to enhance the role of financial investigations, asset recovery mechanisms and interagency coordination and cooperation in these fields.</p>
Recommendation of the Assessment Report	<p><i>7. The National Office for Economic Crimes Enforcement, foreseen under the strategy should become staffed and operational as soon as possible in order to monitor and enhance the effectiveness of interagency cooperation and coordination in the area of financial crime.</i></p> <p>See also § 396 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>It seems that there is an ongoing process 3 recent meetings involving various Kosovo authorities (including, among others, AMSCA) have been held in relation to the National Office for Economic Crimes Enforcement.</p> <p>A MoU between the KPC, KJC, MoJ, MoF, MIA, CBK, KIA and KAA was signed on 22 November 2013. The purpose of this document is to establish the basic principles for the establishment and operation of the NCCEC; to set out the basic principles for his/her mandate and responsibility and to undertake, on their respective behalf, effective cooperation with the NCCEC. This entity will promote, coordinate, monitor, evaluate and report activities of all public and private institutions who are concerned with the prevention, detection, investigation, prosecution and adjudication of crime that generate material benefits by protecting Kosovo financial system from the risk of ML, FT and tax evasion.</p> <p>Following the signature of this MoU, a NCCEC was appointed in January 2014.</p> <p>Apart from the inter-institutional coordination, a draft act is said to be under way but the assessment team has not been given further information on the time frame.</p>
Recommendation of the Assessment Report	<p><i>8. The Asset Management Agency, police, KPC and KJC should be required to keep coordinated statistics with a greater level of detail on the amounts of property frozen, seized, and confiscated relating to ML, FT, criminal proceeds and underlying predicate offences.</i></p> <p>See also §§ 392-393 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>EC 32.2 - The FIU has issued Administrative Instruction No 001/2013 addressing its obligations to compile and maintain comprehensive and meaningful statistics in accordance with the obligations placed upon it by the AML/CFT Law. The Instruction states that the compilation of statistical data, <i>inter alia</i> on confiscated or seized assets in relation to prevention of ML and TF will be done by the FIU and be based on:</p> <ul style="list-style-type: none"> <li>• data that is received at FIU-K as initial information;</li> <li>• data and intelligence reports compiled by FIU-K; and,</li> <li>• data which is received as feedback at FIU-K.</li> </ul> <p>In addition, it had been stated that the NCCEC within the KPC is going to coordinate statistics and collect information. KPC will manage the unified database on statistics covering prosecution services. Each institution will</p>

<b>Recommendation 3 (Confiscation and provisional measures)</b>	
	<p>have a coordinator responsible for statistics.</p> <p>The KP claim that the ECID maintains statistics on sequestration and confiscation of assets acquired through criminal activity, as well as evidences regarding court decisions on freezing and confiscation and that there is a mutual cooperation, whereas the Agency maintains statistics at the national level. Nonetheless, the assessment team has not yet been provided with that sort of statistical information during the evaluation process.</p> <p>Taking all these into account, the assessment team welcomes the provided information and expects that the actions taken will allow to obtain statistics with a greater level of detail and breakdowns on the amounts of property frozen, seized, and confiscated relating to ML, FT, criminal proceeds and underlying predicate offences. Notwithstanding the assessment team notes that the Administrative Instruction does not compel authorities to maintain statistics. This should be addressed, to the greatest extent possible, as recommended in the AR.</p>
Recommendation of the Assessment Report	<p><i>9. There should be consistency of terminology throughout the legislation to dispel ambiguities, including the discrepancies between the AML/CFT Law, CC and CPC.</i></p> <p>See also § 405 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue yet.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order to ensure consistency of terminology throughout the legislation and dispel ambiguities, including the discrepancies between the AML/CFT Law, CC and CPC.</p>
Recommendation of the Assessment Report	<p><i>10. The substitution of non-criminally acquired assets in lieu of confiscating the actual proceeds/material benefit is implied in Article 97.1 of the Criminal Code. This should be redrafted to remove any doubt.</i></p> <p>See also § 352 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue yet – EC 3.1.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order to remove any doubt on the substitution of non-criminally acquired assets in lieu of confiscating the actual proceeds/material benefit.</p>
Recommendation of the Assessment Report	<p><i>11. Temporary Freezing Orders are initiated by the Prosecutor. There are provisions for appeal by those affected by the Order but it is not explicitly stated in the CPC that application for these Orders are ex parte. The language of the relevant provision (Art 274 CPC) should be explicit to remove doubt.</i></p> <p>See also § 360 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue yet – EC 3.2.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order to clearly state that Temporary Freezing Orders initiated by the Prosecutor are <i>ex parte</i>.</p>
Recommendation of the Assessment Report	<p><i>12. Kosovo should consider implementing a system of in rem confiscation of the proceeds of crime. The amendments to the extended law on confiscation do not provide this.</i></p> <p>See also § 377 of the AR.</p>

<b>Recommendation 3 (Confiscation and provisional measures)</b>	
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue yet – AE 3.7 (Additional Elements).</p> <p>The assessment team urges the authorities to address this issue at the earliest in order to consider implementing a system of <i>in rem</i> confiscation of the proceeds of crime.</p>
(Other) changes since the last evaluation	<p>Law No. 04/L-140 on extended powers for confiscation of assets acquired by criminal offence was promulgated on 26 February 2013. It specifies extended powers for confiscation of assets acquired by the persons who have committed a criminal offence when the procedures foreseen in the CPC are not sufficient.</p>

<b>Recommendation 4 (Secrecy laws consistent with the Recommendations)</b>	
<b>Rating: Largely Compliant (LC)</b>	
Recommendation of the Assessment Report	<p><i>1. A new bullet point be added to Article 74(2) of the Law on the CBK, in particular if the CBK is eventually given supervisory powers under and for the purposes of the AML/CFT Law, to clarify the lifting of confidentiality when the CBK provides information to the FIU.</i></p> <p>See also §§ 853, 851 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this recommendation. The assessment team urges the Kosovo authorities to introduce the proposed amendment to the Law on the CBK thus strengthening legal certainty for the lifting of confidentiality for the purposes of the AML/CFT Law. This recommendation now assumes even higher importance due to the changes to the AML/CFT Law where the CBK, through new Article 36A can be and has been delegated supervisory powers for the financial sector for the purposes of the AML/CFT Law by the FIU through the recently signed MoU between the two authorities. According to Article 2 of the MoU, further to the delegation of supervisory authorities <i>The aim of this Memorandum is to enhance and increase the level of cooperation and coordination and to improve the level of security of exchange of information, and to accelerate the process of exchange of information between the Parties, with regard to the prevention and combating of money laundering and terrorist financing.</i></p>
(Other) changes since the last evaluation	

<b>Recommendation 23 (Regulation, supervision and monitoring)</b>	
<b>Rating: Partially Compliant (PC)</b>	
Recommendation of the Assessment Report	<p><i>1. A supervisory legal mandate should be accompanied with a mandate for the appointed supervisory authority to issue binding and mandatory rules and regulations for AML/CFT purposes (for the CBK beyond the powers of the CBK in this regard under Article 85 of the Law on Banks for prudential purposes)</i></p> <p>See also §§ 1107, 1144 of the AR.</p>
<b>Measures taken to implement the</b>	<p>Although the recent amendments to the AML/CFT Law introduced Article 36A with supervisory powers for competent authorities upon delegation by</p>

<b>Recommendation 23 (Regulation, supervision and monitoring)</b>	
<b>Recommendation of the Report</b>	<p>the FIU on the basis of a written agreement, they do not provide further for such delegated authorities to also issue binding and mandatory rules and regulations for those sectors under their delegated supervisory remit for the purposes of the AML/CFT Law. In two instances, under Article 17(3) with reference to the intended purpose and nature of the business relationship and ongoing monitoring and under Article 21(1) in connection with enhanced due diligence, the AML/CFT Law makes references to the <i>competent regulator</i> (without any definition of the term) being empowered to issue a binding instruction to this effect. In the absence of a definition of <i>competent regulator</i> and within the context of new paragraph (1) of Article 30 which empowers the FIU with supervisory powers for all reporting subjects (with the exception of construction companies) and, the term <i>competent regulator</i> would be primarily interpreted to be referring to the FIU, which already has the power to issue administrative directives, instructions and guidance on issues related to ensuring or promoting compliance with the AML/CFT Law to all reporting subjects - within the context of paragraph (1.12) to Article 14 of the AML/CFT Law. Hence, unless the FIU, through its delegation of supervisory powers to the CBK, also delegated its power to issue binding rules and regulations, the CBK, under the present arrangements, and any other authority that receives delegated supervisory powers by the FIU, would not have a legal basis for issuing rules and regulations for the purposes of the AML/CFT Law - EC 23.2.</p> <p>Although this issue is under consideration, it appears that the CBK is of the opinion that its mandate under the Law on Banks to issue Regulations would apply also for the purposes of the AML/CFT Law. The mandate under the Law on Banks is for the CBK to issue rules and regulations for prudential purposes within its legal remit for the prudential supervision of banks and financial institutions within the governance of the Law on Banks. The CBK does not have a direct remit under the AML/CFT Law to supervise the financial sector for the purposes of this Law and, according to Article 36A of the amended AML/CFT Law it can only do so if the FIU delegates such powers to it through a written agreement. Such agreement has been signed but it is silent on the issue of directives, rules or regulations by the CBK for the purposes of the AML/CFT Law.</p> <p>The assessment team therefore again recommends to the Kosovo authorities to enact legislative procedures in this regard. For the sake of repeating itself and the AR, the assessment team reiterates that such powers of the CBK under the Law on Banks apply only for prudential purposes under the Law on Banks and not for the purposes of the AML/CFT Law.</p>
Recommendation of the Assessment Report	<p><i>2. Insert a new paragraph (6) to Article 37 of the Law on Banks requiring a person or entity, alone or in concert with another, divesting of a significant interest or to reduce current shareholding to inform the CBK accordingly</i></p> <p>See also § 1123 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The CBK is still considering this proposal and no amendments to the Law on Banks have been effected yet. The Kosovo authorities may wish to adopt the proposed recommendation as, further to being beneficial for the system itself and being in compliance with international standards, it would contribute to demonstrate the appropriate application of the requirements under the FATF Standards in ensuring that criminals do not penetrate the financial system – EC 23.3.</p>
Recommendation	<p><i>3. Insert a new paragraph (2) to Article 38 of the Law on Banks requiring</i></p>

<b>Recommendation 23 (Regulation, supervision and monitoring)</b>	
of the Assessment Report	<p><i>application of AML/CFT criteria as established under the EU Directive on Mergers and Acquisitions for approval of changes in shareholding</i></p> <p>See also § 1124 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The CBK is still considering this proposal and no amendments to the Law on Banks have been effected yet. The Kosovo authorities may wish to adopt this recommendation as, further to being beneficial for the system itself and would be in consonance with international standards, it contributes to demonstrate the appropriate application of the requirements under the FATF Standards in ensuring that criminals do not penetrate the financial system – EC 23.3.</p>
Recommendation of the Assessment Report	<p><i>4. Amend paragraph (3) of Article 39 of the Law on Banks on mergers, consolidations and acquisitions consequent to the proposed paragraph (2) to Article 38</i></p> <p>See also § 1125-1126 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The CBK is still considering this proposal and no amendments to the Law on Banks have been effected yet. The Kosovo authorities may wish to adopt this recommendation as, further to being beneficial for the system itself and would be in consonance with international standards, it contributes to demonstrate the appropriate application of the requirements under the FATF Standards in ensuring that criminals do not penetrate the financial system – EC 23.3.</p>
Recommendation of the Assessment Report	<p><i>5. Harmonise the definitions of ‘financial institution’ in the various laws</i></p> <p>See also § 1165 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The CBK intends to identify the main divergences and accordingly review the various definitions. Consequently to date no amendments to the respective pieces of legislation (Law on Banks, Law on CBK and AML/CFT Law) have been undertaken – EC 23.5</p>
Recommendation of the Assessment Report	<p><i>6. Introduce a legal basis appointing a competent authority to act as the supervisory authority for the financial sector for the purposes of the AML/CFT Law</i></p> <p>See also §§ 1174, 1182 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The recent amendments to the AML/CFT Law have introduced a new Article 36A which while recognising that the CBK and other sectoral supervisors in accordance with their competencies stated in the AML/CFT Law and in other relevant laws, remain responsible to supervise the implementation of the provisions of the AML/CFT Law by the entities under their supervision, yet such powers become effective only if the FIU delegates the right for supervision based upon a written agreement. To this effect, in June 2013 the FIU and the CBK signed a MoU the aim of which is to delegate the authority to the CBK pursuant to Article 36A of the amended AML/CFT Law, for conducting inspections of compliance with the FIU in line with the provisions of the AML/CFT Law as amended through law No.04/L-178. Through this Agreement, the CBK, as a licensing, supervisory and regulatory authority of the financial sector, will be responsible for inspections of the financial sector’s compliance in the context of prevention of ML and TF based on the legislative framework for prevention of ML and TF and respective sub-legal acts issued by FIU in close cooperation with CBK – EC 23.1.</p>



<b>Recommendation 23 (Regulation, supervision and monitoring)</b>	
	The assessment team welcomes this positive amendment to the AML/CFT Law which now provides a legal basis for the CBK to continue its effective work in supervising the financial sector for the purposes of the AML/CFT Law. The assessment team however reminds that the AR makes further recommendations that are linked to this legal basis, such as those related to the issuing of mandatory regulations, supervisory powers, and the impositions of effective, persuasive and proportionate sanctions that are contemplated by the AML/CFT Law as opposed to those sanctions promulgated by the Law on Banks for prudential purposes.
(Other) changes since the last evaluation	

<b>Recommendation 26 (FIU and its functions)</b>	
<b>Rating: Partially Compliant (PC)</b>	
Recommendation of the Assessment Report	<p><i>1. The Ministry of Finance and the Governing Board of the FIU should take measures to facilitate and promote the institutional standing of the FIU with regard to other authorities.</i></p> <p>See also § 467 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue yet – EC 26.1.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order to facilitate and promote the institutional standing of the FIU with regard to other authorities.</p>
Recommendation of the Assessment Report	<p><i>2. The number of databases that FIU has access to should be expanded. Most importantly, the FIU should be provided access to the database of the Police. Those databases where FIU is allowed direct access should be integrated into the analytical mainframe of goAML to enhance the quality, scope and speed of analysis.</i></p> <p>See also § 468 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>FIU and KP signed a MoU on exchange of information on 19 February 2013 – EC 26.3.</p> <p>This agreement covers the secondment of KP personnel to the FIU as a liaison officer in order to facilitate intelligence gathering, investigation and prosecution of persons suspected of ML and FT.</p> <p>This MoU was extended in September 2013 in order to enhance their cooperation and to link their databases.</p> <p>The assessment team did not receive any additional information neither on the nature and extent of access the FIU has to KP database(s) nor a copy of the extended MoU of September 2013 in order to properly assess the implementation of this recommendation.</p> <p>However, it has been stated that since 2013, the KP have granted permission to the FIU to access its database, which contains data on criminal cases and minor offences and that the KP is communicating with the FIU through the goAML system, which has facilitated and accelerated communications.</p> <p>Therefore, the assessment team encourages the Kosovo authorities to continue their efforts in order to address this issue.</p>
Recommendation	<i>3. Reporting forms should not pose obligations on reporting entities that go</i>

<b>Recommendation 26 (FIU and its functions)</b>	
of the Assessment Report	<p><i>beyond the AML/CFT Law (additional resource burden on the private sector).</i></p> <p>See also § 469 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue yet – EC 26.2.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order to guaranty that the reporting forms do not impose obligations on reporting entities that go beyond the AML/CFT Law.</p>
Recommendation of the Assessment Report	<p><i>4. The FIU should take additional measures to increase the quality of STRs and ultimately alleviate the burden of additional requests by working with the reporting sector by providing general (typologies) and targeted feedback on the outcome of STR disseminations.</i></p> <p>See also §§ 470, 440 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>On 31 October 2013, the FIU issued Administrative Directive No. 001/2013 on Training for Preventing and Combating Money-laundering and Terrorist Financing – EC 26.2.</p> <p>This document provides in particular that the Director of the FIU may request reporting entities to undergo trainings that are related <i>inter alia</i> to their reporting obligations and methods of ML and FT.</p> <p>The FIU also provided some typologies in its 2012 annual report and in a special document published on its website.</p> <p>At the Workshop of 30 October 2013, organised by the PECK Project, the FIU informed that it had started changing the system in order to comply with the AR recommendations. As a result, the reporting quality from the reporting entities, especially banks, has been improved.</p> <p>Therefore, based on the available information, the assessment team concludes that this recommendation has been implemented satisfactorily.</p>
Recommendation of the Assessment Report	<p><i>5. A formal and regular system of feedback on progression of FIU referrals should be implemented jointly with Police, Customs and Prosecutors. This issue should be considered as one of the priorities by the National Office for Economic Crime Enforcement, when this Office is set up.</i></p> <p>See also § 472 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The KP and the FIU have signed a MoU which provides for the placement of a police officer at the FIU premises with the purpose of facilitation, coordination and mutual cooperation and exchange of information between the two institutions. The Office of the NCCEC was established in January 2014, and a Prosecutor has been appointed as the NCCEC.</p> <p>The FIU states that there is an improvement of the cooperation with the KP with regard to the feedback received on cases sent to the police.</p> <p>The assessment team encourages the Kosovo authorities to continue their efforts in order to completely address this issue.</p>
Recommendation of the Assessment Report	<p><i>6. The lack of meaningful statistics demonstrating the outcomes of FIU disseminations to law enforcement is the most important gap and should be rectified by Kosovo authorities in the shortest time possible through a collective interagency effort.</i></p> <p>See also § 473 of the AR.</p>
<b>Measures taken to</b>	<p>On 31 October 2013, the FIU issued the Administrative Instruction No.</p>

<b>Recommendation 26 (FIU and its functions)</b>	
<b>implement the Recommendation of the Report</b>	<p>001/2013 on compiling statistics, reports and recommendations on Money-laundering and Terrorist Financing – EC 26.3 in relation to EC 32.2.</p> <p>This document provides in particular that the FIU compiles statistics and reports regarding, <i>inter alia</i>, cases that were analysed and sent to law enforcement institutions, the number of requests for information received by law enforcement institutions, the number of investigated and convicted persons in relation to prevention of ML and TF, and confiscated or seized assets in relation to prevention of ML and TF.</p> <p>In addition, it has been stated that the NCCEC within the KPC will coordinate statistics and collect information. KPC will manage the unified database on statistics covering prosecution services. Each institution has a coordinator responsible for statistics.</p> <p>KPC provided a report on more than 20 criminal offences dealt with in a coordinated manner. The report is the first huge step although further measures are necessary.</p> <p>The assessment team considers that the Administrative Instruction issued by the FIU goes in the right direction and expects that the collected data will enable to demonstrate the outcomes of FIU disseminations to law enforcement.</p>
Recommendation of the Assessment Report	<p><i>7. The publication of the annual report by the FIU should be considered a priority in order to raise awareness about the activities of the FIU among the wider interagency community, as well as the reporting sector. This report should be used, inter alia as an effective tool by the FIU to provide feedback to the reporting sector, and thus should always include information on current ML typologies.</i></p> <p>See also § 474 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The FIU annual report for 2012 provides information on ML typologies, but it does not give sufficient feedback to the reporting entities on the quality of the STRs – EC 26.8.</p> <p>The assessment team expects the FIU will take further measures in order to fully implement this recommendation.</p>
Recommendation of the Assessment Report	<p><i>8. It is recommended to modify the text of the AML/CFT Law so as to make the FIU power to request additional information unequivocal and not subject to any interpretation.</i></p> <p>See also § 475 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue in the last amendments to the AML/CFT Law – EC 26.4.</p> <p>The assessment team encourages the authorities to address this issue at the earliest in order to empower the FIU to request additional information unequivocally and not subject to any interpretation.</p>
Recommendation of the Assessment Report	<p><i>9. That the FIU should implement the Egmont Principles of Information Exchange in its dealings with foreign FIU's</i></p> <p>See also § 476 of the AR.</p>
<b>Measures taken to implement the Recommendation</b>	<p>In the course of the aforementioned Workshop of 30 October, the FIU informed about having filed an official application for the membership in the Egmont Group. In this context, an assessment mission by the Egmont Group</p>

