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Workshop

**Lessons learned from the 1st assessment cycle
and Kosovo's compliance
with international standards**

(AC & AML/CFT)

30 October 2013, Pristina

Compliance and progress on preventive measures

- Judges, prosecutors and police (AC)
- Members of Parliament (AC)
- Financing of political parties and electoral campaigns (AC)
- Public Administration (AC)
- Public Procurement (AC)
- Preventive measures for financial institutions (AML/CFT)
- Legal persons: beneficial ownership and control information (AML/CFT)

Preventive measures – General context (AC)

- **Corruption risks**

- periodical assessment of corruption risks
- integrated approach of ethical aspects through adequate integrity plans

- **AC strategy and action plan**

- implementation and monitoring of the AC AP and strategy for 2013-2017

- **Harmonising legal and institutional framework for Col and AD**

- CC and Col/AD provisions
- Guidelines
- Verification of assets and control of their origin

Preventive measures – Judges and prosecutors

● **Independence of judges**

- Review of the composition of the KJC
- Appointment of judges/prosecutors (criteria, appeal)
- Review of the initial 3-year period probationary system prior to the final confirmation

● **Regulation of procedural safeguards**

- Random assignment of cases
- Case management, reporting and statistics
- Transparency of the work of courts
- Rules of ethics and professional conduct for judges
- Criteria for approving accessory activities (judges and prosecutors)

Preventive measures – Judges and prosecutors (2)

● Regulation of procedural safeguards...

- *Enhancing disciplinary and criminal investigation of judges and prosecutors*
- *Institutional framework and proceedings for disciplinary/criminal investigations*
- *Limitation period for disciplinary proceedings*
- *Interaction between the KAA and Prosecutor, as well as the judges in proceedings for Col minor and criminal offences*
- *Vetting procedures of candidates (KJC & KPC)*
- *Tackling the excessive length of court proceedings and investigations*

Preventive measures – Police

- Objective and transparent **criteria** for **appointment/dismissal** of the General Director, Deputy Directors and other senior level officials of the Police
- Guidelines for the approval of **exceptional outside engagement** and remuneration limit
- **Post-employment** restrictions, efficient supervision
- Reinforce **human capacity** of the relevant police disciplinary and internal investigation bodies
- Keep the **reliable track record** of **disciplinary** and other actions taken with regard to police officers

Preventive measures – Members of Parliament

- Review of the Code of Conduct
- Practical measures: training, counselling, advice
- Adequate assessment of declared assets
- Supervision and enforcement of the existing rules on conflicts of interest
- Disclosure of outside ties by members of parliament

Financing of political parties and election campaigns

● **Transparency of party funding – general part**

- to harmonise the legal provisions on political entities and campaigns financing in line with the legislation applicable to other candidates for election
- to develop a comprehensive and unique website setting out legal and regulatory framework and providing relevant information on political entities periodical reports and other relevant information
- Extension of the definition of a 'contribution' to funding of political entities and electoral campaigns in order to include indirect resources
- to introduce a definition and regulation of the entities related to a political party

Financing of political parties and election campaigns (2)

● **Transparency - specific part**

- to set more precise conditions for requirements of the financial reports and the deadline(s) of the publication

● **Supervision**

- to give to the Central Electoral Commission/the Office or the Anti-corruption Agency the mandate and the appropriate authority as well as the financial resources and specialised staff to effectively and proactively supervise the funding of political parties and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions

Financing of political parties and election campaigns (3)

- (i) to unify parties' reporting forms, in particular regarding content, periodicity of their submission and publication; and (ii) to determine the procedure for monitoring of established standards
- to establish clear rules ensuring the specialisation, independence and know-how/expertise of auditors called upon to audit the accounts of political parties and candidates

• **Sanctions**

- to introduce more dissuasive, effective and proportionate sanctions in respect of violations of political financing rules and to provide the Central Electoral Commission with the necessary powers to investigate such cases and to apply the appropriate sanctions

Financing of political parties and election campaigns (4)

- to provide the Office with appropriate authority to carry out, as needed, a material verification (in addition to the existing formal review) of the information provided by election candidates and other political entities
- to introduce compulsory periodic publication of political parties' reports on a public website

Preventive measures – Public Administration

- to enhance **transparency** in public administration (including “e-government”)
- adequately implement **access to public documents** at both central and local levels.
- to implement uniform rules for the transparent and impartial **recruitment and promotion** of public servants through inter alia proper announcement of vacant posts, fair competition between candidates and avoidance of conflict of interest;
- to **increase the supervision and monitoring** over the selection and promotion procedures of public officials;
- to introduce appropriate **screening procedures** for checking data and integrity of candidates to positions in public administration.

