Compliance with AML/CFT International Standards

Assessment Report

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Project against Economic Crime (PECK II)

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ASSESSMENT REPORT

on compliance of Kosovo with international anti-money laundering and combating the financing of terrorism standards

December 2018

* 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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FOREWORD

In the world of today, transnational threats to the rule of law keep becoming more complex. Crime knows no borders, and recent corruption and money laundering scandals in Europe show that even strong legal and law enforcement regimes will not always stop crime. There is increasing realisation that Governments must react quickly and take concerted actions on a scale not seen in the past.

Corruption and money laundering, where left unchecked, have destabilised states and entire regions. South East Europe is especially susceptible to such treats due to its geographical location as transit for numerous international smuggling routes.

As part of its work in the region, the Council of Europe has actively supported Kosovo* institutions in creating effective deterrents to corruption and economic crime through capacity building, policy advice, legislative expertise and periodical assessments on compliance with required European and international standards.

To date, two assessments have taken place within the framework of technical assistance provided by the Council of Europe and the European Union under the Joint Project against Economic Crime in Kosovo (PECK). These assessments are based of the methodologies applied to all member States of the Council of Europe by its Group of States against Corruption (GRECO) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

In Kosovo, the first assessment cycle took place in 2012-2014 under the PECK I Project. It delivered findings and recommendations, which later a number of legislative initiatives beyond the lifetime of the project.

The report which is now in the hands of the reader presents the results of the second assessment cycle (2018-2019), based on the evolving standards and assessment methodologies of GRECO and MONEYVAL.

The progress made by Kosovo institutions can be easily traced by comparing the results of the first and second assessments. In the anti-corruption area, both the legal framework and the institutional capacities are improved. This includes further alignment of bribery-related offences in the new Criminal Code, strengthened rules on the prevention of conflict of interest and on the protection of whistleblowers. Initiatives are underway which will strengthen the asset declaration mechanisms, give additional competences to the Kosovo Anti-corruption Agency and further promote integrity and corruption risk assessments.

In the area of anti-money laundering and combating the financing of terrorism (AML/CFT), the level of compliance has increased for almost half of the 40 Recommendations of the global Financial Action Task Force (FATF). Nevertheless, the new benchmarking on effectiveness remains a challenge to be addressed by the Kosovo authorities: only few of the benchmarks have been partially achieved.

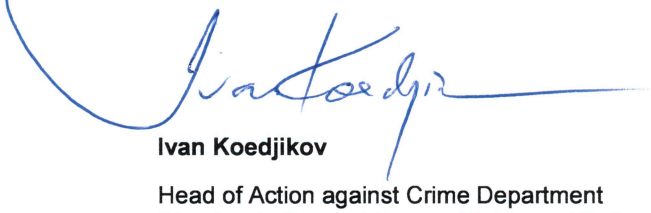
The anti-corruption and AML/CFT assessment reports offer findings, analysis and recommendations that provide a solid basis for legislative, institutional and operational reforms. Their implementation will contribute to the improved compliance with the relevant international standards.

I am confident that these reports will be useful to Kosovo authorities in their continued reform effort and in raise the awareness about the fight against economic crime - including corruption, money laundering and terrorist financing.

I am grateful to our colleagues at the European Commission for the strategic cooperation and excellent partnership throughout our joint efforts to assist Kosovo with this unique project.

I commend the Kosovo authorities and partners – in particular, the Kosovo Anti-corruption Agency and the Financial Intelligence Unit – for their constructive cooperation, coordination and support in making our common exercise a success.

My sincere thanks go to the Council of Europe experts who contributed to this report through their visits, advice, peer reviews and other input. Finally, special thanks to my colleagues at the Economic Crime and Cooperation Division who saw the project through from conception to final implementation and helped make it a reality.



Ivan Koedjikov

Head of Action against Crime Department
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FOREWORD

The Stabilisation and Association Agreement (SAA) is at the core of the relationship between the EU and Kosovo and its continued and effective implementation is key to the advancement of Kosovo on its European path.

The European Union has placed specific importance on the functioning of the Rule of Law, judicial reforms and strengthening of institutional capacities within its long-term assistance to Kosovo.

In this respect, the fight against corruption, money laundering and terrorism financing are high priority areas which have a profound impact on different political processes, including the implementation of EU assistance in Kosovo. Such sustained assistance and financial support aim at strengthening capacities and ensuring the effectiveness in fighting and preventing these negative phenomena.

Within the framework of the joint EU and Council of Europe "Project against Economic Crime in Kosovo", which has been ongoing since 2012, Kosovo has been brought closer to the internationally recognised standards in the areas of anti-corruption, anti-money laundering and countering terrorist financing.

The assessments conducted within the Project follow the methodology of two Council of Europe monitoring mechanisms, i.e. GRECO and MONEYVAL. These evaluations have resulted in concrete findings and recommendations, but they have also provided Kosovo institutions with practical experience in the planning, implementation and coordination of fight against corruption, money laundering and terrorism financing.

During these processes, Kosovo institutions have shown commitment and readiness to strengthen their abilities, demonstrated their progress made since the previous assessments and coordinated their efforts to that effect.

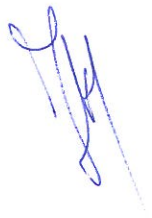
However, important challenges remain to be addressed in light of the findings made and recommendations given in these evaluation reports.

Therefore, knowing the challenges that lie ahead and in order to ensure the effective fight against corruption and money laundering, Kosovo authorities are strongly encouraged to swiftly implement those recommendations and take proper measures to address the identified shortcomings.

The European Union stands ready to provide the necessary support so that Kosovo could further progress on its European path.

Nataliya Apostolova

Head of EU Office in Kosovo/EU Special Representative in Kosovo



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ABBREVIATIONS

AC	Anti-corruption
AI	Administrative Instruction
AIF	Additional Information File
AML/CFT	Anti-Money Laundering/Combating (or Countering) the Financing of Terrorism
AML/CFT Law	Law on the Prevention of Money Laundering and Combating Terrorist Financing
AMSCA	Agency for Managing Seized and Confiscated Assets
BNI	Bearer Negotiable Instrument
BO	Beneficial ownership
CBK	Central Bank of Kosovo
CC	Criminal Code
CDD	Customer Due Diligence
CFT	Combating (or Countering) the Financing of Terrorism
CoE	Council of Europe
CPC	Criminal Procedure Code
CTR	Cash Transaction Report
DECCI	Directorate against Economic Crime and Corruption Investigation
DILC	Department for International Legal Cooperation
DNFBP	Designated Non-Financial Business or Profession
DPMS	Dealers of precious metals and stones
DRLNGO	Department for Registration and Liaison with NGOs
EC	European Commission
ECB	European Central Bank
EDD	Enhanced Due Diligence
ESA	European Supervisory Authority
EU	European Union
EUD	European Union Directive
EULEX	European Union Rule of Law Mission
EUR	Euro
EUROPOL	European Union Agency for Law Enforcement Cooperation
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit of Kosovo
FTF	Foreign Terrorist Fighter
GDP	Gross Domestic Product
goAML	FIU electronic system for data management
GWG	Governmental Working Group
IAIS	International Association of Insurance Supervisors
ILECU	International Law Enforcement Cooperation Unit
IMF	International Monetary Fund
NCBM	National Centre for Border Management
INTERPOL	International Criminal Police Organisation
IO	Immediate Outcome
IOSCO	International Organisation of Securities Commissions
IT	Information technology
JIRATAU	Joint Intelligence, Risk Analysis and Threat Analysis Unit
KBRA	Kosovo Business Registration Agency
KC	Kosovo Customs
KIA	Kosovo Intelligence Agency
KP	Kosovo Police
LEA	Law enforcement authority/agency
LLP	Liability of Legal Persons for Criminal Offences (Law on)
MFA	Ministry of Foreign Affairs

MFI	Micro Finance Institution
MIA	Ministry of Internal Affairs
ML	Money Laundering
MLA	Mutual Legal Assistance
MoF	Ministry of Finance
MoJ	Ministry of Justice
MONEYVAL	The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, Council of Europe
MoU	Memorandum of Understanding
MPA	Ministry of Public Administration
MTI	Ministry of Trade and Industry
MVTS	Money or Value Transfer Service(s)
NBFI	Non-Bank Financial Institution
NCCEC	National Coordinator for Combating Economic Crime
NGO	Non-Governmental Organisation
NPO	Non-Profit Organisation
NRA	National Risk Assessment
PEP	Politically Exposed Person
PF	Proliferation Financing
R.	Recommendation
RBA	Risk-Based Approach
SOCTA	Serious and Organised Crime Threat Assessment
SOP	Standard Operating Procedure
SPRK	Special Prosecutor's Office of Kosovo
STR	Suspicious Transaction Report
TAK	Tax Administration of Kosovo
TCSP	Trust and Company Service Provider
TC	Technical compliance
TF	Terrorist Financing
TFS	Targeted financial sanctions
UN	United Nations
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSCR	United Nations Security Council Resolution
UTR	Unusual Transaction Report
WMD	Weapons of mass destruction

EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in Kosovo as at the date of the onsite visit from 18 to 28 June 2018. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Kosovo's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

1. Although a number of mechanisms to assess ML/TF risk have been adopted at the national, sectoral and operational levels, the authorities do not yet have a fully integrated understanding of ML/TF risks stemming from the exercises carried out so far. It was, established that the NRA report is not sufficiently elaborate in the qualitative and quantitative substantiation of its findings and does not demonstrate the characteristics of a comprehensive assessment based on a robust methodology. Furthermore, its findings have not been adequately communicated to the private sector. In relation to FT, although this component of the NRA is extremely limited, the overall understanding by authorities of FT threats was found to have evolved substantially since 2013. The authorities have a well-integrated risk management framework, which envisages a direct correlation between the NRA exercise and the design of the AML/CFT Strategy and Action Plan. While there is a mechanism to coordinate national AML/CFT policies, close synergies were found to be lacking with national strategies on adjacent topics, such as combating terrorism, organised crime, border management, narcotics and human trafficking. Coordination and cooperation within Kosovo's institutional framework in relation to combating also PF needs to be developed.
2. FIU demonstrated its ability to disseminate generally high-quality financial intelligence to the competent authorities who widely use it together with other available and accessible data to conduct preliminary investigations of ML, associated predicate offences and TF. Some issues remain regarding the quality and timeliness of the information used to generate the financial intelligence. The use (during the preliminary stage) of LEA powers to actively seek financial information and undertake financial investigations outside the framework of cooperation with the FIU and based on intelligence already received by the FIU was not demonstrated despite the various other sources available through the application of police powers. The authorities partially demonstrated the usefulness of the information for conducting formal investigations of associated predicate crimes in conformity with many of the established risks in the NRA. It was not demonstrated that the information would be sufficiently used for ML investigations or subsequent prosecutions.
3. Law enforcement authorities in Kosovo have prioritised the investigation of money laundering by institutionalising and devoting significant resources to financial investigations both within the context of parallel financial investigations and as follow-up to FIU disseminations. While the predicate criminality pursued in ML cases by law enforcement seems to be broadly in line with the risk and threat profile of Kosovo, the volume of cases ultimately prosecuted and adjudicated is negligibly low compared to the size of the threat stemming from predicate criminality and resulting ML in Kosovo. In the few cases of ML convictions, the sanctions seemed to be applied proportionately; however their number is too low to have any dissuasive effect on criminality in Kosovo.
4. Despite the efforts and the priority placed by Kosovo authorities on confiscation, the system still faces significant challenges. Furthermore, seizures and confiscation do not fully reflect the risk profile of Kosovo, taking into account the level and scope of cross-border risks. The legislative framework for confiscation is convoluted and in parts non-functional, which necessitates comprehensive reform (already initiated by Kosovo authorities).
5. The authorities demonstrated proper understanding of the terrorism risks affecting Kosovo and the region, however their awareness and focus on terrorist financing is uneven and has not as yet resulted in the development and implementation of a fully-fledged strategic risk mitigation mechanism for TF. The legislative framework for prosecuting various aspects of the TF offence has deficiencies and needs to be clarified and strengthened.

6. Despite demonstrated capacity of the Kosovo investigating authorities to probe into the financial aspects of terrorism-related cases, no prosecutions were carried out in relation to TF offences in a number of terrorism cases and there seems to be insufficient focus on stand-alone TF prosecution. The alternative measures applied when it is not possible to secure a conviction do not seem to ensure a sustainable result.
7. Kosovo authorities have not implemented a comprehensive system of targeted financial sanctions and the legal framework for targeted sanctions is lacking. Kosovo authorities attempted to assess the risks related to NPOs, although these attempts were neither timely nor resulted in adequate identification of the specific subsector of NPOs carrying the most significant risk or in mitigating measures thereof, including oversight and awareness-raising. Kosovo system has not generated tangible results in terms of deprivation of assets related to terrorism or TF.
8. Understanding of ML/TF risks significantly varies among the representatives of the private sector. Banks and, to an extent commensurate to their risk exposure, other financial institutions (except for currency exchange bureaus) demonstrate a certain level of understanding of ML risks, characteristic to Kosovo. The quality of the risk assessment exercise varies depending on the capacities of the financial institution, indicating a definite need for more guidance in preparing and conducting risk assessments.
9. Suspicious transaction reporting performance is highly uneven among the subjects of the AML/CFT Law in general and among banks in particular. Application of internal controls and procedures by banks and other financial institutions (except for currency exchange bureaus) appears to produce sound results, whereas the same cannot be presumed about currency exchange bureaus and DNFBPs due to the lack of AML/CFT knowledge on one hand and insufficient scope and intensity of supervision on the other hand.
10. Practical sharing of supervisory responsibility between the FIU and the CBK is an issue apparently causing significant ambiguity and subsequent inefficiency of the supervisory regime, particularly regarding control of compliance with the STR reporting requirement by banks and other financial institutions. Market entry measures in the financial sector need to be improved, and decisive efforts need to be made towards enforcement of effective measures to bring into the regulated system the persons involved in currency exchange and money lending activity without any registration and licensing.
11. Among supervisors, the FIU and the CBK demonstrate rather advanced views and understanding of ML/TF risks, but risk profiling practices need to result in regular production and revision of written documents. The shortcomings in the risk profiling practices appear to have an adverse impact on all subsequent stages (i.e. planning, execution and follow-up) of the supervisory cycle. It does not appear that proportionate and dissuasive sanctions stipulated by the AML/CFT Law are imposed on the reporting subjects subsequent to the production of inspection reports by supervisors.
12. Although all legal persons are required to be registered and basic information is publicly available through the Business Registry (KBRA), there does not appear to be a process for verifying the information that is provided to the Business Registry or for checking whether it requires updating. Banks appear to be generally aware of their need to identify the beneficial owner of a legal entity or arrangement, however it is very doubtful whether other financial institutions and DNFBPs are even aware of this obligation. The possible use of strawmen and the illegitimate use of nominees have not been explored sufficiently and very little appreciation of the risks posed by these phenomena was encountered.
13. Kosovo authorities have established a comprehensive system and exert significant efforts to provide a wide range of MLA, however some remaining technical deficiencies and procedures in the international MLA cooperation have an impact on the timeliness of assistance. Kosovo authorities did not demonstrate the active use of MLA for the purposes of ML and TF investigation and prosecution in Kosovo.
14. With regard to other forms of international cooperation the FIU exchanges actively information on ML, associated predicate offences and TF. Significant activity of LEAs in international information exchange is not complemented by adequate focus on ML and TF cases and the supervisory cooperation in this regard seems to be limited. Issues arise in relation to the lack of (timely) availability of some of the relevant information.

Risks and General Situation

2. Kosovo is a jurisdiction, which faces a number of internal and cross-border ML and TF risks, which are further aggravated by structural and contextual factors in Kosovo. A large proportion of the informal economy (almost 32%) exacerbates the risk of tax evasion, while the associated widespread use of cash further limits the effectiveness of any financial control mechanisms, including AML/CFT. Widespread governance issues lead to a high degree of corruption, which is to be classified as one of the main threats in the ML context, both in terms of generating criminal proceeds and undermining the structural foundations of the AML/CFT regime overall.

3. Kosovo is located on the Balkan route for a number of trafficking avenues in drugs, firearms, smuggling of precious metals and stones and other goods, as well as for migrant/human trafficking. Kosovo organised crime groups are well integrated into regional and international organised crime networks. The presence of a large Kosovar diaspora abroad further exacerbates the ML threat in a cross-border context, with significant volumes of incoming and outgoing remittances and cash-flow.

4. Kosovo has faced a major terrorism and terrorism financing threat, with large numbers of foreign terrorist fighters leaving to conflict zones; as well as incoming suspicious financing through the non-profit sector. While the authorities have taken actions to curb the terrorist threat, its financing component largely remains unaddressed.

Overall Level of Effectiveness and Technical Compliance

5. Since the previous PECK assessment Kosovo has taken measures to improve the technical compliance and effectiveness of its AML/CFT framework. Most notably a new version of the AML/CFT Law has been adopted, in order to tackle the deficiencies identified by PECK; a number of regulations were adopted by the Financial Intelligence Unit of Kosovo (FIU) and the Central Bank of Kosovo (CBK) on issues of internal control, customer due diligence (CDD) and beneficial ownership, politically-exposed persons (PEPs) and other issues. A major reform of the Criminal Code and Criminal Procedure Code is underway, including, *inter alia,* with the purpose of streamlining the confiscation procedures and mechanisms.

6. Major institutional developments include the operationalisation of the institution of the National Coordinator for Combating Economic Crime (NCCEC), which is responsible for enhancing the effectiveness of the seizure and confiscation system in Kosovo; another development is the creation of the National Centre for Border Management (NCBM), responsible *inter alia* for monitoring cross-border cash movements.

7. At the same time a number of substantial gaps had not been addressed, most notably the lack of a legislative and institutional framework for the implementation of targeted financial sanctions, transparency of legal entities and control measures with regard to non-profit organisations (NPOs).

Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)

8. Kosovo authorities have developed a number of mechanisms to assess risks from the holistic as well as sectoral standpoint; mechanisms have been set up on a periodic as well as on-going basis. Notwithstanding the range of mechanisms in place, the authorities do not yet have a fully integrated understanding of ML/TF risks stemming from these exercises. A separate NRA and Serious Organised Crime Threat Assessment (SOCTA) have been undertaken, however they have not been fully coordinated, which should be essential for the next update of both documents in 2018. On a sectoral level, several assessments undertaken recently allowed the Kosovar authorities to develop their understanding of the higher risk areas of real estate, NPOs, construction and games of chance, however these should be further deepened and expanded to ensure all major underlying threats, typologies and financial product vulnerabilities are properly covered for these sectors, understood by authorities and properly communicated to the private sector.

9. The 2013 NRA report is not sufficiently elaborate and does not demonstrate the characteristics of a comprehensive assessment based on a robust methodology. The delineation between the key NRA building blocks (threat, vulnerability, likelihood and consequences) was not strictly established. The NRA did not include sufficient breadth and depth with regard the prevalent ML/TF trends and typologies in Kosovo. While high quality typologies have been developed by the FIU, these have not formed the understanding of risks by Kosovo authorities in the NRA process, or more widely in the interagency

community. Moreover, the frequency of updating the NRA is not commensurate with the evolving ML/TF risk situation. Given that the general level of understanding by different types of financial institutions and DNFBPs of the ML/TF risks varies significantly, it has been established that preventative measures in Kosovo are not specifically attuned to the prevailing risks identified in the jurisdiction

10. Even though the FT component of the NRA is extremely limited, the overall understanding by authorities of FT threats has substantially evolved since 2013. In particular there has been clear awareness of key FT risks related to foreign terrorist fighters and non-profit organisations by all AML/CFT authorities involved. Authorities consider these risks to be largely mitigated by their law enforcement, regulatory and policy interventions, however no measurement of residual risk on this issue has yet been done.

11. The authorities have a well-integrated risk management framework, which envisages a direct correlation between the NRA exercise and the design of the AML/CFT Strategy and Action Plan. Furthermore, authorities have provided evidence of specific actions taken in relation to resource reallocation in some government agencies to target the risks identified from the NRA. At the same time it is felt that the Strategy and Action Plan are based on very broad NRA findings, while the necessary actions are not defined coherently, and/or the level of policy ambition in many aspects of the Action Plan is not entirely suitable for an AML/CFT document. While there is a mechanism to coordinate national AML/CFT policies, close synergies are often lacking with national strategies on adjacent topics, such as combating terrorism, organised crime, border management, drug and human trafficking.

12. Kosovo has endeavoured to enhance operational-level cooperation and coordination between all competent authorities. The practical mechanisms established for this purpose (interagency memorandums of understanding (MoUs) and standard operating procedures (SOPs)) seem to be partially operational, but not fully monitored in their effectiveness, although some practical results have been brought. In practice law enforcement authorities conduct effective cooperation though liaison officers, joint units, task forces and operations. The FIU serves as an important central focal point in interagency cooperation. There is however certain room for improvement with regard to: cooperation between the FIU and sectoral supervisors; easier real-time access to databases among authorities; feedback mechanisms on ML investigations and prosecutions.

13. Coordination and cooperation within Kosovo's institutional framework in relation to combating PF needs to be developed. Results of the work done by different state agencies in relation to combating proliferation should be communicated and reflected in the policy-making within the jurisdiction.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)

14. Kosovo competent authorities widely use the financial intelligence of generally high quality together with other available and accessible data to conduct preliminary investigations of ML, associated predicate offences and TF. This would include generally high-quality intelligence generated by the FIU which seems to be contributing actively to the development of the system. The effectiveness is impacted to an extent by the indirect access to some of those sources and the deficiencies in the information maintained.

