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## **Project against Economic Crime in Kosovo\* (PECK)**

### **QUESTIONNAIRE**

**on compliance with international standards  
in the area of anti-money laundering and  
combating the financing of terrorism**

### **CYCLE 1**

ECU/PECK-4/2012

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

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#### **NOTE TO AUTHORITIES:**

- The authorities must provide comprehensive and detailed answers to each question below, and explain to the fullest extent possible the legislative and institutional framework and/or other measures they have taken to meet each criterion of the international standards.
- In support of the responses to the questionnaire below the authorities must provide copies of legislation and other documents, which are mentioned and/or referenced in the answers to questions.
- Requested statistics must be provided (if available) in the form of a table with an annual breakdown for a period of 3 years.
- When answering questions relating to agency resources please provide detailed information on budget, staffing, structure as well as a comprehensive assessment on the sufficiency of the allocated resources.

## **1. General**

### **1.1 General information**

Please provide general information on Kosovo and its economy. Other information that could be relevant would be a short summary addressing the respect of principles such as:

- a) transparency and good governance;
- b) a proper culture of AML/CFT compliance shared and reinforced by authorities, financial institutions, designated non-financial businesses and professions; industry trade groups, and self-regulatory organisations (SROs);
- c) appropriate measures to prevent and combat corruption, including, where information is available, laws and other relevant measures, the jurisdiction's participation in regional or international anti-corruption initiatives and the impact of these measures on the jurisdiction's AML/CFT implementation;
- d) a court system that ensures that judicial decisions are properly enforced;
- e) high ethical and professional requirements for police officers, prosecutors, judges, etc. and measures and mechanisms to ensure these are observed;
- f) a system for ensuring the ethical and professional behaviour on the part of professionals such as accountants and auditors, and lawyers. This may include the existence of codes of conduct and good practices, as well as methods to ensure compliance such as registration, licensing, and supervision or oversight.

Please include summarised information on the level of development of the jurisdiction and other factors that affect the development and implementation of an AML/CFT framework.

### **1.2 General situation of money laundering and financing of terrorism**

Please provide information on the current risks and vulnerabilities that are faced by Kosovo in AML/CFT and how they are being addressed. Additionally, this section should be used to provide background information on the types of predicate offences that are generating illegal proceeds that are laundered (and whether the laundering offences are primarily based on domestic or foreign predicate offences), any estimates of the amount of money being laundered, and the methods, techniques and trends that have been observed regarding the laundering. Information should also be provided on any terrorist activity that has occurred within Kosovo, and on the sources and methods used to finance terrorist activity.

The following questions should be answered:

- (a) What crimes or types of crime are considered to be the major sources of illegal proceeds in your jurisdiction? Please describe briefly the current situation and trends regarding such crimes e.g. how serious a money laundering problem they represent; any order of magnitude estimate you can provide of the scale of proceeds generated; whether the incidence of such crimes is increasing or declining, and whether the proceeds come from domestic or foreign predicate offences.

Please provide, if possible, available statistical data on the numbers of prosecutions and convictions for serious offences, by offence type, for the last four (4) years. This will help the assessors to have an overview of your crime situation generally. For offences that result in economic loss or damage please indicate (if figures are available) the total economic loss or damage resulting from these offences.

(b) Describe the present money laundering situation in your jurisdiction, and how it has changed (if at all) in the last four (4) years? What do you consider your most important money laundering problem? Do you anticipate any changes in the money laundering threat in the foreseeable future? In your description, please provide the following types of information:

- (1) the number of cases of money laundering or suspected money laundering;
- (2) the most common ways in which the money is laundered;
- (3) the types of financial institutions, DNFBP or other businesses used;
- (4) the types of groups involved in laundering operations;
- (5) whether the pattern of money laundering has changed following the introduction of anti-money laundering measures.

(c) Describe the present terrorist financing situation in Kosovo and how it has changed (if at all) in the last four (4) years? Do you anticipate any changes in the methods or techniques that will be used in the foreseeable future? In your description, cover any cases of actual or suspected terrorist financing which have come to light; the source of the funds (including whether legal or illegal), the ways in which the funds were provided to the terrorists and how they were used, the types of institutions used, and the groups involved). Advise whether the terrorist financing techniques and trends have changed following the introduction of counter-terrorist financing measures.

### 1.3 Overview of the Financial Sector and Designated Non-financial Businesses and Professions (DNFBP)

Please provide a description of the types of financial institutions operating in Kosovo, and listing the financial activities that they engage in or are authorised to engage in.<sup>1</sup> It is very useful if a table is prepared that compares the types of financial institutions operating in Kosovo with the list of financial activities set out in the FATF definition. For the purposes of the FATF Recommendations, it is not necessary that a business or institution requires authorisation to be classified as a “financial institution”. Rather, this section should describe

<sup>1</sup> Under the FATF Recommendations *financial institutions* means any person or entity who conducts as a business one or more of the following activities or operations for or on behalf of a customer:

1. Acceptance of deposits and other repayable funds from the public.
2. Lending.
3. Financial leasing.
4. The transfer of money or value.
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money).
6. Financial guarantees and commitments.
7. Trading in:
  - (a) money market instruments (cheques, bills, CDs, derivatives etc.);
  - (b) foreign exchange;
  - (c) exchange, interest rate and index instruments;
  - (d) transferable securities;
  - (e) commodity futures trading.
8. Participation in securities issues and the provision of financial services related to such issues.
9. Individual and collective portfolio management.
10. Safekeeping and administration of cash or liquid securities on behalf of other persons.
11. Otherwise investing, administering or managing funds or money on behalf of other persons.
12. Underwriting and placement of life insurance and other investment related insurance
13. Money and currency changing.

any natural or legal person that engages in a financial activity and meets the definition of “financial institution”. The section should set out information on the number and size of financial institutions, and any recent changes of significance e.g. consolidation in a particular sector.

#### **1.4 Overview of the commercial laws and mechanism governing legal persons and agreements**

Please provide a description of the types of legal persons and legal arrangements that can be established or created, or can own property, in Kosovo. This may extend to types of legal persons and arrangements that cannot be created within Kosovo but which are recognised for purposes such as holding bank accounts or real estate, owning shares or conducting financial transactions. Kosovo should provide basic information on:

(a) how such legal persons or arrangements are created or established or are otherwise recognised e.g. what formal documents are required;

(b) the basic characteristics of such entities e.g. who has ownership (for example shareholders, which could be legal or natural persons) and control (e.g. directors), do they require a registered office or agent etc.;

(c) whether they are registered, what types of information must be provided for the register (in particular, information on ownership and control), and whether this is public information; and

(d) what types of information concerning its ownership and control must be maintained by the entity itself, who has access to this information and must it be retained, in Kosovo where it is created or established or owns property.

It is very useful if this section also contains a description of any laws, systems and mechanisms that exist for identifying natural persons, which could be through domestic identity registration systems, use of identity cards or in other ways.

#### **1.5 Overview of the strategy to prevent money laundering and terrorist financing and its implementation**

Please provide a high-level overview of Kosovo’s of AML/CFT efforts, and in particular the policy objectives. It not necessary to give an overview of the whole system, as all the legislative and other components are described in detail below, and the executive summary of the MER will provide this overview. It should include identification of the authorities, bodies and institutions with AML/CFT responsibilities within Kosovo and a summary of historical developments. The responses to the questions below will help to provide a substantial basis for completing this section.