<b>of the Report</b>	<p>is expected to take place in Pristina by the end of March 2014 in order to determine if the FIU complies with the Egmont Group criteria and requirements, and is ready to become a member – EC 26.10.</p> <p>The assessment team encourages the FIU to adopt the Egmont Principles of Information Exchange notwithstanding the timing of the acceptance of the application to join the Egmont Group as these Principles provide best practice guidance.</p>
Recommendation of the Assessment Report	<p><i>10. The FIU should conduct a financial and technical needs assessment including a 3-year forward look. This should be complemented and informed by an assessment of the money laundering threats and risks to Kosovo (as foreseen by the AML/CFT strategy), where the FIU should take a leading role. The two assessments should produce an integrated action/resource allocation plan with joint priorities set for the FIU, law enforcement, supervisory and policy-making authorities.</i></p> <p>See also § 477 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>On 6 September 2013, the MoF issued Administrative Instruction MF No. 04/2013 on National Risk Assessment on ML and TF.</p> <p>The objective of this Administrative Instruction is to establish, in accordance with the FATF Recommendation 1 and other relevant international standards, an overall process for a national risk assessment on ML and TF including identification, analysis and evaluation of risks.</p> <p>It also aims at guiding the Government and relevant public, private and third sector institutions in Kosovo in designing policies, strategies and other relevant risk management procedures. It will guide them in directing and controlling their activities.</p> <p>The FIU was designated to undertake and coordinate with other competent authorities the national risk assessment.</p> <p>In November 2013, the Government of Kosovo published a document on the ‘National ML and TF Risk Assessment of Kosovo 2013 (NRA).’ The document is complemented by two Annexes: Annex 1 providing an analysis and evaluation matrix for individual risks and Annex 2 providing an Action Plan for the treatment measures to be applied for the risk assessment. The NRA document was endorsed by the Government in December 2013.</p> <p>In January 2014, the National Risk Assessment document was followed by the National Strategy of Kosovo and its Action Plan for the prevention of and fight against the informal economy, ML, TF and other economic and financial crimes for the period 2014-2018. The goals, objectives and actions of the National Strategy and the Action Plan 2014-2018 are based on the National Risk Assessment 2013.</p> <p>The assessment team welcomes the measures taken and encourages the Kosovo authorities to ensure the effective implementation of these documents.</p>
(Other) changes since the last evaluation	

<b>Recommendation 36 (Mutual legal assistance)</b>	
<b>Rating: Partially Compliant (PC)</b>	
Recommendation	<i>1. Provide for service standards on turnaround times of foreign requests</i>

<b>Recommendation 36 (Mutual legal assistance)</b>	
of the Assessment Report	<i>which could impede effectiveness of the system.</i> See also §§ 1698-1699 of the AR.
<b>Measures taken to implement the Recommendation of the Report</b>	Such service standards have already been subject of secondary legislation in Kosovo such as Administrative Instruction No. 2009/1-09 on the Procedure of International Legal Assistance in Criminal and Civil Matters issued by the MoJ, but only in the opposite sense (i.e. giving timeframes for MLA requests from Kosovo to foreign states).  During the on-site visit, the representatives of the MoJ made reference to a more or less similar Administrative Instruction, being under preparation at that time, which would help with the implementation of the Law on International Legal Cooperation in Criminal Matters (either the old or the new one). However, the assessment team has not received so far any concrete information whether this instruction has already been issued – EC 36.3.
Recommendation of the Assessment Report	<i>2. Revise procedural legislation so as to overcome lengthy backlogs with regard to MLA requests that require Judicial Orders to be produced.</i> See also §§ 1698, 1700-1701 of the AR.
<b>Measures taken to implement the Recommendation of the Report</b>	The assessment team is not aware of any formal revision of the procedures for this purpose. As regards backlogs related to ordinary criminal or civil cases pending before the court (thus not MLA cases), the KJC issued a National Backlog Reduction Strategy in August 2013. This is a guiding document for judges, court administrators and judicial support staff. But it does not specifically address MLA related cases (although the effective implementation of the Strategy might have an indirect positive effect on MLA related cases too) – EC 36.3.  Thus, in the opinion of the assessment team, while the strategy seems comprehensive, it does not set MLA requests as a priority in the reduction of the backlog. In view of this, the assessment team encourages the Kosovo authorities to address the backlog of MLA requests as a matter of priority.
(Other) changes since the last evaluation	

<b>Recommendation 40 (Other forms of co-operation)</b>	
<b>Rating: Largely Compliant (LC)</b>	
Recommendation of the Assessment Report	<i>1. ILECU should maintain statistics including sufficient detail to identify the predicate offence and especially where money laundering/TF is a part, as well as request turnaround times without which it is impossible to judge the effectiveness.</i> See also § 1727 of the AR.
<b>Measures taken to implement the Recommendation of the Report</b>	As already stated earlier in this Report, although the FIU issued the Administrative Instruction on the maintenance of statistics, the Instruction does not impose a mandatory obligation on all stakeholders, including competent authorities, under the AML/CFT Law to maintain statistics and to provide to the FIU – in relation to EC 32.2.  The assessment team has not been provided with specific information as to what measures have been or are intended to be taken.  The assessment team therefore urges the Kosovo authorities to take measures

<b>Recommendation 40 (Other forms of co-operation)</b>	
	in order to ensure that ILECU maintains statistics including sufficient detail to identify the predicate offence and especially where ML/TF is a part, as well as request turnaround times without which it is impossible to judge the effectiveness. The assessment team further encourages the Kosovo authorities to address this issue as a matter of priority given that statistics are an important tool for measuring the effectiveness of the system and for setting/revising policies, laws and regulations.
Recommendation of the Assessment Report	<p><i>2. The AML law should provide for the FIU or the prosecutor to seek a bank account monitoring order.</i></p> <p>See also § 1723 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue yet – CETS 198.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order to allow the FIU or the prosecutor to seek a bank account monitoring order.</p>
Recommendation of the Assessment Report	<p><i>3. Kosovo should clarify whether or not it refuses international co-operation on the grounds that it relates to a political offence.</i></p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Article 85 of Law No. 04/L-213 of 31 July 2013 on International Legal Cooperation in Criminal matters clearly states that MLA may be refused if the request concerns a political offence – EC 40.1 and CETS 198 Article 46.6.</p> <p>The assessment team considers that this recommendation has been fully implemented.</p>
Recommendation of the Assessment Report	<p><i>4. FIU should have powers to freeze or postpone transactions on the request of a foreign FIU</i></p> <p>See also § 1723 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have not addressed this issue yet – CETS 198 Article 47.</p> <p>The assessment team urges the authorities to address this issue at the earliest in order to allow the FIU to freeze or postpone transactions on the request of a foreign FIU.</p>
(Other) changes since the last evaluation	

<b>Special Recommendation III (Freezing and confiscating terrorist assets)</b>	
<b>Rating: Non-Compliant (NC)</b>	
Recommendation of the Assessment Report	<p><i>1. Draft and adopt effective laws and procedures for freezing of terrorist funds or other assets of designated persons and entities in accordance with UNSCRs 1267/1988 and 1373 or under procedures initiated by third countries and ensure that freezing actions extend to funds or assets controlled by designated persons.</i></p> <p>See also §§ 417, 421 of the AR.</p>
<b>Measures taken to implement the Recommendation</b>	<p>No primary or secondary legislation has been adopted since the beginning of 2013 that would address, to any extent, the freezing of terrorist funds or other assets of designated persons and entities in accordance with the respective</p>

<b>Special Recommendation III (Freezing and confiscating terrorist assets)</b>	
<b>of the Report</b>	<p>UNSCRs. The recent amendments to the AML/CFT Law did not address this issue either and the assessment team is not aware of any relevant draft legislation in proceeding that would do so – EC SRIII.1 &amp; EC SRIII.2.</p> <p>However, while finalising this Report, the assessment team incidentally became aware of the existence of a relevant piece of legislation that was never brought to its attention by the Kosovo authorities during the assessment process. This is the LIIS No. 03/L-183 of 15.04.2010 that has been in force since May 2010.</p> <p>This law “<i>shall determine the procedure for implementing the non-military international sanctions in the Republic of Kosovo imposed by the United Nations or other international organisations</i>” (Article 1) where “international sanctions” mean “<i>restrictions and obligations imposed by the resolution, convention, covenant, declaration or any act of the United Nations Organisation or other international organisations</i>” and may be of economic, financial, political, communication and public nature (Article 2[1.2]). “Financial sanctions” are, pursuant to Article 2(1.4) “<i>restrictions on the rights of entities, to which international sanctions are implemented, to manage, use or dispose of cash, securities, goods, other assets and property rights; payment restrictions for entities to which international sanctions are implemented; other restrictions on financial activities</i>”.</p> <p>On the face of it, the LIIS thus serves for the implementation of international restrictive measures such as the UN Security Council Resolutions (UNSCR) that are relevant in the context of SR.III and particularly UNSCR 1267/1988. However, the LIIS is too general in its scope and does not establish a practical administrative procedure for freezing accounts of persons or entities on the respective lists but can only serve as the legal basis for introducing such a procedure. All that is stipulated by Article 3(4) is the personal and territorial scope of the law (its provisions also apply to natural and legal persons of Kosovo in the territories of foreign states) while Article 9 provides that civil liability shall not be applied to natural and legal persons of Kosovo for the non-fulfilment of obligations relating to the implementation of international sanctions.</p> <p>Instead of any further procedural rules, Article 3(1) authorizes the Government to adopt additional decisions for implementation of an international sanction. It appears from the text of the law that such decisions are to be adopted on a case-by-case basis which means that procedural rules (which sanction is implemented, time limits for its implementation, conditions, possible exemptions, the entities to which the sanction applies and, if applicable, the expiration date of the sanction) would also be determined on an <i>ad hoc</i> basis. No decisions issued under Article 3(1) are thus envisaged to provide for a general set of rules establishing an effective and publicly known procedure for the implementation of international restrictive measures, including an appropriate freezing procedure.</p> <p>Obviously, the assessment team has not been informed about any decision having been issued pursuant to the LIIS which apparently means that this law has not yet been applied in any concrete case. In addition, the unexplainable silence about the existence of this legislation during the assessment process raises serious concerns that some if not all competent authorities are not even aware of this law. In the absence of effective laws (i.e. those going beyond the mere authorisation for issuing implementing decisions) and procedures to freeze funds or other assets owned by or related to persons designated by the relevant UNSCRs the level of compliance with SR.III thus remains the same.</p>

<b>Special Recommendation III (Freezing and confiscating terrorist assets)</b>	
	As a result, this deficiency remains as identified in the AR.
Recommendation of the Assessment Report	<p>2. <i>Establish a competent designating authority for the purposes UNSCR 1373.</i></p> <p>See also § 422 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>No primary or secondary legislation has been adopted in this respect. The recent amendments to the AML/CFT Law did not address this issue (e.g. no consideration seems to have been given to vest the FIU with such authority) and the assessment team is not aware of any relevant draft legislation either. Neither does the aforementioned LIIS prescribe which Kosovo authority would be competent to suggest to the relevant UN Security Committees to designate persons or entities that meet the specific criteria for designation – EC SRIII.1 &amp; EC SRIII.2.</p> <p>As a result, this deficiency remains as identified in the AR.</p>
Recommendation of the Assessment Report	<p>3. <i>Set up effective systems for communicating actions under the freezing mechanisms to the financial sector and provide adequate practical guidance in this field.</i></p> <p>See also § 422 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>No primary or secondary legislation has been adopted in this respect. The recent amendments to the AML/CFT Law did not address this issue and the assessment team is not aware of any relevant draft legislation either – EC SRIII.5.</p> <p>As a result, this deficiency remains as identified in the AR.</p>
Recommendation of the Assessment Report	<p>4. <i>Introduce appropriate procedures</i></p> <ul style="list-style-type: none"> <li>• <i>for considering de-listing requests and for unfreezing funds or other assets of delisted persons or entities and persons or entities inadvertently affected by a freezing mechanism;</i></li> <li>• <i>for authorising access to funds or other assets frozen pursuant to UNSCR 1267/1988 in accordance with UNSCR 1452;</i></li> <li>• <i>and for specific procedures to challenge freezing actions taken pursuant to the respective UNSCRs.</i></li> </ul> <p>See also §§ 422-423 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>No primary or secondary legislation has been adopted in this respect. The recent amendment to the AML/CFT Law did not address this issue and the assessment team is not aware of any relevant draft legislation either – EC SRIII.7 to SRIII.10.</p> <p>This goes for the above mentioned LIIS too. This legislation only provides that the <i>ad hoc</i> governmental decisions (see above) shall implement the exemptions that had originally been permitted by the original decision of the international organization (which is, however, not relevant in this context).</p> <p>As a result, this deficiency remains as identified in the AR.</p>
Recommendation of the Assessment Report	<p>5. <i>Provide for measures for monitoring the compliance with implementation of obligations under SR.III and to impose sanctions.</i></p> <p>See also § 423 of the AR.</p>
<b>Measures taken to</b>	No primary or secondary legislation has been adopted in this respect. The



<b>Special Recommendation III (Freezing and confiscating terrorist assets)</b>	
<b>implement the Recommendation of the Report</b>	<p>recent amendment to the AML/CFT Law did not address this issue and the assessment team is not aware of any relevant draft legislation either – EC SR.III.13.</p> <p>As a result, this deficiency remains as identified in the AR.</p>
(Other) changes since the last evaluation	

## 2.4. Other recommendations<sup>10</sup>

<b>Recommendation 2 (Liability for ML offence)</b>	
<b>Rating: Partially Compliant (PC)</b>	
Recommendation of the Assessment Report	<p><i>1. Revise the basics of corporate criminal liability as it is currently stipulated by legislation (whether or not it depends on the culpability of the natural person).</i></p> <p>See also §§ 269, 285 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Neither the CC nor the CLLP Law has been amended, to any extent, since the beginning of 2013 and therefore no changes could have been made to Article 40 CC or to the word-for-word identical Article 5 CLLP Law which are relevant in the context of this recommendation - EC 2.1 &amp; EC 2.2.</p> <p>Likewise, the assessment team is not aware of any draft amendment to these laws in proceeding that would address this issue, which consequently remains as identified in the AR.</p>
Recommendation of the Assessment Report	<p><i>2. Harmonize the respective provisions of the AML/CFT Law and the CC, both in terms of concept and terminology, as regards</i></p> <ul style="list-style-type: none"> <li><i>the knowledge standard applicable in case of ML offences (AML/CFT Law vs. CC)</i></li> <li><i>the basics of corporate criminal responsibility and that of the related natural persons (Article 34 AML/CFT Law vs. Article 40 CC / Article 5 CLLP Law).</i></li> </ul> <p>See also §§ 283, 284, 286-288 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>As mentioned in relation to the recommendation right above, neither the CC nor the CLLP Law has been amended since the beginning of the year 2013 and therefore no changes could have been made to the relevant articles in these laws – EC 2.1, EC 2.2 &amp; EC 2.3.</p> <p>Likewise, Article 34 of the AML/CFT Law was also left intact by the recent amendments made to this law and the assessment team is not aware of any draft amendment to any of these laws in proceeding that would address this issue, which thus remains as identified in the AR.</p>

<sup>10</sup> References to the FATF Recommendations in this report refer to the 2003 FATF Forty Recommendations and the Nine Special Recommendations on Terrorist Financing (2001).

As regards Recommendation 28 (Compliant) and SR.IX (Largely compliant) that have not been included below, see also § 3 above.

<b>Recommendation 2 (Liability for ML offence)</b>	
Recommendation of the Assessment Report	<p><i>3. Prescribe more severe sanctions (increase the range of fines) applicable to legal entities for criminal offences.</i></p> <p>See also § 290 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>The regime of criminal sanctions applicable to legal entities falls beyond the scope of the AML/CFT Law the recent amendment of which could therefore have no impact on this field. The relevant legislation is the CLLP Law which, however, has not yet been amended and therefore no changes could have been made to its Chapter III dealing with punishments and other criminal legal sanctions. As a result, this deficiency also remains as identified in the AR – EC 2.5.</p>
(Other) changes since the last evaluation	

<b>Recommendation 6 (Politically exposed persons)</b>	
<b>Rating: Partially Compliant (PC)</b>	
Recommendation of the Assessment Report	<p><i>1. Harmonise the definition of a PEP with the FATF definition in the AML/CFT Law</i></p> <p>See also §§ 789, 791 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>The definition of a PEP in the AML/CFT Law has been replaced by the following text (Article 2 paragraph 1.41): <i>natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons. The FIU in consultation with Ministry of Finance may issue a sub-legal act to define the prominent public functions and the immediate family members of such persons.</i> It should be noted that the definition does not include ‘those closely associated with the PEP’ as is included in the accepted definitions in international standards. In January 2014, the FIU issued Administrative Instruction No 04/2014 on PEPs thus addressing the definition of ‘prominent public functions’, ‘close associates’ and ‘immediate family members’ as required by the amended AML/CFT Law. Moreover, as the Law does not define categories of individuals who could be considered as falling within the PEP status the Instruction provides a comprehensive guidance list for both domestic and foreign PEPs accordingly. Notwithstanding, the above mentioned amendments have not addressed the issue of whether the definition captures middle ranking and more junior officials. The assessment team understands that in its new Regulation replacing Rule X, the CBK shall try to address the issue of the interpretation of the definition of PEPs however such interpretation should be subject to the sub-legal acts issued by the FIU in consultation with the MoF – Rec. 6.</p> <p>The assessment team welcomes the revised definition of a PEP and the issuing of the Administrative Instruction with clear interpretation as to who would constitute such definition and providing guidance to all reporting subjects further to any guidance that is envisaged under the Regulation of the CBK which is only applicable to the financial sector and which, in the case of PEPs, is subject to the guidance issued by the FIU in accordance with the amended AM/CFT Law.</p>
Recommendation of the Assessment	<p><i>2. Impose legal obligation to identify if a beneficial owner of a legal entity</i></p>

<b>Recommendation 6 (Politically exposed persons)</b>	
Report	<p><i>falls within the definition of PEP.</i></p> <p>See also §§ 799, 809 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>Article 17(1) of the AML/CFT Law has been amended requiring reporting subjects to identify the beneficial owner of a legal person and consequently to establish whether that beneficial owner poses a high risk in which case they are to verify the identity. Article 17(1) does not however require the establishment of whether the beneficial owner constitutes a PEP within the definition of the Law. In dealing with the application of enhanced due diligence for PEPs as posing a high risk, and in differentiating between domestic and foreign PEPs, Article 21 of the AML/CFT Law as amended does not address the issue of whether the beneficial owner is a PEP, although the Article requires reporting subjects to determine whether their clients are domestic or foreign PEPs in which case enhanced due diligence is to be applied to foreign PEPs. Consequently, while measures have been taken to clarify the identification of the beneficial owner, and in establishing whether a client falls within the definition of a PEP, the AML/CFT Law as amended still falls short from requiring reporting subjects to identify whether the beneficial owner of a legal entity constitutes a PEP. Notwithstanding, under Article 10 of the proposed Regulation replacing Rule X, the CBK will require banks and financial institutions to identify the PEP status of the beneficial owner: <i>Having identified the beneficial owner(s) banks and financial institutions shall establish through their customer risk assessment procedures whether such beneficial owner(s) falls within the status of politically exposed person(s) in terms of the Law on AML/CFT. In such eventuality banks and financial institutions shall apply the enhanced measures for politically exposed persons as contemplated by the Law on AML/CFT and this Regulation – EC 6.1.</i></p> <p>Administrative Instruction No 04/2014 on PEPs, while making references to the obligation under the AML/CFT Law to identify the beneficial owner in accordance with the provisions of Article 17, likewise falls short in requiring reporting subjects to identify the PEP status of the beneficial owner. Thus, any amendments to the CBK Rule X as detailed above will only apply to the financial sector creating an inconsistency in the application of the Law. Hence the requirement to revise the AML/CFT Law accordingly remains valid.</p> <p>While acknowledging the positive amendments to the AML/CFT Law within the context of the customer risk analysis for higher risk customers, the assessment team is of the opinion that the concerns raised regarding the identification of the beneficial owner and the determination of the PEP status of beneficial owners have not been addressed. Therefore, the assessment team urges the Kosovo authorities to address this issue for a more effective implementation of international standards. Moreover, the assessment team finds that the reference to Article 19(1) in Article 21(5) in the case of domestic PEPs is misleading as Article 19 deals with wire transfers.</p>
Recommendation of the Assessment Report	<p><i>3. Amend Article 21 of the AML/CFT Law to ensure that procedures are applied to identify if a customer or a beneficial owner is eventually identified as a PEP or becomes a PEP.</i></p> <p>See also § 807-809 of the AR.</p>
Measures taken to implement the Recommendation	<p>Paragraph (1.1) of Article 17 of the AML/CFT Law as amended now requires all reporting subjects to determine, on an ongoing basis, the risk of ML and TF presented by their customers and any other persons to whom they provide</p>