15. The usefulness of this information for conducting also formal investigations of associated predicate crimes in conformity with some of the established risks in the NRA and offences generally reported in Kosovo was demonstrated. It could not, however, be confirmed that the information would be sufficiently used for ML investigations. The wide range of information (STRs, CTRs, UTRs, AIF) from the reporting entities has sufficient quality to contribute to useful disseminations of the FIU. Nevertheless, some issues with the limited use of CTRs to initiate new cases and the interpretation of reporting suspicions have a detrimental effect on the system.

16. Law enforcement authorities in Kosovo have prioritised the investigation of money laundering by institutionalising and devoting significant resources to financial investigations both within the context of parallel financial investigations and as follow-up to FIU disseminations. At the same time the extensive efforts of law enforcement in this area are throttled by the resource bottlenecks at the level of prosecution. This is partly due to the resource constraints at the Special Prosecutors Office, which is small and has exclusive competency for prosecuting ML. Kosovo has had examples of third-party convictions and one stand-alone ML conviction, although the latter is a very recent exception, hopefully indicative of a new trend set by the prosecution. In previous years a high standard of proof imposed by prosecution for the underlying predicate effectively limited law enforcement in pursuing ML offences.

17. While the predicate criminality pursued in ML cases by law enforcement seems to be broadly in line with the risk and threat profile of Kosovo, the volume of cases ultimately prosecuted and adjudicated is negligibly low compared to the size of the threat stemming from predicate criminality and resulting ML in Kosovo. In the few cases of ML convictions, the sanctions seemed to be applied proportionately; however their number is too low to have any dissuasive effect on criminality in Kosovo. As a result Kosovo achieves only to a negligible extent the characteristics of an effective system to investigate, prosecute and convict for ML.

18. Despite the priority placed by Kosovo authorities on the issue of confiscation, and the significant efforts of the NCCEC, the framework and results of the confiscation system in Kosovo faces significant challenges. There is still a lack of systemic efforts in the prosecutorial and judicial system overall including all prosecutors and judges dealing with acquisitive crime cases to identify and properly tackle confiscation. The factors contributing to this include lack of knowledge and capacities as well as narrow judicial interpretation. Furthermore, seizures and confiscations do not fully reflect the risk profile of Kosovo, in terms of the dominant predicate offences, and taking into account the level and scope of cross-border risks.

Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.5-8)

19. Kosovo has not clearly demonstrated that the authorities would equally focus on the TF issues as phenomena with their own specificity as a type of financial crime despite understanding demonstrated on terrorism-related risks. Certain deficiencies remaining in the criminalisation of terrorism and respectively terrorism financing in Kosovo through the CC, the AML/CFT Law and the Law on Prohibition of Joining the Armed Conflicts outside State Territory impact the application of the CTF measures. Kosovo authorities have undertaken significant effort and demonstrated important achievements in preventing and prosecuting terrorist activities on their own and in cooperation with countries of the region as well as other international partners. Nevertheless, regardless of investigations involving joint interagency and international effort, there were limited prosecutions/convictions for TF demonstrated.

20. The latter is due to a number of demonstrated objective factors, including the nature of the detected terrorist activities and the financial profile of the persons involved and the self-financing mechanisms. Nevertheless, additional focus and effort of Kosovo authorities on TF is needed to pursue the TF offence as a measure to mitigate the prevalent risks considering: the gravity of the problem of FTFs, the support and recruitment related to this phenomenon, the number of suspended NPOs contributing to radicalisation, oversight deficiencies and indicators related to NPOs and the potential for external financing. Alternative measures applied when it was not possible to secure a conviction seem to have been largely limited.

21. Kosovo has not applied in any systematic way the required targeted sanctions under UNSCR 1267 and 1373. There are certain efforts of some of the authorities, most notably the FIU and the KC and Border Police, to apply certain preventive and targeted measures with regard to the mentioned UNSCRs but they are considered of marginal impact in the absence of further legal mechanisms.

22. NPOs in Kosovo are subject to the supervision of DRLNGO within the Ministry of Public Administration, the FIU as a reporting entity under the AML/CFT Law, and the Tax Administration. A number of legislative deficiencies as well as administrative ineffectiveness seems to be impacting the application of preventive measures against NPOs, the most important being the lack of administrative powers for definite suspension of the NPO activities where it is not possible to secure a criminal conviction. The significant efforts of LEAs and the FIU did not seem to be significantly reflected in enhanced formal supervision and change of administrative practices. It is also noted that the number of temporary suspensions of NPOs did not actually provide a strong impetus towards adopting a comprehensive targeted approach to the sector, although Kosovo authorities have initiated partial efforts to ensure further development of the mitigating measures according to the risk. Kosovo authorities demonstrated effectiveness in depriving terrorists of their instrumentalities (usually small amounts or property of relatively limited value) but no significant success in focusing on potential assets of NGOs or terrorist financiers.

23. Even though the mechanism implementing PF sanctions is similar to that for FT sanctions, there has been no implementation of the TFS framework pursuant to UNSCRs 1718, 1737 and their successor resolutions. Besides the failure to implement these resolutions under Kosovo law, it has been established that there has been no freezing of any PF-related assets or funds to date.

Preventive Measures (Chapter 5 - IO4; R.9-23)

24. Understanding of ML/TF risks significantly varies among the representatives of the private sector. The common shortcoming in how the reporting subjects understand and interpret risk is that they are well aware of contextual risk factors and higher risk segments, but have far less explicit views on the methods and patterns through which perpetrators might misuse the financial and non-financial systems in Kosovo to launder money or finance terrorism.

25. Banks and, to an extent commensurate to their risk exposure, other financial institutions (except for currency exchange bureaus) demonstrate a certain level of understanding of ML risks, characteristic to Kosovo. They are fluent in describing their risk mitigation frameworks and report to have implemented the requirement of the AML/CFT Law to periodically assess and document their risks. The quality of the risk assessment exercise varies depending on the capacities of the financial institution, indicating a definite need for more guidance in preparing and conducting risk assessments.

26. Regarding the constituents of the preventative regime, understanding of beneficial ownership is exclusively confined to direct holding of 25% or more shares in a company as defined by the AML/CFT Law. Among the DNFBPs, only notaries and, to a limited extent, lawyers (where law firms provide legal support to major economic transactions) report to implement very basic CDD measures such as identification of customers and verification of their identity.

27. Suspicious transaction reporting performance is highly uneven among the subjects of the AML/CFT Law in general and among banks in particular, with some of them feeling satisfied about implementation of the reporting requirement by filing CTRs. All representatives of the private sector stress the importance of receiving significantly more general and specific feedback from the FIU regarding compliance with the AML/CFT requirements in general and with the STR reporting performance in particular.

28. Application of internal controls and procedures by banks and other financial institutions (except for currency exchange bureaus) appears to produce sound results, as also ascertained by the findings of supervision. The same cannot be presumed about currency exchange bureaus and DNFBPs due to the lack of AML/CFT knowledge on one hand and insufficient scope and intensity of supervision on the other hand.

Supervision (Chapter 6 – IO.3; R.26-28, R. 34-35)

29. The FIU, the CBK and other sectoral supervisors are assigned responsibility for supervising AML/CFT compliance of financial institutions and DNFBPs. Practical sharing of supervisory responsibility between the FIU and the CBK is an issue apparently causing significant ambiguity and subsequent inefficiency of the supervisory regime, particularly regarding control of compliance with the STR reporting requirement by banks and other financial institutions.

30. There is a range of market entry measures in the financial sector, which need to be improved by introducing, *inter alia*, provisions to prevent associates of criminals from entering the financial market as holders (or beneficial owners) of a significant or controlling interest. The authorities need to make decisive efforts towards enforcement of effective measures to bring into the regulated system the persons without any registration and licensing involved in currency exchange and money lending activity.

31. Among supervisors, the FIU and the CBK demonstrate rather advanced views and understanding of ML/TF risks. Nonetheless, it appears that risk profiling provisions are applied to tentatively guide the efforts of supervisors without regular production and revision of written documents clearly articulating the findings and conclusions about the risk profile of individual supervised entities.

32. The FIU and the CBK have adequate powers and operational independence to enforce their supervisory mandate. Nonetheless, adequacy of the FIU resources *vis-à-vis* its responsibility of supervising all DNFBPs is not obvious and would be a hardly achievable goal unless agreements are concluded to distribute that responsibility evenly between the FIU and sectoral supervisors. The shortcomings in the risk profiling practices of both the FIU and the CBK appear to have an adverse impact on all subsequent stages (i.e. planning, execution and follow-up) of the supervisory cycle.

33. Inspections conducted by the FIU and the CBK cover different areas and ascertain various irregularities in financial institutions and DNFBPs. It does not appear that proportionate and dissuasive sanctions stipulated by the AML/CFT Law are imposed on the reporting subjects subsequent to the production of inspection reports by either the FIU or the CBK. On the background of the ineffective

application of proportionate sanctions as a dissuasive measure against non-compliance with the applicable AML/CFT requirements, representatives of the private sector refer to the disproportionate nature of the fines established by the AML/CFT Law for what are defined as very serious, serious and minor violations of the legislation.

34. In relation to the financial sector, both the FIU and the CBK have appropriate communication mechanisms, channels and practices to promote a clear understanding of AML/CFT obligations and ML/TF risks among banks and, to a lesser extent, other financial institutions. In practice, provision of guidance and training appears to be an area where supervisors generally and the FIU specifically need to invest significantly more resources. There is an overall concern about general and specific feedback provided to the reporting subjects on STR reporting.

Transparency of Legal Persons and Arrangements (Chapter 7 – IO.5; R. 24-25)

35. All legal persons are required to be registered, with basic information being made publicly available through the Business Registry (KBRA). Although there is no beneficial ownership registry, banks and financial institutions appear to be generally aware of their need to identify the beneficial owner of a legal entity or arrangement, however the understanding of what constitutes beneficial ownership varies (in the majority of cases it is limited to direct holding of 25% or more shares in a company as defined by the AML/CFT Law).

36. There does not appear to be a process for verifying the information that is provided to the Business Registry or for checking whether it requires updating. While there is a legal requirement for changes of basic information in respect of all legal persons to be reported to the Business Registry within fifteen days from when such changes are made, failure to comply is not subject to any penalty. Nevertheless, the level of adequacy, accuracy and currency of most of the information at the registry has never been reviewed.

37. The authorities have not assessed the ML/TF risks associated with the types of legal entities created in Kosovo. Moreover, the possible abuse of legal persons, use of strawmen, the illegitimate use of nominees have not been explored sufficiently and very little appreciation of the risks posed by these phenomena was encountered. Mechanisms to ensure that information on the beneficial ownership is accurate and up-to-date are basic, with law enforcement authorities and the FIU using existing information obtained by banks under their CDD requirements.

38. In the course of its supervisory work, the CBK assesses the level of verification of beneficial ownership information by reporting entities while conducting on-site examinations. The CBK checks whether it is adequate, accurate and current. The effectiveness of the sanctions framework of the CBK is questionable and so is the dissuasiveness of the sanctions. While there have been occasional gaps that have been identified in relation to beneficial ownership, no penalties have ever been imposed.

39. The Kosovar legal framework does not recognise trusts, although the operation of legal arrangements established under foreign law is not prohibited. Both the authorities and the vast majority of obliged entities do not seem to be adequately aware of ML/TF risks related to legal arrangements as they lack sufficient understanding of their structures and the nature of their activities.

International Cooperation (Chapter 8 – IO.2; R. 36-40)

40. MLA is carried out in Kosovo pursuant to bilateral agreements or the principle of reciprocity which in fact allows for a wide range of assistance to be provided. The incoming and outgoing requests for MLA are handled in Kosovo through a centralised multi-stage interagency mechanism, coordinated by the Ministry of Justice. While significant efforts are exerted by the MoJ to coordinate MLA and extradition requests effectively, the complexity of the mechanism in its subsequent cascading stages is detrimental in some cases to the timeliness and efficiency of the cooperation, especially in relation to extradition requests.

41. Up till 2017 the provision of timely international legal assistance in criminal matters was not demonstrated. Some changes undertaken in 2017 seem to have contributed to the timeliness; the direct cooperation occurring between authorities has also had a positive effect. The on-site visits confirmed that refusal of cooperation occurred in very limited circumstances and in no manner can be interpreted as negatively affecting the provision of cooperation.

42. Kosovo authorities have not demonstrated that they actively requested cooperation with regard to TF issues, despite the wide use of MLA in terrorism-related cases. Furthermore, the MLA channel does not seem to have been sufficiently used in ML cases undertaken by Kosovo authorities and the assessors

are concerned with the decreasing reliance on this cooperation. There were a number of examples provided with regard to actual cooperation being carried out for asset identification but again in very limited circumstances in relation to asset seizure and confiscation.

43. The cooperation implemented by the FIU is active and based on both requests and spontaneous information. Cooperation is carried out pursuant to detailed internal guidelines (SOP) which stipulate the appropriate mechanisms for the various forms of exchange of information. Exact timelines are provided in the internal guidelines. As evidenced from data provided to assessors, FIU practice correlates with the internal requirements and international best practices. The cases presented and the discussions allow the assessment team to conclude that the obtained information is widely used. The powers for police cooperation and exchange of information are widely used, but it is not clear due to the absence of specific statistics to what extent they are actually related to ML and TF cases. The cooperation of customs authorities in Kosovo also seems to be very active although rarely linked specifically to ML. It was not demonstrated that CBK would engage actively in international cooperation specifically for ML and TF purposes.

Priority Actions

i. Kosovo authorities should carry out a comprehensive ML and TF NRA that is based on a methodology that ensures a detailed review of the prevailing threats and vulnerabilities for all financial/DNFBP sectors and products and the typologies associated with them.

ii. Authorities should enhance their strategic focus on TF and consider integrating specific risks thereof in the other relevant strategies or through adopting specific instruments to ensure adequate action against TF and take measures to ensure the sufficiency of the legal basis for the prosecution of TF.

iii. A system of targeted financial sanctions should be implemented as a matter of urgency and measures to ensure full deprivation of assets should be implemented.

iv. Policy level coordination needs to be further developed between the Ministry of Finance, Ministry of Interior, Ministry of Justice and other actors, in order to ensure substantive AML/CFT input into strategies adjacent to AML/CFT, as well as risk and threat assessment processes running outside the jurisdiction of the MoF (e.g. SOCTA).

v. Kosovo authorities, including the SPRK and the NCCEC should take systemic measures to promote the investigation and prosecution of autonomous ML offences (without the need for a predicate offence prosecution) based on recent case-law.

vi. Kosovo authorities should pursue and finalise initiated reforms aimed at decentralising ML cases to non-SPRK prosecutors, while maintaining high-profile and high-volume cases for oversight and prosecution by the SPRK.

vii. Authorities should assess the sub-sectors of NPOs at risk, including any unregulated and unmonitored activities, in order to implement a targeted approach, and further institutional measures for registration, monitoring or control.

viii. Ensure that the FIU and other supervisors negotiate and conclude the agreements stipulated by the AML/CFT Law to enable a functional mechanism for shared supervisory responsibility; and find a practicable solution to the issue of adequate control of financial institutions' compliance with STR reporting requirements.

ix. Introduce the missing elements of market entry rules; and make decisive efforts towards enforcement of effective measures to bring unlicensed currency exchange and money lending activities into the regulated system.

x. Provide for imposition of proportionate and dissuasive sanctions stipulated by the AML/CFT Law for ascertained non-compliance by the reporting subjects.

xi. Promote the understanding of beneficial ownership beyond direct holding of 25% or more shares in a company; define and enforce more effective measures for verification of the source of funds.

xii. Undertaking a review of the different types of legal persons with a view to assessing their risks, vulnerabilities and attractiveness to be misused for ML/TF purposes.

xiii. Streamline provisions in the CPC related to seizure and confiscation in order to avoid overlap and confusion in implementation.

xiv. Take measures to strengthen Kosovo's ability to prevent the financing of the proliferation of weapons of mass destruction by introducing legislation to provide for measures for implementing targeted financial sanctions concerning the respective UNSCRs. The Kosovar authorities should adopt new legislation within the shortest time possible to regulate TFSs related to PF and to designate competent authorities for this purpose.

xv. Kosovo authorities should ensure sufficient and timely access to all necessary information and further increasing the automated use of this information for generating useful financial intelligence and developing cases of potential ML, associated predicate crime and TF.

xvi. Authorities should consider further resource allocation, including the increase of the available human resources and mechanisms to prioritise the gathering and use of information for purposes of triggering and supporting ML investigations.

xvii. Ensure that authorities performing cross-border cash control measures systematically take into consideration ML/TF suspicions.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings (High, Substantial, Moderate, Low)

IO.1 – Risk, policy and coordination	**IO.2** – International cooperation	**IO.3** – Supervision	**IO.4** – Preventive measures	**IO.5** – Legal persons and arrangements	**IO.6** – Financial intelligence
Moderate	**Moderate**	**Moderate**	**Moderate**	**Low**	**Moderate**
IO.7 – ML investigation & prosecution	**IO.8** – Confiscation	**IO.9** – TF investigation & prosecution	**IO.10** – TF preventive measures & financial sanctions	**IO.11** – PF financial sanctions	
Moderate	**Low**	**Low**	**Low**	**Low**	

Technical Compliance Ratings (C - compliant, LC - largely compliant, PC - partially compliant, NC – non-compliant)

R.1 – Assessing risk & applying risk-based approach	**R.2** – National cooperation and coordination	**R.3** – Money laundering offence	**R.4** – Confiscation & provisional measures	**R.5** – Terrorist financing offence	**R.6** – Targeted financial sanctions – terrorism & terrorist financing
PC	**LC**	**LC**	**PC**	**PC**	**NC**
R.7 – Targeted financial sanctions - proliferation	**R.8** – Non-profit organisations	**R.9** – Financial institution secrecy laws	**R.10** – Customer due diligence	**R.11** – Record keeping	**R.12** – Politically exposed persons
NC	**PC**	**LC**	**PC**	**LC**	**PC**
R.13 – Correspondent banking	**R.14** – Money or value transfer services	**R.15** – New technologies	**R.16** – Wire transfers	**R.17** – Reliance on third parties	**R.18** – Internal controls and foreign branches and subsidiaries
LC	**C**	**C**	**PC**	**NC**	**PC**
R.19 – Higher-risk countries	**R.20** – Reporting of suspicious transactions	**R.21** – Tipping-off and confidentiality	**R.22** - DNFBPs: Customer due diligence	**R.23** – DNFBPs: Other measures	**R.24** – Transparency & BO of legal persons
PC	**LC**	**LC**	**PC**	**PC**	**PC**
R.25 – Transparency & BO of legal arrangements	**R.26** – Regulation and supervision of financial institutions	**R.27** – Powers of supervision	**R.28** – Regulation and supervision of DNFBPs	**R.29** – Financial intelligence units	**R.30** – Responsibilities of law enforcement and investigative authorities
LC	**PC**	**PC**	**PC**	**LC**	**LC**
R.31 – Powers of law enforcement and investigative authorities	**R.32** – Cash couriers	**R.33** – Statistics	**R.34** – Guidance and feedback	**R.35** – Sanctions	**R.36** – International instruments
LC	**LC**	**PC**	**C**	**PC**	**N/A**
R.37 – Mutual legal assistance	**R.38** – Mutual legal assistance: freezing and confiscation	**R.39** – Extradition	**R.40** – Other forms of international cooperation		
LC	**PC**	**PC**	**LC**		

ASSESSMENT REPORT

Preface

1. This report summarises the AML/CFT measures in place as at the date of the onsite visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

2. This assessment was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The assessment was based on information provided by the Kosovo authorities, and information obtained by the evaluation team during its on-site visit to Pristina from 18 to 28 June 2018.

3. The assessment was conducted by an assessment team consisting of:

- Mr Evgeni Evgeniev – law enforcement expert;
- Mr Manfred Galdes – legal expert; and
- Mr Arakel Meliksetyan – financial expert.

4. Reviewers (Scientific experts):

- Mr Nicolas Choules-Burbidge – financial reviewer;
- Mr Lajos Korona – legal and law enforcement reviewer.

5. Peer experts:

- Mr Giuseppe Lombardo – Plenary Chair;
- Ms Lenka Mlynarik Habrnalova;
- Ms Jana Ružarovská;
- Mr Gabor Simonka;
- Mr Klaudijo Stroligo.

6. CoE Secretariat

- Mr Igor Nebyvaev – Head of Unit, Economic Crime and Cooperation Division;
- Mr Edmond Dunga – PECK II Project Advisor;
- Mr Jamie Brown – Project coordinator, Economic Crime and Cooperation Division;
- Ms Joana Kashi – Programme coordinator, Economic Crime and Cooperation Division.

7. Kosovo previously underwent a PECK I assessment in 2013 and a follow-up assessment in 2014, conducted according to the 2004 FATF Methodology. The assessments have been published and are available at www.coe.int.

CHAPTER 1. ML/TF RISKS AND CONTEXT

8. Kosovo is located in south-eastern Europe in the central Balkan Peninsula, and it covers 10,908 km2. Kosovo has an estimated resident population of 1,815,606.13 of which approximately 92% is Albanian and 8% from Serb and other minorities. The official languages in Kosovo are Albanian and Serbian. At the municipal level, the Turkish, Bosnian and Roma languages have the status of official languages.

9. On 10 June 1999 the UN Security Council adopted Resolution (UNSCR) 1244. This resolution, while confirming Serbia's international borders, removed Kosovo from the jurisdiction of Serbia, replacing it with a temporary solution of an internationally supervised administration, aiming to support the development of operational autonomous institutions in Kosovo. Based on UNSCR 1244 the United Nations Interim Administration Mission in Kosovo (UNMIK) was created. It was vested with administrative, legislative and judicial powers in Kosovo.

10. Kosovo declared independence from Serbia on 17 February 2008. In April 2008, Pristina authorities adopted a Constitution, which came into force in June 2008. Kosovo is not a member of the United Nations.