## **2. *Legal System and Related Institutional Measures***

### **2.1 Criminalisation of money laundering**

2.1.1 Has Money laundering been criminalised on the basis of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 2000 UN Convention against Transnational Organized Crime (the Palermo Convention) i.e. the physical and material elements of the offence (see Article 3(1) (b) & (c) Vienna Convention and Article 6(1) Palermo Convention)? (FATF R.1.1)
2.1.2 Has the offence of ML been extended to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime? (FATF R.1.2)
2.1.3 When proving that property is the proceeds of crime is it necessary that a person be convicted of a predicate offence? (FATF R.1.2.1)
2.1.4 Do predicate offences for money laundering cover all serious offences, and does Kosovo seek to extend this to the widest range of predicate offences <sup>2</sup> ? (FATF R.1.3)
2.1.5 If Kosovo applies a threshold approach <sup>3</sup> or a combined approach that includes a threshold approach, do predicate offences at a minimum comprise all offences: a) which fall within the category of serious offences under their domestic law; or b) which are punishable by a maximum penalty of more than one year's imprisonment; or c) which are punished by a minimum penalty of more than six months imprisonment (for countries that have a minimum threshold for offences in their legal system)? (FATF R.1.4)
2.1.6 Do predicate offences for money laundering extend to conduct that occurred in another jurisdiction, which constitutes an offence in that jurisdiction, and which would have constituted a predicate offence had it occurred domestically? (FATF R.1.5)

<sup>2</sup> At a minimum, predicate offences should include a range of offences in each of the designated categories of offences (see annex 1). Where the designated category is limited to a specific offence, then that offence must be covered.

<sup>3</sup> Countries determine the underlying predicate offences for money laundering by reference to (a) all offences, or (b) to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence (threshold approach), or (c) to a list of predicate offences, or (d) a combination of these approaches.

2.1.7 Does the offence of money laundering apply to persons who commit the predicate offence? (FATF R.1.6)
2.1.8 Are there appropriate ancillary offences to the offence of money laundering, including association with or conspiracy to commit, attempt, aiding and abetting, facilitating, and counselling the commission, unless this is not permitted by fundamental principles of domestic law? (FATF R.1.7)
2.1.9 Where the proceeds of crime are derived from conduct that occurred in another jurisdiction, which is not an offence in that other jurisdiction but which would have constituted a predicate offence had it occurred domestically, does this constitute a money laundering offence? (FATF R.1.8)
2.1.10 Does legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? (CETS 198 Art. 9 (3))
2.1.11 Does your legislation and other measures allow for money laundering offence to be established where the person ought to have assumed that the property was proceeds? (CETS 198 Art. 9 (3))
2.1.12 Have all the categories of predicate offences listed in the Appendix to the CETS No. 198 (see Annex 2) been criminalised in your jurisdiction? (CETS 198 Art. 9 (4))
2.1.13 Can a conviction for money laundering be obtained without a requirement for a prior or simultaneous conviction for the predicate offence? (CETS 198 Art. 9 (5))
2.1.14 How do you demonstrate effective implementation of this requirement? If there are examples of statistics which demonstrate the requirement set out in Article 9 (5) of the CETS No. 198 in cases in your jurisdiction, please provide.



2.1.15 Is a conviction for money laundering possible where it is proved that the property the object of paragraph 1a or b of Article 9 originated from a predicate offence, without it being necessary to establish precisely which offence? (CETS 198 Art. 9 (6))
2.1.16 What legislative and other measures in your jurisdiction provide for the possibility of taking into account, when determining the penalty, final decisions against natural or legal persons taken in another Party in relation to offences? (CETS 198 Art. 11)
2.1.17 Do the competent authorities of Kosovo maintain comprehensive statistics on ML investigations, prosecutions, and convictions? If maintained, please provide these statistics (FATF R.32.2). Please indicate any other data or material you consider to be relevant to the effectiveness and efficiency of this part of the AML/CFT system.

## 2.2 Corporate Liability

2.2.1 Does the offence of money laundering apply at least to natural persons that knowingly engage in ML activity? (FATF R.2.1)
2.2.2 Does the law permit the intentional element of the offence of ML and TF to be inferred from objective factual circumstances? (FATF R.2.2 and SR.II.4)
2.2.3 Does the criminal liability for ML and TF extend to legal persons? If it is not possible (i.e. due to fundamental principles of domestic law), does civil or administrative liability apply? (FATF R.2.3 and SR.II.4)
2.2.4 If a legal person is subject to criminal liability for ML and TF, does it preclude the possibility of parallel criminal, civil or administrative proceedings in countries in which more than one form of liability is available? (FATF R.2.4 and SR.II.4)
2.2.5 Are natural and legal persons subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for ML and TF? (FATF R.2.5 and SR.II.4)
2.2.6 Are natural and legal persons held liable for infringements of the of the AML/CFT provisions set out in domestic legislation? (3MLD Art.39)
2.2.7 How are legal persons held liable for criminal offences of money laundering established in accordance with the CETS No. 198 committed for their benefit by any natural person, acting either individually or as a part of an organ of the legal person, who has a leading position within the legal person based on: a) a power of representation of the legal person; or b) an authority to take decisions on behalf of the legal person; or c) an authority to exercise control within the legal person as well as for involvement of such a natural person as accessory or instigator in the above mentioned offences? (CETS 198 Art. 10 (1))
2.2.8 How is the notion of corporate liability applied to legal persons in instances where lack

of supervision or control by natural person who has a leading position in the legal person has made possible the commission of the criminal offences in paragraph 1 for the benefit of that legal person by a natural person under its authority? (CETS 198 Art. 10 (2))

2.2.9 What legislative and other measures in your jurisdiction provide for the possibility of taking into account, when determining the penalty, final decisions against natural or legal persons taken in another Party in relation to offences established? (CETS 198 Art.11)

## 2.3 Criminalisation of terrorist financing

2.3.1 Has terrorist financing been criminalised in accordance with Article 2 of the Terrorist Financing Convention? (FATF SR.II.1)
2.3.2 Do the offences of terrorist financing extend to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part: (i) to carry out a terrorist act(s); (ii) by a terrorist organisation; or (iii) by an individual terrorist. (FATF SR.II.1 (a))
2.3.3 Do the offences of terrorist financing extend to any funds as that term is defined in the TF Convention <sup>4</sup> ? Does this include funds from an illegitimate as well as a legitimate source? (FATF SR.II.1 (b))
2.3.4 Do terrorist financing offences require that the funds: (i) were actually used to carry out or attempt a terrorist act(s); or (ii) were linked to a specific terrorist act(s). (FATF SR.II.1 (c))
2.3.5 Is the attempt to commit terrorist financing an offence? (FATF SR.II.1 (d))
2.3.6 When a person is engaged in any of the types of conduct set out in Article 2(5) of the Terrorist Financing Convention is it an offence? (FATF SR.II.1 (e))
2.3.7 Are terrorist financing offences predicate offences for money laundering? (FATF SR.II.2)

<sup>4</sup> The Terrorist Financing Convention defines *funds* as “assets of every kind, whether tangible or intangible, movable or immovable, however, acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.”

2.3.8 Do terrorist financing offences apply, regardless of whether the person alleged to have committed the offence(s) in the same jurisdiction or a different jurisdiction from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur? (FATF SR.II.3)

2.3.9 Do the competent authorities of Kosovo maintain comprehensive statistics on FT investigations, prosecutions, and convictions? If maintained, please provide these statistics (FATF R.32.2). Please indicate any other data or material you consider to be relevant to the effectiveness and efficiency of this part of the AML/CFT system.