<b>Recommendation 6 (Politically exposed persons)</b>	
<b>of the Report</b>	<p>financial services. A broad interpretation of this amendment in the light of the requirement to be <i>on an ongoing basis</i> should cover this obligation. However, Article 21(5) which specifically requires reporting subjects to determine whether a client is a domestic or a foreign PEP does not impose the obligation on an ongoing basis – EC 6.2.1.</p> <p>Moreover, Administrative Instruction No 04/2014 on PEPs also falls short in addressing this issue.</p> <p>The assessment team urges the Kosovo authorities to clarify this situation through more clear legal provisions in the AML/CFT Law. In the meantime, the assessment team encourages the FIU and other competent authorities under the AML/CFT Law to ensure that they provide guidance to the reporting subjects in this respect.</p>
Recommendation of the Assessment Report	<p><i>4. Clarify in Article 21 of the AML/CFT Law that the identification of the source of funds is applicable on an ongoing basis to all transactions with PEPs</i></p> <p>See also § 816 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Although paragraph (5) to Article 21 has been amended, the item (5.1.2) referring to the requirement to <i>take adequate measures to establish the origin of the assets used in the relationship or transaction</i> has been retained as in the previous version of the Law. However, in its proposed Regulation replacing Rule X the CBK intends to clarify this by defining what constitutes <i>source of wealth</i> and what constitutes <i>source of funds</i> through an Article in the Regulation specifying the enhanced measures to be applied in the case of PEPs – EC 6.3</p> <p>The FIU Administrative Instruction No 04/2014 on PEPs issued in January 2014, and as defined earlier in this Report, likewise does not address the issue of the source of funds and hence this remains subject to the provisions of the AML/CFT Law in the absence of relevant guidance.</p> <p>The assessment team welcomes the definitions to be provided in the proposed Regulation of the CBK. However, since the Regulation is applicable only to banks and financial institutions and the FIU Administrative Instruction No. 04/2014 on PEPs which is applicable to all reporting subjects does not address the issue, the Kosovo authorities may wish to ensure that similar guidance is provided to the other sectors of reporting subjects either through the latter relevant instructions or by definitions in the AML/CFT Law complemented by an amendment to item (5.1.2) of paragraph (5) to Article 21 of the AML/CFT Law.</p>
Recommendation of the Assessment Report	<p><i>5. Provide guidance to the industry</i></p> <p>See also §§ 796, 821 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The proposed Regulation of the CBK replacing its Rule X will provide guidance to banks and financial institutions on the risk-based approach which will include guidance on the categorisation of clients within the degree of risk and a consequent matrix for the monitoring of those customers and relationships that present a higher risk. No similar guidance has been issued or is envisaged to be issued to the other sectors of reporting subjects as Administrative Instruction No 04/2014 on PEPs issued by the FIU in January 2014 does not address the high-risk element of monitoring accounts related to PEPs except by reference to the already existing obligations under the Law with the consequence that there is no guidance to the reporting subjects – EC 6.4.</p>

<b>Recommendation 6 (Politically exposed persons)</b>	
	While welcoming the initiative of the CBK in providing guidance on the risk-based approach and the monitoring of higher risk relationships, the assessment team encourages the Kosovo authorities to address this issue by providing similar guidance to the other sectors.
(Other) changes since the last evaluation	

<b>Recommendation 14 (Protection &amp; no tipping-off)</b>	
<b>Rating: Non-Compliant (NC)</b>	
Recommendation of the Assessment Report	<p><i>1. Amend Article 35 of the AML/CFT Law to extend protection to directors, officers and employees, temporary or permanent</i></p> <p>See also § 977 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>Notwithstanding the reference to ‘persons and entities’ which the AR interprets as referring to ‘persons and entities’ within the context of reporting subjects, the AR had proposed the addition of the text <i>and their directors, officers and employees, whether temporary or permanent</i> immediately following the words “person or entity” thus providing legal clarity and enhancing harmonisation with international standard. The recent amendments to the AML/CFT Law have not addressed this issue.</p> <p>The assessment team urges the Kosovo authorities to consider this proposal thus removing any subjectivity to interpretation through legal clarity and hence better harmonization with the international standards – EC 14.1</p>
Recommendation of the Assessment Report	<p><i>2. Amend paragraph (4) of Article 22 imposing the prohibition of disclosure in accordance with the international standards</i></p> <p>See also § 987 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>The AR has concluded that the prohibition of tipping off as covered through paragraph (4) of Article 22 does not cover the disclosure prohibition circumstances covered by international standards. The recent amendments to the AML/CFT Law have not addressed this issue. The assessment team urges the Kosovo authorities to consider effecting the proposed amendments thus ensuring that the international requirements be covered through legal provisions, even if the current circumstances of prohibition under the present paragraph (4) be retained over and above the international standards – EC 14.2</p>
Recommendation of the Assessment Report	<p><i>3. Consider extending the prohibition of disclosure to other reporting subjects and entities.</i></p> <p>See also § 988 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>The recent amendments to the AML/CFT Law have not addressed this issue. The assessment team recommends this extension as part of the review of paragraph (4) of Article 22 as afore-detailed – EC 14.2</p>
Recommendation of the Assessment Report	<p><i>4. Ensure that paragraph (1.3) of Article 15 does not cover the names and personal details of the staff at the bank or financial institution making the report or providing the information.</i></p> <p>See also § 999 of the AR.</p>

<b>Recommendation 14 (Protection &amp; no tipping-off)</b>	
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The AR questions whether the reference to <i>a person or entity which has provided information</i> refers to the reporting subjects or whether it incorporates the names of officers of the reporting subject who filed the report. The recent amendments to the AML/CFT Law have not addressed this issue and the assessment team is not informed that any other measures have been taken by the Kosovo authorities in this respect – AE 14.3.</p> <p>The assessment team draws the attention of the Kosovo authorities to this recommendation for the protection of officers of the reporting subjects – reference should also be made to item (6) below concerning Article 27 of the EU Third ML Directive.</p>
Recommendation of the Assessment Report	<p><i>5. Review paragraph (2) of Article 15 of the Law to limit the entities or authorities to whom the information could be provided to those to whom the FIU forwards its reports.</i></p> <p>See also § 1000 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Changes effected to paragraph (2) of Article 15 through the recent amendments to the AML/CFT Law do not address this issue. The amendments provide for such information as detailed in paragraph (1) of the Article at the own initiative of the FIU or upon request by any of the authorities mentioned in paragraph (2). This is further strengthened by the introduction of a new paragraph (1a) to Article 15 which empowers the FIU to exchange, domestically as well as internationally, all information accessible or obtainable directly or indirectly by it – AE 14.3.</p> <p>It appears that these changes, rather than addressing the issues raised by the assessment team in the AR, have added to the disclosure of information which can now be provided not only at the initiative of the FIU but also upon request by any of the authorities listed in the Article. The assessment team again urges the Kosovo authorities to review the provisions of Article 15 with the aim of clarifying the circumstances when such disclosure can happen, to limit the authorities who can receive or request such information to those receiving reports from the FIU and to ensure protection of officers of reporting subjects - reference should also be made to item (6) below concerning Article 27 of the EU Third ML Directive.</p>
Recommendation of the Assessment Report	<p><i>6. Add a new paragraph (4) to Article 15 of the AML/CFT Law which obliges any authority that for any reason has possession of personal information on employees of reporting subjects who have filed a report or provided information, to protect such information and keep it confidential.</i></p> <p>See also § 1006 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The recent amendments to the AML/CFT Law have not addressed this issue. Indeed, as indicated under Item 5 above, the amendments made to Article 15 seem to have strengthened the possibility of such information being disclosed by the FIU. For the protection of officers of the reporting subjects the assessment team again urges the Kosovo authorities to address this issue at the earliest – EU Third ML Directive.</p>
Recommendation of the Assessment Report	<p><i>7. Consider the provisions of Article 28 of the EU Third Directive on the lifting of the disclosure prohibitions in specific circumstances.</i></p> <p>See also § 1015 of the AR.</p>
<b>Measures taken to implement the</b>	<p>The recent amendments to the AML/CFT Law have not given any specific consideration to the recommendation in the AR. Therefore, even in</p>

<b>Recommendation 14 (Protection &amp; no tipping-off)</b>	
<b>Recommendation of the Report</b>	<p>circumstances where a Kosovo subsidiary of a foreign institution needs to communicate information related to STRs or other information provided to the FIU to its parent institution or other institutions within the same Group to which it belongs and which is necessary to follow suspicious acts or transactions within the Group related to the same individual or entity, that financial institution needs to apply for the permission of the FIU. The same applied to other reporting subject forming part of a global group or network, such as lawyers, accountants and auditors – EU Third AML Directive (Article 28).</p> <p>The assessment team is of the view that clarity in the law to this effect is important for Kosovo to effectively meet its international obligations in particular in the financial sector where the majority of banks and financial institutions form part of larger international financial groups. Consequently the assessment team urges the Kosovo authorities to reconsider the recommendations either through legislative amendments within the spirit of the EU Third AML Directive or through guidance to this effect provided by the FIU detailing the circumstances where it would not object to such sharing of information.</p>
Recommendation of the Assessment Report	<p><i>8. Consider inserting a new paragraph (4A) to Article 22 of the AML/CFT Law imposing a prohibition of disclosure in circumstances as provided under the Council of Europe Convention (CETS 198).</i></p> <p>See also §§ 1023-1024 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The recent amendments to the AML/CFT Law have not given any specific consideration to the recommendation in the AR. Kosovo is not a signatory to the Council of Europe Convention (CETS 198) and hence has no such obligations. Notwithstanding, Kosovo should acknowledge that adopting such provisions in its AML/CFT Law would strengthen its harmonization to international standards – CETS 198 Article 7.</p> <p>The assessment team urges the Kosovo authorities to give due consideration to these recommendations, and the consequent additional amendments to put these recommendations in practice as detailed in the AR thus strengthening its potential for international cooperation and national effectiveness in implementing a stronger AML/CFT regime and further harmonizing its legislation with international standards.</p>
(Other) changes since the last evaluation	

<b>Recommendation 17 (Sanctions)</b>	
<b>Rating: Non-Compliant (NC)</b>	
Recommendation of the Assessment Report	<p><i>1. Review of Article 24(8), Article 25(7), Article 26(14) and Article 27(4) within the context of the proposed amendments to Article 31 of the AML/CFT Law.</i></p> <p>See also § 1321 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The recent amendments to the AML/CFT Law have not given any specific consideration to the recommendation in the AR – EC 17.1.</p> <p>The assessment team urges the Kosovo authorities to reconsider these recommendations in order to provide legal clarity on the imposition of</p>

<b>Recommendation 17 (Sanctions)</b>	
	penalties in accordance with the AML/CFT Law for breaches of this specific law beyond the imposition of penalties under other generic laws applicable to the sector concerned. However the assessment team recommends that, due to the recent amendments to the AML/CFT Law and in particular the revised list of reporting subjects under Article 16 of the Law, a review of the Articles as recommended be undertaken within the context of the amended AML/CFT Law.
Recommendation of the Assessment Report	<p><i>2. Review present criminal and other offences for legal certainty and avoidance of legal complexity in application due to dual offences and different penalties.</i></p> <p>See also § 1328 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The recent amendments to the AML/CFT Law have not given any specific consideration to the recommendation in the AR – EC 17.1.</p> <p>The assessment team reiterates its recommendation in the AR for the Kosovo authorities to remove ambiguities of penalties for the same offence but through different legislation.</p>
Recommendation of the Assessment Report	<p><i>3. Redraft Article 31 and introduce new Articles 31A and 31B as contemplated in the draft Amending Law amending the AML/CFT Law.</i></p> <p>See also § 1331 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The recent amendments to the AML/CFT Law have revised Article 31 to the extent that a determination made by the FIU notifying the obligor of a failure to comply with the AML/CFT Law shall constitute a violation of the obligations set under the AML/CFT Law which shall be subject to an administrative sanction in the form of a fine of five hundred (500) Euros for each day of non-compliance following the date of notification. Moreover, revised Article 31 requires the FIU, in consultation with MoF, to issue a sub-legal act to define the administrative offence procedure. The imposition of the sanction may be contested before a court of competent jurisdiction. The amendments have further introduced Article 31A through which a pecuniary penalty ranging from five hundred (500) to seven thousand (7,000) Euros shall be imposed on legal persons for certain types of infringements, and Article 31B through which a pecuniary penalty ranging from five hundred (500) to ten thousand (10,000) Euros shall be imposed on legal persons for other types of infringements – EC 17.1 and EC 17.4).</p> <p>In January 2014, in consultation with the MoF, the FIU issued Administrative Instruction No. 03/2014 establishing procedures for the imposition of the administrative sanctions contemplated by Articles 31, 31A and 31B of the AML/CFT Law as amended. Further to the establishment of procedures, the Administrative Instruction provides for an appeals mechanism for the reporting subjects which, while introducing the first level of appeal to be made to the FIU itself and which appeal should be heard in an independent way provides for appeals to the Court. The assessment team has reservations on the transparency of the appeals mechanism with appeals being filed with the FIU who is the authority that is imposing the fine in the first instance.</p> <p>Although the assessment team welcomes the revision of Article 30 and the introduction of Article 31A and Article 31B (which were referred to in the AR recommendation) together with the publication of MoF/FIU Administrative Instruction No. 03/2014 on the imposition of administrative sanctions, yet these amendments and the Administrative Instruction itself, do</p>



<b>Recommendation 17 (Sanctions)</b>	
	not fully meet the proposals made in the AR which provided for the imposition of a range of graduated non-pecuniary administrative sanctions while providing legal clarity for the imposition of administrative fines by the FIU and the pecuniary penalties imposed under new Article 31A and Article 31B. Consequently, the assessment team urges the Kosovo authorities to reconsider and review these amendments in light of the proposals made in the AR.
Recommendation of the Assessment Report	<p><i>4. Designate authority/authorities to impose sanctions through the revised Article 31.</i></p> <p>See also § 1338 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The amended Article 31 states that a determination by the FIU notifying the obligor of a failure to comply with the AML/CFT Law shall constitute a violation of the obligations set under the AML/CFT Law which shall be subject to an administrative sanction in the form of a fine of five hundred (500) Euros for each day of non-compliance following the date of notification. The Article further requires the FIU, in consultation with Minister of Finance, to issue a sub-legal act to define the administrative offence procedure. Although the amended Article 31 seems to imply that the administrative sanction would be imposed by the FIU this is not clear since the Article requires the issuing of sub-legal acts determining the procedures for the imposition of administrative offences. Moreover, while introducing new pecuniary penalties, the revised Article does not provide for an authority to impose such pecuniary penalties unless the non-nomination of an authority to this effect implies that such pecuniary penalties are to be imposed through court procedures. In January 2014, the FIU in consultation with the MoF issued Administrative Instruction No. 03/2014 which designates the FIU as the authority responsible to impose the administrative sanctions contemplated by the AML/CFT Law – EC 17.1.</p> <p>While acknowledging the progress made with regard to the imposition of sanctions and penalties through the AML/CFT Law, the assessment team welcomes the new Administrative Instruction which provides legal clarity in determining the authority responsible to impose such penalties.</p>
Recommendation of the Assessment Report	<p><i>5. Ensure sanctions are applicable to directors and senior management through the revision of Article 31 and for this purpose amend Article 34 of the AML/CFT Law.</i></p> <p>See also § 1349 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The recent amendments to the AML/CFT Law have not addressed the deficiencies identified in respect of Article 34. Furthermore, the amendments to Article 31 do not impose the established penalties and sanctions on directors and senior management – EC 17.3.</p> <p>While noting that Administrative Instruction No. 03/2014 on the imposition of sanctions, consequent to the AML/CFT Law, does not address this issue, the assessment team reiterates the importance that directors and senior management are held liable for sanctions and not only for having committed the offence.</p>
Recommendation of the Assessment Report	<p><i>6. Introduce range of sanctions through the revision of Article 31 as proposed.</i></p> <p>See also § 1358 of the AR.</p>
<b>Measures taken to</b>	The recent amendments to the AML/CFT Law, in introducing new articles

<b>Recommendation 17 (Sanctions)</b>	
<b>implement the Recommendation of the Report</b>	<p>providing for the imposition of pecuniary penalties for various infringements of the Law, do not introduce a range of sanctions that include administrative ones. Indeed all sanctions are in the form of pecuniary penalties. This issue is likewise not addressed by Administrative Instruction No. 03/2014 of the FIU issued in January 2014 – EC 17.4.</p> <p>The assessment team urges the Kosovo authorities to reconsider the latest amendments and take into account the proposals in the AR for the introduction of a range of administrative sanctions that are inspired from similar administrative sanctions imposed through other financial legislation for prudential purposes.</p>
(Other) changes since the last evaluation	<p>It should be mentioned that the amendments to the AML/CFT Law have introduced a new sanction linked to the reporting obligation under Article 22 and other Articles of the Law reflecting the reporting obligations for other reporting subjects and entities under the AML/CFT Law. New Article 36.C of the AML/CFT Law imposes a sanction on :</p> <p>- Whoever uses force or serious threat, or any other means of compulsion, or a promise of a gift or any other form of benefit to induce another person to refrain from making a report required under Article 13 of this Law, or to make a false statement or to otherwise fail to state true information to the FIU, CBK, investigative agencies, a prosecutor or a judge, when such information relates to the reporting obligations of Article 13 of this Law shall be punished by a fine of up to one hundred and twenty-five thousand (€125,000) Euros and by imprisonment of two (2) to ten (10) years.”</p> <p>The assessment team welcomes this additional sanction, which seems to be unique for Kosovo, as it deters both persons who make pressure and officers of reporting subject from failing to make reports to the FIU. The assessment team however notes the reference to ‘Article 13 of this Law’ which may not be correct. Article 13 of the AML/CFT Law refers to the ‘Dismissal and suspension of the FIU Director’. The reporting obligation for banks and financial institutions is found under Article 22 of the AML/CFT Law with other articles in the Law providing for the reporting obligation for other reporting subjects.</p>

<b>Recommendation 18 (Shell banks)</b>	
<b>Rating: Partially Compliant (PC)</b>	
Recommendation of the Assessment Report	<p>1. <i>Redraft paragraph (6) of Article 21 to remove legal uncertainties.</i></p> <p>See also § 1059 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Paragraph (6) of Article 21 of the AML/CFT Law has been amended to read <i>Financial intermediaries cannot open or maintain correspondent accounts with a shell bank or a bank which is known to allow the use of shell accounts as opposed to the previous text which read Financial intermediaries cannot open or maintain correspondent accounts with a shell bank or a bank which is known to allow a bank to be used by shell their accounts.</i> According to the Kosovo authorities further amendments have been made to paragraph (7) of Article 21 which reads that <i>The institutions and persons subject to this law shall pay particular attention to any risk of money laundering or terrorist financing related to products or transactions which promote anonymity and take any measures necessary to prevent its use for the purpose of money laundering or terrorist financing.</i> – EC 18.2.</p>