11. Kosovo has a civil law based legal system, where the Constitution is the highest legal act and all other laws and other legal acts must be in accordance with the Constitution.

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

ML Threats

12. According to the NRA (2013) the top predicate offences relating to AML/CFT include corruption, tax evasion, fraud, theft, and embezzlement. Additionally, significant threats seem to be related to domestic organised crime and its cross-border links with foreign-based organised crime groups, and the range of offences perpetrated by such groups (smuggling, drug, human and arms trafficking, etc.). Criminological data on predicate offences is limited and there remain multiple issues of reliability and confidence in data and figures available. The NRA emphasises the large size of the informal economy as a key contextual money laundering threat in Kosovo.

13. The smuggling of migrants has been reported as a significant proceeds-generating crime, in many cases facilitated by organised crime groups, with an estimated value at EUR 44 million in 2015 (though this number has reportedly dropped significantly in subsequent years).[1] In relation to human trafficking, Kosovo is a source and destination country for men, women, and children subjected to sex trafficking and forced labour.[2]

14. Kosovo is a transit point for illicit drugs coming from Afghanistan, making their way through Turkey and Kosovo for smuggling to Western Europe. Kosovo Police report that the value of drug confiscations for the period 2014-2016 was EUR 12.5 million, though other estimates place the annual drug market value at EUR 50 million.[3] Smuggling in goods is considered to be one of the most common predicate offences for money laundering as the widespread use of cash plays a role in moving criminal assets across borders.[4] Kosovo Police report that they regularly seize illicit arms on the border, and report a number of offences relating to both illegal transport of weapons and illegal possession of weapons.[5]

15. Corruption is recognised by both domestic authorities and international organisations as one of Kosovo's largest obstacles to good governance and attracting investment. Kosovo is enacting legislation

[1] Business and Strategies Europe, Assessment on the Extent of Informal Economy in Kosovo (9 November 2017), p.39; available at https://www.bseurope.com. Also see, Frontex, Western Balkans Annual Risk Analysis (2017), p.31, available at https://frontex.europa.eu/

[2] US Department of State (2017), Trafficking in Persons Report 2017, p. 239, available at https://www.state.gov

[3] Kosovo Police, Annual Report, p.20 available at http://www.kosovopolice.com

[4] Ministry of Finance (2013), Kosovo Money Laundering National Risk Assessment, available at https://mf.rks-gov.net

[5] Kosovo Police (2017), Annual Report, p. 20; available at http://www.kosovopolice.com/, Frontex, Western Balkans Annual Risk Analysis (2017), p.31, available at https://frontex.europa.eu/

to combat corruption, but there has been very limited progress in efforts to investigate, prosecute, jail, and confiscate the assets of corrupt individuals. Corruption as a predicate offence to ML is reportedly most widespread in matters of public procurement and among primarily domestic politically-exposed persons (PEPs), as well as foreign national PEPs considering the unique international presence in Kosovo.

16. Money laundering trends in Kosovo are often related to the widespread use of cash and are often invested in legal businesses, such as real estate, construction, extractive industries, and the petrol trade. Foreign-generated proceeds of crime entering Kosovo both through legal channels (such as remittances) and informal means pose a threat, particularly in relation to organised crime connected with the diaspora community. Issues related to the misuse of legal persons and arrangements through straw men, setting up shell companies, obscuring beneficial ownership, etc. also constitute increasingly growing threats to the integrity of the financial system in Kosovo.

TF Threats

17. Terrorism and TF risks related to Kosovo have been noted by a number of studies. The repercussions of the conflicts in Syria and Iraq on radicalisation, violent extremism and the supply of foreign terrorist fighters are considerable concerns.

18. Based on the 2013 NRA, funds used for the purposes of financing terrorism are partially derived from the proceeds of crime, though some amount of terrorist financing comes through otherwise legitimate fundraising and donations. One of the specific risks noted in the Kosovo NRA is the donation of the legitimate funds used for TF through NGOs, which may also include sources of funding outside of Kosovo. Some sources indicate that NGOs could be involved in up to a third of the TF cases. The role of NGOs in promoting radicalisation and recruitment has been noted in media reports, and foreign funding from certain state actors and private organisations is considered to pose a substantial TF risk.

19. Terrorism financing occurring within and through Kosovo has been reported to have links with cells or individuals operating in foreign countries, including Western Europe, some of them coming from Kosovo's extensive diaspora. Funding in certain known cases of terrorism is believed to have originated from terrorist organisations situated in the Middle East.

Risk assessment of Kosovo

20. Kosovo has undertaken and published its first and only NRA in 2013. The NRA was carried out based on a methodology developed jointly with an international assistance project. It was coordinated by the FIU based on an Administrative Instruction of the MoF, which regulates the NRA process and involvement of other authorities. Kosovo's Government established a NRA working group. The NRA was disseminated to the public authorities and a summary of it is published on the FIU website.

21. Three sectoral risk assessments based on a similar Methodology have been carried out covering the non-profit sector, real estate/construction and games of chance. Furthermore, in 2016 Kosovo authorities finalised a Serious and Organised Crime Threat Assessment (SOCTA), which provides important information on the criminal threats facing Kosovo, including a component on money laundering and terrorism. A process to update the SOCTA is on-going, and should be finalised by the end of 2018. Kosovo authorities plan to complete their second NRA by the end of 2018.

22. A detailed analysis of Kosovo's understanding of its ML/TF risks and measures taken, including those stemming from the NRA and other assessments is provided in IO 1.

Scoping of Higher Risk Issues

23. The assessment team identified areas which required an increased focus through an analysis of information provided by Kosovo authorities, including the NRA, and by consulting various open sources. These were as follows:

24. **The use of cash**: Despite the efforts of the authorities to limit cash transactions, the widespread use of cash facilitates tax evasion and exacerbates the informal and black economy. The assessors focused on (1) the success of the measures taken so far to reduce the shadow economy, tax evasion and related ML; (2) whether the FIU is making effective use of cash transaction reports to identify ML and associated predicate offences, and whether such cases are being investigated and prosecuted effectively; (3) the effectiveness of controls at the borders to detect false/non-declarations and identify ML/TF suspicions; (4) measures implemented by the financial sector, particularly banks and MVTS, to identify the source of funds

in relation to cash transactions; and (5) whether there is any economic rationale underlying the significant physical outflow of cash, what the sources are and the destination. The evaluation team paid particular attention to the use of MLA mechanisms and other forms of domestic (inter-agency) and international co-operation.

25. **Organised Crime (and related offences)**: Considering the regional migration, drug trafficking, etc. routes and cross-border links of organised crime groups[6], the lack of a specific focus on organised crime in the Kosovo NRA and the noted widespread use of cash and its role in moving criminal assets, an area of focus was the understanding of Kosovo authorities of these issues and the measures undertaken to tackle them.

26. **Corruption:** The fight against corruption has been among the priorities of the Government of Kosovo, but remains one of the key challenges faced by the country, whereby corruption is not being detected nor prevented sufficiently, nepotism and a tolerant attitude to corruption is the norm and there is lack of transparency and accountability. The assessors considered the framework in place to detect money laundering derived from corruption offences, and took into account the parallel PECK II assessment being conducted into anti-corruption measures in Kosovo to judge on the influence of corruption as a contextual factor impacting the overall functioning of the AML/CFT system.

27. **Understanding of TF risk**: The assessment aimed to confirm whether relevant financial investigations into TF aspects are carried out as part of all terrorism investigations, including cases concerning foreign terrorist fighters, radicalisation or for recruitment purposes; the use of alternative countermeasures (e.g. expulsion, termination of legal entities, etc.), and cases for applying FIU provisional measures was considered.

28. **Non-Governmental Organisations (NGOs):** The assessment team considered the activities of the non-profit organisations as a major focus point in the evaluation of the CFT system of Kosovo, in view of the remaining technical compliance issues together with the potential for abuse of the sector for TF purposes. Focus was given to the mitigating measures undertaken by authorities in regard to the specific subset of NGOs suspected of being involved in TF, the characteristics of the movement of funds, the regional profile, and a focus on activities that present the most significant risks.[7]

29. **Construction**: According to the NRA, construction is identified as one of the sectors most vulnerable to money laundering (in identified risk 17), and was one of the areas of focus in the assessment. Within the construction sector in Kosovo, reports suggest a significant amount of construction activities bypass financial sector actors and are instead financed through alternative means due to a tendency to use bartering and exchange of assets and property. As such, many potentially illicit sources of funding may be present. Additionally, structural features in the tax system of Kosovo present certain exploitable vulnerabilities for illicit cash flows and money laundering.[8]

30. **Real estate**: Real estate is also considered to be a sector highly vulnerable to money laundering (in identified risk 17), and was one of the focus areas. Similar to the construction sector, a significant amount of informal activity is being carried out in relation to real estate, with a substantial amount of financial and accounting irregularities visible in the difference between business accounting and national accounting information on real estate profits.[9]

31. **Monitoring of Remittances**: The withdrawal, deposit and remittance of cash (either through MVTS or physical transportation) are commonly used in ML schemes. The Central Bank reports remittances are mainly used for personal consumption, not for investment purposes. However, Kosovo does not apply any type of capital control or limitation on international capital flows. As such, access to foreign exchange for investment remittances is fully liberalised. Informal money remittances (and related practices such as hawala networks) were also a matter of further consideration in the assessment.

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[6] UNODC (2014), 'The Illicit Drug Trade through South-Eastern Europe', available at https://www.unodc.org Frontex, Western Balkans Annual Risk Analysis (2017), available at https://frontex.europa.eu/
Regional organised crime links also noted in the Moneyval MERs of Slovenia and Serbia.

[7] Frontex, Western Balkans Annual Risk Analysis (2017), p.47, available at https://frontex.europa.eu/

[8] Business and Strategies Europe, Assessment on the Extent of Informal Economy in Kosovo (9 November 2017), p.53-54; available at https://www.bseurope.com.

[9] Business and Strategies Europe, Assessment on the Extent of Informal Economy in Kosovo (9 November 2017), p.58; available at https://www.bseurope.com

32. In the course of the on-site visit **the sector of precious metals and stones** surfaced as high risk for ML and TF, given the lack of market entry controls and supervision, the number and types of cases handled by authorities, as well as the extent of smuggling of precious metals and stones into Kosovo, including from destinations representing a potential TF risk.

Materiality

33. In 2017, Kosovo had an estimated GDP of EUR 6.4 billion, reflecting a per capita GDP (PPP) of EUR 3,086, making the population in Kosovo the second poorest in Europe, after Moldova. The Euro is the official currency of Kosovo, though the country is not a member of the Eurozone. A 2016 report suggested that the total value of the informal economy is EUR 1.845 billion, representing approximately 31.7% of the value of Kosovo's GDP. Revenues are at 27% of GDP (much lower than the EU average of 45%).

34. Kosovo is still an import-based economy; forced to import goods and raw materials not offered by the local market. The main imported goods include manufactured goods, machinery and equipment, prepared foodstuff, beverages and tobacco, and fuels.

35. Robust domestic demand is funded by transfers and capital inflows that originate, to a large extent, with the Kosovo diaspora. Remittances are an important source of income for at least 43% of Kosovo's population, representing over 14% of GDP (or over EUR 700 million) in 2016. The majority of remittances come from Kosovo's diaspora in European countries, and in particular Germany and Switzerland.

36. Kosovo has 10 commercial banks and 15 licensed insurance companies; no securities market exists. Kosovo's banking sector remains well-capitalised and profitable. Difficult economic conditions, weak contract enforcement, and a risk-averse posture have limited banks' lending activities, although marked improvement occurred in the past two years. The estimated total assets of the three largest banks are approximately USD 2.3 billion. Despite positive trends, relatively little lending is directed toward long-term investment activities. High interest rates (averaging approximately 7.7%) and collateral requirements act as disincentives to borrowers.

Structural Elements

37. Some of the key structural elements which are necessary for an effective AML/CFT regime are generally present in Kosovo. There is a high-level commitment on the part of policy-makers to address AML/CFT issues, which are prioritised at the strategic level in tandem with issues to tackle the informal economy. This is demonstrable in particular through the Government Working Group established to handle AML/CFT and informal economy issues which is chaired by the Minister of Finance and includes officials at the level of Ministers/Deputy Ministers and Heads of agencies (see description below).

38. At the same time a number of the structural elements are not fully in place in Kosovo. Even though the situation has improved in recent years, there is still a considerable lack of political stability; institutions, including the judicial system still lack a degree of accountability, integrity and transparency.

39. Kosovo is undergoing a period of phasing out of the EULEX Rule of Law mission, which will present its own challenges in the short-to-medium term in terms of the need to further build up capacities of Kosovo institutions.

Background and other contextual factors

40. Corruption is a key contextual factor with a widespread impact on all elements of the AML/CFT system. This has been outlined in the 2013 NRA report, the 2014 PECK I Assessment Report, and is further reflected in the Corruption Perceptions Index where Kosovo is ranked 85 out of 180 jurisdictions assessed, with a score of 39 out of 100. Moreover, according to the Worldwide Governance Indicators, Kosovo's control of corruption remains low at a percentile rank of 40, showing no significant improvement along the years.

41. The PECK II Anti-Corruption Assessment identified numerous loopholes related to the framework for prevention of corruption at the level of top executive functions and in law enforcement authorities. Previously two risk assessments in the areas of judiciary and prosecution identified a number of risk factors in these sectors. These findings confirm that areas, which are key to ensuring an effective AML/CFT regime, are also highly susceptible to corruption risks, which should be addressed as a matter of priority.

AML/CFT strategy

42. The Government of Kosovo adopted a five-year National Strategy and Action Plan for the Prevention of and Fight against the Informal Economy, Money Laundering, Terrorist Financing, and Financial Crimes (2014-2018). An Action Plan annexed to the Strategy outlines concrete activities to achieve the specific objectives and implementation goals in the Strategy, identifies which public institution has the primary responsibility for implementation and reporting, as well as provides a timeline and estimated costs for implementation. Both documents are drafted on the basis of the NRA and serve as the central element of the Government's risk mitigation efforts. There is also a built-in monitoring process to review and assess the implementation of the Strategy and Action Plan. A number of adjacent strategies to combat terrorism and organised crime exist and are complementary to the AML/CFT strategy for purposes of this assessment (see further analysis of the strategic framework under IO 1 and Recommendation 2).

Legal & institutional framework

43. The AML/CFT framework in Kosovo is governed by the AML/CFT Law, adopted in 2016. A prior version of the AML/CFT Law (replacing the initial UNMIK Regulation No. 2004/2) was adopted in 2010 and subsequently amended in 2013. Since the last assessment, a number of bylaws, regulations and administrative instructions have been issued pursuant to revised AML/CFT legislation, primarily by the Ministry of Finance and the FIU, in particular, but not limited to:

- Administrative Instruction FIU No. 05/2014 on minimum standards, written procedures and controls for prevention and detection of money laundering and terrorist financing by covered professionals;
- Administrative Directive FIU No. 02/2015 on prevention and detection of money laundering;
- Administrative Directive FIU No. 03/2015 on prevention and detection of terrorist financing;
- Administrative Instruction FIU No. 02/2017 on trainings for prevention of money laundering and combating the financing of terrorism.

44. The AML/CFT Law (Article 56) sets out the offences of money laundering and terrorism financing, which is cross-referenced in the Criminal Code (Article 308). A number of AML/CFT related provisions are still under development, most notably with regard to targeted financial sanctions for terrorism financing.

45. The main agencies and interagency bodies involved in Kosovo's institutional AML/CFT structure are the following:

46. **The Financial Intelligence Unit (FIU)** was established in 2010, substituting the former Financial Intelligence Centre which had been set up pursuant to UNMIK Regulation 2004/2. The FIU is an administrative FIU and has a leading role relating to AML/CFT measures. Administratively it is located under the Ministry of Finance. The FIU's **Oversight Board** is chaired by the Minister of Finance and includes the Minister of Internal Affairs, the Chief Prosecutor of Kosovo, the Director-General of the Kosovo Police, the Director of the Tax Administration of Kosovo, the Director-General of the Customs and the Governor of the CBK. The Board carries out coordination for state-level AML/CFT policy in cooperation with other institutions and relevant stakeholders, and meets at least twice a year. It approves the FIU budget and structure, appoints the FIU Director and scrutinises FIU annual reports.

47. The **Ministry of Finance (MoF)** formulates and implements the policy of the Government regarding the financial, tax and customs matters. It has the overall responsibility for legislation in the AML/CFT area. The MoF also carries out the licensing and supervision of activities of private auditing companies, auditors and accountants as well as operators of games of chance through the specific division under the Kosovo Tax Administration.

48. **Tax Administration of Kosovo (TAK)** is the central body responsible for collection of tax revenue in Kosovo, and investigating tax evasion. The TAK is also the regulatory authority of games of chance. It supervises and manages the registration process, but it also manages the licensing process of the operators of games of chance in accordance with the law.

49. The **Committee for the control of trade in strategic goods** establishes the regulatory regime and control mechanisms for dual-use goods (under Law No. 04/L-198 on trade in strategic goods, which includes weapons of mass destruction under Article 3, paragraph 1.6). The Committee consists of five

members, representing Ministry of Trade and Industry, Ministry of Foreign Affairs, Ministry of the Security Forces, Ministry of Internal Affairs, and Kosovo Customs.

50. The **Ministry of Trade and Industry (MTI)** is responsible for the establishment and supervision of the Registry of Business Organisations and Trade Names. Since 2011, this function is ensured through the **Kosovo Business Registration Agency (KBRA)**.

51. The **Ministry of Foreign Affairs (MFA)** is responsible for coordinating the implementation of terrorism and PF-related targeted financial sanctions (in accordance with Law No. 03/L-183 on the Implementation of International Sanctions).

52. The **Ministry of Internal Affairs (MIA)** has the mission to build, preserve and increase the security for all citizens. One of its strategic priorities is to prevent and reduce crime. It oversees the functioning of the Kosovo Police.

53. **Kosovo Police (KP)** is responsible *inter alia* for ensuring public order and safety, fighting organised crime and guaranteeing the integrity of borders. It has established an Organised Crime Division (OCD), which comprises the Integrated Financial Investigations Sector responsible for undertaking investigations into predicate criminality; as well as the Directorate against Economic Crime and Corruption Investigation (DECCI) which includes a Financial Investigations Sector and an ML Unit, which deals specifically with financial crime and money laundering.

54. **Kosovo Customs (KC)** provides clearance and control of legitimate trade and travellers, collects customs revenues, and works to prevent fiscal risks and investigate the offences of smuggling and trafficking, and related money laundering.

55. The **Central Bank of Kosovo (CBK)** fosters and maintains the stability of the financial system, payment system, as well as price stability. The Central Bank is also the supervisory authority for all of the financial institutions in Kosovo, including bank and non-bank credit institutions, money remitters, currency exchanges and insurance companies.

56. The **Kosovo Prosecutorial Council (KPC)** is an institution fully independent in exercising its functions with the purpose of ensuring a professional and impartial prosecution system. The Council is composed of 13 members, 10 of whom are prosecutors, and 3 non-prosecutors members who decide on the policies of the entire prosecutor system.

57. The **State Prosecutor's Office (SPO)** is an independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts or other acts as specified by law. The State Prosecutor's Office is a unified system empowered to: initiate criminal proceedings, ensure the investigation and prosecution of criminal offences in a timely manner against persons suspected or accused of committing criminal offences; represent charges before the court; exercise regular and extraordinary legal remedies against court decisions; protect the legal rights of victims, witnesses, suspects, accused and convicted persons; cooperate with police, courts, and other institutions; undertake all other actions specified by law.

58. The **Special Prosecution Office (SPRK)** within the office of State Prosecutor has been established by a special law. The SPRK has exclusive competence to investigate and prosecute *inter alia* money laundering, terrorism offences, organised crime, as well as a subsidiary competence for offences such as trafficking, counterfeiting money, corruption and fraud and other serious offences.

59. **Kosovo Judicial Council (KJC)** ensures the independence and impartiality of the judicial system. It is responsible for recruiting and proposing candidates for appointment to judicial office. The Council is also responsible for the transfer of judges and disciplinary proceedings.

60. **Kosovo Intelligence Agency (KIA)** is established as the security and intelligence service in Kosovo. It has a legal personality and has a mandate to operate throughout the territory of Kosovo. KIA collects information concerning threats to the security in Kosovo: terrorism, organised crime, trafficking, etc. KIA has no executive powers.

61. The **National Coordinator for Combating Economic Crime (NCCEC)** promotes, coordinates, monitors, evaluates and reports on activities of law enforcement institutions which are concerned with prevention, detection, investigation, prosecution and adjudication of crime that generates material benefits.

Financial sector

62. The financial sector of Kosovo consists of 10 commercial banks licensed and operational in Kosovo, 2 licensed pension funds, 15 licensed insurance companies (including 3 companies providing life insurance), 11 MFIs, 18 insurance intermediaries, 56NBFIs out of which 8 NBFIs perform money transfer and payment activities, 4 are involved in credit activity, 3 perform leasing activities, one undertakes factoring while there are 42 exchange bureaus (two NBFIs undertaking credit activity are also involved in other activities.

63. The total assets of the financial sector (excluding the CBK) in Kosovo reached EUR 5.91 billion in 2017 and grew by 9.7% compared to 2016. Banking sector assets at EUR 3.87 billion, with an annual growth rate of 6.4%, comprised around 65.5% of total financial sector assets. Pension funds under trust management amounted to EUR 1.653 million with a growth rate of 16% and comprised 27.9% of total financial assets. MFIs managed assets to the value of EUR 192.4 million, increasing by 28.6% and representing 2.5% of the financial sector, following the insurance companies with assets of EUR 177.1 million (EUR155.7 million in non-life and EUR21.6 million in life) representing 3% of the financial sector assets.