## 2.4 Confiscation, freezing and seizing of proceeds of crime

2.4.1 Do laws provide for the confiscation of property<sup>5</sup> that has been laundered or which constitutes:  
a) proceeds from;  
b) instrumentalities used in; and  
c) instrumentalities intended for use in  
the commission of any ML, FT or other predicate offences, and property of corresponding value? (FATF R.3.1)

2.4.2 Do the above laws equally apply:  
(a) to property that is derived directly or indirectly from proceeds of crime; including income, profits or other benefits from the proceeds of crime; and  
(b) to all the property referred to above, regardless of whether it is held or owned by a criminal defendant or by a third party? (FATF R.3.1.1)

2.4.3 Do laws and other measures provide for provisional measures, including the freezing and/or seizing of property, to prevent any dealing, transfer or disposal of property subject to confiscation? (FATF R.3.2)

2.4.4 Do laws or measures allow the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice, unless this is inconsistent with fundamental principles of domestic law? (FATF R.3.3)

2.4.5 Are law enforcement agencies, the FIU or other competent authorities given adequate powers to identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of crime? (FATF R.3.4)

2.4.6 Do laws and other measures provide protection for the rights of bona fide third parties? (FATF R.3.5)

2.4.7 Is there an authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those

<sup>5</sup> All the property referred to in criteria 3.1 and 3.1.1 above is hereafter referred to as “property subject to confiscation”.

actions the authorities would be prejudiced in their ability to recover property subject to confiscation? (FATF R.3.6)
<p>2.4.8 Do laws provide for the confiscation of:</p> <p>a) the property of organisations that are found to be primarily criminal in nature (i.e. organisations whose principal function is to perform or assist in the performance of illegal activities)?</p> <p>b) property subject to confiscation, but without a conviction of any person (civil forfeiture), in addition to the system of confiscation triggered by a criminal conviction?</p> <p>c) property subject to confiscation, and which require an offender to demonstrate the lawful origin of the property? (FATF R.3.7)</p>
<p>2.4.9 Can you co-operate under your domestic law with Parties requesting the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence? Have you provided any international assistance on this basis? (CETS 198 Art. 23.5)</p>
<p>2.4.10 When acting on the request made by another Party in accordance with Articles 23 and 24 of the CETS No. 198, do your authorities, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting Party so it can give compensation to the victims of the crime or return such property to their legitimate owners?</p> <p>How is this achieved in practice? Please provide relevant legal provisions if any. (CETS 198 Art. 25.2)</p>
<p>2.4.11 Are there agreements or arrangements in place giving special consideration to sharing confiscated property with other Parties, on a regular or case-by-case basis? (CETS 198 Art. 25.3)</p>
<p>2.4.12 Do the competent authorities of Kosovo maintain comprehensive statistics on the number of cases and the amounts of property frozen, seized, and confiscated relating to (i) ML, (ii) FT, (iii) criminal proceeds and (iv) underlying predicate offences? If maintained, please provide these statistics (FATF R.32.2). Please indicate any other data or material you consider to be relevant to the effectiveness and efficiency of this part of the AML/CFT system.</p>

## 2.5 Freezing of funds used for terrorist financing

2.5.1 Does Kosovo have effective laws and procedures to freeze terrorist funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999) <sup>6</sup> ? (FATF SR.III.1)
2.5.2 Does Kosovo have effective laws and procedures to freeze terrorist funds or other assets of persons designated in the context of S/RES/1373(2001) <sup>7</sup> ? (FATF SR.III.2)
2.5.3 Does Kosovo have effective laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions? (FATF SR.III.3)
2.5.4 Do the freezing actions mentioned above extend to: a) funds or other assets wholly or jointly <sup>8</sup> owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations; and b) funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations? (FATF SR.III.4)

<sup>6</sup> S/RES/1267(1999) and its successor resolutions obligate countries to freeze without delay the funds or other assets owned or controlled by Al-Qaida, the Taliban, Usama bin Laden, or persons and entities associated with them as designated by the United Nations Al-Qaida and Taliban Sanctions Committee established pursuant to United Nations Security Council Resolution 1267(1999), including funds derived from funds or other assets owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds or other assets are made available, directly or indirectly, for such persons' benefit, by their nationals or by any person within their territory. The Al-Qaida and Taliban Sanctions Committee is the authority responsible for designating the persons and entities that should have their funds or other assets frozen under S/RES/1267(1999) and its successor resolutions. All countries that are members of the United Nations are obligated by S/RES/1267(1999) and its successor resolutions to freeze the assets of persons and entities so designated by the Al-Qaida and Taliban Sanctions Committee.

<sup>7</sup> S/RES/1373(2001) obligates countries to freeze without delay the funds or other assets of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds or other assets derived or generated from property owned or controlled, directly or indirectly, by such persons and associated persons and entities. Each individual country has the authority to designate the persons and entities that should have their funds or other assets frozen. Additionally, to ensure that effective co-operation is developed among countries, countries should examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other countries. When (i) a specific notification or communication is sent and (ii) the country receiving the request is satisfied, according to applicable legal principles, that a requested designation is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee is a terrorist, one who finances terrorism or a terrorist organisation, the country receiving the request must ensure that the funds or other assets of the designated person are frozen without delay.

<sup>8</sup> Jointly refers to those assets held jointly between or among designated persons, terrorists, those who finance terrorism or terrorist organisations on the one hand, and a third party or parties on the other hand.



2.5.5 Does Kosovo have effective systems for communicating actions taken under the freezing mechanisms referred to in Criteria above to the financial sector immediately upon taking such action? (FATF SR.III.5)
2.5.6 Has clear guidance been provided to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms? (FATF SR.III.6)
2.5.7 Does Kosovo have effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations? (FATF SR.III.7)
2.5.8 Does Kosovo have effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person? (FATF SR.III.8)
2.5.9 Does Kosovo have appropriate procedures for authorising access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses? <sup>9</sup> (FATF SR.III.9)
2.5.10 Does Kosovo have appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court? (FATF SR.III.10)
2.5.11 Do laws and other measures in Kosovo provide protection for the rights of bona fide third parties? (FATF SR.III.12)

<sup>9</sup> These procedures should be in accordance with S/RES/1452(2002).

2.5.12 Do the competent authorities of Kosovo maintain comprehensive statistics on the number of persons or entities and the amounts of property frozen pursuant to or under U.N. Resolutions relating to terrorist financing (FATF R.32.2). Please indicate any other data or material you consider to be relevant to the effectiveness and efficiency of this part of the AML/CFT system.

## 2.6 Financial Intelligence Unit

2.6.1 Has Kosovo established an FIU that serves as its centre for receiving (and if permitted, requesting), analysing, and disseminating disclosures of STR and other relevant information concerning suspected ML or FT activities? (FATF R.26.1)
2.6.2 Does the FIU or another competent authority provide financial institutions and other reporting parties with guidance regarding the manner of reporting, including the specification of reporting forms, and the procedures that should be followed when reporting? (FATF R.26.2)
2.6.3 Does the FIU have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STR? (FATF R.26.3)
2.6.4 Is the FIU, either directly or through another competent authority, authorised to obtain from reporting parties additional information needed to properly undertake its functions? (FATF R.26.4)
2.6.5 Is the FIU authorised to disseminate financial information to domestic authorities for investigation or action when there are grounds to suspect ML or FT? (FATF R.26.5)
2.6.6 Does the FIU have sufficient operational independence and autonomy to ensure that it is free from undue influence or interference? (FATF R.26.6)
2.6.7 Is the information held by the FIU securely protected and disseminated only in accordance with the law? (FATF R.26.7)
2.6.8 Does the FIU publicly release periodic reports that include statistics, typologies and trends as well as information regarding its activities? (FATF R.26.8)