<b>Recommendation 18 (Shell banks)</b>	
	The assessment team is of the opinion that the new text for paragraph (6) does not remove the legal uncertainty as to the interpretation of the new text as the term ‘shell accounts’ is unknown in international standards. As stated in the AR the accepted international terminology should be <i>or a bank which is known to allow its accounts to be used by shell banks</i> . Moreover the amendments to paragraph (7) are not related to operations with shell banks but with the risk inherent to products and transactions that promote anonymity. The Kosovo authorities are there urged to reconsider these amendments in the lights of the proposals made in the AR – see also item (2) below.
Recommendation of the Assessment Report	<p><i>2. Insert a definition of ‘correspondent banking relationship’ incorporating both ‘correspondent’ and ‘respondent’ institutions in accordance with the definition in the FATF Glossary to the Methodology.</i></p> <p>See also § 1060 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The recent amendments to the AML/CFT Law have not provided for the definition of ‘correspondent banking relationship’ in accordance with the definition for the term provided in the international standards – EC 18.2.</p> <p>The absence of a definition for the term ‘correspondent banking relationship’ impacts on other provisions in the AML/CFT Law relating to correspondent banking. In particular the absence of such definition impacts negatively on the relationships with shell banks as detailed in the previous item (1) above. Without this definition, paragraph (6) of Article 21 would be prohibiting ‘correspondent’ bank relationships but not ‘respondent’ bank relationships. The Kosovo authorities are therefore advised to reconsider this recommendation in the light of the recent amendments to the AML/CFT Law and the requirements under international standards – see also item (1) above.</p>
Recommendation of the Assessment Report	<p><i>3. Insert a new paragraph (4.6) to Article 21 of the AML/CFT Law to ensure that banks confirm that their respondent institutions do not allow the use of their accounts by shell banks.</i></p> <p>See also § 1066 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The recent amendments to the AML/CFT Law have not directly addressed this recommendation – refer to the revised paragraph (6) of Article 21.</p> <p>Although not specifically included under international standards, this recommendation remains an indirect requirement in establishing correspondent banking relationships. The assessment team reiterates the importance of this recommendation which is complementary to the measures taken to ensure that banks and financial institutions do not operate with or through shell banks, including when they establish a respondent banking relationship.</p>
(Other) changes since the last evaluation	

<b>Recommendation 20.2 (Cash Management Techniques)</b>	
<b>Rating: Non-Compliant (NC)</b>	
Recommendation of the Assessment Report	<i>1. CBK should document its strategy for better cash management techniques with objectives and milestones including the introduction of direct debit and</i>

<b>Recommendation 20.2 (Cash Management Techniques)</b>	
	<i>direct credit systems.</i> See also §§ 1441, 1453 of the AR.
<b>Measures taken to implement the Recommendation of the Report</b>	The CBK has informed that it has developed an action plan to implement the recommendations in the AR. The assessment team has not seen the action plan nor has it been given any further details.
Recommendation of the Assessment Report	2. <i>CBK should co-ordinate a study on the statistics on currency issued and currency deposited to identify the source of these differences in cooperation with other authorities such as Customs and Tax Administration.</i> See also §§ 1445, 1453 of the AR.
<b>Measures taken to implement the Recommendation of the Report</b>	The CBK has informed that it has developed an action plan to implement the recommendations in the AR. The assessment team has not seen the action plan nor has it been given any further details.
Recommendation of the Assessment Report	3. <i>This study should also identify reasons for the high use of the €500 currency note.</i> See also § 1453 of the AR.
<b>Measures taken to implement the Recommendation of the Report</b>	The CBK has informed that it has developed an action plan to implement the recommendations in the AR. The assessment team has not seen the action plan nor has it been given any further details.
Recommendation of the Assessment Report	4. <i>It is recommended to ensure effectiveness of the implementation of Article 13 of the Law on Tax Administration by Tax Administration.</i> See also § 1447 of the AR.
<b>Measures taken to implement the Recommendation of the Report</b>	The TAK has not provided any details on what measures it has taken or intends to take to implement this recommendation.
Recommendation of the Assessment Report	5. <i>The statistics on the percentage of currency in circulation against the Gross Domestic Product indicate high positions which need to be further addressed in the light of the high cash based economy in Kosovo</i> See also §§ 1448 of the AR.
<b>Measures taken to implement the Recommendation of the Report</b>	The CBK has informed that it has developed an action plan to implement the recommendations in the AR. The assessment team has not seen the action plan nor has it been given any further details.
(Other) changes since the last evaluation	

<b>Recommendation 27 (Law enforcement authorities)</b>	
<b>Rating: Partially Compliant (PC)</b>	
Recommendation of the Assessment	1. <i>The National Office for Economic Crimes Enforcement should urgently design measures for closer FIU-police collaboration and monitor their</i>

<b>Recommendation 27 (Law enforcement authorities)</b>	
Report	<p><i>implementation in order to increase the efficiency in the use of FIU resources by police.</i></p> <p>See also § 506 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>FIU and KP signed a MoU on exchange of information on 19 February 2013 – EC.</p> <p>This agreement covers the secondment of KP personnel to the FIU as a liaison officer in order to facilitate intelligence gathering, investigation and prosecution of persons suspected of ML and FT.</p> <p>This MoU was extended in September 2013 in order to enhance their cooperation and to link their databases.</p> <p>The assessment team welcomes the information provided about the measures taken that aim to promote a closer collaboration between the FIU and the police and expects that this will have an effect on the efficiency in the use of FIU resources by the police.</p>
Recommendation of the Assessment Report	<p><i>2. The National Office for Economic Crimes Enforcement should institute a system of maintaining unified statistics among police and prosecution on ML cases, in order to ensure that accurate analysis of effectiveness of the system can be made.</i></p> <p>See also § 507 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>It has been stated that the NCCEC within the KPC will coordinate statistics and collect information. KPC will manage the unified database on statistics covering prosecution services. Each institution has a coordinator responsible for statistics. Leading institution responsible for collecting statistics from various institutions will be the coordination body within the KPC. KPC provided a report on more than 20 criminal offences dealt with in a coordinated manner – See also Recommendation 32.</p> <p>In addition, it has been stated that the KP - ECID maintains statistics regarding sequestration and confiscation of assets acquired through the criminal activity as well as evidences regarding court decisions on freezing and confiscation. ECID also has statistics regarding ML cases and harmonises them with those of the Prosecution whenever this is required.</p> <p>The assessment team welcomes the information provided on the measures taken and hopes that they will allow demonstrating the effectiveness of the system.</p>
Recommendation of the Assessment Report	<p><i>3. Increase the staffing of the Kosovo Police financial crime and money laundering unit.</i></p> <p>See also § 491 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>During 2013, 20 additional police officers joined the Economic Crimes Investigations Department and 2 officers were appointed for financial investigations – see also Recommendation 30.</p> <p>The assessment team welcomes this addition of resources which augurs well for Kosovo to fulfil its obligations for the prevention of ML and the FT.</p>
Recommendation of the Assessment Report	<p><i>4. The police liaison officer placed in the FIU following the signing of the planned MoU should become the main channel of feedback between the two agencies, particularly with regard to the supply of information on the progress of FIU cases. This should be explicitly specified in the text of the MoU. Additionally the FIU should hold regular consultations and</i></p>

<b>Recommendation 27 (Law enforcement authorities)</b>	
	<p><i>coordination meetings with the Police ML unit on issues pertaining to the content of supplied material.</i></p> <p>See also § 509 of the AR</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>As already mentioned, FIU and KP signed a MoU on exchange of information on 19 February 2013.</p> <p>This agreement covers the secondment of KP personnel to the FIU as a liaison officer in order to facilitate intelligence gathering, investigation and prosecution of persons suspected of ML and FT.</p> <p>It is only mentioned that the duties of this officer are, <i>inter alia</i>, to liaise between the FIU-K and KP. It is not clearly specified that he should become the main channel of feedback between the two agencies, particularly with regard to the supply of information on the progress of FIU cases, and consequently the assessment team cannot assess whether this recommendation has been adequately implemented.</p> <p>Since 2013, KP communicates with FIU through the goAML system, which has facilitated and accelerated communication.</p> <p>According to the FIU, there is an improvement of cooperation with the Police with regard to the feedback received on the cases transmitted.</p>
Recommendation of the Assessment Report	<p><i>5. To introduce objective and transparent criteria for appointment/dismissal of the General Director and top management of the Police in order to ensure operational independence of the Police.</i></p> <p>See the PECK AC Report, Section 2.3, §§ 254-255.</p> <p>See also § 510 of the AR</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The assessment team was informed that the appointment and dismissal of the General Director is governed by Law no. 04/L-076 on KP. The Law has a special Chapter IV “Senior Management of Police” with three respective and specific articles for this issue (37, 38 and 39), which provide for criteria for nomination and dismissal of the General Director of the KP. The authorities further added that in order to ensure full transparency during the nomination process of the General Director of the KP, the officials of the EU Mission, EULEX and representatives of American ICITAP participated as observers.</p> <p>The assessment team cannot but note that nothing evolved since the AR and therefore urges the Kosovo authorities to give due consideration to this recommendation.</p>
Recommendation of the Assessment Report	<p><i>6. It is recommended to adopt guidelines for Police concerning the approval of exceptional outside engagement for police officers and establish a limit for the remuneration on such engagements.</i></p> <p>See the PECK AC Report, Section 2.3, § 259.</p> <p>See also § 510 of the AR</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>It has been stated to the assessment team that the issue of exceptional outside engagement or special engagements is regulated based on the remuneration system of the KP, which provides for basic salary, hazard pay and other additions according to the nature/responsibility of the work.</p> <p>The assessment team cannot but note that nothing evolved since the AR and therefore urges the Kosovo authorities to give due consideration to this recommendation</p>
Recommendation	<p><i>7. The Kosovo Police Inspectorate role should be expanded to include an</i></p>

<b>Recommendation 27 (Law enforcement authorities)</b>	
of the Assessment Report	<p><i>evaluation on whether KP is effective and 'fit for purpose'. These reports should be made public.</i></p> <p>See also § 510 of the AR</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>In 2013, KPI hired 15 investigators/inspectors who have attended a 6 months course at the Kosovo Academy for Public Security, therefore during 2014 it is planned to expand further bearing in mind that there is currently an amendment of the Regulation on the Change of the Organizational Structure which foresees creation of Regional Divisions according to the regional division of the KP, and as the result there will be need for more investigators/inspectors and the number of KPI employees will have to expand from 73 as it stands currently, to total 92.</p> <p>The assessment team welcomes the provided information and encourages the Kosovo authorities to continue their efforts in order to fully implement this recommendation.</p>
Recommendation of the Assessment Report	<p><i>8. There should be a concerted effort to clear the backlog of ML cases in the prosecutorial system.</i></p> <p>See also § 499 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The assessment team has not been provided with information as to what measures have been taken in order to rectify this situation which could have negative impact on the effectiveness of the system.</p> <p>The assessment team therefore urges the Kosovo authorities to establish a plan and a time frame within which to address this issue.</p>
Recommendation of the Assessment Report	<p><i>9. Kosovo competent authorities should undertake a review of ML/TF trends and techniques on a regular interagency basis with detailed input from the police and prosecution.</i></p> <p>See also § 484 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>It has been stated to the assessment team that a series of meetings on the ML trends "Pass the Money" were organised, and 5 meetings have been held throughout 2013 with prosecutors, judges, police, FIU, Customs, KTA and AMSCA.</p> <p>The assessment team welcomes the information provided and encourages the authorities to continue their efforts in order to fully implement this recommendation.</p>
(Other) changes since the last evaluation	

<b>Recommendation 29 (Monitoring and Supervisory Powers)</b>	
<b>Rating: Non- Compliant (NC)</b>	
Recommendation of the Assessment Report	<p><i>1. Insert a new Article 30B in the AML/CFT Law to the effect that a supervisory authority appointed under the AML/CFT Law that already has a supervisory remit under other legislation may apply its prudential supervisory powers under the respective laws for the purposes of supervising compliance under the AML/CFT Law with the exception of the application of administrative or other penalties and sanctions under these laws as these are contemplated under the AML/CFT Law.</i></p>

<b>Recommendation 29 (Monitoring and Supervisory Powers)</b>	
	See also §§ 1253-1254, 1265 of the AR.
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities hold that this recommendation has been fulfilled by the recent amendments to Article 30 of the AML/CFT Law whereby the FIU is given a broader supervisory remit for all reporting subjects (with the exception of construction companies) and where otherwise no further changes are effected to the previous Article 30. This is not the case. First because the amendment is only to the extent of broadening the supervisory remit of the FIU and second because the recommendation in the AR is referring to authorities other than the FIU that are given a supervisory role for the purposes of the AML/CFT Law and which authorities already hold a supervisory remit under any other law for that sector. The importance of this recommendation has now assumed a higher degree due to the introduction of new Article 36A whereby, through the MoU signed between the FIU and the CBK, the latter has been delegated supervisory responsibilities for the financial sector for the purposes of the AML/CFT Law. The CBK already has a prudential supervisory remit for the financial sector through the Law on Banks which provides the CBK with the powers necessary for it to carry out this remit. But such powers are only with regard prudential supervision for the purposes of the Law on Bank and not for the purposes of the AML/CFT Law – EC 29.1.</p> <p>The assessment team therefore reiterates the importance of this recommendation for the introduction of a new Article (which could now follow Article 36A) providing such supervisory powers for the purposes of the AML/CFT Law – with the exception of the sanctioning powers under the Law on Bank as these are superseded by the sanctioning provisions in the AML/CFT Law, in particular as further proposed for amendments (See Recommendation 17) in the AR.</p>
Recommendation of the Assessment Report	<p>2. <i>Insert a new paragraph (6) to Article 30 of the AML/CFT Law providing for the off-site examination powers of the FIU.</i></p> <p>See also §§ 1275-1277 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Article 30 paragraph (1) has been amended through the recent amendments to the AML/CFT Law but only to the extent of broadening the supervisory remit of the FIU to all reporting subjects under Article 16 as also amended with the exception of construction companies as reporting subjects. Otherwise, paragraph (1) of Article 30 has retained the same supervisory powers of the FIU to enter the premises of the reporting subject during business hours <i>if there is a reasonable suspicion that it contains records which are maintained pursuant to Articles 16 to 28 of this law or documents relevant to determining whether obligations under Articles 16 to 28 of this law have been complied with.</i> To this effect, officials of the FIU may demand and inspect records and may make copies thereof for the purposes of their on-site examination but <i>The authorised official or officials shall limit the inspection to that part of the premises in which the relevant records or documents are reasonably likely to be found and they shall only perform actions which are necessary for, and proportionate to, the purpose of inspection of such records.</i> This clearly shows that the supervisory powers vested by the AML/CFT Law upon the FIU are limited to on-site examinations. But international standards require that supervisory authorities have both on-site and off-site powers of inspection. It is for this purpose that the AR recommends that the FIU be given powers of off-site supervision through the introduction of a new paragraph (6) to Article 30 to this effect – EC 29.3.</p>



<b>Recommendation 29 (Monitoring and Supervisory Powers)</b>	
	The assessment team reiterates the importance of this proposed new paragraph (6) to Article 30 providing for off-site supervisory powers to the FIU. Within the context of the delegation of supervisory powers to the CBK for the financial sector, and within the context of the proposals made in the AR as detailed in item (1) above whereby the CBK would have off-site supervisory powers even for the purposes of the AML/CFT Law for the financial sector, the importance of this recommendation for the FIU to have similar supervisory powers for off-site purposes assumes a higher degree for the sake of consistency in the overall supervisory regime for all reporting subjects under the AML/CFT Law.
(Other) changes since the last evaluation	

<b>Recommendation 30 (Resources, integrity, and training) Regarding financial institutions</b>	
<b>Rating: Non-Compliant (NC)</b>	
Recommendation of the Assessment Report	<p><i>1. A legal mandate appointing a competent authority to supervise the entire financial sector for the purposes of the AML/CFT Law should be accompanied by a review of adequate human and other resources.</i></p> <p>See also § 1197 of the AR.</p>
Measures taken to implement the Recommendation of the Report	Through the MoU entered into between the FIU and the CBK within the provisions of the new Article 36A of the AML/CFT Law as amended the CBK has now assumed the supervisory remit for the entire financial sector for the purposes of the AML/CFT Law. Hence the current resources (2 officials) available for this function are not adequate. As had been informed in the course of the Cycle 1 on site visit, the CBK will be allocating more resources to this AML/CFT supervisory Section within the institution. In the course of the workshop held in Pristina on 30 October 2013, the CBK informed that it had already made an action plan to comply with PECK recommendations and this will include resources required to fulfil its obligations under the AML/CFT Law as the delegated supervisory authority for the entire financial sector – EC 30.1.
Recommendation of the Assessment Report	<p><i>2. Increase the staffing of the Kosovo Police financial crime and money laundering unit.</i></p> <p>See also §§ 491, 495 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>As of 1 July 2013, 20 additional police officers joined the ECID of the KP.</p> <p>The assessment team welcomes this addition of resources which augurs well for Kosovo to fulfil its obligations for the prevention of ML and the FT.</p>
Recommendation of the Assessment Report	<p><i>3. Consideration should be given to further reinforcing the Customs through allocating additional resources to motivate and facilitate the filling of vacancies, as well as to reinforce the integrity of staff.</i></p> <p>See also § 538 of the AR.</p>
Measures taken to implement the Recommendation of the Report	<p>Kosovo authorities have informed that in June 2013, all vacancies in the Law Enforcement Directorate of the Customs had been filled. However, approximately 25 vacancies in other sectors still remained.</p> <p>The assessment team, in acknowledging the progress achieved in this regard,</p>

<b>Recommendation 30 (Resources, integrity, and training)</b> <b><i>Regarding financial institutions</i></b>	
	encourage the Kosovo authorities to continue assessing the resource needs of the Customs in order to ensure an effective implementation of the borders supervisory regime.
(Other) changes since the last evaluation	<p>In assessing EC 30.3 for the purposes of training provided by the authorities, the AR comments (§ 1217) that both institutions (CBK and FIU) may wish to reconsider their training programme in this regard in the light of eventual changes in the AML/CFT Law establishing a supervisory authority for the entire financial sector for AML/CFT compliance purposes.</p> <p>In response, and in the light of the supervisory powers for the entire financial sector being vested within the CBK through the MoU signed with the FIU in terms of Article 36A of the AML/CFT Law as amended, the two authorities have taken or are taking the following measures.</p> <p>In accordance with paragraph (1.10) of Article 14 of the AML/CFT Law which requires the FIU <i>to organize and/or conduct training regarding money laundering, the financing of terrorist activities and the obligations of reporting subjects</i> and in terms of paragraph (1.12) of Article 14 of the same law which empowers the FIU to issue administrative directives to reporting subjects, on 31 October 2013 the FIU issued Administrative Directive No. 001/2013 on training for preventing and combating ML and TF. The main objective of the Directive is primarily to define the responsibilities and powers of the FIU in providing training and in ensuring the participation of reporting subjects. The first part of the Directive deals with training for reporting subjects by the FIU and requires reporting subjects to respond positively to such training when invited to attend. Training for reporting subjects shall cover</p> <ul style="list-style-type: none"> <li>• reporting obligations of the reporting subjects set by the AML/CFT Law and other sub legal acts;</li> <li>• the consequences of not respecting the AML/CFT Law;</li> <li>• methods of ML and FT as well as the risks that reporting subjects might face and the possible consequences of such risks; and</li> <li>• other important and relevant issues of this field – AML/CFT.</li> </ul> <p>The Directive next empowers the FIU in close cooperation and coordination with rule of law and other institutions, to also provide training to institutions that deal with investigation, prosecution and adjudication of various criminal cases of ML and FT as well as other offences that relate to ML and FT.</p> <p>Finally, the Administrative Directive addresses internal procedures and employee training programmes that should be put in place by reporting subjects, requiring banks and financial institutions to have such programmes in place in accordance with the obligations placed upon them through Article 23 of the AML/CFT Law.</p> <p>Within this context, the CBK intends to issue an Administrative Directive addressed to banks and financial institutions on training requirements for the prevention of ML and the FT. The proposed Administrative Directive does not provide a training programme for banks and financial institutions to adopt and implement. The responsibility to develop training programmes for the prevention of ML and the FT remains the responsibility of banks and financial institutions and may vary from one institution to another depending on a number of individual circumstances. The proposed Administrative Directive does however provide principles upon which banks and financial</p>

<b>Recommendation 30 (Resources, integrity, and training)</b> <i>Regarding financial institutions</i>	
	<p>institutions shall develop their training programmes. The Directive is applicable to all banks and subsidiaries and branches of foreign banks, non-bank financial institutions and MFIs and subsidiaries and branches of similar foreign institutions licensed by the CBK to operate in Kosovo in terms of the Law on Banks. The proposed Administrative Directive is constructed as follows:</p> <ul style="list-style-type: none"> <li>• it establishes the responsibilities of banks and financial institutions in providing training at all levels of officers and employees on a continuous basis and as a minimum on an annual basis, both in general and in specific format and both internal and external;</li> <li>• it establishes the nature of training and awareness that banks and financial institutions are expected to provide;</li> <li>• it provides detailed principles on the type of training that banks and financial institutions should consider for each category. These are not exhaustive and banks and financial institutions are encouraged to develop these principles in accordance with their individual needs and circumstances;</li> <li>• it provides for measures for its implementation while referring to administrative measures for non-compliance.</li> </ul>