64. In recent years the banking system was characterised by variations in the expansion of infrastructure, with the number of branches and agencies (sub-branches) of the commercial banks going down from 265 in 2015 to 238 in December 2017. Eight banks are owned by foreign capital (Austria, Germany, France, Turkey, Slovenia, Serbia), whereas 2 of them are owned locally.

65. Foreign owned banks have dominated the Kosovo banking system managing 88.1% of the total assets of the banking system in December 2017. The remaining part of the assets (11.9% in December 2017) is managed by local ownership. The banking system in Kosovo continues to be characterised by a high level of market concentration, where 61.1% of the total bank assets are managed by the three largest banks, while the asset concentration of the foreign owned banks stands at 88.1%.

66. The depth and sophistication of financial services provided by MFIs is poor, with the main focus being basic credit products. Microfinance institutions are primarily involved in microcredit operations in rural areas, where there is a significant level of informal economy, hence increased ML/TF risks.

67. MVTS operators and banks carry out significant volumes of money remittances to and from the extensive diaspora community located outside of Kosovo. For 2017 the incoming remittances totalled EUR 759.2 million, while outgoing remittances totalled EUR 51.1 million.

68. The CBK is responsible for the supervision of all of the entities of the financial sector. There is as yet no stock exchange in Kosovo, and no licenced securities intermediaries.

DNFBPs

69. The categories of DNFBP's defined as reporting subjects under the AML/CFT Law include casinos, including internet casinos and licensed objects of the games of chance; real estate agents and real estate brokers; lawyers and notaries when they prepare for carrying out or engage in transactions for their client concerning certain activities; accountants, auditors and tax advisers; trust and company service providers that are not covered elsewhere in the AML/CFT Law, providing certain services to third parties on a commercial basis; and sellers of precious metals and precious stone traders. Furthermore, Kosovo authorities have designated as reporting entities the following subjects: natural and legal persons who are dealers in high-value items of EUR 10,000 or more; and non-profit organisations.

70. All types of DNFBPs operate in Kosovo, except for trust and company service providers (TCSPs), which are not recognised under Kosovo's legal system. According to the FIU, there are a total of 1,885 DNFBPs registered in Kosovo:

Table 1: Number of entities by authorities in each DNFBP sector

NON FINANCIAL SECTOR Name of the entity	No. of Licensed/Regulated/ Registered entities
Games of chance	41
Real Estate Agents	46
Lawyers	840
Notaries	74
Accountants and Auditors	473
Traders of Precious Metals and Stones	411
Other: registered NGOs	9,555

71. There are no registered casinos in Kosovo, however there are 41 games of chance, including slot machines (main activity), bingos, tombola, sport betting units and one public lottery. The sector is supervised by TAK and the FIU (for AML/CFT purposes).

72. The real estate sector is considered as a high risk because estate agencies do not obtain a license in order to operate (they are considered to be facilitators of a future transaction between the buyer and the seller) and because of the extensive use of cash in the sector. Real estate is to be notarised and subsequently registered with respective Municipal Cadastral Offices (MCOs). Any transaction for the sale/purchase of property in value of EUR 10,000 or more has to be settled through a bank transfer as otherwise it would not be registered in the cadastre; hence the banks have a potential preventative role in the monitoring of real estate transactions.

73. Lawyers in Kosovo are organised through the Kosovo Chamber of Advocates (KCA) (Bar). The activity of the Chamber and its organisation is governed by the Law on Bar No. 04/L-193, Statute of KCA and Code of Ethics for Lawyers. The MoJ is responsible for ensuring that the legal profession is exercised in compliance with the law.

74. Notaries in Kosovo are organised through the Kosovo Chamber of Notaries (KCN) that is a very recent body. The Minister of Justice determines the general number of notaries and the relative coverage for each municipality. Notaries are involved in all transactions related to the sale of moveable and immoveable property including real estate, and as such they have an additional role in the preventative regime for real estate transactions.

75. The accounting sector includes large international firms, small local businesses, as well as independent professionals. Activities carried out by this sector, as confirmed during the on-site visit, include bookkeeping and accounting, tax consultancy and auditing. The larger firms also accompany capital transactions.

76. Dealers in precious metals and stones are individuals or legal entities. Their activity is specifically regulated among other common laws by the Law No. 04/L-154 on Precious Metal Works. According to this law precious metal products undergo obligatory examination and marking prior to being placed into the market. They should be certified by the Metrology Inspectorate seal – currently the Metrology Agency and are supervised by the Market Inspectorate within the MTI. The examination is done in the Precious Metal Products Laboratory. Despite the regulatory requirements, there is a significant risk of unmarked product placed and sold by DPMS in Kosovo, potentially originating from proceeds of crime. A number of police operations have been carried out, with confiscations of significant volumes of such product.

Preventive measures

77. The AML/CFT Law contains the main requirements for preventative measures to be undertaken by reporting entities, including requirements for CDD, reporting, risk assessment, record keeping and internal controls. A number of bylaws have been adopted by the FIU and CBK in detailing the preventative requirements (e.g. in the area of beneficial ownership identification).

78. The 2016 version of AML/CFT Law has addressed several gaps with regard to preventive measures highlighted in the 2014 mutual evaluation. A number of deficiencies remain however, as noted in the TC Annex.

Legal persons and arrangements

79. The following types of legal persons can be established in Kosovo as per applicable legislation:

80. Individual Business (IB): is an entity that can be formed and owned by only one natural person and does not have a separate legal status. The owner of such an entity has unlimited personal liability for the debts and obligations of the individual business. Although it is not a legal person, it may contract, hold property and sue or be sued in its own name or in the name of its owner.

81. General partnership (GP): is a partnership formed by two or more natural or legal persons, who undertake business activity for profit pursuant to the partnership agreement. The owners of such entities are jointly and severally liable for the debts and obligations of the GP. Such liability is unlimited. The GP is not a legal person, but may be formed by legal persons who become general partners of the GP. The GP is managed by its general partner(s). Although the GP is not a legal person, it may contract, hold property and sue or be sued in its own name or in the name of its owner.

82. Limited partnership (LP): is a partnership formed by at least one general partner and at least one limited partner. Although the limited partnership is not a legal person, it may contract, hold property and sue or be sued in its own name or in the name of its owner.

83. Limited liability company (LLC): is a legal person formed and owned by one or more natural or legal persons, excluding NGOs. The LLC is legally separate and distinct from its owners. The personal liability of the owners is limited to the capital they invested in the LLC.

84. Joint stock company (JSC): is a legal person owned by its shareholders but is legally separate and distinct from its shareholders. Thus the shareholders have limited personal liability for the debts and obligations of the JSC.

85. The Law on Business Organisations provides for the process of the creation of a legal person and for the submission of basic ownership information to the Kosovo Registry of Business Organisations and Trade Names. The Business Registry is a central register that maintains the records of all registered companies. The Business Registry is responsible for: registration of new companies; registration of trade names; registration of branch offices of foreign companies; receipt of a copy of the annual financial statements and business reports of LLCs and JSCs (a copy of the financial statements is also filed with the MoF).

86. Currently, the Business Registry contains 161,155 companies in total. Of these, 128,976 are registered IBs, 3,503 GPs, 87 LPs, 27,061 LLCs, 513 JSCs, 809 foreign business organisations, 133 agricultural cooperatives, 30 Social Enterprises, 10 Public Enterprises, with 33 companies under the jurisdiction of the Kosovo Privatisation Agency.

87. Kosovo law does not recognise trusts as a distinct type of legal arrangement and Kosovo is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition.

Supervisory arrangements

88. The AML/CFT supervision framework is consolidated mainly under the CBK and FIU. For financial institutions the CBK is the main licensing and supervisory authority both for AML/CFT and non-AML/CFT purposes. At the same time the FIU is also designated as the AML/CFT supervisor for FIs:

Table 2: Financial institutions

Financial institutions	Licensing or registration	AML/CFT Supervisor
Banks	CBK	CBK and FIU
Currency Exchange Offices	CBK	CBK and FIU
MVTS	CBK	CBK and FIU
Insurance companies	CBK	CBK and FIU
MFIs	CBK	CBK and FIU
NBFI	CBK	CBK and FIU
Private pension funds	CBK	CBK and FIU

89. DNFBPs are covered under the below arrangements:

Table 3: DNFBPs

DNFBPs	Licensing, registration, appointment, regulation	AML/CFT Supervisor
Notaries	Chamber of Notaries/Ministry of Justice	FIU
Attorneys (Advocates)	Chamber of Advocates/Ministry of Justice	FIU
Independent auditors and auditing firms	Kosovo Financial Reporting Council/Ministry of Finance	FIU
Independent accountants and accounting firms	Kosovo Financial Reporting Council/Ministry of Finance	FIU
Persons and casinos organising prize games including persons organising internet prize games	Games of Chance Division / Kosovo Tax Administration	FIU
Real estate agents/agencies	KBRA & TAK	FIU
Trust and company service providers	N/A	N/A
Dealers in precious metals; dealers in precious stones	Metrology Department/MTI	FIU
Traders in goods receiving payment in cash at EUR 10,000 or more	-	FIU
NGOs	DRLNGO/MPA	FIU
Political parties	Central Election Commission	

International Cooperation

90. Due to its status Kosovo faces a number of impediments to international cooperation, in particular through multilateral mechanisms, where Kosovo authorities are not represented, such as Interpol. More recently the Kosovo FIU has become a member of the Egmont group, which has facilitated information exchange with foreign FIUs; the Kosovo Customs has joined the World Customs Organisation, which should facilitate further information exchange. Bilateral MLA arrangements are actively used, where they have been established, while in other cases MLA and other forms of international information exchange are carried out through UNMIK or EULEX.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

- Kosovo authorities have developed a number of tools and mechanisms to assess risks from the holistic as well as sectoral standpoint; mechanisms have been set up on a periodic as well as on-going basis. However, given the range of mechanisms in place, the authorities do not yet have a fully integrated understanding of ML/TF risks stemming from these exercises.
- A separate NRA and Serious Organised Crime Threat Assessment (SOCTA) have been undertaken, however they have not been fully coordinated, which should be essential for the next update of both documents in 2018.
- On a sectoral level, several assessments undertaken recently allowed the Kosovar authorities to develop their understanding of the higher risk areas of real estate, NPOs, construction and games of chance. However these should be further deepened and expanded to ensure all major underlying threats, typologies and financial product vulnerabilities are properly covered for these sectors, understood by authorities and properly communicated to the private sector.
- The 2013 NRA report is not sufficiently elaborate in the qualitative and quantitative substantiation of its findings and does not demonstrate the characteristics of a comprehensive assessment based on a robust methodology. The delineation between the key NRA building blocks (threat, vulnerability, likelihood and consequences) was not strictly established. The NRA did not include sufficient breadth and depth with regard the prevalent ML/TF trends and typologies in Kosovo. While high quality typologies have been developed by the FIU, these have not formed the understanding of risks by Kosovo authorities in the NRA process, or more widely in the interagency community.
- The frequency of updating the NRA is not commensurate with the evolving ML/TF risk situation.
- Other operational-level mechanisms for threat monitoring, including a specialised Unit embedded in the Integrated Border Management Centre have a good understanding of border-related risks/threats, including those related to cash smuggling, however awareness from other authorities on these issues is lacking.
- Even though the TF component of the NRA is extremely limited, the overall understanding by authorities of TF threats has substantially evolved since 2013. In particular there has been clear awareness of key TF risks related to foreign terrorist fighters and non-profit organisations by all AML/CFT authorities involved. Authorities consider these risks to be largely mitigated by their law enforcement, regulatory and policy interventions, however no measurement of residual risk on this issue has yet been done.
- The authorities have a well-integrated risk management framework, which envisages a direct correlation between the NRA exercise and the design of the AML/CFT Strategy and Action Plan. Furthermore, authorities have provided evidence of specific actions taken in relation to resource reallocation in government agencies to target the risks identified from the NRA. At the same time it is felt that the Strategy and Action Plan are based on very broad NRA findings, while the necessary actions are not defined coherently, and/or the level of policy ambition in many aspects of the Action Plan is not entirely suitable for an AML/CFT document.

- The integration of measures to combat the informal economy with the AML/CFT strategic documents has some value; however it needs to be handled with a degree of caution, given the differing tools oftentimes used to pursue AML/CFT at the operational level.
- The assessment team ascertained that the general level of understanding by different types of financial institutions and DNFBPs of the ML/TF risks varies significantly. This is an indication that preventative measures in Kosovo are not specifically attuned to the prevailing risks identified in the jurisdiction.
- While there is a mechanism to coordinate national AML/CFT policies, close synergies are often lacking with national strategies on adjacent topics, such as combating terrorism, organised crime, border management, drug and human trafficking.
- Kosovo has endeavoured to enhance operational-level cooperation and coordination between all competent authorities. The practical mechanisms established for this purpose (interagency MoU and SOPs) seem to be partially operational, and not entirely monitored in their effectiveness, although some practical results have been brought. In practice law enforcement authorities practice effective cooperation though liaison officers, joint units and operations.
- The FIU serves as an important central focal point in interagency cooperation. There is however certain room for improvement with regard to: cooperation between the FIU and sectoral supervisors; easier real-time access to databases among authorities; feedback mechanisms on ML investigations and prosecutions.
- The National Coordinator for Combating Economic Crime (NCCEC) is an important institution, which facilitates coordination between criminal justice authorities, particularly on issues of seizure and confiscation, and has achieved significant results in this field. At the same time, there is overall room for improvement in the justice and prosecutorial system, in particular as regards case tracking and coordination of statistical information on ML/TF.
- Coordination and cooperation within Kosovo's institutional framework in relation to combating PF needs to be developed. Results of the work done by different agencies in relation to combating proliferation should be communicated and reflected in the policy-making within the jurisdiction.

Recommended Actions

Kosovo authorities should strengthen their risk assessment, risk management and strategic framework, in particular by the following measures:

- Carrying out a comprehensive ML NRA that is based on a methodology that focuses on a detailed review of the prevailing threats and vulnerabilities. The review of threats should be closely aligned with the SOCTA process, and other operational-level mechanisms in Kosovo (IBM; JIRATAU, etc.). The authorities should assess with a high level of granularity all the financial sectors and financial products from the standpoint of ML/TF risk, and the typologies associated with these sectors and products in Kosovo, and the same for all DNFBP sectors (including a special focus on DPMS); the NRA should determine the residual risk of ML and TF in Kosovo and take into account corruption as a contextual factor impacting AML effectiveness.
- In turn, the SOCTA process in its ML-related component should align with the findings of the future NRA and other ML-related risk assessments.
- Either in conjunction with the ML NRA or as a separate exercise, ensuring an all-encompassing assessment of the TF risks, including an in-depth analysis of the terrorist financing typologies associated with FTFs and radicalisation in Kosovo; threats and typologies of abuse of NPOs in Kosovo and sector-specific and product-specific vulnerabilities related to these phenomena, including the DPMS sector.

- The authorities should adopt a format of the risk management framework that continues to address contextual factors (which are more static in nature), but is sufficiently operational and adaptable to the evolving ML/TF risks.
- The AML/CFT Strategy and Action Plan need to be recalibrated to focus on impact; tools to measure residual ML/TF risk should be introduced.
- Policy level coordination needs to be further developed between the Ministry of Finance, Ministry of Interior, Ministry of Justice and other actors, in order to ensure substantive AML/CFT input into strategies adjacent to AML/CFT, as well as risk and threat assessment processes running outside the jurisdiction of the MoF (e.g. SOCTA).
- The AML/CFT strategic documents and action plans should provide clarity as to the operational-level measures that need to be carried out (by law enforcement, supervisors and the FIU) to mitigate the identified risks and also ensuring that such operational measures feed into the existing coordination structures and practices.
- Conduct a revision and actualisation of existing MoUs namely (the MoU on Exchange of Information, Risk Assessment and Coordination between Law Enforcement Institutions and Agencies) to simplify internal mechanisms and procedures in support of multiagency cooperation platforms.
- Reinforce interagency cooperation by introducing vertical and horizontal control mechanisms to ensure full implementation of applicable MoUs and SOPs in order to improve information exchange and operational interoperability among LEAs and other agencies in Kosovo.
- Set up a monitoring and reporting mechanism to verify that interagency cooperation progress is clearly identified and recorded. It should address in particular requests made and replies given; reporting status; reports, analysis and advice provided in both ways and feedback status.
- Developing and implementing a system of awareness raising for obliged entities of identified ML and TF risks; as well as guidelines and requirements for reporting entities to incorporate this information into their own risk assessment.
- Requiring authorities responsible for the supervision of regulated institutions and DNFBPs to adopt a risk-based approach to supervision and to ensure that all operators within the sectors subject to AML/CFT laws have an appreciable level of understanding of their risk exposure.
- Considering the use the institution of the NCCEC for coordination of measures to pursue ML cases in the justice system.
- Authorities should develop coordination mechanisms to counter proliferation financing.

91. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The recommendations relevant for the assessment of effectiveness under this section are R 1-2.

Immediate Outcome 1 (Risk, Policy and Coordination)

Kosovo's understanding of its ML/TF risks

92. The understanding of risk within Kosovo varies substantially. Although a number of exercises have been carried out at a national level to assess the level of risk and threat, some of these are now outdated and have been superseded by events. The different risk assessments exercises carried out remain disjointed and although the private sector was actually involved in the carrying out of the National Risk Assessment (NRA) in 2013, the vast majority of the obliged entities are not aware of the findings of these studies.

93. The understanding of risks by Kosovo institutions comes from information gathered in the authorities' own operational activities and to some extent the risk and threat assessment exercises conducted since 2013. A Serious Organised Crime Threat Assessment (SOCTA) was finalised in 2016 and covers the period 2014-2015 (an update of the SOCTA is on-going and is expected to be finalised by the end of 2018). Furthermore three separate sector-specific risk assessments were carried out between the

Third Quarter of 2017 and the First Quarter of 2018 that examined the ML/TF risks in the NGO sector, the construction industry and the games of chance business. At the time of the on-site visit, only preliminary steps had been taken to conduct a second NRA, even though five years had passed since the publication of the first report and a number of developments had taken place within the jurisdiction, together with changes in ML/TF trends that had not been taken into account. This has had a detrimental effect on formulating proper risk-related policy and operational measures.

94. The NRA carried out in 2013 was a first attempt at such an exercise, and the Kosovar authorities should be commended for having taken such an initiative. An examination of the NRA report revealed that the exercise actually carried out was not sufficiently comprehensive. This fact is acknowledged by the authorities and steps have been taken to ensure that the NRA that should be concluded by the end of December 2018 is carried out on the basis of a methodology that is more comprehensive in scope. The NRA process was led by the FIU, with involvement of several other public-sector authorities in an *ad hoc* working group which also included private sector representation.

95. Upon analysis of the NRA it can be concluded that the report is not sufficiently elaborate in the qualitative and quantitative substantiation of its findings and thus does not demonstrate the characteristics of a comprehensive assessment based on a robust methodology. The report does not contain a thorough analysis part, which would have allowed to judge on the logic and substantiation of conclusions presented in the document. Technical documents presented to the assessment team, which underlie the findings of the Report seem to indicate that a survey of competent authorities and private sector was the main tool used to arrive at the findings, however it seems that other types of analysis or underlying information, which are necessary for a credible NRA had been used sufficiently or at all (statistical analysis, cases and typologies, supervisory findings, data from international cooperation requests, academic and international sources).

96. The delineation between the key NRA building blocks - threat, vulnerability, likelihood and consequences - was not strictly established. There is a convoluted use of these identifiers with respect to a wide-ranging scope of phenomena, thus making the whole exercise seem unstructured. For example, the listing of ML threats includes formulations such as "Construction business, real estate business and petrol stations are the most vulnerable sectors for money laundering." or "Extent of informal economy remains on a high level or increases in Kosovo". While such conclusions are indeed useful in a risk assessment, they are not directly threat-related, as the former is describing economic sectors where ML activity is conducted, and DNFBP vulnerabilities (for the real estate sector); the latter is mainly a contextual factor.

Threats

97. With regard to threats, the NRA identifies the following main predicate offences: corruption, tax offences, crimes related to procurement and privatisation process, smuggling and other financial crimes and drug crimes. What is most notable is the missing reference to threats posed by organised crime, which is clearly a major source for concern with regard to Kosovo, as well as human trafficking. Furthermore, there is no detailed description of the threat environment beyond the above simple listing of predicates, and no differentiation between domestic and foreign predicate offences. The latter is particularly relevant in the context of the geographic position of Kosovo, and taking into account the links to transnational organised groups, cross-border drug trafficking, smuggling and human trafficking activities.

98. The SOCTA goes quite a few steps beyond the NRA in identifying the specific criminal threats to which the jurisdiction is exposed. It examines a number of predicate offences and trends that are particular to Kosovo and the surrounding region. At the same time, the SOCTA applies a crime-by-crime descriptive approach, and does not attempt to provide for a holistic description of the structure of organised criminality in Kosovo, as this is normally done in SOCTA reports (e.g. number and size of organised groups, specialisation, ethnic composition, regional distribution, international links, etc.). While competent authorities (Organised Crime Division of the KP) seem to have elements of this understanding, the authorities should further develop this into a holistic and detailed analysis, and use it to target operational measures, including for AML purposes.