2.6.9 Has the FIU considered applying for membership in the Egmont Group? (FATF R.26.9)
2.6.10 Has the FIU taken account of the Egmont Group Statement of Purpose and its Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases (these documents set out important guidance concerning the role and functions of FIUs, and the mechanisms for exchanging information between FIU)? (FATF R.26.10)
2.6.11 Is Art. 25(1) of the Directive implemented in your jurisdiction? (3MLD Art. 25(1))
2.6.12 Has Kosovo adopted legislative and other measures permitting urgent actions to be taken by the FIU or, as appropriate by any other competent authorities or body when there is a suspicion that a transaction is related to money laundering, to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion? Please provide the provisions of your domestic legislation, regulations or other measures in this respect. (CETS 198 Art. 14)
2.6.13 Does Kosovo restrict such measures to cases where a suspicious transaction report had been submitted? (CETS 198 Art. 14)
2.6.14 What is the maximum duration of a suspension or withholding of consent to a transaction according to your domestic legislation? (CETS 198 Art. 14)
2.6.15 Do the competent authorities maintain comprehensive statistics on:
(a) suspicious transaction reports, and other reports where appropriate under domestic law, received and disseminated;
(i) STR received by the FIU, including a breakdown of the type of financial institution, DNFBP, or other business or person making the STR;
(ii) Breakdown of STR analysed and disseminated;
(iii) international wire transfers (It is acceptable if these statistics are kept by another agency).
(iv) STR resulting in investigation, prosecution, or convictions for ML, FT or an underlying

<p>predicate offence</p> <p>(FATF R.32.2, 32.3).</p> <p>Please indicate any other data or material you consider to be relevant to the effectiveness and efficiency of this part of the AML/CFT system.</p>
<p>2.6.16 Is the FIU of Kosovo adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform its functions? (FATF R.30.1)</p>
<p>2.6.17 Is the staff of the FIU required to maintain high professional standards, including standards concerning confidentiality, integrity and appropriate skills? (FATF R.30.2)</p>
<p>2.6.18 Is the staff of the FIU provided with adequate and relevant training for combating ML and FT? (FATF R.30.3)</p>

## 2.7 Law enforcement authorities

2.7.1 Does Kosovo have designated law enforcement authorities that have responsibility for ensuring that ML and FT offences are properly investigated? (FATF R.27.1)
2.7.2 Has consideration been given to taking measures, whether legislative or otherwise, that allow competent authorities investigating ML cases to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering? (FATF R.27.2)
2.7.3 Are measures in place, whether legislative or otherwise, that provide law enforcement or prosecution authorities with an adequate legal basis for the use of a wide range of special investigative techniques when conducting investigations of ML or FT (e.g. controlled delivery of the proceeds of crime or funds intended for use in terrorism, undercover operations, etc)? (FATF R.27.3)
2.7.4 Where special investigative techniques are permitted, are such techniques used when conducting investigations of ML, FT, and underlying predicate offences, and to what extent? (FATF R.27.4)
2.7.5 In addition to special investigative techniques, are the following effective mechanisms used?  (a) Permanent or temporary groups specialised in investigating the proceeds of crime (financial investigators)? An important component of the work of such groups or bodies would be focused on the investigation, seizure, freezing and confiscation of the proceeds of crime. (FATF R.27.5(a))  (b) Co-operative investigations with appropriate competent authorities in other countries, including the use of special investigative techniques, provided that adequate safeguards in place? (FATF R.27.5(b))
2.7.6 Are ML and FT methods, techniques and trends reviewed by law enforcement authorities, the FIU and other competent authorities (as appropriate) on a regular, interagency basis? Are the resulting information, analyses or studies disseminated to law enforcement and FIU staff, as well as staff of other competent authorities? (FATF R.27.6)

2.7.7 Do the competent authorities responsible for conducting investigations of ML, FT and other underlying predicate offences have the powers to be able to: a) compel production of, b) search persons or premises for, and c) seize and obtain transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons? (FATF R.28.1)
2.7.8 Do the competent authorities referred to above have the powers to be able to take witnesses' statements for use in investigations and prosecutions of ML, FT, and other underlying predicate offences, or in related actions? (FATF R.28.2)
2.7.9 Are the law enforcement and prosecution authorities of Kosovo adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform their functions? (FATF R.30.1)
2.7.10 Are the law enforcement and prosecution authorities of Kosovo required to maintain high professional standards, including standards concerning confidentiality, integrity and appropriate skills? (FATF R.30.2)
2.7.11 Are the law enforcement and prosecution authorities of Kosovo provided with adequate and relevant training for combating ML and FT? (FATF R.30.3)
2.7.12 Are there special training or educational programmes provided for judges and courts concerning ML and FT offences, and the seizure, freezing and confiscation of property that is the proceeds of crime or is to be used to finance terrorism? (FATF R.30.4)

## 2.8 Cross Border Declaration or Disclosure

2.8.1 Has Kosovo implemented one of the following two systems on incoming and outgoing<sup>10</sup> cross-border transportations of currency or bearer negotiable instruments in order to detect the physical cross-border transportation of currency and bearer negotiable instruments that are related to money laundering or terrorist financing:

(a) A declaration system that has the following characteristics:

(i) All persons making a physical cross-border transportation of currency or bearer negotiable instruments that are of a value exceeding a prescribed threshold should be required to submit a truthful declaration to the designated competent authorities; and

(ii) The prescribed threshold cannot exceed EUR/USD 15,000<sup>11</sup>

OR

(b) A disclosure system that has the following characteristics:

(i) All persons making a physical cross-border transportation of currency or bearer negotiable instruments should be required to make a truthful disclosure to the designated competent authorities upon request; and

(ii) The designated competent authorities should have the authority to make their inquiries on a targeted basis, based on intelligence or suspicion, or on a random basis. (FATF SR.IX.1)

2.8.2 Do designated competent authorities of Kosovo have the authority to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use when they discover a false declaration/disclosure of currency or bearer negotiable instruments or a failure to declare/disclose them? (FATF SR.IX.2)

2.8.3 Are designated competent authorities of Kosovo able to stop or restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found:

(a) Where there is a suspicion of money laundering or terrorist financing; or

(b) Where there is a false declaration/disclosure.

(FATF SR.IX.3)

<sup>10</sup> Jurisdictions do not have to use the same type of system for incoming and outgoing cross-border transportation of currency or bearer negotiable instruments.

<sup>11</sup> Jurisdictions that implement a declaration system should ensure that the prescribed threshold is sufficiently low to meet the objectives of Special Recommendation IX. In any event, the threshold cannot exceed EUR/USD 15,000.



2.8.4 Do appropriate authorities retain the amount of currency or bearer negotiable instruments declared/disclosed or otherwise detected, and the identification data of the bearer(s) in instances when:

- (a) A declaration which exceeds the prescribed threshold is made; or
  - (b) Where there is a false declaration/disclosure; or
  - (c) Where there is a suspicion of money laundering or terrorist financing.
- (FATF SR.IX.4)

2.8.5 Is information obtained through the processes implemented under FATF.SR.IX.1 (above) available to the Financial Intelligence Unit (FIU) through either:

A system whereby the FIU is notified about suspicious cross-border transportation incidents;  
OR  
By making the declaration/disclosure information directly available to the FIU in some other way.

(FATF SR.IX.5)

2.8.6 Is there adequate co-ordination on the domestic level among customs, immigration and other related authorities on issues related to the implementation of FATF SR.IX? (FATF SR.IX.6)

2.8.7 At the international level, does Kosovo allow for the greatest possible measure of co-operation and assistance amongst competent authorities? (FATF SR.IX.7)

2.8.8 Can the authorities of Kosovo apply sanctions to persons who make a false declaration or disclosure, as well as persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering? (FATF SR.IX.8, 9)

2.8.9 Can the authorities of Kosovo apply freezing, seizure and confiscation measures in

relation to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering? (FATF SR.IX.10, 11).