<b>Recommendation 31 (National cooperation)</b>	
<b>Rating: Non-Compliant (NC)</b>	
Recommendation of the Assessment Report	<p><i>1. In order to rectify the deficiencies in the area of interagency cooperation authorities in Kosovo should make it a priority to implement the AML/Economic Crime and KPC Strategies. This however should be done in a coordinated fashion, given the number of cross-cutting issues among the two documents.</i></p> <p>See also §§ 1654, 1662 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The assessment team has not been provided with any information relevant to this recommendation. The assessment team therefore cannot assess whether the Kosovo authorities have registered progress in this regard or whether the Kosovo authorities have given due consideration to the recommendation.</p>
Recommendation of the Assessment Report	<p><i>2. In view of the assessment team, the KPC Strategy should be more explicit with regard to promoting feedback between relevant authorities, which could be accomplished through inserting mandatory obligations in the MoUs. This should also be mentioned in the Action plan of the Strategy.</i></p> <p>See also § 1661 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The assessment team has not been provided with information as to what measures have been or are intended to be taken on this issue.</p> <p>The assessment team therefore urges the Kosovo authorities to ensure that the KPC Strategy is more explicit with regard to promoting feedback between relevant authorities and that this is also mentioned in the Action Plan of the Strategy.</p>
Recommendation of the Assessment Report	<p><i>3. This Joint Rule of Law Coordination Board should be kept informed about the implementation of both – the AML/Economic Crime Strategy and the KPC Strategic Plan on Inter-Institutional Cooperation in order to ensure</i></p>

<b>Recommendation 31 (National cooperation)</b>	
	<p><i>coordination and complementarity with other issues being discussed on its agenda.</i></p> <p>See also § 1663 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The assessment team has not been provided with information as to what measures have been or are intended to be taken on this issue.</p> <p>The assessment team therefore urges the Kosovo authorities to ensure that the Joint Rule of Law Coordination Board is kept informed about the implementation of both the AML/Economic Crime Strategy and the KPC Strategic Plan on Inter-Institutional Cooperation in order to ensure coordination and complementarity with other issues being discussed on its agenda.</p>
(Other) changes since the last evaluation	

<b>Recommendation 32 (Statistics)</b>	
<b>Rating: Non-Compliant (NC)</b>	
Recommendation of the Assessment Report	<p><i>1. The Asset Management Agency, police, KPC and KJC should be required to keep coordinated statistics with a greater level of detail on the amounts of property frozen, seized, and confiscated relating to ML, FT, criminal proceeds and underlying predicate offences.</i></p> <p>See also §§ 392-393 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The FIU has issued Administrative Instruction No. 001/2013 addressing its obligations to compile and maintain comprehensive and meaningful statistics in accordance with the obligations placed upon it by the AML/CFT Law. The Instruction states that the compilation of statistical data, <i>inter alia</i> on confiscated or seized assets in relation to prevention of ML and TF will be done by the FIU and be based on:</p> <ul style="list-style-type: none"> <li>• data that is received at FIU as initial information;</li> <li>• data and intelligence reports compiled by FIU; and,</li> <li>• data which is received as feedback at FIU.</li> </ul> <p>In addition, it had been stated that the NCCEC within the KPC is going to coordinate statistics and collect information. KPC will manage the unified database on statistics covering prosecution services. Each institution will have a coordinator responsible for statistics.</p> <p>The assessment team welcomes the provided information and expects that the actions taken will allow obtaining statistics with a greater degree of detail on the amounts of property frozen, seized, and confiscated relating to ML, FT, criminal proceeds and underlying predicate offences. Notwithstanding the assessment team notes that the Administrative Instruction does not compel authorities to maintain statistics. This should be addressed as recommended in the AR.</p>
Recommendation of the Assessment Report	<p><i>2. The lack of meaningful statistics demonstrating the outcomes of FIU disseminations to law enforcement is the most important gap and should be rectified by Kosovo authorities in the shortest time possible through a collective interagency effort.</i></p> <p>See also §§ 455-456, 464 of the AR.</p>

<b>Recommendation 32 (Statistics)</b>	
<b>Measures taken to implement the Recommendation of the Report</b>	<p>As already indicated in this Report, on 31 October 2013, the FIU issued Administrative Instruction No. 001/2013 on compiling statistics, reports and recommendations on ML and TF. This document provides in particular that the FIU has to compile statistics regarding, <i>inter alia</i>, cases that were analysed and sent to law enforcement institutions.</p> <p>The assessments team encourages the Kosovo authorities to carry forward this Administrative Instruction to also cover the concerns raised in the AR in this regard by placing a mandatory obligation on all stakeholders to maintain meaningful statistics.</p>
Recommendation of the Assessment Report	<p><i>3. The National Office for Economic Crimes Enforcement should institute a system of maintaining unified statistics among police and prosecution on ML cases, in order to ensure that accurate analysis of effectiveness of the system can be made.</i></p> <p>See also § 505 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>It had been stated that the NCCEC within the KPC is going to coordinate statistics and collect information. KPC will manage the unified database on statistics covering prosecution services. Each institution will have a coordinator responsible for statistics.</p> <p>The assessment team welcomes the provided information and expects that the actions taken will allow obtaining unified statistics among police and prosecution on ML cases, in order to ensure that accurate analysis of effectiveness of the system can be made.</p>
Recommendation of the Assessment Report	<p><i>4. A new Article 30A under the title “Statistical Data” as indicated should be introduced in the AML/CFT Law requiring the maintenance of statistics by reporting subjects and relevant competent authorities.</i></p> <p>See also § 1225 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The recent amendments to the AML/CFT Law have not taken this recommendation into consideration.</p> <p>Notwithstanding, the FIU issued Administrative Instruction No. 001/2013 dealing with the compilation of statistics, reports and recommendations on ML and TF. On its part, having been delegated supervisory powers for the entire financial sector for the purposes of the AML/CFT Law in terms of the new Article 36A through the MoU entered into with the FIU, the CBK intends to issue an Administrative Directive on the maintenance and provision of statistics applicable to the financial sector.</p> <p>The objective of the Administrative Instruction issued by the FIU is primarily to define the obligations under paragraph (1.8) of Article 14 of the AML/CFT Law which requires the FIU to compile statistics and records and based thereon make recommendations to the competent authorities and Ministries and/or other relevant persons or bodies regarding measures which may be taken and legislation which may be adopted to combat ML and the FT activities. Within this context the Instruction delineates the type of statistics that the FIU intends to maintain. The Instruction next defines the source of information for the compilation of statistical data that will be maintained by the FIU:</p> <ul style="list-style-type: none"> <li>• data that is received at the FIU as initial information;</li> <li>• based on the data and intelligence reports compiled by the FIU itself; and</li> </ul>

### Recommendation 32 (Statistics)

- based on data which is received as feedback at FIU.
- The proposed Administrative Directive to be issued by the CBK will be applicable to the entire financial sector. The proposed Administrative Directive establishes sets of statistics that are comprehensive and meaningful for banks and financial institutions, and the CBK itself, to be able to understand and measure the effectiveness of the system for the prevention of ML and the FT with regard to the financial sector. The statistics detailed in the Directive are not exhaustive and banks and financial institutions may collect and maintain additional information which they may consider necessary to fulfil their obligations in this regard. The Directive however does lay down the principles for the minimum sets of statistics that should be maintained and provided to the CBK in this regard. To this effect the Directive is complemented with a template for the collection and maintenance of comprehensive and meaningful statistics which banks and financial institutions shall be required to complete and submit to the CBK on a periodical basis as the CBK may establish. Having established its objectives, the proposed Administrative Directive is constructed as follows:
- it establishes the responsibilities of banks and financial institutions in the collection and maintenance of comprehensive and meaningful statistics, gives direction thereto and obliges banks and guides them to use statistics in measuring the effectiveness of their internal procedures and to report periodically to the CBK;
  - it establishes the main pillars of statistical information that banks and financial institutions shall maintain as a minimum. The eight pillars which are defined in more detail in the Annex to the Directive, are those related to: CDD; Relationships and Accounts; Suspicious Transaction reporting; Currency Transaction reporting; Compliance assessments; Resources; Training and Awareness; and Court Orders. The Directive allows the CBK to request additional statistics as circumstances may warrant;
  - it requires the CBK to consolidate the statistical information received on its decision on consolidation methodology. It also requires the CBK to undertake an effectiveness assessment of the whole financial sector on the basis of the individual assessments reported by the banks and financial institutions and the consolidated statistics and to make such information available to the FIU. The Directive requires the CBK itself to maintain its own statistics in this regard.
  - It provides for measures for its implementation while referring to administrative measures for non-compliance.
- The assessment team acknowledges this positive progress on the part of the FIU and the CBK. It notes that while the Administrative Instruction of the FIU is not binding on reporting subjects and other stakeholders under the AML/CFT Law to maintain and provide statistics, the proposed Administrative Directive of the CBK appears to be binding on banks and financial institutions since it is understood that it provides for sanctions. Also the Directive of the CBK further appears to provide guidance to banks and financial institutions on the type of statistics to be maintained and reported to the CBK. Consequently, without a general mandatory requirement under the AML/CFT Law for all reporting subjects and other stakeholders to maintain statistics, there will be an uneven playing field and the FIU may at the end lack important statistics on which to base its decisions and recommendations. To this effect, the assessment team reiterates the importance of the new Article as proposed in the AR and urges the Kosovo authorities to adopt this

<b>Recommendation 32 (Statistics)</b>	
	recommendation at the earliest.
Recommendation of the Assessment Report	<p><i>5. Kosovo authorities should keep detailed statistics on MLA with reference to offences involved, as well as requests on seizure and confiscation of proceeds (FATF Recommendation 36).</i></p> <p>See also § 1701 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The assessment team is not aware of any measures taken in this regard except indirectly through the Administrative Instruction issued by the FIU and which, as already determined through this Report, does not impose any mandatory obligation on stakeholders to maintain statistics. Moreover, the Instruction does not make reference to the FIU maintaining statistics on MLA.</p> <p>The assessment team therefore encourages the Kosovo authorities to take measures to ensure that such statistics be maintained as may be necessary related to MLA.</p>
Recommendation of the Assessment Report	<p><i>6. ILECU should maintain statistics including sufficient detail to identify the predicate offence and especially where money laundering/TF is a part, as well as request turnaround times without which it is impossible to judge the effectiveness.</i></p> <p>See also § 1726 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>As already stated earlier in this Report, although the FIU has issued an Administrative Instruction on the maintenance of statistics, the Instruction does not impose a mandatory obligation on all stakeholders, including competent authorities, under the AML/CFT Law to maintain statistics and to provide the same to the FIU.</p> <p>The assessment team has not been provided with specific information as to what measures have been or are intended to be taken.</p> <p>The assessment team therefore urges the Kosovo authorities to take measures in order to insure that ILECU maintain statistics including sufficient detail to identify the predicate offence and especially where ML/TF is a part, as well as request turnaround times without which it is impossible to judge the effectiveness. The assessment team further encourages the Kosovo authorities to address this issue at the earliest because statistics are an important component for the measurement of the effectiveness of the system and for setting/revising policies, laws and regulations.</p>
(Other) changes since the last evaluation	Refer to the note of the assessment team in Section 2.6 – <i>Statistics</i> .

<b>Recommendation 33 (Legal persons-beneficial owners)</b>	
<b>Rating: Partially Compliant (PC)</b>	
Recommendation of the Assessment Report	<p><i>1. Introduce an obligation for immediate reporting of changes to shareholding and directors further to the ad hoc appointment of a person responsible to do so.</i></p> <p>See also §§ 1479-1480, 1482 of the AR.</p>
<b>Measures taken to implement the Recommendation</b>	The KBRA has informed that it has established a working group to amend and supplement the Law on Business Organizations, and that all the

<b>Recommendation 33 (Legal persons-beneficial owners)</b>	
<b>of the Report</b>	<p>recommendations will be taken into account.</p> <p>In the absence of additional information which the KBRA has not made available at this stage, the assessment team cannot assess any progress achieved.</p>
Recommendation of the Assessment Report	<p><i>2. Introduce procedures and systems for competent authorities and the industry to identify where a person owns more than one business organisation.</i></p> <p>See also §§ 1483-1485 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The KBRA has informed that it has established a working group to amend and supplement the Law on Business Organizations, and that all the recommendations will be taken into account.</p> <p>In the absence of additional information which the KBRA has not made available at this stage, the assessment team cannot assess any progress achieved.</p>
Recommendation of the Assessment Report	<p><i>3. Introduce administrative procedures to ascertain to the extent possible the accuracy of documents and contents by the KBRA in order to ensure that both natural and legal persons establishing companies be checked and monitored with respect to possible criminal records or professional disqualifications, as well as against the United Nations and other lists of designated persons and entities.</i></p> <p>See also §§ 1486-1487 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The KBRA has informed that it has established a working group to amend and supplement the Law on Business Organizations, and that all the recommendations will be taken into account.</p> <p>In the absence of additional information which the KBRA has not made available at this stage, the assessment team cannot assess any progress achieved.</p>
Recommendation of the Assessment Report	<p><i>4. Introduce procedures to identify interconnectivity between registered business organisations.</i></p> <p>See also § 1497 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The KBRA has informed that it has established a working group to amend and supplement the Law on Business Organizations, and that all the recommendations will be taken into account.</p> <p>In the absence of additional information which the KBRA has not made available at this stage, the assessment team cannot assess any progress achieved.</p>
Recommendation of the Assessment Report	<p><i>5. Introduce measure for accuracy and validity of applications for registration to cater for the short registration period.</i></p> <p>See also § 1495 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The KBRA has informed that it has established a working group to amend and supplement the Law on Business Organizations, and that all the recommendations will be taken into account.</p> <p>In the absence of additional information which the KBRA has not made available at this stage, the assessment team cannot assess any progress achieved.</p>



<b>Recommendation 33 (Legal persons-beneficial owners)</b>	
(Other) changes since the last evaluation	

<b>Special Recommendation VI (AML requirements for money/value transfer services)</b>	
<b>Rating: Non-Compliant (NC)</b>	
Recommendation of the Assessment Report	<p><i>1. Harmonise the definition of a 'financial institution' in the respective legislation, including the AML/CFT Law, including activities that may be undertaken by non-bank financial institutions.</i></p> <p>See also §§ 1378, 1389-1391 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>{See replies under Recommendation 23, EC 23.5, Item 5}</p> <p>The CBK intends to identify the main divergences and review the various definitions. Consequently to date no amendments to the respective pieces of legislation (Law on Banks, Law on CBK and AML/CFT Law) have been undertaken yet – EC SRVI.1.</p>
Recommendation of the Assessment Report	<p><i>2. Designate a competent authority with a regulatory and supervisory remit for the purposes of the AML/CFT Law for the entire financial sector.</i></p> <p>See also § 1394 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>{See replies under Recommendation 23, EC 23.1, Item 6}</p> <p>The recent amendments to the AML/CFT Law have introduced a new Article 36A which while recognising that the CBK of Kosovo and other sectoral supervisors in accordance with their competencies provided for in the AML/CFT Law and in other relevant laws, remain responsible to supervise the implementation of the provisions of the AML/CFT Law by the entities under their supervision, yet such powers become effective only if the FIU delegates the right for supervision based upon a written agreement. To this effect, in June 2013 the FIU and the CBK signed a MoU the aim of which is to delegate the authority to the CBK pursuant to Article 36A of the amended AML/CFT Law, for conducting inspections of compliance with the FIU in line with the provisions of the AML/CFT Law as amended through law No.04/L-178. Through this Agreement, the CBK, as a licensing, supervisory and regulatory authority of the financial sector, will be responsible for inspections of the financial sector's compliance in the context of prevention of ML and TF based on the legislative framework for prevention of ML and TF and respective sub-legal acts issued by FIU in close cooperation with CBK – EC SRVI.2 and EC SRVI.3.</p> <p>The assessment team welcomes this positive amendment to the AML/CFT Law which now provides a legal basis for the CBK to continue its effective work in supervising the financial sector for the purposes of the AML/CFT Law. The assessment team however reminds that the AR makes further recommendations that are linked to this legal basis, such as those related to the issuing of mandatory regulations, supervisory powers, and the impositions of effective, persuasive and proportionate sanctions that are contemplated by the AML/CFT Law as opposed to those sanctions promulgated by the Law on Banks for prudential purposes.</p>
Recommendation of the Assessment Report	<p><i>3. Clarify in the Law on Banks the power for non-bank financial institutions, including MVT services providers, to appoint agents and under what</i></p>

<b>Special Recommendation VI (AML requirements for money/value transfer services)</b>	
	<p><i>conditions or prohibit them.</i></p> <p><i>4. Insert a definition of ‘agent’ in the Law on Banks.</i></p> <p>See also § 1405 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Information available to the assessment team does not indicate that this recommendation has been adopted or considered by the Kosovo authorities. Consequently the assessment team urges the Kosovo authorities to give due consideration to this recommendation, taking account of the analysis of SR VI in the AR, to give legal clarity to the use of <i>agents</i> by banks and financial institutions – EC SRVI.4</p>
Recommendation of the Assessment Report	<p><i>5. Insert a new paragraph or Article in the Law on Banks or the AML/CFT Law obliging MVT services providers to maintain a list of agents if the Law on Banks does not prohibit this.</i></p> <p>See also § 1406 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Information available to the assessment team does not indicate that this recommendation has been adopted or considered by the Kosovo authorities. Consequently the assessment team urges the Kosovo authorities to give due consideration to this recommendation, taking account of the analysis of SR VI in the AR, to give legal clarity to the use of <i>agents</i> by banks and financial institutions – EC SRVI.4</p>
Recommendation of the Assessment Report	<p><i>6. Redraft Article 31 of the AML/CFT Law as recommended under Section 3.11 of this Report [AR].</i></p> <p>See also §§ 1319, 1321, 1331 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>[See comments under Recommendation 17 – Sanctions – EC 17.1 and EC17.4, Item 3]</p>
Recommendation of the Assessment Report	<p><i>7. Carry out an identification strategy for informal activities in MVT services as part of a broader programme to assess the risk and vulnerabilities of the financial sector for money laundering and the financing of terrorism (AE SRVI.6).</i></p> <p>See also §§ 1412-1413, 1418 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>With reference to §§ 1412-1413 regarding the availability and application of sanctions please refer to the comments under Recommendation 17 – Sanctions – EC 17.1 and EC17.4, Item 3 and which are also applicable to EC 29.4 of Recommendation 29 – EC SRVI.5.</p> <p>The Kosovo authorities have taken due consideration of the obligations under the new FATF Standards and in particular those under Recommendation 1 for jurisdictions to undertake a National Risk Assessment on the jurisdictions’ ML and TF vulnerabilities. To this effect Article 27 of the Law No. 04/L-178 on Amending and Supplementing the AML/CFT Law (Official Gazette of Kosovo No. 5, 8 March 2013), among other issues, empowers the MoF to issue Administrative Instructions for the National ML and TF Risk Assessment. Pursuant to this Article 27 in September 2013 the MoF has issued an Administrative Instruction No. 04/2013 on a National ML and TF Risk Assessment. The Instruction lays down the procedures to be followed and the criteria to be observed for the FIU to undertake and co-ordinate with other competent authorities a national risk assessment every five years.</p>

<b>Special Recommendation VI (AML requirements for money/value transfer services)</b>	
	<p>In November 2013 the Government of Kosovo published a document on the ‘National ML and TF Risk Assessment of Kosovo 2013.’ The document is complemented by two Annexes: Annex 1 providing an analysis and evaluation matrix for individual risks and Annex 2 providing an Action Plan for the treatment measures for the risk assessment. The objective of the document is to identify threats and vulnerabilities in Kosovo for ML and TF and to establish mitigating measures accordingly.</p> <p>The assessment team considers this Instruction and the November 2013 document as positive moves in the right direction. However the FIU together with the CBK, should ensure that a national risk assessment includes an in-depth risk assessment of the financial sector, including the identification of informal activities in the sector.</p>
(Other) changes since the last evaluation	