99. In its money laundering subchapter the SOCTA acknowledges the transnational element of money laundering, whereby ML in Kosovo occurs from foreign predicate activity and vice versa (ML occurs abroad from predicate activity taking place in Kosovo). This is an important element, which should be further developed into a detailed description and typologies of these transnational links. At the same time, the SOCTA goes on to state that "No organised criminal group involved in the cases of corruption or money

laundering has been identified so far". This conclusion runs contrary to the numerous cases presented to the assessment team, where organised criminality and ML were clearly interlinked. This link is further supported by interviews with representatives of OCD KP, who presented a rather clear picture of money laundering by organised crime in the sectors of games of chance and construction (mirroring the findings of the two respective sectoral assessments carried out by the FIU). Analysis of MLA requests also shows that organised criminality is often linked to ML. Therefore the SOCTA ML-related findings are also partially out of place, and are not correlated neither with the situation on the ground, nor with the sectoral FIU assessments.

Vulnerabilities

100. With regard to vulnerabilities, the NRA produces a long list of contextual and systemic issues related to the informal economy, legislative framework, judiciary, law enforcement and AML/CFT authorities. While these are all factors of significant relevance to the ensuing AML/CFT risks, they are oftentimes self-evident or too high-level (e.g. "National legal framework on money laundering and financing of terrorism is not fully in compliance with the international standards"; "Overlapping mandates and inefficient models for cooperation, coordination and information exchange weaken strategic and operational performance of the relevant authorities"; "Inefficient internal regulations and control mechanisms and their poor implementation in the public and private sectors weaken the prevention and detection of money laundering, financing of terrorism, economic crime, financial crime and informal economy"). Most of the vulnerabilities identified in the NRA are generally related to the need of high-level improvement of the AML/CFT system in its various aspects; however it lacks a measurement of the strength of preventative measures and supervision to limit the level of jurisdiction-wide ML/TF risk.

101. In practice the NRA misses a more "actionable" level of vulnerabilities analysis related to sectoral and product-based vulnerabilities. The NRA does not include an analysis of the financial and DNFBP sectors from the point of view of existing vulnerabilities in their AML/CFT controls (e.g. poor CDD, lack of capacity to identify the beneficial owner); and inherent vulnerabilities irrespective of effective AML/CFT controls (e.g. the volume of international transfers to/from Kosovo may present an inherent vulnerability). Furthermore, the vulnerability assessment does not cover the financial products offered by FIs, which is a crucial component. The assessment/understanding of vulnerabilities is not specifically informed by the AML/CFT assessments of Kosovo that have been carried out.

Risks and their rating (consequences and likelihood)

102. The assessment team finds that the NRA did not include sufficient breadth and depth with regard the identification of prevalent ML/TF trends and typologies in Kosovo, which ultimately form the list of risks scenarios evaluated *vis-à-vis* their likelihood and consequences.

103. The list of risks developed by Kosovo authorities contains only two formulations, which fit the description of a money laundering or terrorism financing risk (i.e. a description of how ML or TF may be taking place), namely:

- Legitimate funds used for the terrorist financing are mostly derived from fundraising and donated through the non-governmental organisations;
- Inefficient international cooperation enables laundering of foreign proceeds of crime in Kosovo.

104. Both scenarios identify the underlying threat, which exploits vulnerability in the system, thus resulting in ML or TF. The consequences and likelihood of these risks are rated respectively as high/likely and moderate/likely, which is in the middle range. That said, a further detailing of these risks would need to be made in order to make them more actionable from the operational standpoint.

105. Other formulations in the list of "risks" are not in fact ML or TF scenarios, and tend to address higher policy or contextual issues (e.g. "High unemployment rate increases informal economy in Kosovo", or "Inefficient compliance supervision functions are increasing informal economy and financial crimes"). Overall, these weaknesses in the NRA demonstrate a lack of capacity to understand where the money that could potentially be laundered through the Kosovar financial system is coming from, which subjects or entities might be used for ML and how they would carry out the ML placement, layering or integration process in or from Kosovo.

106. A good basis for the development of risk scenarios would have been the typologies work being undertaken by the FIU, which resulted so far in the publication of two typologies reports, with one of them

specifically dedicated to corruption and PEPs. However, these have not formed the understanding of risks by Kosovo authorities in the NRA process, or more widely in the interagency community or private sector.

107. The FIU typologies reports offer a description of case scenarios and typologies, which took or may take place. However, as can be expected, these reports do not address issues of likelihood of these ML/TF scenarios occurring or their consequences. Nevertheless, for future risk assessment work, Kosovo authorities should actively use the developed typologies (and identify new ones) as the basis for defining the risks and risk components (threats, vulnerabilities) in a future NRA.

108. The SOCTA contains a number of partial ML risk descriptors, in particular referencing offshore accounts and fictitious business activities in offshore countries as a means for ML. This is an important statement, which seemed to resonate little with the law enforcement authorities, when questioned whether offshore zones and shell companies were used for ML. Other than TAK, representatives of law enforcement seemed not to be aware or have handled such cases. The FIU has reported that it has scrutinised the materials available on-line as a result of off-shore scandals (e.g. "Panama Papers"), however no link with Kosovo persons or entities was found. Kosovo authorities should take measures in the next NRA to specifically develop an understanding of risks emanating from potential offshore operations or shell companies, and develop measures to counter these phenomena.

109. With regard to legal entities, the general deficiency is the failure of authorities to understand which types of domestic or foreign entities are being used to launder the proceeds of crime, or at least which categories of entities are particularly vulnerable to being used for this purpose. Discussions during the on-site visit demonstrated that there is very little understanding on this issue overall.

110. The NRA does not address cross-border risk comprehensively such that its impact can be assessed and understood, or linked to and contextualised with the threats emanating in other areas such as organised crime, human trafficking and drug trafficking. There appears to be no explicit assessment of the use of wire transfers in a cross-border context. Kosovo remains a cash-based economy, with a large diaspora in Europe transferring large amounts of cash to their home country. Some operational mechanisms, including a specialised Unit embedded in the Integrated Border Management Centre have a good understanding of border-related risks/threats. However these are mainly related to cash smuggling, and even then awareness from other authorities on these issues is evidently lacking.

111. When referring to what is essentially the integration stage of ML, the SOCTA lists the following types of commodities for investment of criminal proceeds: real estate; construction; hotels; vehicles; opening of various business activities or continuation of existing businesses, living expenses. Two of these avenues (investment into real estate and construction) were tackled in the sectoral risk assessments, which suffer generally from the same methodological deficiencies, as noted above, however they do contain more specifics as regards sectors and some of the potential abuses therein. They have in fact allowed the Kosovar authorities to develop their understanding of the higher risk areas much further. However, it remains unclear on what basis the sectors were chosen. Taking into account the conclusions of the SOCTA, one would have assumed that the use of Kosovo for the purposes of terrorist financing could have also merited a dedicated risk assessment in view of the seriousness of the matter.

Understanding of terrorism financing risk

112. The TF risk within the jurisdiction was assessed very superficially in the NRA. As demonstrated in other parts of this report (see IO 9), the area of TF is particularly important for Kosovo as there have been a proportionately high number of cases of foreign terrorist fighters that have been identified and prosecuted. Although the authorities are evidently aware of the higher level of risk of TF within the jurisdiction, one would have expected that this matter would have been dealt with in detail and that guidance would have been provided to obliged entities on the basis of a detailed and thorough risk assessment. In truth, the overall understanding by the authorities of TF threats has evolved since 2013. In fact, the level of awareness of key TF risks related to foreign terrorist fighters and non-profit organisations by all AML/CFT authorities involved is considered to be at a good stage. Authorities consider these risks to be largely mitigated by their law enforcement, regulatory and policy interventions, however no measurement of residual risk on this issue has yet been done and therefore the actual assessment of risk in this area is still based on the personal knowledge of the individuals working within these authorities.

113. Overall, it is essential that the future editions of SOCTA and the NRA, as well as any further sectoral risk assessments are all mutually harmonised in order to develop a coherent and detailed view of ML/TF risks in place in Kosovo. The SOCTA should be used as a basis to assess the threat environment for the NRA;

in turn, the findings of the NRA should inform the ML-related chapter of the SOCTA. These should extensively rely on typologies, cases and statistics developed by the FIU and law enforcement, and should take into account AML/CFT assessment reports and findings of supervisors to define vulnerabilities.

114. Further risk assessment efforts should additionally focus on cross-border ML/TF risks, especially those posed by wire transfers and cross-border cash movements, taking into account the large diaspora community outside Kosovo, the ML threats emanating from certain predicate offences such as human trafficking, arms trafficking, drug trafficking, the impact of organised crime on ML/TF, the risk posed by legal persons in the context of TF, and the vulnerability of the DNFBP sector to ML/TF.

115. Although the NRA report establishes that the NRA is to be assessed on an annual basis (page 8 of the NRA), no evidence was found that a periodical review was actually being carried out. It seems therefore, that Kosovo authorities had the intent of measuring the residual risk, based on risk mitigation measures taken, however this was not actually done in practice. In any case, given high-level policy focus of the NRA such a review would have taken the form of a policy document, rather than tool for the measurement of residual risk.

National policies and activities to address identified ML/TF risks

116. Kosovo authorities have set up the AML/CFT strategic framework in direct correlation to the National Risk Assessment and its findings, with the aim of creating an overarching AML/CFT risk management system for the whole of Kosovo. The NRA thus served as one of the underlying documents for the development of the National Strategy of Kosovo for Prevention and Fight against Informal Economy, Money Laundering, Terrorism Financing and Financial Crimes 2014-2018, and the related Action Plan for the same period.

117. However, as described above, the NRA mostly addresses high-level institutional, regulatory and capacity issues, rather than specific ML/TF risks. Therefore, the Strategy and Action Plan inevitably mirror these NRA findings, and are not focused on specific ML/TF risks as yet. Perhaps, given that the Kosovo AML/CFT system was undergoing what is essentially an institutional and legislative maturation process, such an approach was justifiable in the initial period. However, ultimately the risk management system should focus on specific ML/TF risks identified by authorities, and serve to mitigate these risks.

118. Kosovo authorities have informed that implementation of the Strategy was integrated into decision making in terms of budget and performance plans of ministries and responsible public institutions. The Government reviews progress achieved *vis-à-vis* the Strategy's performance indicators every 6 months to see if adjustments in risk mitigation measures are needed. Furthermore, year-end reviews are also carried out by the Government to determine whether the risk assessment and scope of management are still appropriate. A range of agencies contribute to these reviews.

119. A significant priority for the National Strategy is reducing the level of informal economy, which is one of the key contextual factors that facilitates money laundering in Kosovo. The objective of the Strategy in this regard is raising awareness on the informal economy and promotion of transparency, accountability, good governance. Other key objectives of the Strategy are promoting intelligence, investigation, prosecution, court and enforcement proceedings; institutional capacity building; proactive international cooperation; improvement of legislation. The Action Plan further details these objectives with a list of actions assigned to responsible authorities, deadlines of implementation and performance indicators. It should be said that the Strategy and Action Plan are largely activity-oriented and not impact-oriented. There is no embedded mechanism to judge, whether the activities undertaken have actually had an impact on reducing the informal economy or tackling money laundering/terrorism financing based on objective data.

120. Given that the thematic scope of the Action Plan includes informal economy issues, many of the actions are very high-level, such as "Broaden the tax base of Kosovo in order to protect fiscal interest of the state, to ensure employees' rights and to ensure fair competition in the business area". The Action Plan even includes measures aimed at enhancing corporate governance standards in the private sector. While it is understandable that such broad measures are important contextually, authorities should take care to ensure, that the scope of AML/CFT issues addressed by the Strategy or Action Plan does not suffer as a result. This will be particularly important as Kosovo authorities further progress in their understanding of ML/TF risks and the measures that need to be taken as a result. It is at this stage that the policy ambition of the Strategy/Action Plan concerning the informal economy may become dissonant to the more targeted task of tackling specific ML/TF risks. The authorities should be conscious of this and adopt a format of the

risk mitigation framework that continues to address contextual factors (which are more static in nature), but is sufficiently operational and adaptable to the evolving ML/TF risks.

121. At the same time, with regard to AML/CFT some of the measures set out are not particularly clear. For example, one of the measures envisages to "Implement compliance supervision activities to assess AML/CFT reporting subjects' compliance with the Law on Prevention of Money Laundering and Terrorist Financing" and the prescribed sectors of focus are healthcare, legal system/judiciary, political parties, government and border control/customs, construction business, real estate business and petrol stations. While sectoral focus in the Action Plan is something to be welcomed, the modalities of such implementation are not made clear, and it is questionable whether AML/CFT supervision can reasonably address all of these areas (with the exception, perhaps, of real estate), given the limited number and nature of tools at its disposal.

122. In the area of intelligence, investigation and prosecution the Action Plan mandates the establishment of a number of standard operating procedures (SOPs), such as the SOP for targeting of serious crimes. These documents have been adopted by Kosovo authorities, and seem to have positive outcomes in terms of practical use. The focus on serious crime is particularly essential in the context of risks faced by Kosovo, and should be commended. However, the Action Plan gives no further thematic orientation on the types and modalities of serious criminal activities, which should be addressed through these SOPs.

123. Kosovo authorities produce Annual Reports on implementation of the National Strategy and Action Plan. These documents are an important tool to maintain the functional nature of the strategic framework and ensure the continued engagement by Kosovo authorities. At the same time, these documents serve mainly as information updates with regard to actions taken by authorities, and do not fulfil a function to analyse impact or measure any residual ML/TF risk.

124. The sectoral assessments carried out by authorities with regard to construction, real estate, games of chance and NPOs are all recent. A number of actions have been prescribed in these risk assessments, however it is apparently too early to consider any policy measures taken by Kosovo authorities as a result of these assessments.

125. There have also been policy decisions taken by the authorities that are risk-based, such as the prohibition for immovable property transactions of EUR 10,000 or more to be settled in cash. These are clearly evidence of a shift in mindset that has been happening over the years, however, these decisions pre-date the NRA and clearly have not been implemented as a consequence of any formal risk assessment.

126. A number of other Strategies exist, which are adjacent to the AML/CFT Strategy, in particular in the areas of crime prevention, anti-corruption, counterterrorism, combating organised crime, integrated border management etc. A reading of these documents did not allow the assessment team to identify specific points, where practical synergies have been established with the AML/CFT Strategy, or AML/CFT measures overall. Even though the AML/CFT Strategy itself mentions these documents and the need for coordination, it seems that progress in this area has not yet been made in practice.

127. The abovementioned areas do not cover all of the key risk areas noted by the assessment team as constituting a problem for Kosovo, and requiring potential policy and other risk mitigation measures. In particular, this relates to the laundering of corruption proceeds, ML risks in sector of cross-border wire transfers, cash smuggling, use of offshore zones and shell companies, particular threats emanating from organised crime, human and migrant trafficking, as well as the TF-related threats emanating from FTFs.

Exemptions, enhanced and simplified measures

128. There has not been any sign that the results of a formal risk assessment have been used to support the application of exemptions, enhanced measures for higher risk scenarios and limited simplified measures for lower risk scenarios among reporting institutions.

129. There has been one exemption made for CTR/threshold reporting, according to FIU Administrative Instruction No. 1/2017 (on payments of municipal obligations, payments of taxes), however there is no evidence that this exemption was made as a result of any sort of risk assessment. No evidence of a formal risk assessment, in fact, was available to justify the action taken by the authorities to reduce the level of customer due diligence in these circumstances.

130. There is no legislative or regulatory mechanism, nor was there any action taken requiring reporting entities to take into account high ML/TF risks identified by Kosovo authorities. Financial institutions are free to determine high ML/TF risks on their own in accordance with provisions of Article 18 of the AML/CFT Law. Simplified measures for the implementation of the FATF Recommendations are not envisaged by Kosovo legislation, other than simplified due diligence. It may be applied by reporting entities in accordance with Article 23 of the AML/CFT Law, in situations when the entity has identified the risk to be low, and this low risk has been confirmed by FIU and sectoral supervisors. Kosovo authorities provided no evidence that this has actually occurred in practice.

Objectives and activities of competent authorities

131. The follow-up mechanisms described above generally ensure that competent authorities implement the activities, findings and priorities, established by the NRA as well as the AML/CFT Strategy and Action Plan.

132. Kosovo authorities stated that the risks identified in the NRA and ensuing Strategy and Action Plan result in specific actions taken in relation to resource reallocation in government agencies to target identified ML/TF risk. The assessment team confirmed that this is indeed the case, in particular with regard to the FIU, where a Performance and Resource Plan was developed for the period 2015-2017 and a new Performance Plan 2018-2020 was drafted in 2018. These plans are based and take into account the risk areas identified in the NRA and sectoral assessments, which is commendable. For example the FIU Plan requires that STRs related to the construction sector be prioritised, as this was identified as a priority in the NRA. Additional resources were also to be allocated to the FIU based on NRA recommendations.

133. It is not clear to what extent the same practice exists with regard to other authorities. In some instances the assessment team witnessed the inverse, whereby certain operational authorities detected risks, which were not identified at the higher level, or known in the wider interagency community.

134. As it was mentioned above, the recommendations emanating from the NRA and retranslated into the Action Plan have a specific impact on the operational priorities of competent authorities, in particular the LEAs and Prosecution. The best example is the SOP for Selection of Targets of Serious Crimes and Multiagency Investigation Teams, which sets out a number of criteria for prioritisation of cases in an interagency setting. The SOP focuses in particular on prioritising the major predicate offences for Kosovo, including corruption, organised crime, human trafficking, money laundering, terrorism financing, cybercrime, drug trafficking, and smuggling. It is, however not clear to what extent and in what modalities this SOP is used, and to what extent the various authorities employ the procedures set therein.

135. The Integrated Border Management Centre (IBMC) is an excellent example of an interagency body, which has a built-in risk assessment mechanism that further tailors the activities of the IBMC to respond to the risks and threats identified. Based on the intelligence-led policing model, the IBMC identified risks, set risk profiles and carried out targeted operations with regards to cross-border transportation of cash and precious metals and stones.

136. Other law enforcement authorities seem to be substantially aware of the high ML and TF risk areas, when these fall within their area of specialisation. Overall, as demonstrated under IO 6, the scope of investigations and prosecutions generally mirrors the risk profile of Kosovo in terms of the types of predicate offences and the types of money laundering that is occurring. However the volume of prosecutions and convictions is overall not commensurate with the risk profile of Kosovo.

137. Evidence of a risk-based approach to supervision by the competent authorities was very limited. The FIU did suggest that the selection of two audit firms to be subjected to an on-site compliance examination was carried out on a risk-sensitive basis but this should not be seen as evidence of risk-based supervision. The CBK claims to be undertaking supervision on a ML/TF risk-sensitive basis; however the determination of risk remains totally discretionary.

138. During the on-site part of the assessment, it was also determined that the CBK focuses, as would be expected, the major part of its supervisory efforts on banks. Nevertheless, there is no knowledge whether any enterprise-wide risk assessment has been carried out by non-banking financial institutions and insurance companies. The higher level of risk stemming from the use of high risk operators such as official and unofficial currency exchanges is also not given sufficient importance.

139. In their activities, the supervisory authorities seem to have failed to explicitly link AML/CFT compliance by licensed entities to the threats (i.e. the top predicate offences) in Kosovo and the potential of specific sectors being used for laundering.

140. It was also determined that no specific action in relation to supervision by the CBK, the FIU and DNFBP supervisors has been taken on the basis of the NRA and the SOCTA, which evidences the lack of synergies at a policy-making level.

National coordination and cooperation

141. Policy level coordination in the AML/CFT area is run effectively and at a high level, primarily under the leadership of the Minister of Finance. The main coordination body is the Government Working Group (GWG) chaired by the Minister of Finance and includes the Ministers of Justice, Internal Affairs, Trade and Industry, Labour and Social Welfare, and the heads of Police, Customs, Tax Administration, Prosecution, Central Bank, Supreme Court, Anti-Corruption Agency, Financial Intelligence Unit; it also includes representatives from private and civil society. The GWG is a well-functioning mechanism, which is used to move forward AML/CFT policies at a high level, and which is able to actively engage a broad range of authorities.

142. At the same time, Kosovo has a number of high level coordinating structures adjacent to AML/CFT, such as the National Coordinator for integrated border management (Deputy Minister of Interior), National Coordinator for Counterterrorism (Minister of Interior), the Counselling Board of the National Coordinator for Combating Economic Crime (NCCEC), which is chaired by the Minister of Justice. It was noticed during the on-site visit, that while all of these structures take part and contribute to the GWG, more efforts need to be made to ensure that AML or CFT priorities are integrated into their own work; and that a harmonised approach is taken with regard to the policies elaborated by these coordinating structures.

143. At the operational level, Kosovo authorities have adopted a Comprehensive Agreement (MoU) on Exchange of Information, Risk Assessment and Coordination between Institutions and Law Enforcement Agencies, which also envisages several coordination groups for the purposes of combating and preventing economic and financial crimes, including the Strategic Level Group, Tactical Level Group, and the Analytical Level Group (Quality Management). It was not clear however to what extent this mechanism was operational. The MoU envisages the designation of points of contact between the agencies, as well as a mechanism to enhance the interoperability of databases between law enforcement authorities through conducting joint feasibility studies. So far a few such studies have been conducted (e.g. between the FIU and customs) however it was clear that the integration of key databases among all the relevant agencies remains a work in progress (see detailed analysis in IO 6). Meanwhile, the assessors got the impression that the mechanism established under this MoU is not entirely monitored and seems only partially operational.

144. The FIU has highly effective and operational coordination arrangements with all of the key government agencies involved in AML/CFT. Exchange of information is carried out in some cases directly through the FIU goAML system, where LEAs have direct access.

145. The National Coordinator for Economic Crime Enforcement is an effective mechanism, which functions to increase the cooperation of all relevant institutions, particularly in relation to promoting increased prosecutorial effectiveness in the area of seizure and confiscation.

146. Bilateral mechanisms such as the establishment of the Joint Investigative Unit between the Kosovo Police and Customs can be considered a good practice. Customs is also a part of a number of joint databases with law enforcement and prosecution, with access to a number of registries. At the same time automatic access to the full range of databases is a work in progress.