Preventive measures – Public Administration (2)

- to **adopt the Code of Ethics** for civil servants as soon as possible;
- to consider **extension of its application** to uncovered categories of officials in the public administration;
- to increase **familiarity** of public administration at all levels **with ethical professional standards** (through inter alia regular training, guides, advice).
- to work out guidelines about the behaviour and conduct of public officials when they receive **gifts** in order to complete the rules laid down in article 11 in law no. 04/L-050 on declaration, origin and control of property of senior public officials and on declaration, origin and control of gifts of all public officials.

Preventive measures – Public Administration (3)

- to **strengthen the control of the declarations of assets and interests** in order to ensure proper implementation and monitoring;
- to intensify efforts to build **capacity in individual institutions** to prevent and detect conflicts of interest through close supervision and coordination mechanisms as well as by means of specific reference materials, guidelines and training;
- an adequate and enforceable **conflict of interest standard**, including improper migration to the private sector ("**pantouflage**") **be extended** to every person who carries out a function in the public administration (including managers and consultants) at every level of government.

Preventive measures – Public Administration (4)

- to consider making wider use of **rotation** in sectors of public administration particularly exposed to a risk of corruption;
- to establish and maintain a **central periodical reporting of statistics** on the use of disciplinary proceedings and sanctions in public administration;

Preventive measures – Public Procurement

- to create conditions for **enhanced transparency and equality in competition**, in order to minimise the risk of corruption opportunities in public procurement and privatisation fields
- to ensure **further streamlining of Public Procurement rules and procedures**, including a quick introduction of **central purchasing**;
- to **enhance monitoring, supervision and review capacities and mechanisms**;
- to **revise Public Procurement Law** concerning the scope and procedures related to reporting of public procurement violations and offenders;

Preventive measures – Public Procurement (2)

- enhance **exchange** and **treatment of information** and **horizontal interagency cooperation**, notably between public procurement, audit, anti-corruption, tax and other law enforcement bodies.
- (i) to introduce **coherent staff policies and treatment** in the public procurement system in order to avoid changes of staff; (ii) to clarify and strengthen procedures that ensure objective criteria for conclusion of contracts; (iii) to introduce **conflict of interest prevention rules** in the public procurement, including compulsory declaration of conflict of interest situations by members of procurement panels; and (iv) to promote **further training and specialisation** focused on prevention and detection of corruption practices.

Preventive measures – Financial institutions

Risk of money laundering or terrorist financing

- Kosovo authorities should undertake a national **assessment of ML and TF risks**

Preventive measures – Financial institutions

Customer due diligence (R.5)

- a **review of Rule X**, incorporating **Advisory Letter 2007/1**, of the CBK
- harmonisation of the **definition** of '**financial institution**' in the respective laws and regulations
- legal obligation for the application of the **full CDD measures** as defined in the AML/CFT Law as opposed to the application of the identification and verification processes which only form a component of the CDD concept
- a review of the distribution and application of the **United Nations and other lists** of designated persons and entities;
- a general review of the AML/CFT Law in specific areas related to **enhanced and reduced CDD** (risk based approach and harmonisation of provisions)

Preventive measures – Financial institutions

Politically Exposed Persons (PEPs) (R.6)

- harmonise the **definition of a PEP** with the FATF definition in the AML/CFT Law;
- impose **legal obligation to identify** if a beneficial owner of a legal entity falls within the definition of PEP;
- **amend Article 21 of the AML/CFT Law** to ensure that procedures are applied to identify if a customer or a beneficial owner is eventually identified as a PEP or becomes a PEP;
- clarify in **Article 21** of the AML/CFT Law that the **identification of the source of funds** is applicable on an ongoing basis to all transactions with PEPs;
- provide **guidance to the industry**

Preventive measures – Financial institutions

Financial institution secrecy or confidentiality (R.4)

- a new bullet point be added to **Article 74(2) of the Law on the CBK**, in particular if the CBK is eventually given supervisory powers under and for the purposes of the AML/CFT Law, to clarify the **lifting of confidentiality** when the CBK provides information to the FIU.