<b>Special Recommendation VIII (Non-profit organisations)</b>	
<b>Rating: Non-Compliant (NC)</b>	
Recommendation of the Assessment Report	<p><i>1. Insert a new Article 2A on the ‘Designation and Competences of the Competent Body’ in the Law on NGOs establishing the competencies of the Competent Body with regards to designation; functions and responsibilities under the Law; oversight of NGOs; and periodic risk assessment including sharing of information.</i></p> <p>See also §§ 1521, 1523 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>According to the Kosovo authorities, with the aim of harmonizing the legal infrastructure in line with international standards, DRLNGO has initiated the procedure for amending and supplementing the Law No. 04/L-57 of 2011 on the Freedom of Association in NGOs (hereinafter: Law on NGOs). Indeed, at the workshop of 30 October 2013 held in Pristina, DRLNGO informed that amendments to the Law on NGOs have been drafted but they are at their initial stage. They will be included with the Legislative Plan of the MoJ for 2014 - EC SRVIII.1.</p> <p>The assessment team acknowledges this step and hopes that the adoption of the proposal for a new Article 2A in the Law on NGOs providing for the designation of the Competent Body and its competences be given its due consideration.</p>
Recommendation of the Assessment Report	<p><i>2. Amend definition of ‘Competent Body’ in Article 2 of the Law on NGOs.</i></p> <p>See also § 1522 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>Within the context of the review of the Law on NGOs, the Kosovo authorities will be implementing this recommendation for the harmonization of the legal infrastructure in line with international standards EC SRVIII.1.</p>
Recommendation of the Assessment Report	<p><i>3. Apply a risk sensitivity approach to the oversight functions which could be developed through the analysis of the financial and activity reporting under the Law on NGOs in order to focus on the larger NGOs or those that present a higher risk of being used for criminal activities.</i></p> <p>See also § 1523 of the AR.</p>
<b>Measures taken to</b>	According to information provided by the Kosovo authorities, in coordination

<b>Special Recommendation VIII (Non-profit organisations)</b>	
<b>implement the Recommendation of the Report</b>	<p>with FIU and other relevant institutions DRLNGO is engaged in assessing NGOs as needed - EC SRVIII.1.</p> <p>In acknowledging this initiative as a positive step, the assessment team urges DRLNGO as the agency responsible for the supervision and oversight functions of NGOs to take the leading role in this initiative and to document the risk sensitivity supervisory process accordingly in order to demonstrate its effective implementation.</p>
Recommendation of the Assessment Report	<p><i>4. Identify responsibilities and better formalise and structure outreach to the sector to strengthen awareness on vulnerabilities and risks to NGOs posed through the misuse of such organisations.</i></p> <p>See also § 1536 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>According to the Kosovo authorities, representatives of all these institutions have participated in the above mentioned working group and there is exchange of information as needed. At the workshop of 30 October 2013 held in Pristina, the Head of the ECID within the KP informed that several meetings with NGOs were held to raise awareness, that the authorities have opened discussions with NGOs and encourage information sharing (maintain contacts on regular basis) - EC SRVIII.2.</p> <p>In the absence of detailed information on the outcome of the joint group in this regard, the assessment team questions the effect of the outcome, the delineation of responsibilities and the structure or framework established to increase outreach to NGOs and to what extent the awareness of such vulnerabilities have been understood and acted upon by NGOs.</p>
Recommendation of the Assessment Report	<p><i>5. To this effect there is a need for more cooperation, coordination and information sharing between the relevant authorities, such as the DRLNGO, the FIU, Tax Administration and other authorities who can contribute to the raising of awareness.</i></p> <p>See also § 1537 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>According to the Kosovo authorities, representatives of all these institutions participated in the above mentioned working group and there is exchange of information as needed - EC SRVIII.2.</p> <p>In the absence of detailed information on the outcome of the joint group in this regard, the assessment team questions the framework established for cooperation, coordination and for the exchange of information to create a more robust and effective outreach to the NGOs.</p>
Recommendation of the Assessment Report	<p><i>6. Remove legal ambiguity on supervisory powers under Article 30 and designate an authority to monitor NGOs for the purposes of Article 24 of the AML/CFT Law.</i></p> <p>See also § 1554 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>According to the Kosovo authorities, within the framework of the aforementioned changes and supplements of the NGO law the harmonization of these issues has been recommended. Notwithstanding, the amendments to Article 16 of the AML/CFT Law have now included NGOs as reporting subjects while Article 30 of the AML/CFT Law as amended now places supervisory responsibilities for NGOs for the purpose of the AML/CFT Law within the remit of the FIU - EC SRVIII.3.</p> <p>In acknowledging the measures being taken by the Kosovo authorities as reported, however in the absence of viewing the proposed text to the</p>

<b>Special Recommendation VIII (Non-profit organisations)</b>	
	AML/CFT Law and the Law on NGOs, the assessment team is not in a position to comment, the more so since the concern raised in the AR in this regard seems to have been already addressed through the amendments to the AML/CFT Law.
Recommendation of the Assessment Report	<p><i>7. Amend paragraph (11) of Article 9 of the Law on NGOs requiring NGOs also to report changes in relation to paragraph (4.2) and (4.3) of Article 18 of the Law on NGO.</i></p> <p>See also § 1564 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have informed that this recommendation will be taken into account in the proposed amendment of the Law on NGOs - EC SRVIII.3.1.</p> <p>The assessment team has not had the opportunity of viewing the proposed amendments.</p>
Recommendation of the Assessment Report	<p><i>8. Consider introducing prudential sanctions for breaches of Article 4 and paragraph (11) of Article 9 of the Law on NGOs.</i></p> <p>See also § 1575 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have informed that these measures will be foreseen during the amendment of the Law on NGOs - EC SRVIII.3.2.</p> <p>The assessment team has not had the opportunity of viewing the proposed amendments.</p>
Recommendation of the Assessment Report	<p><i>9. Harmonise Article 24 of the AML/CFT Law and Article 21 of the Law on NGOs on the sanctioning powers of the Competent Body.</i></p> <p><i>10. Insert a new paragraph (1.3) to Article 21 of the Law on NGOs providing a link to Article 24 of the AML/CFT Law on removal of registration for non-compliance with Article 24 of the AML/CFT Law.</i></p> <p>See also § 1578 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have informed that these measures will be considered during the amendment of the Law on NGOs - EC SRVIII.3.2.</p> <p>The assessment team has not had the opportunity of viewing the proposed amendments. Notwithstanding it is the opinion of the assessment team that the proposed amendments in this regard as defined in the Cycle 1 AML/CFT Law have now to be reviewed within the context that according to Article 16 of the AML/CFT Law NGOs are now considered as reporting subjects and, in consequent to the amendments of Article 30 of the AML/CFT Law as amended NGOs now fall within the supervisory remit of the FIU for the purposes of the AML/CFT Law.</p>
Recommendation of the Assessment Report	<p><i>11. Include measures in the internal licensing procedures of DRLNGO for due diligence on founders, at least by reference to United Nations and other lists of designated persons and entities.</i></p> <p>See also § 1589 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have informed that DRLNGO has already implemented this recommendation during 2013 - EC SRVIII.3.3.</p> <p>The assessment team welcomes this positive step by DRLNGO. However in informing that the recommendation has been adopted, the Kosovo authorities fall short in detailing the procedures as applied by DRLNGO first to ensure</p>

<b>Special Recommendation VIII (Non-profit organisations)</b>	
	that it is continuously in possession of the latest lists of designated persons and, second, the procedures applied to check names against such lists.
Recommendation of the Assessment Report	<p><i>12. Amend paragraph (4) to Article 24 of the AML/CFT Law to provide for the maintenance of transaction records and their availability to competent authorities.</i></p> <p>See also § 1598 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities referred to the term of protection in the mentioned law and inform that through new supplements to the law, the conservation deadline of referred documents will be provided for. To this effect DRLNGO informed that it maintains all the data of NGOs files since the establishment of the NGO Office (1999 until today) - EC SRVIII.3.4.</p> <p>The concern raised by the assessment team in the AR was not that DRLNGO does not retain documents. The proposed amendment to paragraph (4) of Article 24 of the AML/CFT Law sets the initiation time for the retention period; ensures the manner in which documents are retained; and ensures availability upon demand to all relevant competent authorities who have to fulfil legal obligations in relation to NGOs in accordance with the requirements under EC SRVIII.3.4. The assessment team therefore urges the Kosovo authorities to reconsider this proposal, particularly in the light that through the amendments to the AML/CFT Law in accordance with Article 16, NGOs are now considered as reporting subjects for the purposes of the law.</p>
Recommendation of the Assessment Report	<p><i>13. Insert a new paragraph (5A) to Article 24 of the AML/CFT Law empowering the FIU to demand information, data or documents from NGOs for the purposes of fulfilling its obligations under the Law further to paragraph (4) and paragraph (9) of the same Article.</i></p> <p>See also § 1609 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have informed that the representatives of FIU are part of the working group for amendments to the Law on NGOs and the implementation of these recommendations will be taken into account carefully - EC SRVIII.4.</p> <p>The assessment team has not had the opportunity of viewing the proposed amendments. Notwithstanding the assessment team advises that the proposals made in the AR in this regard be reviewed in the light that through the amendments to the AML/CFT Law NGOs are now considered as reporting subjects for the purposes of Article 16 of the Law and consequently NGOs are subject to all the obligations under the AML/CFT Law and fall within the supervisory remit of the FIU in accordance with Article 30 as amended for the purposes of the AML/CFT Law.</p>
Recommendation of the Assessment Report	<p><i>14. Review Article 4 of the Memorandum of Understanding between the FIU and DRLNGO.</i></p> <p>See also § 1618 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have informed that DRLNGO will implement this recommendation as well – EC SRVIII.4.1.</p> <p>The assessment team advises that Article 4 of the MoU between DRLNGO and the FIU should now be reviewed within the provisions of the AML/CFT Law recognising NGOs as reporting subjects for the purposes of Article 16 of the Law and consequently falling within the supervisory remit of the FIU for</p>

<b>Special Recommendation VIII (Non-profit organisations)</b>	
	the purpose of the AML/CFT Law.
Recommendation of the Assessment Report	<p><i>15. Establish practical mechanisms for co-operation and sharing of information between authorities relevant to the NGOs sector.</i></p> <p>See also §§ 1554, 1619-1620, 1644 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have informed that DRLNGO is part of the working group for the Anti-terrorism Strategy – EC SRVIII.4.1.</p> <p>To the extent that participation of DRLNGO in the working group for the Anti-terrorism Strategy meets the requirements as raised for EC SRVIII.4.1 in the AR, the assessment team acknowledges this as a positive step. However, the assessment team has not been provided with any information to this effect and hence it cannot determine the degree of progress achieved.</p>
Recommendation of the Assessment Report	<p><i>16. Undertake an assessment of risks and vulnerabilities to which NGOs may be exposed or be exploited for financing of terrorism and implement an outreach programme for NGOs to create more awareness of such risks and vulnerabilities including training awareness sessions.</i></p> <p>See also §§ 1525, 1539 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>With respect to the undertaking of an assessment of risks and vulnerabilities, according to the Kosovo authorities, in cooperation with other relevant institutions Minister of Internal Affairs has established a joint group steered by KP, in which DRLNGO is an active part - EC SRVIII.1.</p> <p>In the absence of detailed information on the terms of reference and workings of this joint group, the assessment team expects that a working plan has been drawn up, criteria established against which to measure risks and identify vulnerabilities, and that a time frame has been established.</p> <p>With respect to the outreach programme, according to the Kosovo authorities DRLNGO cooperates constantly with FIU - EC SRVIII.2.</p> <p>The concern here is not the cooperation between DRLNGO and the FIU but the implementation of an outreach programme to the NGO sector with a view to protecting the sector from ML or TF. In the opinion of the assessment team this proposal would have been a natural step following the tasks of the joint group mentioned earlier for EC SRVIII.1. The assessment team therefore questions to what extent this mentioned joint group has assessed the concerns raised in the AR concerning awareness of vulnerabilities in the NGO sector.</p>
Recommendation of the Assessment Report	<p><i>17. DRLNGO should undertake a strategic assessment to determine which NGOs occupy a significant portion of the financial resources under control of the sector or have a substantial share of the sector's international activities. This assessment should be shared with the FIU.</i></p> <p>See also § 1555 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	<p>The Kosovo authorities have informed that this task (field) is contained in the strategy on cooperation with FIU - EC SRVIII.3.</p> <p>The assessment team questions how this recommendation can be adopted by being contained in the strategy on cooperation with the FIU. DRLNGO as the competent authority for NGOs under the Law has all the information available to measure which NGOs occupy a significant portion of the financial resources under control of the sector or have a substantial share of the sector's international activities. Therefore the assessment team reiterates its position that DRLNGO could carry out this task immediately and then</p>

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	share the information with the FIU within the procedures under the strategy on cooperation with FIU, and within the supervisory remit of the FIU for NGOs for the purposes of the AML/CFT Law.
Recommendation of the Assessment Report	<p><i>18. Extend FIU Administrative Directive requiring reporting entities to pay special attention to UNSCR on designated individuals and organisations to DRLNGO.</i></p> <p>See also § 1590 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	The Kosovo authorities informed that this proposal will be taken into account in cooperation with FIU - EC SRVIII.3.3.
Recommendation of the Assessment Report	<p><i>19. Implement the relevant components of the AML/CFT Strategy with immediate effect.</i></p> <p>See also § 1526 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	The Kosovo authorities have not provided any information on the implementation of the AML/CFT Strategy Plan within this context. However, at the workshop held in Pristina on 30 October 2013, the FIU informed that the report concerning the assessment and the AML Strategy together with standard operational procedures for supervision of compliance - has been drafted and will be in consultation with other interested parties. To this effect the FIU is finalising the Action Plan in December 2013 and will start implementing it from January 2014 - EC SRVIII.1.
Recommendation of the Assessment Report	<p><i>20. Irrespective of not having yet applied for Egmont membership, the FIU should take account of the Egmont Principles for Information Sharing in establishing procedures under MoUs with other foreign FIUs.</i></p> <p>See also § 1523 of the AR.</p>
<b>Measures taken to implement the Recommendation of the Report</b>	The Kosovo authorities have not provided any information on the consideration, acceptance or implementation of the Egmont Principles for Information Sharing within this context. However, during the workshop of 30 October 2013 held in Pristina, the FIU informed about having filed an official application for the membership in the Egmont Group. In this context, an assessment mission by the Egmont Group is expected to take place in Pristina by the end of March 2014 in order to determine if the FIU complies with the Egmont Group criteria and requirements and is ready to become a member - EC SRVIII.5.
(Other) changes since the last evaluation	



## 2.5. Specific Questions

There were no specific questions raised in the AR other than those already addressed in the previous section to this Report

## 2.6. Statistics

Please complete - to the fullest extent possible - the following tables:

***Note by the assessment team:*** The Kosovo authorities, with the exception of the FIU to a certain extent, have not provided any statistics for the completion of the following statistical tables. Notwithstanding the lack of statistics, these tables, which form an integral and important element of this Report, have been retained for the sake of completion.

***Comment by the assessment team:*** The fact that the Kosovo authorities have not provided the requested statistics raises serious concerns on the actual maintenance of comprehensive and meaningful statistics as required by FATF Recommendation 32 on the retention of statistics which was rated as not compliant (“NC”) in the AR.

Moreover, the lack of statistics further raises concerns on the ability of the Kosovo authorities to demonstrate the effectiveness of the AML/CFT system.

### 2.6.1. Money laundering and financing of terrorism cases

**Table 1: Investigations, prosecutions and convictions**

As regards ML/TF investigations and prosecutions, this table should reflect only cases which have been commenced by law enforcement authorities independently, without a prior input/STR from the financial intelligence unit. Convictions relate to decisions of a court of competent jurisdiction.

2012												
	ML/TF Investigations by law enforcement carried out independently without prior STR			Prosecutions commenced			Convictions (first instance)			Convictions (final)		
	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons
ML												
FT												

2013												
	ML/TF Investigations by law enforcement carried out independently without prior STR			Prosecutions commenced			Convictions (first instance)			Convictions (final)		
	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons
ML												
FT												

**Table 2: Property frozen, seized and confiscated**

This table should not include information on property seized/confiscated on the basis of a mutual legal assistance request.

Property frozen refers to the freezing of property on the basis of a court order where a person has already been charged of an offence and that 'property seized' refers to the seizure of property on the basis of court order issued in the course of a criminal investigation where no charges have yet been brought.

Conviction based refers to instances where the order was applied as part of the sentencing for an underlying predicate offence. Conversely, non-conviction-based refers to situation where property is confiscated without a prior conviction of a predicate offence.

2012								
	Property frozen		Property seized		Property confiscated		Property recovered following conviction	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
ML – Conviction-based								
ML-non-conviction-based								
Underlying predicate offences where applicable								
ML Total								
FT								

2013								
	Property frozen		Property seized		Property confiscated		Property recovered following conviction	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
ML – Conviction-based								
ML-non-conviction-based								
Underlying predicate offences where applicable								
ML Total								
FT								

**Table 3: FIU to FIU co-operation**

International co-operation	2011	2012	2013	Total
<b>INCOMING REQUESTS</b>				
Foreign requests received by the FIU	10	10	7	27
Foreign requests executed by the FIU	11	13	6	30
Foreign requests refused by the FIU	0	0	0	0
Spontaneous sharing of information received by the FIU	0	0	2	2

International co-operation	2011	2012	2013	Total
TOTAL (incoming requests and information)	10	10	7	27
Average number of days to respond to requests from foreign FIUs	49	33	26	36
Refusal grounds applied	0	0	0	0
OUTGOING REQUESTS				
Requests sent by the FIU				
Spontaneous sharing of information sent by the FIU	3	0	2	5
TOTAL(outgoing requests and information)				

*Table 4: Law enforcement agencies co-operation*

International co-operation	2011		2012		2013	
INCOMING REQUESTS	ML	FT	ML	FT	ML	FT
Foreign requests received by law enforcement authorities related to ML						
Foreign requests executed						
Foreign requests refused						
TOTAL						
Average time of execution (days)						
OUTGOING REQUESTS	ML	FT	ML	FT	ML	FT
Number of requests sent abroad by law enforcement authorities						
Number of requests sent and executed						
Number of requests sent and refused						
TOTAL						

## 2.6.2. Suspicious and currency transaction reports (STRs/CTRs), supervisory action and sanctions/other measures

*Table 5: STRs/CTRs*

2012															
Statistical Information on reports received by the FIU								Judicial proceedings							
Reporting entity	Reports about transactions above threshold	Reports about suspicious transactions		Cases opened by FIU		Notifications to law enforcement / prosecutors		Indictments				Convictions			
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT	
								Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
FINANCIAL INSTITUTIONS															
Banks															

2012															
Statistical Information on reports received by the FIU								Judicial proceedings							
Reporting entity	Reports about transactions above threshold	Reports about suspicious transactions		Cases opened by FIU		Notifications to law enforcement / prosecutors		Indictments				Convictions			
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT	
								Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
Insurance sector															
Securities sector															
Currency exchange															
(please specify and add further rows as applicable)															
<b>DNFBPs</b>															
Casinos															
Real estate agents															
Dealers in precious metals/stones															
Lawyers															
Notaries															
Accountants															
Auditors															
Trust and company service providers															
Other professionals (please specify and add further rows as applicable)															
<b>OTHER REPORTING ENTITIES (if applicable)</b>															
(please specify and add further rows as applicable)															
<b>Total</b>															

2013															
Statistical Information on reports received by the FIU									Judicial proceedings						
Reporting entity	Reports about transactions above threshold	Reports about suspicious transactions		Cases opened by FIU		Notifications to law enforcement / prosecutors		Indictments				Convictions			
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT	
								Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
FINANCIAL INSTITUTIONS															
Banks	601,208	159	6	102	6	63	1								
Insurance sector	0	0	0	0	0	0	0								
Securities sector	0	0	0	0	0	0	0								
Currency exchange	2,531	0	0	0	0	0	0								
Money Transfer Agencies	1,111	6	0	5	0	2	0								

2013															
Statistical Information on reports received by the FIU									Judicial proceedings						
Reporting entity	Reports about transactions above threshold	Reports about suspicious transactions		Cases opened by FIU		Notifications to law enforcement / prosecutors		Indictments				Convictions			
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT	
								Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
DNFBPs															
Casinos	0	0	0	0	0	0	0								
Real estate agents	0	0	0	0	0	0	0								
Dealers in precious metals/stones	0	0	0	0	0	0	0								
Lawyers	0	0	0	0	0	0	0								
Notaries	0	1	0	0	0	0	0								
Accountants	0	0	0	0	0	0	0								
Auditors	0	0	0	0	0	0	0								
Trust and company service providers	0	0	0	0	0	0	0								
Other professionals (please specify and add further rows as applicable)															
OTHER REPORTING ENTITIES (if applicable)															
Kosovo Customs	1,928	0	1	0	1	0	0								
Others	0	1	0	4	0	0	0								
Total	606,778	167	7	111	7	65	1								

**Table 6: Supervisory Action**

Column 2 should indicate the overall number of supervisory on-site visits, regardless of whether AML/CFT issues were considered. Columns 3 and 4 are specifically concerned with AML/CFT issues.