147. Cooperation in the supervisory field is a work in progress, whereby the FIU and CBK undertake active measures to share information relevant to inspections and controls. However, there are issues with regard to sharing of STR-related information (see IO 3 for more details). Furthermore, while the AML/CFT Law provides for an agreement to be signed between the FIU and CBK, this has not happened in practice and appears to hinder effectiveness.

148. As regards coordination in the field of combating proliferation, Kosovo has established a Committee for the control of trade in strategic goods, consisting of five members and deputy members, representing: Ministry of Trade and Industry, Ministry of Foreign Affairs, Ministry of the Security Force, Ministry of Internal Affairs and Kosovo Customs. This Committee however does not deal with PF issues *per se*. The AML/CFT Action Plan (2014-2018) also indicates that the coordination of PF-relation sanctions is

undertaken by the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Finance, and the National Coordinator for Combating Economic Crime. However, no further supporting documentation regarding such coordination has been provided to the assessors.

Private sector's awareness of risks

149. The private sector was included within the NRA process. The complete NRA was published on the FIU website but there is very little evidence to show that obliged entities were encouraged to access the NRA and taken any action as a result of its conclusions. The same can be said about the SOCTA and the sector-specific risk assessments carried out more recently.

150. No evidence was obtained during the on-site part of the assessment that the conclusions of the NRA report or the SOCTA had altered the thinking of financial institutions and DNFBPs of what constitutes a risk of ML/TF and neither were the conclusions being factored into the customer risk assessment at obliged entity level. The vast majority of the financial sector entities and DNFBPs interviewed weren't even aware of the existence of these documents and of their obligation to factor into their own risk assessment the conclusions of these documents. Even those entities that evidently had a very good level of compliance were totally unaware of the existence of these reports. Some interlocutors who happened to have referred to it even suggested that the findings of the NRA were inaccurate and outdated. Moreover, although the authorities responsible for ML/TF supervision of the financial and DNFBP sector were clearly aware of the higher risk areas, their thinking was not founded on any scientific study or empirical evidence.

151. From the perspective of risk and their roles in relation to real estate transactions, demonstrable outreach could usefully be undertaken to notaries, estate agents and lawyers on the implications of the NRA. Similarly, outreach could be undertaken to insurers, leasing companies, credit unions, investment firms, NGOs, money remitters and casinos on the areas of risk and ML/TF vulnerability.

152. Since the construction industry and the sale of immovable property are known to pose among the highest risk of ML in Kosovo (this was confirmed by most of the persons interviewed during the on-site part of the assessment), the fact that the knowledge of AML/CFT requirements by notaries, lawyers and estate agents providing services in this area is particularly low, if not inexistent, is especially worrying. This fact is exacerbated by a very basic but unfortunately ineffective level of supervision and the absence of any administrative sanctions being imposed on operators and professionals providing services in this sector even where breaches of the law were identified.

153. Notwithstanding the misgivings about the NRA exercise and its relevance, the representatives of banks met by the evaluation team showed a proactive approach to the assessment and consideration of risk and had a broad understanding of it from a sectoral perspective and form a national point of view. Awareness of risks in other sectors, however, remains low. Immediate Outcome 3 provides further information.

Overall Conclusions on Immediate Outcome 1

154. Kosovo authorities have undertaken significant efforts to develop their understanding of ML risks. Although a number of high level risk-evaluating and threat assessment exercises were indeed carried out, these did not include sufficient breadth and depth when considering the prevalent ML trends and typologies in Kosovo and they do not provide a specific risk mitigation response. Furthermore, the methodological foundations for these exercises should be reviewed, and the integration and interoperability between them should be ensured. They should include modules for the measurement of impact of risk mitigation measures, as well as consideration of residual risk.

155. Notwithstanding the evident gaps in the NRA, the actual risks arising from domestic predicate offences and terrorist threats seem to actually be largely understood by the authorities, especially the individuals involved in law enforcement, intelligence gathering, the CBK and the FIU. However, the absence of detailed analyses and the failure to share such analyses with the obliged entities, together with the inexistence of any evidence of the use of such analyses for supervisory purposes leaves serious doubts as to whether the level of understanding and awareness required by the international standards has been achieved.

156. Operational level interagency cooperation mechanisms function well, however they could benefit from further systematisation, control and monitoring, in order to further enhance their effectiveness and interoperability between authorities. Cooperation in the PF field is not established and should be set up.

157. **Kosovo has achieved a moderate level of effectiveness with Immediate Outcome**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key findings

IO 6

- The authorities of Kosovo use on a regular basis a significant range of information from various sources for financial intelligence purposes. Some issues are of concern related to the maintenance and update of the information used to generate financial intelligence, the indirect access to databases by competent authorities and the consistency of generated intelligence with Kosovo's risk profile. The use (during the preliminary stage) of LEAs powers to actively seek financial information and undertake financial investigations outside the framework of cooperation with the FIU and based on already received intelligence in the FIU was not demonstrated despite the various other sources available through the application of police powers.
- FIU demonstrated its ability to disseminate generally high-quality financial intelligence to the competent authorities who widely use it together with other available and accessible data to conduct preliminary investigations of ML, associated predicate offences and TF. The authorities partially demonstrated the usefulness of the information for conducting formal investigations of associated predicate crimes in conformity with some of the established risks in the NRA. It was not demonstrated that the information would be sufficiently used for ML investigations or subsequent prosecutions.
- Despite the significant increase in the quantity of the STRs and other information received from reporting entities and the seemingly adequate quality of the reports, it was not fully demonstrated that the STRs received correspond to the risk profile of Kosovo. Additional effort is necessary from FIU in guidance and training to promote reporting based on the most important risks.
- Authorities have achieved a good level of cooperation based on a number of initiatives and formal mechanisms. Some minor deficiencies in the cooperation and information exchange are mitigated by the broad mechanisms for joint investigations and targeting of the most important risks in Kosovo.

IO 7

- Kosovo has the necessary elements of a legal system and an institutional framework, which is designated to investigate and prosecute money laundering.
- Law enforcement authorities in Kosovo have prioritised the investigation of money laundering by institutionalising and devoting significant resources to financial investigations both within the context of parallel financial investigations and as follow-up to FIU disseminations. At the same time the decision whether or not to refer a predicate case for a parallel financial investigation is discretionary.
- In terms of resources the existing resource constraints of the SPRK allow it to consider only a limited number of ML cases. SPRK exclusive competency for the ML offence thus prevents its broader use for acquisitive crime predicates.
- Some indications point to the existence of a high standard of proof imposed by the SPRK on law enforcement to ensure that a parallel prosecution of the predicate offence is possible

when a money laundering indictment is pursued. Even though the trend may be changing, this has led lead to a frustration of efforts and resources in the law enforcement units handling suspicious ML cases, where the predicate is not definitely known (e.g. based on FIU disseminations).

- While the predicate criminality pursued in ML cases by law enforcement seems to be broadly in line with the risk and threat profile of Kosovo, the volume of cases ultimately prosecuted and adjudicated is negligibly low compared to the size of the threat stemming from predicate criminality and resulting ML in Kosovo. In the few cases of ML convictions, the sanctions seemed to be applied proportionately; however their number is too low to have any dissuasive effect on criminality in Kosovo.

IO 8

- Kosovo has placed a clear priority on enhancing the effectiveness of provisional measures and confiscation, although progress in the field remains very slow.
- The National Coordination for Combating Economic Crime plays a highly constructive and proactive role in the efforts to enhance the system and practice of seizure and confiscation in Kosovo.
- The instances of final confiscations are few, and mainly result from a handful of high-profile cases, which demonstrates that efforts being invested by law enforcement to trace, freeze and seize property are not paying off further down the criminal justice chain.
- The systems for maintenance of statistics by different authorities are highly disparate, and do not provide a sufficient breakdown of data to allow for proper judgement on the profile and content of confiscations.
- Legal provisions for freezing and confiscation under the Criminal Procedure Code (CPC) are complex with a number of overlaps, leading to some confusion in implementation.
- The system of declaration of cash and BNI does not result in final results in terms of seizures and confiscations, in particular with regard to potential instances of ML or TF suspicions.

Recommended Actions

IO 6

- Kosovo authorities should ensure amending the relevant registers used and the accuracy of the information, including through a consolidation of the real estate register. Authorities should also review the indirect access of the FIU to the real estate and TAK databases in the framework of financial intelligence analysis to ensure timely availability of the information commensurate with the risks and the priorities of the competent authorities.
- Kosovo authorities should take action to further automate the analytical processes in the FIU to decrease the remaining manual work.
- The FIU, LEAs and Prosecution Office should discuss on a case-by-case basis the reasons for unsuccessful use of the financial intelligence for the purposes of ML investigations and prosecutions. This should be done in particular for cases where clear indicators on the specific predicate offence are missing, and where difficulties with formulating an indictment persist in order to ensure that ML cases are given priority.
- Feedback provided from the LEAs in relation to the FIU disseminations should be detailed and provided on a regular basis in order to ensure their operational needs are fully met by the FIU.
- FIU and competent authorities should consider further measures to encourage the use of information on cash transactions and monetary instruments moved across border for developing cases of potential ML, associated predicate crime and TF.

- Further statistics should be maintained to allow the full assessment of the usefulness of the FIU information from the reporting entities and of the disseminations undertaken.
- Authorities should establish timeframes for providing a response to the FIU information requests, and ensure the enforcement of these timeframes.
- Authorities should assess the adequacy of reporting and use of unusual transaction reports submitted by the reporting entities; further guidance and typologies should be provided to ensure the necessary information is available to the competent authorities pursuant to the requirements for reporting suspicious activities.
- Authorities should consider further resource allocation, including the increase of the available human resources and mechanisms to prioritise the gathering and use of information for purposes of triggering and supporting ML investigations.

IO 7

- Kosovo authorities should pursue and finalise initiated reforms aimed at decentralising ML cases to non-SPRK prosecutors, while maintaining high-profile and high-volume cases for oversight and prosecution by the SPRK.
- Kosovo authorities, including the SPRK and the NCCEC should take systemic measures to promote the investigation and prosecution of autonomous ML (without the need for a predicate offence prosecution) based on recent case-law.
- Following the implementation of a decentralisation system Kosovo authorities should consider ensuring that the National Coordinator for Economic Crime monitors and enhances prosecutorial activities aimed at pursuing money laundering offences.
- Kosovo authorities should further develop their system of training on prosecution and adjudication of money laundering, and build the capacities of the corpus of financial experts who provide expertise as part of the judicial process in ML cases.

IO 8

- Further support the NCCEC in its efforts to enhance the effectiveness of provisional measures and confiscations applied in acquisitive crime cases.
- Kosovo authorities should unify and integrate the various systems and mechanisms for the collection and maintenance of statistics on seizures and confiscations and ensure sufficient detail in the data maintained.
- Streamline provisions in the CPC related to seizure and confiscation in order to avoid overlap and confusion in implementation.
- Ensure that authorities performing cross-border cash control measures systematically take into consideration ML/TF suspicions.

158. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R.4 & R.29-32.

Immediate Outcome 6 (Financial intelligence ML/TF)

Use of financial intelligence and other information

159. The competent authorities of Kosovo have access to and use a significant range of information from various sources, both public and private, and the exchange of information is facilitated by a number of MoUs between institutions. At the same time some concerns are related to deficiencies in some of the databases used and the effectiveness of access to the necessary information in certain cases.

160. FIU conducts analysis based on a wide range of sources including STRs, UTRs, CTRs and declarations of monetary instruments at border, as well as additional information that could be gathered from any reporting entities. FIU is authorised to gather additional information from all reporting entities (regardless of the entity that filed the report) whenever a case is opened for analysis and this could be done based on an extensive number of triggers as discussed below.

161. FIU has access to a number of databases of public institutions although certain limitations are observed either related to the process of access to the information, or the adequacy of the information itself as noted below.

162. FIU has direct access to the databases of the Civil Registration Agency (Civil Status, Vehicle registration database, Family tree), Customs (Export/import of goods and services, Declaration of monetary means at border points, Non-declaration of monetary means), Kosovo Registry of Business Organisations and Trade Names (within the Ministry of Trade and Industry) and DRNGO within MPA.

163. FIU has direct access to the Kosovo Registry of Business Organisations and Trade Names. This would also be the main source of beneficial ownership information. As noted under Recommendation 24 however there are a number of issues related to the availability of adequate information on the beneficial ownership in the register for each and every category of entity. This would require the use also of the CDD mechanisms and obtaining of information through the reporting entities (mainly banks). A number of other deficiencies of the Registry of Business Organisations have a detrimental effect on the ability of the competent Kosovo authorities to obtain and use information on the legal entities: the information is oftentimes outdated, there is lack of information in certain cases on shareholders, etc.

164. In regard to the access of the LEA to information on legal entities and beneficial ownership it is not clear what direct mechanisms are available and used as noted under Recommendation 24. The availability and use of the FIU channel is noted although it is not considered to be able to fully replace deficiencies in LEAs own access and would have an impact on FIU resources. On a more positive note the analysis of the cases discussed with the LEAs and the FIU would not confirm the large-scale use of offshore companies or complex legal structures which would have made identification even more difficult.

165. Despite the mentioned direct access to the DRLNGO database the effectiveness of use of this information is affected by the number of deficiencies related to the registration and oversight of the NGOs and specifically to the inaccuracies of the database and the lack of up-to-date information in some cases, the lack of proper identification of the activities etc. It is also not clear whether full data allowing proper identification of all persons exercising management or control functions is available in the database. These deficiencies would be detrimental to the CFT effort of all competent authorities especially LEAs and KIA. The introduction in 2017 of a new database is noted. It resolves a number of issues but the structural problems of the registration and oversight remain as noted under IO 10.

166. Moreover, FIU uses public records available, including those of the Business Registration Agency, Anti-Corruption Agency (property declaration), TAK (search for taxpayers), Interpol (Database of wanted persons), Privatisation Agency of Kosovo. These public records however would be limited (lack of identification data publicly available, lack of full details and financial statements, etc.) and would in practice require indirect access through request in many cases.

167. In regard to the indirect exchange of the FIU it is noted that over 90% of the information is exchanged through the electronic system (goAML) which is a secure communication channel. At the same time assessing the general effectiveness of the indirect access to other authorities' information by the FIU it is noted that no strict timelines can be set by the FIU for obtaining this information and also there are no deadlines specified in the AML/CFT law which is potentially detrimental to the FIU analysis. This is corroborated by a demonstrated case analysis by the FIU which took more than 6 months since the receipt of the STR until the dissemination despite relatively limited collection of additional data. Information was provided that registers of bank accounts, credits and international payments have already been set up but no direct access is provided to the FIU.

168. FIU obtains information on real estate from municipal cadastral offices or cadastral records from the Cadastral Agency. Moreover, information is also provided, through the request, by the enterprises that provide public services in the country. As discussed during the meetings on-site the information is obtained through a written request (via secure electronic connection). In many instances, especially concerning land, a request to the central cadastral records would be necessary followed by a request for full details to the respective municipal offices. The average timeframe for obtaining information from the central authority is

about one week. Further time would be needed for the municipalities requested after that. This would mean separate requests and waiting times for each municipality and is also to be considered in conjunction with the lack of any legal requirement for the respective public authorities to respond in a timely manner. This process, although limited to land, is considered to be cumbersome and potentially resulting in delays in obtaining full details on property owned. Considering the use of relatives and associates for acquiring property the impact on timeliness and ability to adequately trace assets seems to be even greater. Certain deficiencies in the available information (full records history) are also noted by some of the interlocutors met on-site. The Performance and Resource Plan of the FIU of 2018 recognises that the cadastral register is not up-to-date and cannot be used as the only reliable source of ownership of real estate. Considering the importance of the real estate risks, the lack of centralised and directly accessible mechanism holding real estate information is a concern for the assessors.

169. The ability of the LEAs to obtain and use such real estate information using their own powers was not demonstrated. Moreover, considerable difficulties were noted in regard to obtaining information on real estate in neighbouring countries especially where indirect control was involved. The acquisition of such real estate was mentioned as one of the most significant typologies for laundering proceeds, including corruption-generated. Notaries were also not considered as a reliable source to obtain information on real estate despite their increasing role in the real estate transactions.

170. Considering the national risks identified by Kosovo authorities with regard to the real estate sector the aforementioned deficiencies in the access to information have a major impact on the use of adequate information for developing evidence and tracing proceeds.

171. FIU accesses full tax information through request to the TAK. In 2017 for example 111 such requests were made which represents the large majority of requests for obtaining information from public institutions (out of about 165 requests to public authorities in total for 2017). This would correspond to the importance of the tax-related risks identified in the NRA. Timeliness does not seem to be affected by the indirect access to information and also the TAK provides full feedback to the FIU in all disseminated cases thus further directing the effort of the FIU. These numbers are also commensurate with the numbers of disseminations by the FIU to the TAK. Thus the FIU seems to be seeking and receiving adequate information from the TAK and making full use of it. Nevertheless, the indirect access to such information, in view of the vast number of requests, seems to be detrimental to the overall effort focused on one of the major identified risks in Kosovo.

172. No further information was provided in regard to the law enforcement access to tax information. It is not demonstrated that information gathered and exchanged resulted in tax-related ML being pursued.

173. For obtaining financial data the LEAs would widely rely on the powers of the FIU. Apart from the FIU expertise and communication with the reporting entities, the use of the FIU powers would be required considering the limitations to LEAs, allowing access to financial data only as part of the covert measures stipulated in the Criminal Procedure Code within the pre-trial (formal) investigation stage. Articles 86-92 of the Criminal Procedure Code would be applicable in the pre-trial investigation phase and provide for detailed requirements in this regard. Thus the large majority of requests to the FIU would be made by the KP, KIA, KC, Prosecution Offices, KC and ILECU, related to preliminary investigations. Most of the requests from the KIA would be focused on checking financial flows potentially linked to terrorism and a relatively high level of cooperation seems to be taking place for the period 2014-2017. Comparing the number of cases opened for information gathering based on these requests to the number of cases triggered by STRs there seems to be a significant workload on the FIU that could have a detrimental effect on the resources. The situation for example in 2017 reveals 130 requests to the FIU from other institutions of which about two thirds (80) would be coming from KP, KC and ILECU. The situation for 2014-2016 seems to be comparable. Simple requests would be mainly the responsibility of the KC and KP liaison officers in the FIU, thus mitigating the potential negative impact on the FIU resources. The evaluators were provided with information that about 90% of these requests would be dealt by the KP liaison officer to the FIU, thus reducing the burden on the FIU resources. However, when comparing the number of requests to the number of cases opened as a result, most of the requests seem to have resulted in case opening[10], pursuant to the operating procedure of FIU. It is understood judging from the SOPs of the FIU that these cases (based on requests) would be tackled as additional information gathering to previous cases and largely the bulk of the work would be assumed by the respective FIU analysts within the respective case.

[10] Based on the SOP of 2014.

174. Thus the FIU channel would enable the LEAs to effectively undertake the relevant enquiries before the formal investigative stage and to ascertain potential relation to ML, associated predicate offences and TF. Comparing the number of cases opened by the FIU on request to the number of requests sent to the FIU however it is confirmed that most (if not all) requests would be related to previous information from the FIU, thus raising doubts as to the adequate ability of LEA to obtain financial information for the development of cases of financial investigation generated by LEA indicia at the initial stages and where the FIU has still not received any STR.

Table 4: Requests to FIU

Request filing institutions	2013	2014	2015	2016	2017
Kosovo Police	57	91	52	45	53
KIA - mostly related to TF and terrorism	14	23	19	28	31
EULEX	8	11	7	5	2
Special Prosecution of Kosovo	1	6	3	1	2
State Prosecutor	5	6	3	0	
Tax Administration of Kosovo	20	7	2	0	8
Kosovo Customs	61	25	15	22	21
ILECU	15	6	6	6	6
Other	2	2	3	6	7
Total	**183**	**177**	**110**	**113**	**130**

175. At the same time the number of instances where additional information (AIF, see below) is requested by the FIU and provided by reporting entities related to previous STRs is extremely high compared to the number of cases and would potentially limit the FIU ability to focus on new cases of ML based on the wide range of available information (STRs, data mining of other sources) as resources for processing this additional information need to be deployed. The large number of these additional pieces of information is understood by the assessment team to be based on LEA necessities and seems to be corresponding to the established practice of the LEAs to routinely request comprehensive additional information from the FIU after receiving the respective dissemination. The reasons for these additional requests do not seem to be related to the lack of quality of the disseminated reports of the FIU (based on interviews and specific cases reviewed, see below). A potential explanation is then related to what is discussed under IO 7 in regard to the required level of proof for the predicate criminality and the effort of the LEAs to conduct as comprehensive enquiry as possible into the financial aspects of the case, and especially in the absence of indication for the predicate crime. Thus, a concern remains in regard to the usefulness of the financial intelligence gathered as a trigger for standalone ML investigations, when it is difficult to ascertain the specific predicate criminality and it is necessary to rely on circumstantial evidence.

176. FIU and LEAs are involved in the group for detecting and targeting serious crime led by the SPRK that is operating pursuant to Standard Operating Procedures for Selection of Targets of Serious Crime and Multiagency Investigation Teams. This has resulted in the FIU and Special Prosecution having more emphasised cooperation on operational issues in the process and other actions of common interest. The group started its activity in 2015 and dealt with 28 cases where the FIU was involved. Among the key priorities of the joint group is the fight against corruption and several cases were presented, including a case involving a judge, cases of secretaries of ministries in Kosovo and a member of the parliament.