2.8.10 If Kosovo discovers an unusual cross-border movement of gold, precious metals or precious stones, is consideration made to notify, as appropriate, the Customs Service or other competent authorities of the countries from which these items originated and/or to which they are destined, and to co-operate with a view toward establishing the source, destination, and purpose of the movement of such items and toward the taking of appropriate action? (FATF SR.IX.12)

2.8.11 Are the systems for reporting cross border transactions subject to strict safeguards to ensure proper use of the information or data that is reported or recorded? (FATF SR.IX.13)

2.8.12 Are the customs authorities of Kosovo adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform their functions? (FATF R.30.1)

2.8.13 Are the customs authorities of Kosovo required to maintain high professional standards, including standards concerning confidentiality, integrity and appropriate skills? (FATF R.30.2)

2.8.14 Are the customs authorities of Kosovo provided with adequate and relevant training for combating ML and FT? (FATF R.30.3)

2.8.15 Do the competent authorities of Kosovo maintain comprehensive statistics on cross border transportation of currency and bearer negotiable instruments (FATF R.32.2). Please indicate any other data or material you consider to be relevant to the effectiveness and efficiency of this part of the AML/CFT system.

### 3. *Preventive Measures - Financial Institutions*

Please give a concise overview of the scope of coverage of AML/CFT preventive measures as they apply to the financial sector (see also section 1.3 above for a definition of *financial institutions*) i.e. what sectors are covered and to what extent.

#### 3.1 Risk of money laundering or terrorist financing

A jurisdiction may decide not to apply certain AML/CFT requirements, or to reduce or simplify the measures being taken, on the basis that there is a low or little risk of money laundering or terrorist financing. Has Kosovo taken a decision not to apply certain required AML/CFT measures to a particular financial sector based on an analysis of ML and FT risks as they relate to particular types of customers, business relationships, transactions or products? If yes, please set out the basis upon which such a decision has been taken.

#### 3.2 Customer due diligence

3.2.1 Are financial institutions permitted to keep anonymous accounts or accounts in fictitious names? (FATF R.5.1)

3.2.2 Are financial institutions required to undertake customer due diligence (CDD) measures when:

- a) establishing business relations;
- b) carrying out occasional transactions above the applicable designated threshold (USD/€ 15,000);
- c) carrying out occasional transactions that are wire transfers;
- d) there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds; or
- e) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data? (FATF R.5.2)

3.2.3 Are financial institutions required to identify the customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information (identification data)? (FATF R.5.3)

3.2.4 For customers that are legal persons or legal arrangements, is the financial institution required to:

- (a) verify that any person purporting to act on behalf of the customer is so authorised, and

identify and verify the identity of that person; and (b) verify the legal status of the legal person or legal arrangement <sup>12</sup> ? (FATF R.5.4)
3.2.5 Are financial institutions required to identify the beneficial owner <sup>13</sup> , and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is? (FATF R.5.5)
3.2.6 For all customers, does the financial institution have to determine whether the customer is acting on behalf of another person, and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person? (FATF R.5.5.1)
3.2.7 For customers that are legal persons or legal arrangements, is the financial institution required to take reasonable measures to: (a) understand the ownership and control structure of the customer; (b) determine who are the natural persons that ultimately own or control the customer. (FATF R.5.5.2)
3.2.8 Are financial institutions required to obtain information on the purpose and intended nature of the business relationship? (FATF R.5.6)
3.2.9 Are financial institutions required to conduct ongoing due diligence on the business relationship? (FATF R.5.7)
3.2.10 Does ongoing due diligence include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds? (FATF R.5.7.1)

<sup>12</sup> Verification can be carried out by obtaining proof of incorporation or similar evidence of establishment or existence, and obtain information concerning the customer's name, the names of trustees (for trusts), legal form, address, directors (for legal persons), and provisions regulating the power to bind the legal person or arrangement.

<sup>13</sup> *Beneficial owner* refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

3.2.11 Are financial institutions required to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships? (FATF R.5.7.2)
3.2.12 Are financial institutions required to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction? (FATF R.5.8)
3.2.13 Where there are low risks, can financial institutions apply reduced or simplified measures? (FATF R.5.9)
3.2.14 Are financial institutions permitted to apply simplified or reduced CDD measures to customers resident in another jurisdiction?
3.2.15 If there is a suspicion of money laundering or terrorist financing or specific higher risk scenarios apply, are simplified CDD measures acceptable? (FATF R.5.11)
3.2.16 Where financial institutions are permitted to determine the extent of the CDD measures on a risk sensitive basis, are there requirements to follow guidelines issued by the competent authorities? (FATF R.5.12)
3.2.17 Are financial institutions required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers? (FATF R.5.13)
3.2.18 Are financial institutions in Kosovo permitted to complete the verification of the identity of the customer and beneficial owner following the establishment of the business relationship, provided that: (a) This occurs as soon as reasonably practicable. (b) This is essential not to interrupt the normal conduct of business.

(c) The money laundering risks are effectively managed? (FATF R.5.14)
3.2.19 Where a customer is permitted to utilise the business relationship prior to verification, are financial institutions required to adopt risk management procedures concerning the conditions under which this may occur? <sup>14</sup> (FATF R.5.14.1)
3.2.20 If the financial institution is unable to comply with Criteria (FATF R.5.3 to 5.6) above: a) is it permitted to open the account, commence business relations or perform the transaction? b) is it required to consider making a suspicious transaction report? (FATF R.5.15)
3.2.21 If the financial institution has already commenced the business relationship, are there any requirements to terminate the business relationship and to consider making a suspicious transaction report? (FATF R.5.16)
3.2.22 Are financial institutions required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times? (FATF R.5.17)
3.2.23 Are financial institutions required to perform CDD measures on existing customers if they are customers to whom Criterion 5.1 applies? (FATF R.5.18)
3.2.24 What is the position in your jurisdiction regarding passbooks on fictitious names? (3MLD Art.6)
3.2.25 In accordance with the FATF Recommendations financial institutions must be required to undertake CDD measures when carrying out occasional transactions <i>above</i> the applicable designated threshold. Are transactions and linked transactions <i>equivalent to</i> EUR 15 000 covered? (3MLD Art.7 b)

<sup>14</sup> These procedures should include a set of measures such as a limitation of the number, types and/or amount of transactions that can be performed and the monitoring of large or complex transactions being carried out outside of expected norms for that type of relationship.

3.2.26 Which approach does Kosovo follow in its definition of “beneficial owner”? Please specify whether the criteria in the EU definition of “beneficial owner” are covered in your legislation. (3MLD Art.3(6))

### 3.3 Politically exposed persons (PEPs)

3.3.1 Are financial institutions required to put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person? (FATF R.6.1)
3.3.2 Are financial institutions required to obtain senior management approval for establishing business relationships with a PEP? (FATF R.6.2)
3.3.3 Where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP, are financial institutions required to obtain senior management approval to continue the business relationship? (FATF R.6.2.1)
3.3.4 Are financial institutions required to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs? (FATF R.6.3)
3.3.5 Where financial institutions are in a business relationship with a PEP, are they required to conduct enhanced ongoing monitoring on that relationship? (FATF R.6.4)
3.3.6 Are the above requirements extended to PEPs who hold prominent public functions domestically? (FATF R.6.5)
3.3.7 Has the 2003 United Nations Convention against Corruption been signed, ratified, and/or fully implemented? (FATF R.6.6)
3.3.8 Does Kosovo implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive? (3MLD Art.3(8), 13(4))



### **3.4      Secrecy laws consistent with the recommendations**

Does any financial institution secrecy law inhibit the implementation of the FATF Recommendations? (FATF R.4.1)
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### 3.5 Record keeping

3.5.1 Are financial institutions required to maintain all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction (or longer if requested by a competent authority in specific cases and upon proper authority)? (FATF R.10.1)

3.5.2 Are transaction records sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity? (FATF R.10.1.1)

3.5.3 Are financial institutions required to maintain records of the identification data, account files and business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority)? (FATF R.10.2)

3.5.4 Are financial institutions required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority? (FATF R.10.3)

### 3.6 Suspicious transaction reporting related to ML or FT

3.6.1 Are financial institutions required by law or regulation to report to the FIU (a suspicious transaction report – STR) when they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity? (FATF R.13.1)