Preventive measures – Financial institutions

Record keeping (R.10)

- amending paragraph (6.2) of Article 17 in connection with the **timing of the retention period** for a series of linked occasional transactions;
- inserting a new paragraph (7) to Article 17 **empowering the FIU to extend the retention period** in specific cases;
- **amending paragraph (6.1) of Article 17** consistent with paragraph (6) of Article 18 (five (5) year retention period - upon closing of an account or upon the termination of the business relationship, whichever is later); and
- harmonising Article 17 and Article 20 on the **availability of retained records** to competent authorities.

Preventive measures – Financial institutions

Suspicious transaction reporting (R.13 & SR.IV)

- amending the **definition of ‘suspicious acts and transactions’** to include situations where information available indicates that a person or entity may be involved in criminal activities;
- **amending Article 22** to introduce the reporting obligation for the financing of terrorism;
- amending the **definition of ‘suspicious acts or transactions’** to include attempted acts and transactions; and
- FIU to undertake measures to ensure that **CTRs that raise suspicions are also reported as STRs** and to create awareness accordingly

Preventive measures – Financial institutions

Protection and no tipping off (R.14)

- **amend Article 35 of the AML/CFT Law** to extend protection to directors, officers and employees, temporary or permanent;
- **amend paragraph (4) of Article 22** imposing the prohibition of disclosure in accordance with the international standards;
- consider **extending the prohibition of disclosure** to other reporting subjects and entities;
- ensure that paragraph (1.3) of Article 15 **does not cover the names and personal details of the staff** at the bank or financial institution making the report or providing the information;
- review paragraph (2) of Article 15 of the Law to **limit the entities or authorities to whom the information could be provided** to those to whom the FIU forwards its reports;

Preventive measures – Financial institutions

Protection and no tipping off (R.14) - Cont'd

- add a **new paragraph (4) to Article 15 of the AML/CFT Law** which obliges any authority that for any reason has possession of personal information on employees of reporting subjects who have filed a report or provided information, to protect such information and keep it confidential;
- consider the provisions of Article 28 of the EU Third Directive on the **lifting of the disclosure prohibitions in specific circumstances**; and
- consider inserting a new paragraph (4A) to Article 22 of the AML/CFT Law **imposing a prohibition of disclosure in circumstances** as provided under the Council of Europe Convention (CETS 198)

Preventive measures – Financial institutions

Shell banks (R.18)

- **redraft paragraph (6) of Article 21** to remove legal uncertainties (correspondent banking relationships with a shell bank);
- insert a **definition of ‘correspondent banking relationship’** incorporating both ‘correspondent’ and ‘respondent’ institutions in accordance with the definition in the FATF Glossary to the Methodology;
- **insert a new paragraph (4.6) to Article 21 of the AML/CFT Law** to ensure that banks confirm that their respondent institutions do not allow the use of their accounts by shell banks.

Preventive measures – Financial institutions

Ongoing Supervision and Monitoring and Market Entry (R.23)

- introduce a legal basis **appointing a competent authority to act as the supervisory authority for the financial sector** for the purposes of the AML/CFT Law;
- a supervisory legal mandate should be accompanied with a **mandate for the appointed supervisory authority to issue binding and mandatory rules and regulations for AML/CFT purposes** (for the CBK beyond the powers of the CBK in this regard under Article 85 of the Law on Banks for prudential purposes);
- **insert a new paragraph (6) to Article 37 of the Law on Banks** requiring a person or entity, alone or in concert with another, divesting of a significant interest or to reduce current shareholding [in a bank] to inform the CBK accordingly;

Preventive measures – Financial institutions

Ongoing Supervision and Monitoring and Market Entry (R.23) – Cont'd

- **insert a new paragraph (2) to Article 38 of the Law on Banks** requiring application of AML/CFT criteria as established under the EU Directive on Mergers and Acquisitions for approval of changes in shareholding;
- **amend paragraph (3) of Article 39 of the Law on Banks** on mergers, consolidations and acquisitions consequent to the proposed paragraph (2) to Article 38; and
- harmonise the **definitions of 'financial institution'** in the various laws.