2012				
	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	1	2	3	4
<b>FINANCIAL SECTOR</b>				
Banks				
Securities				
Insurance				
MSBs (Money Services Businesses) and exchange offices				
Other (please specify and add further rows as applicable)				
<b>NON FINANCIAL SECTOR</b>				
Casinos				

2012				
	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	1	2	3	4
Real estate				
Dealers in precious metals and stones				
Lawyers				
Notaries				
Accountants & auditors				
Trust and company service providers				
Other (please specify and add further rows as applicable)				

2013				
	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	1	2	3	4
<b>FINANCIAL SECTOR</b>				
Banks				
Securities				
Insurance				
MSBs and exchange offices				
Other (please specify and add further rows as applicable)				
<b>NON FINANCIAL SECTOR</b>				
Casinos				
Real estate				
Dealers in precious metals and stones				
Lawyers				
Notaries				
Accountants & auditors				
Trust and company service providers				
Other (please specify and add further rows as applicable)				

**Table 7: AML/CFT sanctions or other measures imposed by supervisory authorities**

Please complete a table (as beneath) for sanctions imposed for AML/CFT infringements in respect of each type of supervised entity and adjust the table to indicate any criminal sanctions where applied.

The total number of inspections carried out should be identical to the sum of columns 3 and 4 in a. above.

If equivalent statistics are available in a different format then these may be used instead. If it is more convenient separate tables may be used for the financial and non-financial sector.

2012									
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied						Number of sanctions taken to court (if applicable)
			Written warning	Fines		Removal of manager/compliance officer (where applicable)	Withdrawal of license (where applicable)	Other (please specify and add further columns as applicable)	
Number	Amount (EUR)								
FINANCIAL SECTOR									
Banks									
Securities									
Insurance									
MSBs and exchange offices									
Other (please specify and add further columns as applicable)									
NON FINANCIAL SECTOR									
Casinos									
Real estate									
Dealers in precious metals and stones									
Lawyers									
Notaries									
Accountants & auditors									
Trust and company service providers									
Other (please specify and add further rows as applicable)									
TOTAL									

2013									
	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Type of sanction/measure applied						Number of sanctions taken to court (if applicable)
			Written warning	Fines		Removal of manager/compliance officer (where applicable)	Withdrawal of license (where applicable)	Other (please specify and add further columns as applicable)	
				Number	Amount (EUR)				
FINANCIAL SECTOR									
Banks									
Securities									
Insurance									
MSBs and exchange offices									
Other (please specify and add further columns as applicable)									
NON FINANCIAL SECTOR									
Casinos									
Real estate									
Dealers in precious metals and stones									
Lawyers									
Notaries									
Accountants & auditors									
Trust and company service providers									
Other (please specify and add further rows as applicable)									
TOTAL									



## 2.7. Questions related to the Third Directive (2005/60/EC) and the Implementation Directive (2006/70/EC)

Implementation / Application of the provisions in the Third Directive and the Implementation Directive	
Please indicate whether the Third Directive and the Implementation Directive have been fully implemented / or are fully applied and since when.	Since Kosovo is not a member state of the EU it is not bound by the provisions of Directives and Regulations issued by the European Parliament and the Council or by the Commission of the EU. Consequently, although due consideration is given to the standards of the EU, it cannot be said that the Third AML Directive and the Implementation Directive have been implemented in full.
Other implementing measures	

Beneficial Owner	
Please indicate whether your legal definition of beneficial owner corresponds to the definition of beneficial owner in the 3rd Directive (please also provide the legal text with your reply)	<p>According to the latest amendments to the AML/CFT Law, beneficial owner is defined as:</p> <ul style="list-style-type: none"> <li>- <i>the natural person who ultimately owns or controls a customer or an account, the person on whose behalf a transaction is being conducted, or the person who ultimately exercises effective control over a legal person or arrangement.</i></li> </ul> <p>In placing the obligation on reporting subjects to identify the beneficial owner and to verify the identification against independent sourced documents, the AML/CFT Law (Article 17 paragraph 1.2), while imposing the obligation on reporting subjects to identify the beneficial owner, further defines the term ‘beneficial owner’ as:</p> <ul style="list-style-type: none"> <li>- <i>all reporting subjects shall identify the beneficial owner and/or a natural person or persons who directly or indirectly control 20% or more of a legal person. Where reporting entities consider that the risk of money laundering or terrorism finance is high, they shall take reasonable measures to verify his or her identity so that the institution or person covered by this law is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer.</i></li> </ul>
Other implementing measures	

Risk-Based Approach	
Please indicate the extent to which financial institutions have been permitted to use a risk-based approach to discharging certain of their AML/CFT obligations.	<p>The amendments to the AML/CFT Law have provided clearer provisions requiring reporting subject to apply a risk assessment to measure risks posed by their customers and to apply mandatory higher measures where the risk is considered high. Thus, paragraph (1.1) of Article 17 of the AML/CFT Law as amended recently requires reporting subjects to:</p> <ul style="list-style-type: none"> <li>- <i>determine, on an ongoing basis, the risk of money laundering and terrorist financing presented by their customers and any other persons to whom they provide financial services. Where reporting subjects determine that the risk of money laundering and terrorism finance is elevated, they shall take the measures set out in paragraph 1 of Article 21, in addition to the measures set out in this Article.</i></li> </ul> <p>Moreover, the proposed Regulation replacing Rule X to be issued by the CBK provides extensive guidance and directions to banks and financial institutions to implement an effective risk based approach through risk templates to be</p>

	applied for a risk assessment of all clients and which, through risk categorization of such clients, identifies those posing higher risks to which higher identification measures would be applied in addition to the normal due diligence measures, and which, if not within the risk appetite of the institutions, would be refused.
Other implementing measures	

Politically Exposed Persons	
Please indicate whether criteria for identifying PEPs in accordance with the provisions in the Third Directive and the Implementation Directive <sup>11</sup> are provided for in your domestic legislation (please also provide the legal text with your reply).	<p>The definition of PEPs has been amended through the recent amendments to the AML/CFT Law:</p> <p><i>- means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons.</i></p> <p>The new definition is similar to the definition in the EU Third AML Directive.</p> <p>The definition further requires that <i>The FIU in consultation with Ministry of Finance may issue a sub-legal act to define the prominent public functions and the immediate family members of such persons.</i></p> <p>In January 2014 the FIU issued Administrative Instruction No. 04/2014 on the definition of ‘prominent public functions’, ‘close associates’ and ‘immediate family members’ as required by the AML/CFT Law as amended. Moreover, as the Law does not define categories of individuals who could be considered as falling within the PEP status the Instruction provides a comprehensive list for both domestic and foreign PEPs accordingly. There is no indication in the Instruction whether ‘prominent public functions’ shall also cover middle ranking or more junior officials.</p> <p>Moreover the Kosovo legislation has not adopted paragraph (4) of Article 2 of the EU Implementation Directive whereby a person who has ceased to be entrusted with a prominent public function for at least one year could no longer be considered as a PEP.</p> <p>With regards to the identification of PEPs and the application of enhanced CDD, the AML/CFT Law as amended requires reporting subjects to take different measure to that PEP identified as a ‘domestic’ one to that PEP identified as a ‘foreign’ one.</p> <p>In the case of a domestic PEP, Article 21(5) of the AML/CFT Law as amended requires that:</p> <p><i>- Reporting subjects shall take reasonable measures to determine if their clients are domestic politically exposed persons, and if such determination results in a client being determined to be a domestic politically exposed persons, then reporting subjects shall take measures set out in Article 19 paragraph 1, in respect of such clients.</i></p> <p>In this regard, the assessment team notes that the reference to Article 19 paragraph (1) may not be correct as the quoted article refers to wire transfer activities.</p> <p>In the case of a foreign PEP, paragraph (5.1) of Article 21 requires that:</p> <p><i>(5.1) - reporting subjects shall ensure they determine whether their clients are foreign politically exposed persons, and if such determination results in a client being determined to be a foreign politically exposed persons</i></p>

<sup>11</sup> Please see Article 3(8) of the 3rd Directive and Article 2 of Commission Directive 2006/70/EC reproduced in Appendix II.

	<p><i>then reporting subjects shall take the following measures.</i></p> <p>5.1.1. <i>obtain the approval of a senior officer of the reporting subject;</i></p> <p>5.1.2. <i>take adequate measures to establish the origin of the assets used in the relationship or transaction; and</i></p> <p>5.1.3. <i>ensure continuous and strengthened monitoring of the account and the relationship.</i></p>
Other implementing measures	

<b>“Tipping off”</b>	
<p>Please indicate whether the prohibition is limited to the transaction report or also covers ongoing ML or TF investigations.</p>	<p>Paragraph (4) of Article 22 of the AML/CFT Law requires that:</p> <p><i>- Directors, officers, employees and agents of any bank or financial institution who make or transmit reports pursuant to the present article shall not provide the report, or communicate any information contained in the report or regarding the report, to any person or entity, including any person or entity involved in the transaction which is the subject of the report, other than the FIU or CBK, unless authorised in writing by the FIU, a Prosecutor, or a Court.</i></p> <p>Therefore the prohibition (tipping off) is limited to the transaction report. As determined under the AR the prohibition (See comments in this Report regarding FATF Recommendation 14) does not bind the institution itself that files the report but is extended to cover also the provision of the report to third parties.</p> <p>It is worth noting that the recent amendments to the AML/CFT Law have extended the similar prohibitions to other sectors covered by the AML/CFT Law such as NGOs, political parties and registered candidates and the legal and accountancy professions but do not provide for the provision of the report to the CBK.</p>
<p>With respect to the prohibition of “tipping off” please indicate whether there are circumstances where the prohibition is lifted and, if so, the details of such circumstances.</p>	<p>As indicated in paragraph (4) of Article 22 of the AML/CFT Law as quoted above, the only exception or lifting off is <i>other than the FIU or CBK, unless authorised in writing by the FIU, a Prosecutor, or a Court.</i></p> <p>The AR, in commenting and recommending that the Kosovo authorities consider the provision of the EU Third AML Directive (Article 28) in this regard, further suggests that the FIU should issue guidance to the industry under what circumstances it would be prepared to authorize disclosure in particular due to the high presence of foreign banks in Kosovo which would thus be able to share such information within the Group that they form part of such that the reporting and the investigation can take a broader aspect.</p> <p>It is worth noting that the recent amendments to the AML/CFT Law extending the prohibition to other sectors covered by the AML/CFT Law as indicated above, do not provide for any lifting of the prohibition of ‘tipping off’ except for filing the report with the FIU in the case of political parties and registered candidates:</p> <p><i>- to any person or entity, including any person or entity involved in the transaction which is the subject of the report, other than the FIU.</i></p>
Other implementing measures	

“Corporate liability”	
Please indicate whether corporate liability can be applied where an infringement is committed for the benefit of that legal person by a person who occupies a leading position within that legal person.	<p>Article 34 of the AML/CFT Law as amended, with reference to criminal liability of legal persons, states that:</p> <p><i>- If a legal person commits an offence under this Law, every director and other person concerning in the management of the legal person (and any person purporting to act in such capacity) commits the offence unless that person proves that:</i></p> <p><i>1.1. the offence was committed without his or her consent or knowledge; and</i></p> <p><i>1.2. the person took reasonable steps to prevent the commission of the offence as ought to have been exercised by that person having regard to the nature of his or her functions in that capacity.</i></p> <p>It is not clear therefore whether corporate liability can be applied in the circumstances as detailed in the EU Third AML Directive. Indeed, paragraph 14 of the AR states:</p> <p><i>- While the criminal liability of legal entities is generally provided for, the assessment team found a number of contradictory provisions in the respective pieces of legislation as regards the basics of corporate criminal responsibility (whether or not it depends on the culpability of the natural person and whether a legal person shall also be liable for the criminal offence if the respective person, who has committed the criminal offence, was not sentenced for that). The issue calls for urgent harmonization of the respective legislation.</i></p> <p>There have been no further amendments to the legislation in this respect since the Cycle 1 assessment.</p>
Can corporate liability be applied where the infringement is committed for the benefit of that legal person as a result of lack of supervision or control by persons who occupy a leading position within that legal person?	{ Please refer to the reply above }
Other implementing measures	

### 3. Appendices

#### 3.1. Appendix I: Recommended Action Plan to improve AML/CFT system

AML/CFT System	Recommended Action (listed in order of priority)
<b>1. General</b>	<b>No text required</b>
<b>2. Legal System and Related Institutional Measures</b>	
2.1 Criminalisation of Money Laundering (R.1)	<ul style="list-style-type: none"> <li>• Revise the legal definitions related to proceeds of crime so as to eliminate confusion and redundancy in this field.</li> <li>• Redefine the required level of proof for the predicate crime (Art. 32 paragraph 4.1) and/or provide for adequate guidance to practitioners in this respect.</li> <li>• Reformulate the provision that defines the coverage of self-laundering (Art. 32 paragraph 4.2) so as to remedy its current inadequacy.</li> <li>• Harmonize the respective provisions of the AML/CFT Law and the CC, both in terms of concept and terminology, as regards ancillary offences.</li> <li>• Provide for the adequate criminalization of the offence of market manipulation and include it among predicate offences to ML.</li> </ul>
2.2 Liability for ML offence (R.2)	<ul style="list-style-type: none"> <li>• Revise the basics of corporate criminal liability as it is currently stipulated by legislation (whether or not it depends on the culpability of the natural person).</li> <li>• Harmonize the respective provisions of the AML/CFT Law and the CC, both in terms of concept and terminology, as regards <ul style="list-style-type: none"> <li>• the knowledge standard applicable in case of ML offences (AML/CFT Law vs. CC)</li> <li>• the basics of corporate criminal responsibility and that of the related natural persons (Art.34 AML/CFT Law vs. Art.40 CC / Art.5 CLLP Law)</li> </ul> </li> <li>• Prescribe more severe sanctions (increase the range of fines) applicable to legal entities for criminal offences.</li> </ul>
2.3 Criminalisation of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> <li>• The duplicate criminalization of FT (in the CC on the one hand and in the recently amended AML/CFT Law on the other) should urgently be addressed by Kosovo legislation (involving both the Ministry of Justice and the Ministry of Finance) so as to provide for a single, autonomous and comprehensive FT offence that meets all aspects of SR.II.</li> <li>• Revise the current coverage of “terrorist act” (“act of terrorism” etc.) and redefine it in full compliance with Art. 2(1) of the FT Convention, including <ul style="list-style-type: none"> <li>• providing for the complete and general coverage of the “generic” offence of terrorism</li> <li>• abandon requiring the extra purposive element to the “treaty offences” as subject of FT</li> <li>• make it clear that the definition of “terrorist act” in Art. 135.1 extends to the terrorism-related offences (e.g. recruitment for terrorism) so that financing of these offences can also be considered a FT offence</li> </ul> </li> </ul>

AML/CFT System	Recommended Action (listed in order of priority)
	<ul style="list-style-type: none"> <li>• The actions listed below all refer to the FT criminalization as it is currently provided by the CC :</li> <li>• criminalize the financing of an individual terrorist (for any purpose) in the FT offence</li> <li>• revise and reformulate the inconsistent and/or redundant terminology used in FT-related provisions</li> </ul>
2.4 Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> <li>• The Criminal Procedure Code should be amended to include provisions that indicate the standard of proof required to allow for the confiscation of instrumentalities intended for the use in a criminal offence.</li> <li>• Kosovo should harmonize the norms of the CC and CPC with regard to third party confiscation. In this case priority should be given to the framework set out in the CC, which is generally in line with international standards, and would not pose effectiveness problems in terms of implementation, contrary to the norms of the CPC.</li> <li>• Kosovo should revise the provisions of the CPC regulating the protection of the rights of bona fide third parties. The standard of proof required from the bona fide to prove their legitimate rights and intentions with regard to property should be lowered.</li> <li>• Kosovo should institute mechanisms prevent or void actions, contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.</li> <li>• The judiciary should be allowed and encouraged to take a proactive approach in taking the necessary measures, where the prosecutor has clearly failed in an obvious setting of a specific case to follow through with seizure and confiscation of known instrumentalities/proceeds of crime.</li> <li>• Kosovo should implement the relevant components of the AML/CFT strategy as soon as possible, particularly to enhance the role of financial investigations, asset recovery mechanisms and interagency coordination and cooperation in these fields.</li> <li>• The National Office for Economic Crimes Enforcement, foreseen under the strategy should become staffed and operational as soon as possible in order to monitor and enhance the effectiveness of interagency cooperation and coordination in the area of financial crime.</li> <li>• The Asset Management Agency, police, KPC and KJC should be required to keep coordinated statistics with a greater level of detail on the amounts of property frozen, seized, and confiscated relating to ML, FT, criminal proceeds and underlying predicate offences.</li> <li>• There should be consistency of terminology throughout the legislation to dispel ambiguities, including the discrepancies between the AML/CFT Law, CC and CPC.</li> <li>• The substitution of non-criminally acquired assets in lieu of confiscating the actual proceeds/material benefit is implied in Article 97.1 of the Criminal Code. This should be redrafted to remove any doubt.</li> <li>• Temporary Freezing Orders are initiated by the Prosecutor. There</li> </ul>

AML/CFT System	Recommended Action (listed in order of priority)
	<p>are provisions for appeal by those affected by the Order but it is not explicitly stated in the CPC that application for these Orders are ex parte. The language of the relevant provision (Art 274 CPC) should be explicit to remove doubt.</p> <ul style="list-style-type: none"> <li>• Kosovo should consider implementing a system of in rem confiscation of the proceeds of crime. The amendments to the extended law on confiscation do not provide this.</li> </ul>
2.5 Freezing of funds used for terrorist financing (SR.III)	<ul style="list-style-type: none"> <li>• Draft and adopt effective laws and procedures for freezing of terrorist funds or other assets of designated persons and entities in accordance with UNSCRs 1267/1988 and 1373 or under procedures initiated by third countries and ensure that freezing actions extend to funds or assets controlled by designated persons.</li> <li>• Establish a competent designating authority for the purposes UNSCR 1373.</li> <li>• Set up effective systems for communicating actions under the freezing mechanisms to the financial sector and provide adequate practical guidance in this field.</li> <li>• Introduce appropriate procedures <ul style="list-style-type: none"> <li>• for considering de-listing requests and for unfreezing funds or other assets of delisted persons or entities and persons or entities inadvertently affected by a freezing mechanism;</li> <li>• for authorising access to funds or other assets frozen pursuant to UNSCR 1267/1988 in accordance with UNSCR 1452;</li> <li>• and for specific procedures to challenge freezing actions taken pursuant to the respective UNSCRs.</li> </ul> </li> <li>• Provide for measures for monitoring the compliance with implementation of obligations under SR.III and to impose sanctions.</li> </ul>
2.6 The Financial Intelligence Unit and its functions (R.26)	<ul style="list-style-type: none"> <li>• The Ministry of Finance and the Governing Board of the FIU should take measures to facilitate and promote the institutional standing of the FIU with regard to other authorities.</li> <li>• The number of databases that FIU has access to should be expanded. Most importantly, the FIU should be provided access to the database of the Police. Those databases where FIU is allowed direct access should be integrated into the analytical mainframe of goAML to enhance the quality, scope and speed of analysis.</li> <li>• Reporting forms should not pose obligations on reporting entities that go beyond the AML/CFT Law (additional resource burden on the private sector).</li> <li>• The FIU should take additional measures to increase the quality of STRs and ultimately alleviate the burden of additional requests by working with the reporting sector by providing general (typologies) and targeted feedback on the outcome of STR disseminations.</li> <li>• A formal and regular system of feedback on progression of FIU referrals should be implemented jointly with Police, Customs and Prosecutors. This issue should be considered as one of the priorities by the National Office for Economic Crime Enforcement, when this Office is set up.</li> <li>• The lack of meaningful statistics demonstrating the outcomes of</li> </ul>