3.6.2 Does the obligation to make a STR also apply to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism? (FATF R.13.2)

3.6.3 Are all suspicious transactions related to ML or FT, including attempted transactions, reported regardless of the amount of the transaction? (FATF R.13.3 and SR.IV.2)

3.6.4 Does the requirement to report suspicious transactions apply regardless of whether they are thought, among other things, to involve tax matters? (FATF R.13.4 and SR.IV.2)

3.6.5 Are financial institutions required to report to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offence for money laundering domestically? (FATF R.13.5)

3.6.6 Are financial institutions required by law or regulation to report to the FIU (a suspicious transaction report – STR) when they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism? (FATF SR.IV.1)

### 3.7 Protection and no tipping off

3.7.1 Are financial institutions and their directors, officers and employees (permanent and temporary) protected by law from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU? (FATF R.14.1)

3.7.2 Are financial institutions and their directors, officers and employees (permanent and temporary) prohibited by law from disclosing (“tipping off”) the fact that a STR or related information is being reported or provided to the FIU? (FATF R.14.2)

3.7.3 Do laws or regulations or any other measures ensure that the names and personal details of staff of financial institutions that make a STR are kept confidential by the FIU? (FATF R.14.3)

3.7.4 Is Art. 27 of the Directive implemented in your jurisdiction? (3MLD Art. 27)

3.7.5 Under what circumstances are the tipping off obligations applied? Are there exceptions? (3MLD Art. 28)

3.7.6 Are there legislative and other measures in place to ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been sought or obtained in accordance with sub paragraphs a, b or c of Article 7 (2) or that an investigation is being carried out? Please provide relevant legislative and other measures. (CETS 198 Art. 7)

### **3.8 Shell banks**

3.8.1 Has Kosovo taken measures to prohibit the establishment or continued operation of shell banks? (FATF R.18.1)
3.8.2 Have measures been taken to prevent financial institutions from entering into, or continuing, correspondent banking relationships with shell banks? (FATF R.18.2)
3.8.3 Are financial institutions required to satisfy themselves that respondent financial institutions in a foreign jurisdiction do not permit their accounts to be used by shell banks? (FATF R.18.3)

### 3.9 Ongoing Supervision and Monitoring and Market Entry

3.9.1 Are financial institutions subject to adequate AML/CFT regulation and supervision and are effectively implementing the FATF Recommendations? (FATF R.23.1)
3.9.2 Do designated competent authorities have responsibility for ensuring that financial institutions adequately comply with the requirements to combat money laundering and terrorist financing? (FATF R.23.2)
3.9.3 Do supervisors or other competent authorities take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in a financial institution? (FATF R.23.3)
3.9.4 Are directors and senior management of financial institutions subject to the Core Principles evaluated on the basis of “fit and proper” criteria including those relating to expertise and integrity? (FATF R.23.3.1)
3.9.5 For financial institutions that are subject to the Core Principles, do the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, apply in a similar manner for anti-money laundering and terrorist financing purposes? (FATF R.23.4)
3.9.6 Are natural and legal persons providing a money or value transfer service, or a money or currency changing service licensed or registered? (FATF R.23.5)
3.9.7 Are natural and legal persons providing a money or value transfer service, or a money or currency changing service subject to effective systems for monitoring and ensuring compliance with domestic requirements to combat money laundering and terrorist financing? (FATF R.23.6)
3.9.8 Are financial institutions (other than those mentioned in FATF R.23.4) licensed or registered and appropriately regulated, and subject to supervision or oversight for AML/CFT

purposes? (FATF R.23.7)
3.9.9 Are the supervisory authorities of Kosovo adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform their functions? (FATF R.30.1)
3.9.10 Are the supervisory authorities of Kosovo required to maintain high professional standards, including standards concerning confidentiality, integrity and appropriate skills? (FATF R.30.2)
3.9.11 Are the supervisory authorities of Kosovo provided with adequate and relevant training in AML and CFT? (FATF R.30.3)
3.9.12 Do the competent authorities of Kosovo maintain comprehensive statistics on on-site examinations conducted by supervisors relating to or including AML/CFT and any sanctions applied? (FATF R.32.2). Please indicate any other data or material you consider to be relevant to the effectiveness and efficiency of this part of the AML/CFT system.

### 3.10 Supervisors

3.10.1 Do supervisors have adequate powers to monitor and ensure compliance by financial institutions, with requirements to combat money laundering and terrorist financing? (FATF R.29.1)

3.10.2 Do supervisors have the authority to conduct inspections of financial institutions, including onsite inspections, to ensure compliance and do inspections include the review of policies, procedures, books and records, and extend to sample testing? (FATF R.29.2)

3.10.3 Do supervisors have the power to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance?<sup>15</sup> (FATF R.29.3)

3.10.4 Does the supervisor's power to compel production of or to obtain access for supervisory purposes need to require a court order? (FATF R.29.3.1)

3.10.5 Do supervisors have adequate powers of enforcement and sanction against financial institutions, and their directors or senior management for failure to comply with or properly implement requirements to combat money laundering and terrorist financing? (FATF R.29.4)

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<sup>15</sup> This includes all documents or information related to accounts or other business relationships, or transactions, including any analysis the financial institution has made to detect unusual or suspicious transactions.



### 3.11 Sanctions

3.11.1 Does Kosovo have effective, proportionate and dissuasive criminal, civil or administrative sanctions available to deal with natural or legal persons that fail to comply with Kosovo's AML/CFT requirements? (FATF R.17.1)

3.11.2 Has Kosovo designated an authority (e.g. supervisors or the FIU) empowered to apply sanctions? (FATF R.17.2)

3.11.3 Are sanctions available in relation not only to the legal persons that are financial institutions or businesses but also to their directors and senior management? (FATF R.17.3)

3.11.4 Is the range of sanctions available broad and proportionate to the severity of a situation? Do the sanctions include the power to impose disciplinary and financial sanctions and the power to withdraw, restrict or suspend the financial institution's license, where applicable? (FATF R.17.4)

### 3.12 Money or value transfer services

3.12.1 Has Kosovo designated one or more competent authorities to register and/or licence natural and legal persons that perform money or value transfer services (MVT service operators), maintain a current list of the names and addresses of licensed and/or registered MVT service operators, and be responsible for ensuring compliance with licensing and/or registration requirements? (FATF SR.VI.1)

3.12.2 Does Kosovo have a system in place for monitoring MVT service operators and ensuring that they comply with the AML/CFT standards? (FATF SR.VI.2)

3.12.3 Does Kosovo require each licensed or registered MVT service operator to maintain a current list of its agents which must be made available to the designated competent authority? (FATF SR.VI.2)

### 3.13 Modern secure transaction techniques

Has Kosovo taken measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

*Examples of techniques or measures that may be less vulnerable to money laundering include:*

- *Reducing reliance on cash;*
- *Not issuing very large denomination banknotes;*
- *Secured automated transfer systems. (FATF R.20.2)*

#### **4.     *Legal Persons – Access to beneficial ownership and control information***

4.1 Has Kosovo taken measures to prevent the unlawful use of legal persons in relation to money laundering and terrorist financing by ensuring that its commercial, corporate and other laws require adequate transparency concerning the beneficial ownership and control of legal persons? (FATF R.33.1)

Examples of mechanisms that could be used in seeking to ensure that there is adequate transparency may include:

1. A system of central registration (or up front disclosure system) where a domestic registry records the required ownership and control details for all companies and other legal persons registered in that jurisdiction. The relevant information could be either publicly available or only available to competent authorities. Changes in ownership and control information would need to be kept up to date.
2. Requiring company service providers to obtain, verify and retain records of the beneficial ownership and control of legal persons.
3. Relying on the investigative and other powers of law enforcement, regulatory, supervisory, or other competent authorities in a jurisdiction to obtain or have access to the information.