Preventive measures – Financial institutions Supervisors (R.29)

- **insert a new Article 30B in the AML/CFT Law** to the effect that a supervisory authority appointed under the AML/CFT Law that already has a supervisory remit under other legislation may **apply its prudential supervisory powers** under the respective laws for the purposes of supervising compliance under the AML/CFT Law with the exception of the application of administrative or other penalties and sanctions under these laws as these are contemplated under the AML/CFT Law; and
- **insert a new paragraph (6) to Article 30** of the AML/CFT Law providing for the off-site examination powers of the FIU.

Preventive measures – Financial institutions

Sanctions (R.17)

- **review of Article 24(8), Article 25(7), Article 26(14) and Article 27(4)** within the context of the proposed amendments to Article 31 of the AML/CFT Law;
- **review present criminal and other offences** for legal certainty and avoidance of legal complexity in application due to dual offences and different penalties;
- **redraft Article 31 and introduce new Articles 31A and 31B** as contemplated in the draft Amending Law amending the AML/CFT Law;

Preventive measures – Financial institutions

Sanctions (R.17) – Cont'd

- **designate authority/authorities to impose sanctions** through the revised Article 31;
- **ensure sanctions are applicable to directors and senior management** through the revision of Article 31 and for this purpose amend Article 34 of the AML/CFT Law; and
- **introduce range of sanctions** through the revision of Article 31 as proposed.

Preventive measures – Financial institutions

Money or value transfer services (SR. VI)

- harmonise the **definition of a ‘financial institution’** in the respective legislation, including the AML/CFT Law, including activities that may be undertaken by non-bank financial institutions;
- **designate a competent authority** with a regulatory and supervisory remit for the purposes of the AML/CFT Law **for the entire financial sector**;
- **clarify** in the Law on Banks **the power for non-bank financial institutions**, including MVT services providers, **to appoint agents** and under what conditions or prohibit them;

Preventive measures – Financial institutions

Money or value transfer services (SR. VI) – Cont'd

- insert a **definition of 'agent'** in the Law on Banks;
- **insert a new paragraph or Article in the Law on Banks or the AML/CFT Law** obliging MVT services providers to maintain a list of agents if the Law on Banks does not prohibit this;
- **redraft Article 31 of the AML/CFT Law** as recommended under Section 3.11 of this Report.

Preventive measures – Financial institutions

Modern secure transaction techniques (R.20)

- CBK should document its **strategy for better cash management techniques** with objectives and milestones including the introduction of direct debit and direct credit systems;
- CBK should co-ordinate **a study on the statistics on currency issued and currency deposited** to identify the source of these differences in cooperation with other authorities such as Customs and Tax Administration;
- this study should also identify **reasons for the high use of the €500 currency note**;
- it is recommended to **ensure effectiveness of the implementation of Article 13 of the Law on Tax Administration** by Tax Administration.

Legal persons – Access to beneficial ownership and control information (R.33)

- **introduce an obligation for immediate reporting of changes to shareholding and directors** further to the ad hoc appointment of a person responsible to do so;
- introduce procedures and systems for competent authorities and the industry to **identify where a person owns more than one business organisation**;
- introduce administrative procedure to **ascertain to the extent possible the accuracy of documents and contents by the KBRA** in order to ensure that both natural and legal persons establishing companies be checked and monitored with respect to possible criminal records or professional disqualifications, as well as against the United Nations and other lists of designated persons and entities;

Legal persons – Access to beneficial ownership and control information (R.33) - 2

- introduce procedures to **identify interconnectivity** between registered business organisations;
- **introduce measure for accuracy and validity of applications for registration** to cater for the short registration period.

***Thank you
for your attention and participation***

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Questions

