

Project against Economic Crime (PECK)

Plenary Meeting

**to discuss and adopt PECK Final Assessment Reports (2nd cycle)
on Kosovo compliance with international standards
for Anti-Corruption (AC) and Anti-Money Laundering and Combating the
Financing of Terrorism (AML/CFT) components**

Pristina, 2 – 3 December 2014

***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)***

Mr Frederic Cottalorda (Monaco), member of the PECK assessment team

Project against Economic Crime (PECK)

Key Findings for R.26:

- 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 scope and mode of FIU access to various databases is not fully satisfactory

Project against Economic Crime (PECK)

Key Findings for R.26:

- 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 publishes its annual activity report on its website.
- 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.

Project against Economic Crime (PECK)

Key Findings for R.26:

- 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.
- 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.

Project against Economic Crime (PECK)

Key Findings for R.27 & R.28:

- 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.

Project against Economic Crime (PECK)

Key Findings for R.27 & R.28:

- Article 87 of 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.
- Article 119 of the new CPC gives the Prosecutor the right to request all documentary evidence including financial records.
- Article 121 of 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.
- According to article 67 of the CPC, confidential data held by non-parties to the investigation can only be obtained through Court orders.

Project against Economic Crime (PECK)

Key Findings for R.27 & R.28:

- Covert and technical measures of surveillance and investigation can also be undertaken by the police (Articles 86 to 96 of the CPC).
- 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.

Project against Economic Crime (PECK)

Key Findings for R.27 & R.28:

- 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.

Project against Economic Crime (PECK)

Key Findings for R.27 & R.28:

- 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, it did not appear that there is a strong willingness to prosecute ML cases.

Project against Economic Crime (PECK)

Key Findings for SR. IX:

- 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.

Funded
by the European Union
and the Council of Europe



COUNCIL OF EUROPE



Implemented
by the Council of Europe

Project against Economic Crime (PECK)

Key Findings for SR. IX:

- 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.