These mechanisms are, to a large degree, complementary and jurisdictions may find it highly desirable and beneficial to use a combination of them.

To the extent that jurisdictions rely on the investigative powers of their competent authorities, these authorities should have sufficiently strong compulsory powers for the purpose of obtaining the relevant information.

Whatever mechanism is used it is essential that: (a) competent authorities are able to obtain or have access in a timely fashion to the beneficial ownership and control information, (b) the information is adequate, accurate and timely and (c) competent authorities are able to share such information with other competent authorities domestically or internationally.

4.2 Are competent authorities able to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons? (FATF R.33.2)

## 5. *Non-profit organisations*

5.1 Has Kosovo undertaken a review of the adequacy of domestic laws and regulations that relate to non-profit organisations as well as studied the activities, size and other relevant features of their non-profit sectors for the purpose of identifying the features and types of non-profit organisations (NPOs) that are at risk of being misused for terrorist financing or money laundering by virtue of their activities or characteristics? (FATF SR.VIII.1)
5.2 Has Kosovo undertaken outreach to the NPO sector with a view to protecting the sector from terrorist financing/money laundering abuse?(FATF SR.VIII.2)
5.3 Have steps been taken to promote effective supervision or monitoring of those NPOs which account for: (i) a significant portion of the financial resources under control of the sector; and (ii) a substantial share of the sector's international activities? (FATF SR.VIII.3)
5.4 Are NPOs required to maintain information on: (1) the purpose and objectives of their stated activities; and (2) the identity of person(s) who own, control or direct their activities, including senior officers, board members and trustees? (FATF SR.VIII.3.1)
5.5 Are there are appropriate measures in place to sanction violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs. (FATF SR.VIII.3.2)
5.6 Are NPOs licensed or registered by competent authorities? (FATF SR.VIII.3.3)
5.7 Are NPOs required to maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation? (FATF SR.VIII.3.4)
5.8 Has Kosovo implemented measures to ensure that it can effectively investigate and gather information on NPOs? (FATF SR.VIII.4)

5.9 Has Kosovo instituted an effective system of domestic co-operation, co-ordination and information sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs of potential terrorist financing/money laundering concern? (FATF SR.VIII.4.1)

5.10 Can full access to information on the administration and management of a particular NPO (including financial and programmatic information) be obtained during the course of an investigation? (FATF SR.VIII.4.2)

5.11 Does Kosovo have investigative expertise and capability to examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations? Are mechanisms in place that allow for prompt investigative or preventative action against such NPOs? (FATF SR.VIII.4.3)

5.12 Are there appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support? (FATF SR.VIII.5)

## **6.      *International co-operation***

### **6.1      Co-operation and Co-ordination**

6.1.1 Do policy makers, the FIU, law enforcement and supervisors and other competent authorities have effective mechanisms in place which enable them to co-operate, and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing? (FATF R.31.1)

6.1.2 Are mechanisms in place for consultation between competent authorities, the financial sector and other sectors that are subject to AML/CFT laws, regulations, guidelines or other measures? (FATF R.31.2)

## 6.2 Mutual legal assistance

6.2.1 Please provide a list of treaty based multilateral obligations concerning legal assistance in criminal matters (including AML/CFT offences) that apply in your jurisdiction or is planned to be ratified in the future.
6.2.2 Is Kosovo able to provide the widest possible range of mutual legal assistance in AML/CFT investigations, prosecutions and related proceedings <sup>16</sup> ? (FATF R.36.1)
6.2.3 Is Kosovo able to provide such assistance in a timely, constructive and effective manner? (FATF R.36.1.1)
6.2.4 Are there any constraints on providing mutual legal assistance? (FATF R.36.2)
6.2.5 Does Kosovo have clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delays? (FATF R.36.3)
6.2.6 Can a request for mutual legal assistance be refused on the sole ground that the offence is also considered to involve fiscal matters? (FATF R.36.4)
6.2.7 Can a request for mutual legal assistance be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP, except where the relevant information was obtained in circumstances where legal professional privilege or legal professional secrecy applies? (FATF R.36.5)
6.2.8 Are the powers of competent authorities available for use in response to requests for

<sup>16</sup> Mutual legal assistance should include assistance of the following nature: (a) the production, search and seizure of information, documents, or evidence (including financial records) from financial institutions, or other natural or legal persons; (b) the taking of evidence or statements from persons; (c) providing originals or copies of relevant documents and records as well as any other information and evidentiary items, (d) effecting service of judicial documents; (e) facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting jurisdiction and (f) identification, freezing, seizure, or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offences, and assets of corresponding value.



mutual legal assistance? (FATF R.36.6)
6.2.9 Has Kosovo, in order to avoid conflicts of jurisdiction, considered devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one jurisdiction? (FATF R.36.7)
6.2.10 Are the powers of competent authorities required under R.28 available for use when there is a direct request from foreign judicial or law enforcement authorities to domestic counterparts? (FATF R.36.8)
6.2.11 Does your jurisdiction allow for extradition of nationals in AML/CFT cases? If not, under which conditions do the competent authorities of your jurisdiction prosecute them?
6.2.12 Please indicate which international AML/CFT conventions and treaties that have been ratified or is planned to be ratified in the future.

### 6.3 Mutual legal assistance on confiscation and freezing

6.3.1 Are there appropriate laws and procedures to provide an effective and timely response to mutual legal assistance requests by foreign countries related to the identification, freezing, seizure, or confiscation of: (a) laundered property from, (b) proceeds from, (c) instrumentalities used in, or (d) instrumentalities intended for use in, the commission of any ML, FT or other predicate offences? (FATF R.38.1)
6.3.2 Are the above requirements also met where the request relates to property of corresponding value? (FATF R.38.2)
6.3.3 Has Kosovo had arrangements for co-ordinating seizure and confiscation actions with other countries? (FATF R.38.3)
6.3.4 Has Kosovo considered establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes? (FATF R.38.4)
6.3.5 Has Kosovo considered authorising the sharing of confiscated assets between them when confiscation is directly or indirectly a result of co-ordinated law enforcement actions? (FATF R.38.5)
6.3.6 Are foreign non criminal confiscation orders recognised and enforced? (FATF R.38.6)

## 6.4 Other forms of international co-operation

6.4.1 Are competent authorities in Kosovo able to provide the widest range of international cooperation to their foreign counterparts? (FATF R.40.1)
6.4.2 Is Kosovo able to provide such assistance in a rapid, constructive and effective manner? (FATF R.40.1.1)
6.4.3 Does Kosovo have clear and effective gateways, mechanisms or channels that will facilitate and allow for prompt and constructive exchanges of information directly between counterparts? (FATF R.40.2)
6.4.4 Are such exchanges of information possible: (a) both spontaneously and upon request, and (b) in relation to both money laundering and the underlying predicate offences? (FATF R.40.3)
6.4.5 Are all competent authorities in Kosovo authorised to conduct inquiries on behalf of foreign counterparts? (FATF R.40.4)
6.4.6 Is the FIU authorised to make the following types of inquiries on behalf of foreign counterparts: (a) searching its own databases, including with respect to information related to suspicious transaction reports; (b) searching other databases to which it may have direct or indirect access, including law enforcement databases, public databases, administrative databases and commercially available databases? (FATF R.40.4.1)
6.4.7 Are law enforcement authorities authorised to conduct investigations on behalf of foreign counterparts? Has other competent authorities been authorised to conduct investigations on behalf of foreign counterparts, where permitted by domestic law? (FATF R.40.5)