Case example – Klina Judge Case (see further elements of this case under IO 7)
A former judge was investigated based on the significant input from the FIU. The indictment was filed on July 05, 2011 against an ex-judge, who used to exercise his duty as judge in Basic Court of Klina, which is a small city in Kosovo. Two other persons were also indicted by the prosecutor in the same indictment. They were charged with criminal offences as follows: organised crime by article 274, paragraphs 1, 2 and 3 of ex CC (in power up to 2013 when new CCK entered in force), money laundering from article 10.2 from UNMIK regulation 2004/02, miss abuse of official duty or the position from article 339 paragraphs 1 and 3 of ex CC, tax evasion from article 249 paragraphs 1 and 2 of ex CC and two other criminal offences. In 2017, BC in Pristina brought judgment, which convicts ex judge for criminal offence of issuing unlawful judicial decisions from article 432 of CC, money laundering from article 56.1 of Law on Preventing the Money Laundering and Fighting of Terrorism and abuse of official duty or position from article 422 of CC. The investigation revealed property in large amount of the defendant who was former judge acquired in the period 2002-2008 in order to conceal the origin of the proceeds from abuse of office and other crimes, a total amount of approximately EUR 1,200,000. These included property acquired in Kosovo (2 apartments and a house, business premises), real estate identified in Montenegro, motor vehicle and funds received from the sale of two business premises.

177. Kosovo competent authorities widely use the financial intelligence together with other available and accessible data to conduct preliminary investigations of ML, associated predicate offences and TF. Despite the usefulness of this information for conducting also formal investigations of associated predicate crimes in conformity with some of the established risks in the NRA and offences generally reported in Kosovo, it could not be confirmed that the information would be sufficiently used for ML investigations and subsequent ML prosecutions.

178. From 2014 to 2017, Kosovo Police (DECCI) made 86 requests for information to the FIU in total. This figure includes only the requests from DECCI (Directorate against Economic Crime and Corruption Investigation). In general, all sectors of the Kosovo Police (including Directorate of Counterterrorism) have submitted to the FIU a total of 241 requests for information exchange and investigation assistance.

179. Requests were made for FIU in different cases of organised crime by the Integrated Financial Investigation Sector (IFIS) of Kosovo Police as below. The number of requests seems to be roughly comparable to the number of reported offences of organised crime in the respective period.

Table 5: Requests to FIU from Integrated Financial Investigation Sector (IFIS) of Kosovo Police related to organised crime

	2013	2014	2015	2016	2017
Requests	16	8	3	6	10
Requests for gathering information through international request	4	1	3	3	3
Total	20 – requests submitted 21 - replies received	9 – Requests submitted 13 - replies received	6 - requests submitted 6 - replies received	9 - Requests submitted 9 - replies received	13 - requests submitted 13 - replies received

180. TAK, apart from the aforementioned matching mechanism, expressed also satisfaction with the exchange of information (assisted also by a liaison officer of TAK to FIU) and the cases where TAK used the information provided, which then resulted in detection of undeclared or unpaid tax obligations. In addition

as noted above TAK provides information to the FIU which contributes to the analysis of the cases and significant subsequent disseminations for investigation to TAK (see below). The authorities claimed significant use of the financial intelligence for those purposes and informed about the contribution of the FIU information for tax-related investigations. Significant numbers of FIU disseminations are provided to the TAK.

Table 6: FIU disseminations to TAK

	2013	2014	2015	2016	2017	Total 2013-2017	% of all
Tax Administration of Kosovo	21	21	23	26	39	130	28.57%

181. Nonetheless, the statistics provided do not demonstrate the usefulness of the information provided by the FIU to TAK (28.57% of all FIU disseminations for 2013-2017) as a sole trigger of tax-related cases. The FIU disseminations were used as a trigger for only 2 of the investigations for tax-related crimes for the period 2015-2017. As mentioned above, there were also no tax-related ML cases, pursued by TAK.

182. No specific results based on financial intelligence were demonstrated in the framework of cooperation of the FIU with ACA. There are limited disseminations from FIU to ACA. In 2017 there were three FIU reports disseminated to ACA without any information available on the outcome of the checks of potential undeclared assets. On the other hand, the anti-corruption agency has submitted a number of requests to FIU mainly related to incompliance with the declaration obligations of persons and in view of the inability to collect on its own necessary detailed financial information. Requests from ACA to the FIU were in the range of 6-8 annually, including 3 requests in 2015, 6 in 2016 and increasing numbers in the following years.

183. Despite some cases of ML investigations discussed during the on-site visit, the number of referrals by police to the Prosecutor's Office based on disseminations by the FIU shows that an insignificant number of the disseminated financial intelligence products are used for triggering investigations for ML. The statistics of the KP (DECCI-FIS) showed for the period 2015 - 2017 a total of 8 cases of criminal reports to the SPRK for ML, of which 4 were initiated based on FIU dissemination (although the FIU seems to be contributing to all cases of financial investigations). Despite the fact that half of the ML reports were triggered by FIU dissemination, the number seems insignificant compared to the total number of disseminations (322 for the same period) and the numbers of investigations for various predicate offences, including organised crime, tax crimes, arms trafficking, etc. Most of the cases of convictions for ML presented to the assessment team were older cases where only the final judgments were pronounced in the last three years, thus not allowing adequate assessment of effective use of the financial intelligence and other information for developing evidence and tracing proceeds related to ML. On a more positive note, the LEA noted that some of the disseminations would trigger investigations for other predicate crimes (e.g. tax evasion, fraud, etc.) although no detailed statistics are available.

Case example: Regional money laundering case

A case was initiated by the FIU based on a STR. Person B. S. who appeared with documents from X State has opened the business account "P" and started the realisation of cash deposits in the account opened in one of the banks in Kosovo; and after the cash deposits were made, the person in question started the realisation of the outgoing international transfers described as payments of invoices to a company in Country Q. Through international co-operation, countries like country X and Q were contacted to obtain more information about person B.S. and the company that is accepting transfers from Kosovo. Suspicion arose on the use of forged documents.

During the investigation, it was found that the person with the B.S. initials can be actually another foreigner subject to investigation because of involvement in smuggling of cigarettes and tobacco. He was also involved in smuggling of drugs. The international information exchange was used to establish these facts.

Case example: Regional money laundering case
The FIU cooperated closely with the Special Prosecution and held joint meetings with police investigators. The financial data gathered by the FIU included vast information, including all details of the bank accounts at all local banks and in those in foreign countries, all declarations of monetary funds at border crossing points were checked, information from MVTS, property traced, including the property abroad, surveillance cameras and border crossings and comparison with the transaction data were carried out. Meetings were also held with investigators from the relevant foreign jurisdictions.

184. The statistics provided on the postponements of transactions initiated by the FIU indicate a very limited number of formal investigations opened in any of those cases and it is not clear how many of the preliminary checks were actually related to ML. It is not clear what part of the funds involved in the freezing orders of the FIU (totalling more than EUR 2 million for 2016-2017) have actually been secured. On a more positive note, it is to be clarified that the postponement orders refer to separate transactions and not to cases (thus postponements related to a relatively limited number of cases), thus making the disproportion between formal investigations and indictments and cases when postponements were used less notable. Nevertheless, no exact statistics are available to fully clarify that disproportion.

Table 7:

Year	Number of postponement orders issued by FIU	Number of cases where the FIU order was followed by a preliminary investigation and a seizure order was issued	Number of cases where the FIU order was followed by a preliminary investigation and a freezing order was issued	Number of cases where a prosecution / indictment was initiated
2014	20	1	20	1
2015	6	1	1	1
2016	85	1	85	1
2017	3	1	3	1

185. FIU disseminated in 2013-2017 about 40 cases based on suspicion of TF. A number of cases related to TF disseminations were discussed during the on-site visit. Comprehensive checks were carried in regard to those cases and origin and destination of funds was probed. FIU can also be considered as a major contributor of information in order to establish the movements of funds under terrorism-related investigations. One of the examples was the Syria support case (please refer to IO 9), where the FIU to a large extent initiated the checks into the financial aspects. In this case cooperation involved FIU and KC. Despite the lack of any confirmation of TF as a result of most of the cases developed previously and no convictions for TF or TF-related ML, significant involvement of the FIU in at least two alleged TF cases currently under formal investigation was discussed during the on-site visit. One of the cases was related to transactions from the zones around the Middle East conflict areas and the other involved alleged TF taking place from an EU country and related to a number of transactions through several countries and using various delivery channels, which is evidencing adequate action in a relatively complex case.

STRs received and requested by competent authorities

186. FIU is entitled to and is receiving information on suspicion of ML, associated predicate crime and TF from reporting entities as well as public authorities. This would include STRs from the reporting entities under the AML/CFT Law (including NPOs) as well as additional reports based on previous STRs (AIF) and CTRs. Further to these categories of information, FIU is able to receive information related to its mandate from a wide range of public authorities including courts or responsible authorities for implementation of the Law, including intergovernmental and international organisations, the public or governmental bodies. Information on suspicion of ML, predicated offences and TF can be also voluntarily provided to the FIU. In practice, apart from the STRs from reporting entities in the private sector, the FIU is receiving reports on suspicion only from the KC and the supervisors (understood as CBK). No information on suspicion has ever been received from the DRLNGOs despite the significant risks associated with the sector. With regard to TF suspicion almost all reports for the period 2013-2017 were received from the reporting entities with the

exception of one report from the KC in 2013 and one report from sectoral supervisor in 2016. Moreover, one case received from public authorities resulted in sequestration of real estate in a terrorism-related conviction.

187. The total number of STRs received in 2011-2017 was 2,417. For the period 2013-2017, there were 103 TF-related STRs. The number of STRs received increased significantly, whereby an increase by 83% in 2017 is noted over the number received in 2015. The banks are the main contributor to this growth while the input of all other reporting entities is insignificant. There is no reporting whatsoever from the DNFBPs which is a significant concern, in view of the significant risks associated with the real estate sector, gambling, etc. The assessors also have doubts with regard to the effectiveness of the system established for the NPOs considering that no reports have been received from them.

188. The FIU generally assess the quality of reports as good and increasing in the recent years following a number of trainings and guidance provided. The authorities also consider the current system of tipping-off safeguards for the disclosure of information on STRs (regulated and interpreted strictly to prevent disclosure also to supervisors and financial institutions' management) as contributing to the effectiveness of the reporting regime especially in the case of corruption-related suspicion and, according to the FIU, increasing reporting of information on PEPs. Typologies covering these issues have been published. At the same time certain doubts arise in relation to the authorities' ability to maintain the quality of the reporting, considering the issues stemming from the supervisory practices as discussed under IO 3 and IO 4. The assessors also believe that the system could benefit from further guidance and typologies provided to the reporting entities and institutions. There have been two typologies reports issued by the FIU in the last 5 years, one of which focusing on PEPs, but it is noted that for example the annual reports of the FIU have not included typologies on a regular basis and no further initiatives in this field are known. No adequate outreach in terms of typologies and reporting has been undertaken for NPOs.

189. In addition to the aforementioned sources of information from the reporting entities, the FIU receives also additional information subsequently gathered by the reporting entities following an already reported STR. This additional information (designated as AIF in the FIU reports) is reported pursuant to Article 26, paragraph 2 of the AML/CFT Law although the effectiveness of use of this information cannot be confirmed in view of the lack of any further information provided by authorities. There are no clear criteria for the implementation of this obligation by the reporting entities, including making the decision to continue reporting, the extent of reporting, etc. On the one hand, it is noted that reporting entities in a small number of cases would continue reporting on their own initiative. On the other hand, most of those reports seem to be actually submitted based on a request by the FIU judging from the information provided by authorities. No statistics were provided on the exact number of such additional information packages following the initial STR.

190. The mentioned provision of the law provides for receipt of such information also based on a request by the FIU (within its work on a case) and this constitutes the largest part of the AIF obtained. It is the impression of the assessors based on these guidelines that the additional information would consist of details on transactions carried out to separate accounts. The statistics of the FIU show 6,016 pieces of additional information (transactions) in 2014, 3,975 in 2015 and 6,325 in 2016. It is not clear whether these numbers represent separate transactions or separate reports. Taking into account the use of electronic communication channel and the structured receipt of information on transactions, as well as discussions held on-site these reports could be considered to be able to assist significantly the competent authorities in performing their duties. This should be also considered in view of the available analytical capacity of the FIU (which includes at least three certified financial forensic experts) to process the information. Nevertheless, the vast number of reports seems to be incommensurate with the available human resources. All requests from FIUs, police etc. would be dealt with through AIFs to obtain the necessary information.

191. In regard to the receipt and use of UTRs it is noted that this system of reporting could not be considered on its own an effective and useful tool as there is no specific legal basis for the receipt of this information and subsequent use and they do not seem to serve as a reliable information source. The generation of these reports to the FIU is understood by the assessors as an issue related on the one hand linked to the lack of adequate guidance to the reporting entities. The number of these reports range from a few in 2014 and 2015 to 23 in 2016, but nevertheless involves significant amounts as seen from the following table. The issue should be clarified by the authorities and ensure that no abuse is happening.

Table 8: Funds involved in the UTRs received by FIU

Year	2014	2015	2016	2017
UTRs	EUR 1,001,320	EUR 601,600	EUR 16,176,800	EUR 14,408,443

192. It is still not clear what the added value of this system is, considering that there is no information on the use of these reports in the analysis and the outcome, and the lack of uniform and clearly understood and enforceable obligation for all reporting entities to provide such information in all cases as neither the new, nor the old AML/CFT law include such obligation. The reporting requirement for these reports, although clearly defined in the AML/CFT Law (both current and previous), is subject to a wider interpretation by the FIU (as demonstrated e.g. in the Annual Reports 2014-2016 of the FIU). The Law clearly stipulates reporting only when requested by the FIU whereas the filing of these reports is not obligatory. Secondly, although significant amounts seem to be involved, it is not clear, due to the aforementioned interpretation difficulties, whether all potential information on unusual transactions is actually delivered and contributing to the FIU effort. Thirdly, it is not clear what procedures would be followed by the FIU as this is not explained in the SOP on the analysis and intelligence process of 2015 and is not even mentioned as a source of information.

193. The authorities did not demonstrate that the underlying activities reported as part of the STRs fully correspond to the risk profile of the country (especially with regard to real estate, gambling, corruption, organised crime and cash movement). It is especially worrisome that very few reports were provided from KC and most of them were related to undeclared monetary instruments at the border. No suspicion seems to have been reported in regard to significant cash movement in the case of compliance with the declaration obligations as well as in regard to trade-based money laundering. This is a significant concern also having in mind the widespread smuggling of goods and arms and the presence of a seconded KC expert acting as analyst in the FIU (see below). On a more positive note, the KC seem to be actively benefiting from the STR and other financial intelligence available to the FIU despite some lack of clarity in the SOP of the KC investigation unit concerning the procedures for potential use of financial intelligence. It is understood based on the Customs SOP that the liaison officer would be performing most of the tasks related to the provision of information to the Customs and ensuring the financial aspects are properly covered. Despite the significant exchange of information with TAK, there have been no reports filed from TAK to FIU on suspicion for ML.

194. In regard to CTRs the authorities explained their extensive use as a tool in the analysis of cases by the FIU and subsequent disseminations. At the same time those CTRs are used also in a data mining framework pursuant to a comprehensive methodology (SOP) that takes into account specific risks and priorities. Further details however are not available to ascertain the results of the use of CTRs as part of the analysis. In the period between 2012 and 2016, the number of reported transactions in cash grew over 60%. The number of transactions received increased from 778,286 in 2016 to 839,608 in 2017. The mentioned numbers include also the information received from the KC.

Table 9: Numbers of CTRs (including monetary instruments at border) over the years

Years	2012	2013	2014	2015	2016	2017
CTR received	480,479	606,778	553,651	617,430	778,286	837,903

Table 10: CTRs received, including monetary instruments declared at border

	2014		2015		2016	
Reporting Entities and Institutions	Reports	Transactions	Reports	Transactions	Reports	Transactions
Banks	1,700	548,139	2,028	614,162	2,087	774,463
Microfinance institutions	12	37	12	25	22	184

	2014		2015		2016	
Insurance Sector	3	11	0	0	0	0
Currency Exchange	297	2,959	292	1,875	297	2,384
Money Transfer Agencies	25	500	23	104	18	99
Total CTRs of Banks and Financial Institutions	**2,037**	**551,646**	**2,355**	**616,166**	**2,424**	**777,130**
Kosovo Customs	12	2,005	12	1,264	12	1,156
Total	**2,049**	**553,651**	**2,367**	**617,430**	**2,436**	**778,286**

Operational needs supported by FIU analysis and dissemination

195. FIU's analytical function is performed on the basis of a number of detailed and mostly comprehensive standard operating procedures by experienced and qualified analysts, using widely sophisticated IT tools for input, storing, retrieval of information, processing, and dissemination. Not all of the potential of the IT system for automation is fully used however and despite the general satisfaction with the quality of the FIU's output, some concerns were expressed by some of the interlocutors on the timeliness of disseminations.

196. FIU is initiating and conducting operational analysis largely based on the STR information coming from the reporting entities (including public authorities). The analysis is in line with no less than seven (7) standard operating procedures (SOPs) adopted by the Director of FIU or jointly with the KP and the TAK. Those SOPs encompass most of the processes in the FIU in detail, including the case opening and development, prioritisation and selection, gathering additional information from various sources, intelligence gathering and enrichment of cases, conditions and safeguards for the intelligence processes, international information exchange, anonymous matching of databases with TAK and KP (see above), and targeting serious crime. SOPs provide for a sound basis for the performance of the FIU functions. They are also considered a proper instrument to avoid abuse of FIU powers and to ensure the effective focusing of resources on the performance of the core functions of the FIU. Some minor shortcomings are observed, e.g. the lack of criteria for dissemination, or risk factors and ranking criteria or describing some of the processes in too general terms. The FIU experts seemed well aware of the requirements and exert effort to overcome any issues or difficulties arising or related to the increasing incoming flows of information by undertaking amendments to the SOPs (e.g. through the Performance and Resource Plan of 2018 stipulating action for the following two years).

Table 11: Sources for the cases opened by FIU

Cases opened for analysis	2015	2016	2017
Cases opened based on STRs	125	180	147
Cases opened on anonymous information	14	18	6
Cases opened from Spontaneous Information by other FIUs	1	1	5
Cases based on requests for information	106	113	140
Joint projects of analysis/investigation with other law enforcement institutions	1	6	12
Total cases opened	**247**	**318**	**310**

197. FIU is increasingly focusing on joint projects of analysis and investigation with LEAs and other authorities. A significant increase in 2017 of the number of such cases generated from joint work is demonstrated. These projects allow competent authorities to jointly work on subjects suspected of specific

criminality associated with significant risk or of particular public importance. These included also an increased focus on lists of persons generated together with the ACA in regard to unclear origin of property of PEPs. On the basis of these projects the FIU has opened the aforementioned cases for further analysis whenever additional information became available.

198. The FIU Standard Operation Procedure also includes the analysis of CTR information as part of the processing of cases opened. The FIU IT system provides a number of tools for analysis and retrieval of information that could be useful for enriching the cases and intelligence products were demonstrated to include also the analysis of CTR data.

199. At the same time since 2014 FIU has started implementing a system mainly of data mining of the CTR data based on predetermined criteria and additional requirements in conformity with the main risks and priorities of the FIU work. The objectives are defined annually but selection of targets for further analysis is also done based on specific priorities, joint cases developed, etc. Based on this retrieval of targets, case proposals are triggered, which, although still not transformed into actual cases, are considered to be of great benefit subject to future monitoring for the level of risk. This system is considered by the assessors as a viable tool for further development of cases for dissemination especially in view of the risks associated with the informal economy, use of cash and cash movement across border. However, its effectiveness is limited by the insufficient use largely linked to lack of resources to tackle these cases in addition to the STR-based analysis and cases opened on request of the other authorities. Thus, the actual opening of cases on CTRs seems to be related to the limits for the respective year and the level of risk associated with the specific targeted case proposal. FIU indicated 28 case proposals in 2015 and one in 2016. The assessors were not informed on any actual cases triggered or disseminations undertaken based on these proposals.

200. FIU receipt, selection and analysis function significantly benefits from the receipt of information from reporting entities in electronic form (more than 95%) using standardised templates and allowing structured information to be rapidly registered in the databases. A thorough and effective prioritisation system was developed and implemented by FIU and is part of the SOP of the unit. The system is based on detailed criteria and rating mechanisms. Nevertheless, there is still manual work involved in the process of selection and prioritisation of reports through the required case proposals (CAP) to the management of the FIU. This is mainly related to the manual checks in most of the databases in order to determine links to previous reports or other important information. This would negatively impact the analytical resources of the FIU.

Table 12: Requests for information (ORD) by FIU (to reporting entities and public authorities)

Year	Number of requests
2014	1,992
2015	1,616
2016	1,628
2017	1,032

201. In 2017, FIU sent approximately 77% of all requests for information to banks, and about 7% to other reporting entities. For the same period about 16% of all requests have been submitted to public authorities. The majority of the latter were to TAK (111 requests) and Cadastre (25).

202. Apart from the various sources of information available to the FIU and used, the input into the FIU analysis of the LEA information is largely achieved through the use of the database matching mechanisms. These mechanisms guarantee the adequate development of potential cases of ML, predicate crime and TF and could be considered a highly efficient way to avoid duplication of effort and ensure timely reaction and prioritisation of the cases as well as proper dissemination. At the same time, it is noted that further details on the available information need to be received via a separate request to the LEA which has a negative effect on the timeliness of the LEA input, albeit mitigated by the use of dedicated KP liaison officer in the FIU. On the other hand, some concerns arise as to the provision of timely feedback from KP in relation to the FIU disseminations and the limited information that is usually provided (unlike e.g. the feedback from the TAK). The KP feedback is usually done periodically in an aggregated manner for a number of disseminations received and is limited to the output in terms of reporting to the prosecution or not. With regard to the requests for information from KP to the FIU, the assessment team was informed of details of the respective case provided only where international request for information is needed (in order to fulfil principles of information exchange).