AML/CFT System	Recommended Action (listed in order of priority)
	<p>FIU disseminations to law enforcement is the most important gap and should be rectified by Kosovo authorities in the shortest time possible through a collective interagency effort.</p> <ul style="list-style-type: none"> <li>• The publication of the annual report by the FIU should be considered a priority in order to raise awareness about the activities of the FIU among the wider interagency community, as well as the reporting sector. This report should be used, inter alia as an effective tool by the FIU to provide feedback to the reporting sector, and thus should always include information on current ML typologies.</li> <li>• It is recommended to modify the text of the AML/CFT Law so as to make the FIU power to request additional information unequivocal and not subject to any interpretation.</li> <li>• That the FIU should implement the Egmont Principles of Information Exchange in its dealings with foreign FIU's</li> <li>• The FIU should conduct a financial and technical needs assessment including a 3 year forward look. This should be complemented and informed by an assessment of the money laundering threats and risks to Kosovo (as foreseen by the AML/CFT strategy), where the FIU should take a leading role. The two assessments should produce an integrated action/resource allocation plan with joint priorities set for the FIU, law enforcement, supervisory and policy-making authorities.</li> </ul>
2.7 Law enforcement, prosecution and other competent authorities (R.27)	<ul style="list-style-type: none"> <li>• The National Office for Economic Crimes Enforcement should urgently design measures for closer FIU-police collaboration and monitor their implementation in order to increase the efficiency in the use of FIU resources by police.</li> <li>• The National Office for Economic Crimes Enforcement should institute a system of maintaining unified statistics among police and prosecution on ML cases, in order to ensure that accurate analysis of effectiveness of the system can be made.</li> <li>• Increase the staffing of the Kosovo Police financial crime and money laundering unit.</li> <li>• The police liaison officer placed in the FIU following the signing of the planned MoU should become the main channel of feedback between the two agencies, particularly with regard to the supply of information on the progress of FIU cases. This should be explicitly specified in the text of the MoU. Additionally the FIU should hold regular consultations and coordination meetings with the Police ML unit on issues pertaining to the content of supplied material.</li> <li>• To introduce objective and transparent criteria for appointment/dismissal of the General Director and top management of the Police in order to ensure operational independence of the Police (see description in the AC Report, Section 2.3).</li> <li>• It is recommended to adopt guidelines for Police concerning the approval of exceptional outside engagement for police officers and establish a limit for the remuneration on such engagements (see description in the AC Report, Section 2.3).</li> <li>• The Kosovo Police Inspectorate role should be expanded to include an evaluation on whether KP is effective and 'fit for</li> </ul>



AML/CFT System	Recommended Action (listed in order of priority)
	<p>purpose'. These reports should be made public.</p> <ul style="list-style-type: none"> <li>• There should be a concerted effort to clear the backlog of ML cases in the prosecutorial system.</li> <li>• Kosovo competent authorities should undertake a review of ML/TF trends and techniques on a regular interagency basis with detailed input from the police and prosecution.</li> </ul>
2.8 Cross border declaration or disclosure (SR.IX)	<ul style="list-style-type: none"> <li>• Consideration should be given to further reinforcing the Customs through allocating additional resources to motivate and facilitate the filling of vacancies, as well as to reinforce the integrity of staff.</li> <li>• A periodic external fit-for-purpose evaluation should be carried out with regard to Kosovo Customs in order to assess function, structure, effectiveness and value for money. The results should be made public.</li> </ul>
<b>3. Preventive Measures – Financial Institutions</b>	
3.1 Risk of money laundering or terrorist financing	<ul style="list-style-type: none"> <li>• Kosovo authorities should undertake a national assessment of ML and TF risks</li> </ul>
3.2 Customer due diligence, including enhanced or reduced measures (R.5)	<ul style="list-style-type: none"> <li>• a review of Rule X, incorporating Advisory Letter 2007/1, of the CBK within the context of the new legislation and the repeal of the UNMIK Regulations;</li> <li>• harmonisation of the definition of 'financial institution' in the respective laws and regulations;</li> <li>• legal obligation for the application of the full CDD measures as defined in the AML/CFT Law as opposed to the application of the identification and verification processes which only form a component of the CDD concept;</li> <li>• a review of the distribution and application of the United Nations and other lists of designated persons and entities;</li> <li>• a general review of the AML/CFT Law in specific areas related to enhanced and reduced CDD within the context of the application and guidance on the risk based approach and the harmonisation of provisions as indicated in the respective Essential Criteria.</li> </ul>
3.3 Politically Exposed Persons (PEPs) (R.6)	<ul style="list-style-type: none"> <li>• harmonise the definition of a PEP with the FATF definition in the AML/CFT Law;</li> <li>• impose legal obligation to identify if a beneficial owner of a legal entity falls within the definition of PEP;</li> <li>• amend Article 21 of the AML/CFT Law to ensure that procedures are applied to identify if a customer or a beneficial owner is eventually identified as a PEP or becomes a PEP;</li> <li>• clarify in Article 21 of the AML/CFT Law that the identification of the source of funds is applicable on an ongoing basis to all transactions with PEPs;</li> <li>• provide guidance to the industry.</li> </ul>
3.4 Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> <li>• a new bullet point be added to Article 74(2) of the Law on the CBK, in particular if the CBK is eventually given supervisory powers under and for the purposes of the AML/CFT Law, to clarify the lifting of confidentiality when the CBK provides</li> </ul>

AML/CFT System	Recommended Action (listed in order of priority)
	information to the FIU.
3.5 Record keeping (R.10)	<ul style="list-style-type: none"> <li>• amending paragraph (6.2) of Article 17 in connection with the timing of the retention period for a series of linked occasional transactions;</li> <li>• inserting a new paragraph (7) to Article 17 empowering the FIU to extend the retention period in specific cases;</li> <li>• amending paragraph (6.1) of Article 17 consistent with paragraph (6) of Article 18; and</li> <li>• harmonising Article 17 and Article 20 on the availability of retained records to competent authorities.</li> </ul>
3.6 Suspicious transaction reporting (R.13 & SR.IV)	<ul style="list-style-type: none"> <li>• amending the definition of ‘suspicious acts and transactions’ to include situations where information available indicates that a person or entity may be involved in criminal activities;</li> <li>• amending Article 22 to introduce the reporting obligation for the financing of terrorism;</li> <li>• amending the definition of ‘suspicious acts or transactions’ to include attempted acts and transactions; and</li> <li>• FIU to undertake measures to ensure that CTRs that raise suspicions are also reported as STRs and to create awareness accordingly.</li> </ul>
3.7 Protection and no tipping off (R.14)	<ul style="list-style-type: none"> <li>• amend Article 35 of the AML/CFT Law to extend protection to directors, officers and employees, temporary or permanent;</li> <li>• amend paragraph (4) of Article 22 imposing the prohibition of disclosure in accordance with the international standards;</li> <li>• consider extending the prohibition of disclosure to other reporting subjects and entities;</li> <li>• ensure that paragraph (1.3) of Article 15 does not cover the names and personal details of the staff at the bank or financial institution making the report or providing the information;</li> <li>• review paragraph (2) of Article 15 of the Law to limit the entities or authorities to whom the information could be provided to those to whom the FIU forwards its reports;</li> <li>• add a new paragraph (4) to Article 15 of the AML/CFT Law which obliges any authority that for any reason has possession of personal information on employees of reporting subjects who have filed a report or provided information, to protect such information and keep it confidential;</li> <li>• consider the provisions of Article 28 of the EU Third Directive on the lifting of the disclosure prohibitions in specific circumstances; and</li> <li>• consider inserting a new paragraph (4A) to Article 22 of the AML/CFT Law imposing a prohibition of disclosure in circumstances as provided under the Council of Europe Convention (CETS 198)</li> </ul>
3.8 Shell banks (R.18)	<ul style="list-style-type: none"> <li>• redraft paragraph (6) of Article 21 to remove legal uncertainties;</li> <li>• insert a definition of ‘correspondent banking relationship’ incorporating both ‘correspondent’ and ‘respondent’ institutions in accordance with the definition in the FATF Glossary to the</li> </ul>

AML/CFT System	Recommended Action (listed in order of priority)
	<p>Methodology;</p> <ul style="list-style-type: none"> <li>• insert a new paragraph (4.6) to Article 21 of the AML/CFT Law to ensure that banks confirm that their respondent institutions do not allow the use of their accounts by shell banks.</li> </ul>
3.9 Ongoing Supervision and Monitoring and Market Entry (R.23)	<ul style="list-style-type: none"> <li>• introduce a legal basis appointing a competent authority to act as the supervisory authority for the financial sector for the purposes of the AML/CFT Law;</li> <li>• a supervisory legal mandate should be accompanied with a mandate for the appointed supervisory authority to issue binding and mandatory rules and regulations for AML/CFT purposes (for the CBK beyond the powers of the CBK in this regard under Article 85 of the Law on Banks for prudential purposes);</li> <li>• insert a new paragraph (6) to Article 37 of the Law on Banks requiring a person or entity, alone or in concert with another, divesting of a significant interest or to reduce current shareholding to inform the CBK accordingly;</li> <li>• insert a new paragraph (2) to Article 38 of the Law on Banks requiring application of AML/CFT criteria as established under the EU Directive on Mergers and Acquisitions for approval of changes in shareholding;</li> <li>• amend paragraph (3) of Article 39 of the Law on Banks on mergers, consolidations and acquisitions consequent to the proposed paragraph (2) to Article 38; and</li> <li>• harmonise the definitions of ‘financial institution’ in the various laws.</li> </ul>
3.10 Supervisors (R.29)	<ul style="list-style-type: none"> <li>• insert a new Article 30B in the AML/CFT Law to the effect that a supervisory authority appointed under the AML/CFT Law that already has a supervisory remit under other legislation may apply its prudential supervisory powers under the respective laws for the purposes of supervising compliance under the AML/CFT Law with the exception of the application of administrative or other penalties and sanctions under these laws as these are contemplated under the AML/CFT Law; and</li> <li>• insert a new paragraph (6) to Article 30 of the AML/CFT Law providing for the off-site examination powers of the FIU.</li> </ul>

AML/CFT System	Recommended Action (listed in order of priority)
3.11 Sanctions (R.17)	<ul style="list-style-type: none"> <li>• review of Article 24(8), Article 25(7), Article 26(14) and Article 27(4) within the context of the proposed amendments to Article 31 of the AML/CFT Law;</li> <li>• review present criminal and other offences for legal certainty and avoidance of legal complexity in application due to dual offences and different penalties;</li> <li>• redraft Article 31 and introduce new Articles 31A and 31B as contemplated in the draft Amending Law amending the AML/CFT Law;</li> <li>• designate authority/authorities to impose sanctions through the revised Article 31;</li> <li>• ensure sanctions are applicable to directors and senior management through the revision of Article 31 and for this purpose amend Article 34 of the AML/CFT Law; and</li> <li>• introduce range of sanctions through the revision of Article 31 as proposed.</li> </ul>
3.12 Money or value transfer services (SR. VI)	<ul style="list-style-type: none"> <li>• harmonise the definition of a ‘financial institution’ in the respective legislation, including the AML/CFT Law, including activities that may be undertaken by non-bank financial institutions;</li> <li>• designate a competent authority with a regulatory and supervisory remit for the purposes of the AML/CFT Law for the entire financial sector;</li> <li>• clarify in the Law on Banks the power for non-bank financial institutions, including MVT services providers, to appoint agents and under what conditions or prohibit them;</li> <li>• insert a definition of ‘agent’ in the Law on Banks;</li> <li>• insert a new paragraph or Article in the Law on Banks or the AML/CFT Law obliging MVT services providers to maintain a list of agents if the Law on Banks does not prohibit this;</li> <li>• redraft Article 31 of the AML/CFT Law as recommended under Section 3.11 of this Report.</li> </ul>
3.13 Modern secure transaction techniques (R.20)	<ul style="list-style-type: none"> <li>• CBK should document its strategy for better cash management techniques with objectives and milestones including the introduction of direct debit and direct credit systems;</li> <li>• CBK should co-ordinate a study on the statistics on currency issued and currency deposited to identify the source of these differences in cooperation with other authorities such as Customs and Tax Administration;</li> <li>• this study should also identify reasons for the high use of the €500 currency note;</li> <li>• it is recommended to ensure effectiveness of the implementation of Article 13 of the Law on Tax Administration by Tax Administration.</li> </ul>
<b>4. Legal Persons and Arrangements</b>	
4.1 Legal persons – Access to beneficial ownership and control information	<ul style="list-style-type: none"> <li>• introduce an obligation for immediate reporting of changes to shareholding and directors further to the <i>ad hoc</i> appointment of a person responsible to do so;</li> <li>• introduce procedures and systems for competent authorities and</li> </ul>

AML/CFT System	Recommended Action (listed in order of priority)
(R.33)	<p>the industry to identify where a person owns more than one business organisation;</p> <ul style="list-style-type: none"> <li>• introduce administrative procedure to ascertain to the extent possible the accuracy of documents and contents by the KBRA in order to ensure that both natural and legal persons establishing companies be checked and monitored with respect to possible criminal records or professional disqualifications, as well as against the United Nations and other lists of designated persons and entities;</li> <li>• introduce procedures to identify interconnectivity between registered business organisations;</li> <li>• introduce measure for accuracy and validity of applications for registration to cater for the short registration period.</li> </ul>
<b>5. Non-Profit Organisations</b>	
5.1 Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> <li>• insert a new Article 2A on the ‘Designation and Competences of the Competent Body’ in the Law on NGOs establishing the competencies of the Competent Body with regards to designation; functions and responsibilities under the Law; oversight of NGOs; and periodic risk assessment including sharing of information;</li> <li>• amend definition of ‘Competent Body’ in Article 2 of the Law on NGOs;</li> <li>• remove legal ambiguity on supervisory powers under Article 30 and designate an authority to monitor NGOs for the purposes of Article 24 of the AML/CFT Law;<sup>12</sup></li> <li>• amend paragraph (11) of Article 9 of the Law on NGOs requiring NGOs also to report changes in relation to paragraph (4.2) and (4.3) of Article 18 of the Law on NGO;</li> <li>• consider introducing prudential sanctions for breaches of Article 4 and paragraph (11) of Article 9 of the Law on NGOs;</li> <li>• harmonise Article 24 of the AML/CFT Law and Article 21 of the Law on NGOs on the sanctioning powers of the Competent Body;</li> <li>• insert a new paragraph (1.3) to Article 21 of the Law on NGOs providing a link to Article 24 of the AML/CFT Law on removal of registration for non-compliance with Article 24 of the AML/CFT Law;</li> <li>• include measures in the internal licensing procedures of DRLNGO for due diligence on founders, at least by reference to United Nations and other lists of designated persons and entities;</li> <li>• amend paragraph (4) to Article 24 of the AML/CFT Law to provide for the maintenance of transaction records and their availability to competent authorities;</li> <li>• insert a new paragraph (5A) to Article 24 of the AML/CFT Law empowering the FIU to demand information, data or documents from NGOs for the purposes of fulfilling its obligations under the Law further to paragraph (4) and paragraph (9) of the same Article;</li> <li>• review Article 4 of the Memorandum of Understanding between</li> </ul>

<sup>12</sup> The draft Amending Law amending the AML/CFT Law is proposing to place this responsibility with the FIU.

AML/CFT System	Recommended Action (listed in order of priority)
	<p>the FIU and DRLNGO;</p> <ul style="list-style-type: none"> <li>• establish practical mechanisms for co-operation and sharing of information between authorities relevant to the NGOs sector;</li> <li>• undertake an assessment of risks and vulnerabilities to which NGOs may be exposed or be exploited for financing of terrorism and implement an outreach programme for NGOs to create more awareness of such risks and vulnerabilities including training awareness sessions;</li> <li>• DRLNGO should undertake a strategic assessment to determine which NGOs occupy a significant portion of the financial resources under control of the sector or have a substantial share of the sector's international activities. This assessment should be shared with the FIU;</li> <li>• extend FIU Administrative Directive requiring reporting entities to pay special attention to UNSCR on designated individuals and organisations to DRLNGO; and</li> <li>• implement the relevant components of the AML/CFT Strategy with immediate effect.</li> </ul>
<b>6. National and International Co-operation</b>	
6.1 National co-operation and coordination (R.31)	<ul style="list-style-type: none"> <li>• In order to rectify the deficiencies in the area of interagency cooperation authorities in Kosovo should make it a priority to implement the AML/Economic Crime and KPC Strategies. This however should be done in a coordinated fashion, given the number of cross-cutting issues among the two documents.</li> <li>• In view of the assessment team, the KPC Strategy should be more explicit with regard to promoting feedback between relevant authorities, which could be accomplished through inserting mandatory obligations in the MoUs. This should also be mentioned in the Action plan of the Strategy.</li> <li>• This Joint Rule of Law Coordination Board should be kept informed about the implementation of both – the AML/Economic Crime Strategy and the KPC Strategic Plan on Inter-Institutional Cooperation in order to ensure coordination and complementarity with other issues being discussed on its agenda.</li> </ul>
6.2 Mutual Legal Assistance (R.36)	<ul style="list-style-type: none"> <li>• Provide for service standards on turnaround times of foreign requests which could impede effectiveness of the system.</li> <li>• Revise procedural legislation so as to overcome lengthy backlogs with regard to MLA requests that require Judicial Orders to be produced.</li> </ul>
6.3 Other Forms of Co-operation (R.40)	<ul style="list-style-type: none"> <li>• ILECU should maintain statistics including sufficient detail to identify the predicate offence and especially where money laundering/TF is a part, as well as request turnaround times without which it is impossible to judge the effectiveness.</li> <li>• The AML law should provide for the FIU or the prosecutor to seek a bank account monitoring order.</li> <li>• Kosovo should clarify whether or not it refuses international co-operation on the grounds that it relates to a political offence.</li> <li>• FIU should have powers to freeze or postpone transactions on the request of a foreign FIU.</li> </ul>

AML/CFT System	Recommended Action (listed in order of priority)
<b>7. Other Issues</b>	
7.1 Resources and statistics (R. 30 & 32)	<ul style="list-style-type: none"> <li>• A legal mandate appointing a competent authority to supervise the entire financial sector for the purposes of the AML/CFT Law should be accompanied by a review of adequate human and other resources.</li> <li>• The Asset Management Agency, police, KPC and KJC should be required to keep coordinated statistics with a greater level of detail on the amounts of property frozen, seized, and confiscated relating to ML, FT, criminal proceeds and underlying predicate offences.</li> <li>• The lack of meaningful statistics demonstrating the outcomes of FIU disseminations to law enforcement is the most important gap and should be rectified by Kosovo authorities in the shortest time possible through a collective interagency effort.</li> <li>• The National Office for Economic Crimes Enforcement should institute a system of maintaining unified statistics among police and prosecution on ML cases, in order to ensure that accurate analysis of effectiveness of the system can be made.</li> <li>• Increase the staffing of the Kosovo Police financial crime and money laundering unit.</li> <li>• Consideration should be given to further reinforcing the Customs through allocating additional resources to motivate and facilitate the filling of vacancies, as well as to reinforce the integrity of staff.</li> <li>• A new Article 30A under the title “Statistical Data” as indicated should be introduced in the AML/CFT Law requiring the maintenance of statistics by reporting subjects and relevant competent authorities.</li> <li>• ILECU should maintain statistics including sufficient detail to identify the predicate offence and especially where money laundering/TF is a part, as well as request turnaround times without which it is impossible to judge the effectiveness.</li> </ul>

### **3.2. Appendix III: Relevant EU texts**

**Excerpt from Directive 2005/60/EC of the European Parliament and of the Council, formally adopted 20 September 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing**

#### **Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3<sup>rd</sup> Directive):**

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

(ii) the natural person(s) who otherwise exercises control over the management of a legal entity;

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;

(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

#### **Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3<sup>rd</sup> Directive):**

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

**Excerpt from Commission Directive 2006/70/EC of 1 August 2006 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.**

#### **Article 2 of Commission Directive 2006/70/EC (Implementation Directive):**

##### **Article 2**

##### **Politically exposed persons**

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:

(a) heads of State, heads of government, ministers and deputy or assistant ministers;

(b) members of parliaments;

(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;

(d) members of courts of auditors or of the boards of central banks;

(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;



(f) members of the administrative, management or supervisory bodies of State-owned enterprises.

None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.

The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:

- (a) the spouse;
- (b) any partner considered by national law as equivalent to the spouse;
- (c) the children and their spouses or partners;
- (d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:

- (a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;
- (b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.