

Project against Economic Crime (PECK)

Project's Closing Conference

Pristina, 28 April 2015

The Financial Intelligence Unit (Section 2.6 – R.26)
Law Enforcement, prosecution and other competent authorities
(Section 2.7 – R.27 & R.28)
Cross border declaration or disclosure (Section 2.8 – SR. IX)
National cooperation and coordination (Section 6.1 – R.31)
Other forms of international cooperation (Section 6.5 – R.40)

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Key Findings concerning the FIU

- The FIU functions as a central independent national institution responsible for researching, obtaining, analysing and disseminating to competent authorities the information with regard to the potential money laundering and terrorist financing.
- The FIU has issued several guidance to reporting entities by means of 'Administrative Directives'.
- The FIU publishes its annual activity report on its website.
- The scope and mode of FIU access to various databases is not fully satisfactory and could be enhanced

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Key Findings concerning the FIU

- The procedure to request additional information from reporting entities contains significant ambiguity and is open to legal challenge.
- The FIU disseminates materials either to police or the SPRK, however, until recently, the extent and quality of feedback it receives on the progress and outcomes of these disseminations is very low and unsystematic.
- The FIU has applied for membership in the Egmont Group. However, it has not applied yet the Egmont Principles for information exchange in its activities.
- The necessary efforts should be sustained in order to ensure that the FIU's budget remain at a satisfactory level in order to enable it to correctly execute its mandate.

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Key Findings concerning the FIU

- Unfortunately the assessment team has not been provided with sufficient information to comprehensively judge the effectiveness of the FIU. The lack of meaningful statistics demonstrating the outcomes of FIU disseminations to law enforcement is the most important gap and efforts to address this issue should be continued.
- However, sanitized files intended for dissemination to law enforcement authorities demonstrate the clear ability of analysts in the FIU to perform analysis to the point as to be able to infer the probable predicate offence from available data.

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Key Findings concerning Law Enforcement & Prosecution Authorities

- All the Kosovo law enforcement agencies have a responsibility for ensuring that money laundering offences are investigated.
- Money Laundering prosecutions are a competence reserved for the SPRK.
- Money laundering investigations are prosecutor-led with law enforcement acting as “the right hand” of the prosecutor.

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Key Findings concerning Law Enforcement & Prosecution Authorities

- The CPC describes the range of investigative techniques available to law enforcement.
- The postponement of an arrest is not fully available to Kosovo law enforcement authorities.
- According to the CPC the Prosecutor has the right to request all documentary evidence including financial records.
- The CPC lists the non-exclusive range of evidence that can be obtained by the prosecutor during the investigation stage and prior to the pre-trial testimony.
- Confidential data held by non-parties to the investigation can only be obtained through Court orders.

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Key Findings concerning Law Enforcement & Prosecution Authorities

- Covert and technical measures of surveillance and investigation can also be undertaken by the police.
- The lack of indictment and of convictions for ML cases does not permit to consider that, when conducting investigations of ML and underlying predicate offences, the power for competent authorities to obtain documents and information for use in those investigations and in prosecutions is fully effective.
- There are also significant instances of political interference.

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Key Findings concerning Law Enforcement & Prosecution Authorities

- At the time of the Cycle 1 on-site visit, the statistics and records kept by the Police and the Prosecutors did not match, both in terms of the criteria and the ultimate numbers. This seems however to improve lately.
- The statistics given by prosecutors indicate a gradual increase in the case load for ML offences handled by them, and the growing backlog of cases.

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Key Findings concerning Law Enforcement & Prosecution Authorities

- In 2013, according to the KPC statistics, 45.61% of the AML criminal reports were dropped or closed before investigation and for 52.63% the investigations were ceased, leaving only 1.76% of cases ending with an indictment being filed.
- No statistics were provided on the reasons why no further action was taken for so many reports and why so few cases ended in an indictment being filed.
- it also appeared that the level of awareness of Prosecutors on ML matters could be significantly improved.
- From a general perspective, Kosovo authorities should take appropriate measures in order to increase the number of cases ending in an indictment being filled.

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Key Findings concerning Cross-Border Declaration

- Every person entering or leaving Kosovo and carrying monetary instruments of a value of €10,000 or more must declare the amount and the source of such monetary instruments in writing.
- In case of false declaration, the Customs have the power to seize and detain monetary instruments which have been falsely declared or undeclared.
- Customs authorities also have the power to question and search natural persons and their baggage.
- The Kosovo Customs can apply sanctions to persons who make a false declaration or disclosure.

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Key Findings concerning Cross-Border Declaration

- Customs also report all suspicious ML/TF incidents to the FIU in the form of an STR.
- Kosovo Customs successfully co-operates with KP, FIU, Integrated Border Management agencies and EULEX.

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Key Findings concerning National Co-operation and Coordination

- An AML/CFT strategy was adopted in January 2014 abrogating the previous strategy that had been adopted in September 2012.
- At the end of June 2014, the institutions responsible for the implementation of the Action Plan have finalised 7 and initiated 20 out of altogether 51 actions.
- When and if completed, this will have a major impact on Kosovo's ability to organise and inform itself to better tackle the threats from money laundering, economic crime and terrorist financing.
- A recently established National Office for Economic Crimes Enforcement is to serve as the key coordinating and monitoring mechanism for activities of all government actors in the area of combating economic crime, including ML and TF.

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Key Findings concerning National Co-operation and Coordination

- The KPC has developed a Strategic Plan for Inter-Institutional Cooperation in the Fight against Organized Crime and Corruption for 2013-2015. This document is aimed at improving interagency cooperation and information exchange on cases of corruption and organized crime.
- It is clear that the KPC and AML/Economic Crime strategies cover a number of the same issues which may lead to a concern as to how those strategies will correlate in terms of practical implementation.

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Key Findings concerning National Co-operation and Coordination

- Law-enforcement agencies are still at the initial stage of creating proper and systematic mechanisms for interagency information exchange and cooperation.
- Police, Customs, FIU and Prosecutors have signed a number of MoUs to this effect, however several key arrangements, such as an FIU-Prosecutors MoU have not yet been considered.

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Key Findings concerning Other Forms of International Co-operation

- The AML/CFT Law allows the FIU to share information with any foreign counterpart agency performing similar functions and which are subject to similar obligations in terms of preservation of confidentiality.
- The FIU is also able to make enquiries on behalf of foreign counterparts of publicly available information and in its own databases.
- The FIU is entitled to request and receive from public or governmental bodies, or international bodies or organizations or intergovernmental organizations (in Kosovo), data, information, documents related to a person, entity, property or transaction, and may share information with any foreign counterpart.

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Key Findings concerning Other Forms of International Co-operation

- The AML/CFT Law should also allow the FIU to make enquiries to financial institutions or other reporting subjects for information, based on a request from a foreign FIU
- Statistics provided show that the FIU seems to cooperate in an effective manner with its counterparts.

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Key Findings concerning Other Forms of International Co-operation

- Since 2011 the Kosovo Police has created an International Law Enforcement Co-operation Unit (ILECU) within the framework of a regional project aimed at facilitating international information exchange between law enforcement authorities.
- However, the statistics provided by Kosovo authorities with regard to international information exchange by the police were not detailed enough to allow the assessment team to judge about the effectiveness.