6.4.8 Can requests for cooperation be refused on the sole ground that the request is also considered to involve fiscal matters? (FATF R.40.7)
6.4.9 Can requests for cooperation be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies? (FATF R.40.8)
6.4.10 Has Kosovo established controls and safeguards to ensure that information received by competent authorities is used only in an authorised manner? (FATF R.40.9)
6.4.11 Are mechanisms in place to permit a prompt and constructive exchange of information with non-counterparts? Does it take place directly or indirectly? (FATF R.40.10)
6.4.12 Does the requesting authority as a matter of practice disclose to the requested authority the purpose of the request and on whose behalf the request is made? (FATF R.40.10.1)
6.4.13 Can the FIU obtain from other competent authorities or other persons relevant information requested by a foreign counterpart FIU? (FATF R.40.11)
6.4.14 Have you taken the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in your territory? Please provide relevant legislative provisions or describe the process/procedure. (CETS 198 Art. 17.1)
6.4.15 Do you make the execution of such a request dependant on the same conditions you applied in respect of requests for search and seizure? Please provide relevant legislative provisions or describe the process/procedure. (CETS 198 Art. 17.4)

6.4.16 Have you extended this Article to non-bank financial institutions? If yes, please explain to which financial institutions these provisions have been applied. Please provide relevant legislative provisions or describe the process/procedure. (CETS 198 Art. 17.6)
6.4.17 What legislative measures have you taken to ensure that on request of another Party you shall provide the particulars of specified bank accounts and of banking operations which have been carried out during the specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account? Please provide the provisions of your domestic legislation, regulations or other measures. (CETS 198 Art. 18.1)
6.4.18 Have you extended this Article to non-bank financial institutions? If yes, please explain to which financial institutions these provisions have been applied. (CETS 198 Art. 18.5)
6.4.19 Do you have the power, at the request of another Party to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party? (CETS 198 Art.19.1)
6.4.20 Have you extended this Article to non-bank financial institutions? If yes, please explain to which financial institutions these provisions have been applied. (CETS 198 Art. 19.5)
6.4.21 Can co-operation be refused on the grounds that the request relates to a fiscal offence, where the offence also relates to financing of terrorism? If yes, please provide reasons. (CETS 198 Art. 28.1d)
6.4.22 Can co-operation be refused on the grounds that the request relates to a political offence, where the offence also relates to financing of terrorism? If yes, please provide reasons. (CETS 198 Art. 28.1e)
6.4.23 Is co-operation still granted even if the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is mentioned in the request both

as the author of the underlying criminal offence and of the offence of money laundering? If co-operation is not granted in this situation, please explain. (CETS 198 Art. 28.8c)
6.4.24 What are the legislative provisions allowing your judicial authorities, including public prosecutors, in the event of urgency to send requests and communications under this chapter directly to such authorities of another Party? Is it also possible to send at the same time a copy of the request or communication to the central authority of the requested Party through your central authority? (CETS 198 Art.34.2)
6.4.25 Are the authorities of the requesting Party able to contact your domestic authorities directly prior to a formal request, to ensure that it can be dealt with efficiently upon receipt and that it contains sufficient information and supporting documentation to meet your legislative requirements? (CETS 198 Art.34.6)
6.4.26 Can your FIU co-operate with all types of FIU, regardless of whether they are administrative, law enforcement or judicial? What measures are in place to ensure that your FIU is able to co-operate with other FIUs whatever their internal status? (CETS 198 Art.46.3)
6.4.27 Are requests made under this article accompanied by a brief statement of the relevant facts known to your FIU? (CETS 198 Art.46.4)
6.4.28 Does your FIU specify in the request how the information sought will be used? (CETS 198 Art.46)
6.4.29 When a request is made in accordance with this article, does your FIU provide all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between the Parties? Please describe the process and procedures in place for fulfilling these obligations in a timely and comprehensive manner. (CETS 198 Art.46.5)
6.4.30 Does your FIU refuse to divulge information? On which bases, as provided for in this Article would or does your FIU refuse to divulge information? (CETS 198 Art.46.6)

6.4.31 Are any refusals appropriately explained to the FIU requesting the information? (CETS 198 Art.46)
6.4.32 Does your legislation or other measures clearly determine and limit the use of information and documents obtained by your FIU so that they cannot be disseminated to a 3 <sup>rd</sup> party or used for any other purpose than analysis without prior consent of the supplying FIU? (CETS 198 Art.46.7)
6.4.33 When transmitting information or documents pursuant to this Article, does your FIU impose restrictions and conditions on the use of information by the receiving FIU for purposes other than those stipulated in paragraph 7? (CETS 198 Art.46.8)
6.4.34 How is Article 46 (9) implemented in your legislation or procedures? Please explain the basis on which the transmitting FIU would refuse to allow transmitted information to be used for criminal investigations or prosecutions? (CETS 198 Art.46.9)
6.4.35 What necessary measures, including security measures, does your FIU undertake, to ensure that the information submitted under this article is not accessible by any other authorities, agencies or departments? (CETS 198 Art.46.10)
6.4.36 How is Article 46 (11) implemented in your legislation or practice as to the confidentiality and the protection of personal data? (CETS 198 Art.46.11)
6.4.37 Does your FIU make enquiries as to the use of transmitted information and receive feedback on transmitted information or where you are the receiving FIU, provide feedback? (CETS 198 Art.46.12)
6.4.38 Are legislative or other measures in place to permit urgent action to be initiated by a FIU, at the request of a foreign FIU, to suspend or withhold consent to a transaction going ahead for such periods and depending on the same conditions as apply in its domestic law in

respect of the postponement of transactions? (CETS 198 Art.47)

## ***Annexes***

### **Annex 1: List of FATF designated categories of offences**

<b>FATF designated categories of offences</b>	<b>Article(s) in the Criminal Code</b>
Participation in organized criminal group and racketeering	
Terrorism and terrorist financing	
Trafficking in human beings and migrant smuggling	
Sexual exploitation and sexual exploitation of children	
Illicit trafficking in narcotic drugs and psychotropic substances	
Illicit arms trafficking	
Illicit trafficking in stolen and other goods	
Corruption and bribery	
Fraud	
Counterfeiting currency	
Counterfeiting and piracy of products	
Environmental crimes	
Murder, grievous bodily injury	
Kidnapping, illegal restraint and hostage-taking	
Robbery or theft	
Smuggling	
Extortion	
Forgery	
Piracy	



Insider trading and market manipulation	
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## Annex 2: List of designated categories of offences to the CETS 198

Designated categories of offences in the Appendix to the CETS 198	Offences in domestic legislation
a. participation in an organised criminal group and racketeering;	
b. terrorism, including financing of terrorism;	
c. trafficking in human beings and migration smuggling;	
d. sexual exploitation, including sexual exploitation of children;	
e. illicit trafficking in narcotic drugs and psychotropic substances;	
f. illicit arms trafficking;	
g. illicit trafficking in stolen and other goods;	
h. corruption and bribery;	
i. fraud;	
j. counterfeiting currency;	
k. counterfeiting and piracy of products;	
l. environmental crime;	
m. murder, grievous bodily injury;	
n. kidnapping, illegal restraint and hostage-taking;	
o. robbery or theft;	
p. smuggling	
q. extortion	
r. forgery	
s. piracy; and	
t. insider trading and market manipulation	

### **Annex 3: Abbreviations**

<b>Abbreviations</b>	<b>Description</b>
3MLD	Third Money Laundering Directive 2005/60/EC
AML/CFT	Anti-Money Laundering/Countering (or Combating) the Financing of Terrorism
BNI	Bearer-Negotiable Instrument
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
DNFBP	Designated Non-Financial Business or Profession
ETS	European Treaty Series
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
MER	Mutual Evaluation Report
ML	Money Laundering
MLA	Mutual Legal Assistance
MVT	Money or Value Transfer
NPO	Non-Profit Organisation(s)
PECK	Project against Economic Crime in Kosovo
PEPs	Politically Exposed Persons
S/RES	United Nations Security Council Resolution
SR	FATF Special Recommendation(s)
SROs	Self-Regulatory Organisations
STR	Suspicious Transaction Report