203. Liaison officers of the KP and KC are contributing to the effectiveness of the FIU work and cooperation effort. Both liaison officers would also perform intelligence analysis duties subject to the safeguards applicable to the other analysts of the FIU.

204. The average timeframe for the analysis and dissemination of cases varies depending on its nature but would include the initial process of analysis of the STR and subsequent case proposal and the time for additional information gathering/enrichment and analysis. The SOP stipulates 15 days from the receipt of an STR to the case proposal by the analyst and there was no information to indicate any incompliance with this timeframe. The authorities noted that about 92% of suspicious reports received in 2015 have been processed in the year under review, while the remaining part remains to be analysed in the following year. No similar information was provided in regard to subsequent years when a significant increase in the number of STRs is noted (to be processed using the same resources). Moreover, a random case of normal priority and seemingly average complexity (involving requests to 2 FIUs and a limited number of public authorities, e.g. tax) presented to the assessors revealed about 8 months from receipt till dissemination. No further information on any special circumstances of the case was provided. The authorities did not demonstrate how many STRs were disseminated in the respective years. Some of the interlocutors met on-site commented on the lack of timeliness of some of the reports disseminated to them. Although this was not assessed as a systematic issue, some concern arises with regard to the timeliness of performance of the FIU analytical work. The main reasons seem to be related to limited resources, a certain level of manual work especially in the initial stages of analysis and indirect access to some types of information as noted above.

205. FIU performed its analytical function for the period 2014-2017 using 5-6 analysts in the operational and analyses department and was restructured at the beginning of 2018 to increase the staff of this unit to 7, excluding the Head of Unit. The total staff of the FIU, including the aforementioned two (2) full-time liaison officers of the KP and the KC amounts to 23. The assessors have no doubts with regard to the capacity and experience of the analysts. For example, at least three of them are also certified financial forensic experts. The average workload of the analytical department for 2015-2017 varied between 22 in 2015 to 30 cases in 2017. This is seemingly a reasonable workload but resource limitations are obvious when taking into account additional workload in terms of cooperation requirements with other institutions, the prioritisation and selection processes (of STRs ranging from 398 to 728), the increase in the incoming information and the targeting procedures and strategic analyses. Moreover, the impression of the assessors is that the targeting and prioritisation procedure of the STRs and CTRs may in practice be adjusted in a way to keep the average workload in terms of cases which could be detrimental to the effectiveness by leaving aside cases which might also have significant potential value to the overall effort of the competent authorities. Further to these, additional measures should be taken by Kosovo authorities to ensure adequate premises for the FIU, not only for the experts involved in its tasks but also for proper backup and archiving of documentation.

206. With regard to the strategic analysis, the FIU efforts were focused on conducting the NRA and the analysis of some high-risk sectors, which has resulted in specific measures planned and currently being implemented. However, it is noted that a number of high-risk areas seem to be still left uncovered.

207. Strategic analysis is performed by the same department responsible for the operational analysis and as such dependent to a large extent on the same resource limitations. The strategic analysis is undertaken pursuant to the SOP on Analysis and Intelligence Process as well as a number of specifically elaborated methodologies for risk analysis.

208. The FIU coordinated and was largely involved on its own and in cooperation with other relevant authorities and the private sector in the last four years in conducting comprehensive risk analyses of the construction and real estate sectors, the gambling sector and the non-profit organisations sector. Despite the benefits of these products and the subsequent action plans, it is noted that a number of risk areas identified in the NRA and several following national strategies on combating various types of criminal activities and adverse phenomena, have actually been long due for further analysis but have not been addressed mainly due to the lack of resources.

209. Nevertheless, the FIU is to be commended for exerting the necessary effort towards proper understanding of the risks and most pressing issues impacting the effectiveness of the fight against ML, associate predicate crime and TF.

210. The results of these efforts could be demonstrated not only in a number of disseminated cases to the competent authorities but also in the legislative measures implemented (e.g. amendments to the law on freedom of association, the law on religious organisations, etc.).

Dissemination

211. FIU is disseminating information to a wide range of competent authorities based mainly on the STRs received, as well as based on several joint initiatives with the law enforcement authorities and the KIA. The dissemination takes place for ML, predicate offences and TF pursuant to explicit authorisation in the AML/CFT legislation.

212. The criteria for dissemination is provided for in Article 15, paragraph 2 of the AML/CFT Law which requires the FIU to submit information relevant for investigations within the authorities' competence. No further criteria however are included in the SOPs of the FIU and decisions for dissemination would be taken on an ad-hoc basis. The explanation of the authorities is that the decision on the competent authority to receive the dissemination and the prioritisation of disseminations would rely on the risk ratings based on objective criteria and the major threats defined for the respective period by the FIU. The Prosecution Office would receive the cases rated with the highest risk while all other cases would require further substantiation by the LEAs before going to Prosecution.

Table 13: Disseminations by FIU

Reports disseminated by the FIU referred to the other relevant institutions (only cases opened on STRs	2013	2014	2015	2016	2017	Total 2013-2017	%
Kosovo Police	44	27	42	54	60	226	49.56
Special Prosecution of Kosovo/State Prosecutor	0	1	9	7	4	21	4.59
Tax Administration of Kosovo	21	21	23	26	40	131	28.6
Kosovo Customs	4	2	6	1	2	15	3.28
Kosovo Intelligence Agency	0	0	4	0	1	5	1.09
Anti-corruption Agency	0	0	1	0	3	44	0.87
EULEX	2	2	1	13	2	20	4.37
International FIUs/Spontaneous information	3	6	8	11	5	33	7.21
Others	0	0	0	0	2	2	0.44
Total intelligence reports disseminated	**74**	**59**	**94**	**112**	**119**	**458**	**100**

213. A number of these cases disseminated were the result of the processes of targeting crime and various joint initiatives with the law enforcement authorities as discussed above. These would include persons/transactions targeted and analysed in relation to organised crime, non-profit organisations source of funding, analysis of funds of certain geographic areas, corruption-related property and transactions. These would cover some of the important risks identified in the NRA but not all of them. Moreover, for the last three years, the system does not seem to be strongly contributing to major risks identified for Kosovo. For 2017 there was no targeting. For 2016 and 2015 the case of relevance were related to money remittance that was carried out jointly with FIU Albania, but the other targeting does not seem to have been adequately linked to the most important risks.

214. Examples of adequate support of the FIU in investigations by the KP in standalone cases of ML or third-party laundering were provided. These included 2 cases related to EU countries and involvement of an economic actor in ML conducted with funds originating from fraud with the participation of a PEP. Both the FIU in its disseminations and the KP in further enquiries based on such disseminations seem to focus

also on these types of ML. Nevertheless, in a number of cases LEAs complained about the lack of sufficient information on the predicate crime in some of the disseminations received from the FIU which would make extremely difficult any further investigation. Despite this, during the on-site visit there were generally no views indicating lack of quality of the disseminated cases. The LEAs confirmed that the STRs usually contain sufficient leads to be followed by LEAs in order to further substantiate ML and/or predicate criminality. The impression of the assessors based on cases provided and discussed is also that disseminations contain sufficient information and quality analysis.

215. TF cases are treated with the highest priority by FIU and would generally receive the highest risk rating, thus resulting in quick dissemination, despite the procedures generally carried out in regard to the ML STRs. A number of the aforementioned targeted action of the FIU was related to TF risks and resulted in a number of cases disseminated. Moreover it is noted that in a number of cases freezing (postponement) of transactions/funds was undertaken although the suspicion was not confirmed.

216. It is clear as discussed above that the disseminations are very rarely contributing to ML convictions in the last three years. Despite the impact of disseminations in regard to tax-related crimes and other predicate offences investigated by the competent authorities, the assessors are not in a position to provide a definitive conclusion on the results of disseminations considering the lack of clear statistics on their subsequent use in formal investigations and contribution to convictions in regard to predicate criminality.

Cooperation and exchange of information/financial intelligence

217. FIU and other competent authorities cooperate widely within a number of joint groups at the strategic level and pursuant to a multitude of SOPs and MoUs resulting in several initiatives at the operational level focused on major risks identified at national level.

218. FIU is applying significant effort to ensure competent authorities are provided with relevant information. The following example of activities could be considered a best practice in this regard.

Best Practice: Automated matching FIU - KP and TAK databases
Kosovo authorities have implemented a useful system for anonymous matching of database information based on standard operating procedures of 2014. The objective of this Standard Operating Procedure (hereafter: SOP) is to define and standardise the handling of information requests which are sent from the FIU to the Kosovo Police with a purpose to check whether certain listed subjects who are registered in the FIU's goAML database are also registered in the Kosovo Police Information System (hereafter: KPIS). The purpose is to identify persons registered in the KPIS which are suspected of crimes which may constitute predicate offence for money laundering or sources of assets meant for terrorist financing. The SOP shall also ensure application of the confidentiality and data protection provisions. Similar system was established in 2014 pursuant to a SOP also with the TAK and such matching has been carried out. These seem to be a useful tool but more information is needed to assess the effectiveness of the matching mechanism and results thereof.

219. The FIU is also providing adequate assistance to the LEAs through the use of its powers for international exchange of information. The procedures followed by the FIU ensure sufficient safeguards both in relation to the substantiation of the requests it receives from LEAs for such assistance and in relation to the proper use of the information disseminated to LEAs in response.

220. On the other hand, despite the generally good level of cooperation some deficiencies are noted with regard to the information provided by other competent authorities for the purposes of developing cases of potential ML, including (as discussed above) the lack of regular and detailed feedback in some cases, the indirect provision of information, low level of reporting of cases that could indicate potential ML to the FIU in some instances (e.g. from KC and TAK for example).

221. Apart from the joint initiatives on specific subjects described above, FIU is involved in the targeting process performed based on the procedures stipulated in the SOP on the Analysis and Intelligence Process and the SOP for Selection of Targets of Serious Crimes and Multiagency Investigation Teams. The process takes place at the level of the FIU on a monthly basis and involves meetings mainly with the prosecution and KP. At the national level all competent authorities are present and contributing to the process.

Table 14: Targeting and support by FIU

	2014	2015	2016	2017
Number of Regular Targeting Meetings with the Kosovo Police and the Special Prosecution Office as defined in the Standard Operational Procedures of the FIU for Strategic and Operational Intelligence and Analysis	10	12	12	12
Number of ML investigations supported by FIU expertise in analysis	2	3	3	3

222. All competent authorities use channels for information exchange which are secure and efficient including the use of dedicated connections through the FIU IT system.

Overall conclusions on Immediate Outcome 6

223. Kosovo authorities use a wide range of information sources although the indirect access to some of those sources and the deficiencies in the information maintained have an impact on the effectiveness of the competent institutions and are incommensurate with the risk profile in some cases.

224. Kosovo competent authorities widely use financial intelligence of a generally high quality together with other available and accessible data to conduct preliminary investigations of ML, associated predicate offences and TF. This would include generally high-quality intelligence generated by the FIU which seems to be contributing actively to the development of the system.

225. Despite the usefulness of this information for conducting also formal investigations of associated predicate crimes in conformity with some of the established risks in the NRA and offences generally reported in Kosovo was demonstrated, it could not, however, be confirmed that the information would be sufficiently used for ML investigations.

226. Despite some minor deficiencies, the FIU and other competent authorities cooperate on the basis of a wide range of initiatives, within a number of joint groups at the strategic level and pursuant to a multitude of SOPs and MoUs resulting in several projects at the operational level focused on major risks identified at national level.

227. **Kosovo has a moderate level of effectiveness for Immediate Outcome 6**.

Immediate Outcome 7 (Investigation and prosecution)

ML identification and investigation

228. Kosovo has the necessary elements of a legal system and an institutional framework, which is designated to investigate and prosecute money laundering. A the time of the on-site visit Kosovo was preparing a comprehensive reform of its criminal justice system, including the Criminal Code and Criminal Procedure Codes, which will have an impact on the investigation and prosecution of ML[11]. These measures were not yet in place at the time of the on-site visit and hence will not be taken into account for the purposes of this assessment. These changes do demonstrate, however that Kosovo authorities understand existing shortcoming in the system currently in place to prosecute ML offences.

229. The offence of money laundering is investigated by a number of authorities, with the majority of investigations being carried out by the Kosovo Police (KP). The KP has two separate structures, which are specialised in the investigation of ML: the Directorate against Economic Crime and Corruption Investigation (DECCI) and the Organised Crime Division (OCD).

230. The DECCI and more specifically its Financial Investigation Sector (FIS) has the responsibility for receiving FIU materials and where necessary initiating ML investigations based on these materials. The DECCI is staffed by 120 investigators, while the FIS is staffed by 14. There is further ML specialisation within the Sector, which contains a specialised Money Laundering Unit, comprised of 4 investigators. The investigators of the FIS handle high-priority cases, and can outsource cases of lower importance to their colleagues in the DECCI, who are located in the regions. When a predicate offence is identified in the

[11] The new Codes envisage, *inter alia*, the extension of competencies to prosecute ML offences to non-SPRK prosecutors.

context of an ML investigation this information is forwarded to specialised Directorates to further investigate the predicate (e.g. Directorate for Investigation for Trafficking with Human Beings (DITHB), Directorate for Investigation of Trafficking with Narcotics (DITN), etc.). The DECCI has a direct IT link to the FIU through the goAML Platform and receives the FIU materials directly through this link.

231. The OCD includes an Integrated Financial Investigation Sector (IFIS) staffed by 10 officers, which is responsible for launching parallel financial investigations into predicate offences, such as organised crime, trafficking in humans, drugs and arms, cybercrime, etc. Unlike the ML investigations of DECCI-FIS, the OCD-IFIS investigations always originate with a predicate offence investigation either from within the OCD, DITHB, DITN or other Directorates of the KP.

232. The KP has a standard operating procedures for the various sectors including the IFIS. Although the SOPs do not specifically reference parallel financial investigations as a concept, in practice these SOPs seem to cover the substance of such investigations. It was also argued by authorities that the IFIS, has been set up to specifically undertake such parallel financial investigations. Extensive interviews held on-site with the IFIS do confirm that this practice is indeed in place, and it occurs whenever there is a significant amount of funds attached to a predicate offence, which according to authorities is approximately 80% of significant proceeds-generating cases. However no specific quantifiable data has been provided as to the frequency of parallel financial investigations *vis-à-vis* predicate crime investigations overall, or what is the specific threshold to launch a parallel financial investigation.

233. Kosovo Customs (KC) and the Tax Administration of Kosovo (TAK) may also investigate money laundering. Both agencies have been involved in ML-related investigations jointly with the Kosovo Police. Specialised ML units in these two agencies have not been established.

234. The offence of money laundering is under the exclusive competency of the Special Prosecutors Office (SPRK), which means that the SPRK oversees all ML investigations undertaken by law enforcement authorities. When authorising an ML investigation the SPRK issues a so-called letter of entrustment to the law enforcement authority undertaking the necessary investigative actions. In practice SPRK prosecutors seem to follow closely the ML investigations and are aware of the details of a case, even when an indictment is yet to be filed. SPRK may delegate the oversight and prosecution of ML cases to non-SPRK prosecutors, however this has never been done in practice. Even if delegations were to be done, the indictment is still to be filed by the SPRK.

235. Law enforcement authorities have reported some effectiveness lapses in their work to pursue money laundering, caused by the high standard of proof required by SPRK on the underlying predicate offence. What this devolved to in practice is the inability to initiate a stand-alone ML investigation without a parallel investigation for a predicate crime. This conditioning seems to have been particularly detrimental to the work of the DECCI-FIS and its Money Laundering Unit, which is responsible for investigating ML based on FIU disseminations. As in many cases these disseminations indicate suspicious financial activity, there is rarely a possibility to clearly establish an underlying predicate offence. Even when a predicate can be inferred, in many cases it is virtually impossible to establish that specific funds are in fact criminal proceeds. Thus, the DECCI-FIS is in fact forced to undertake a "parallel predicate investigation" in order to move a money laundering investigation forward, which is the inverse of what is required by the standards. This circumstance has to date significantly depleted the outputs from the significant resources invested in the activities of the DECCI-FIS to proactively pursue money laundering.

236. The statistics provided by the authorities are partially incomplete and do not demonstrate the full picture as regards the functioning of the law enforcement and criminal justice chain. The below table demonstrates the number of ML investigations carried out by the respective law enforcement bodies:

Table 15:

LEA	2014	2015	2016	2017
DECCI-FIS	2 / 5[12] : no data	7 / 24 / 3 : no data	2 / 2 / 0 : no data	1 / 2 / 1 : no data
OCD-IFIS	32 / 5	19 / 5	17 / 4	15 / 1
Customs		3 / 18 / 26 : no data	1 / / 10 (on-going case)	1 / / 10 (on-going case)

[12] Number of cases investigated / number of natural persons / number of legal persons : number of indictments

237. As was mentioned in the analysis for IO 6, during the on-site visit the DECCI-FIS reported the submission of a total of 8 criminal reports to the SPRK for ML in the period 2015-2017, with only 4 of them based on FIU disseminations (total FIU disseminations to the KP in the same period were 322).

238. No statistics have been provided so far, which have allowed the assessment team to track the number of indictments broken down by the competent LEA, which carried out the underlying investigation. As regards ML prosecutions the following statistics were provided by the Kosovo Prosecutorial Council, which maintains a statistical tracking mechanism for criminal offences:

Table 16:

Year	Carried over (from previous period		Received (during the year		Total ongoing cases		Resolved (during the year		Unresolved (at the end of the year	
	Cases	Pers.	Cases	Pers.	Cases	Pers.	Cases	Pers.	Cases	Pers.
2015	30	83	9	27	39	110	7	15	32	95
2016	31	76	4	7	35	83	6	17	29	66
2017	29	76	8	23	37	99	7	16	29	82

239. If 2016 is taken as a sample year, however, it should be highlighted that only 4 new ML cases were brought to the SPRK, whereby two potentially originated from the DECCI-FIS, and the rest from OCD-IFIS and Kosovo Customs. It can also be assumed that the majority of the 29 cases carried over from the previous period were resulting from OCD-IFIS investigations. The 6 cases solved by SPRK in 2016 resulted in 3 indictments, while the other 3 cases were dismissed. The trend for 2017 is virtually the same.

240. Additional statistics were provided in the 2017 Annual Report of the National Coordinator for Economic Crime (NCEC), which states that a total of 37 ML cases were being handled by the SPRK in 2017, out of which 29 were unresolved by the end of 2017. Without OCD-IFIS statistics reliable calculations cannot be made as to the proportion of ML cases being rejected by the SPRK, however based on KPC and NCEC data it can be stated that the amount of cases being carried over from year to year significantly exceeds (five or six-fold) the amount of cases being resolved on a yearly basis.

241. While in some instances the backlog may be due to a delay in the investigative process, including extended timeframes for international cooperation and MLA, this cannot be the principal explanation. The other reason for the backlog (and the overall reluctance of SPRK to take on ML cases), may be rooted in the SPRK institutional mandate to focus on high-profile crime and its workload with such cases. It should be understood that the SPRK was created to focus on high-threat offences such as terrorism, genocide, crimes against humanity and war crimes, organised crime, etc., where it has been given exclusive competence. With only 12 prosecutors employed in the SPRK, the caseload has been very high – at approximately 60 cases per prosecutor at a given point in time. The SPRK also has 4 experts to assist primarily with financial analysis, although apparently some of the positions had been vacant for periods at a time, and in any case such an arrangement is not sufficient to support any larger number of prosecutions for ML, acquisitive crime and related seizures/confiscations, which should be the objective of Kosovo authorities.

242. Thus the caseload and potentially the financial complexity could be an impediment and/or demotivating factor to taking forward money laundering cases. In the least, it would influence the amount of money laundering cases handled. That being said, it does not seem that the SPRK has set any value-based or threat-based threshold for the ML cases it is willing to process, other than a strength-of-evidence standard. At the same time, the Standard Operating Procedures for Selection of Targets of Serious Crimes and Multiagency Investigation Teams set a number of criteria including for aspects related to the proceeds of crime. The Working Group implementing these SOPs seems to currently be operational, however historically this has not always been the case. The Working Group considers cases often with FIU input and presence in the Working group meetings. Specific statistics on the cases considered by this Working Group have not been provided to the assessment team.

243. It should be noted in this context that the on-going transfer of cases from EULEX prosecutors is creating additional case-load pressure on the SPRK, which in the current situation cannot be alleviated by

the additional 5 vacancies opened, which would bring the number of SPRK prosecutors to 17. The logical way forward in dealing with this backlog is reconsidering SPRK exclusivity for prosecuting ML, which is currently being proposed by draft legislation). As a second option, if the legislative proposals to not come through, it would be recommended to establish a systemic procedure and practice for delegating ML cases to non-SPRK prosecutors, based on a certain value or threat-based threshold, while retaining SPRK jurisdiction over the most important high-profile cases. It seems that efforts are underway by SPRK and the NCCEC to prepare trainings for non-SPRK prosecutors to prepare them for the future handling of ML cases.

244. As regards convictions Kosovo Judicial Council provided the following statistics:

Table 17:

Year	Carried over from previous period	New cases received	Total ongoing cases	Total accused persons	Imprisonment sentences	Persons sentenced to imprisonment	Cases dismissed (acquittals
2014	1	4	5	10	2	4	
2015	3	2	5	9	0	0	
2016	5	3	8	28	2	3	
2017	6	2	8	28	0	0	

245. Thus a total of 4 convictions were handed down for the 4-year period of 2015-2017, amounting to an average of one conviction per year. Comparing the proportion of indictments for ML by the SPRK and the number of convictions, the disparities between on-going cases and convictions (given the overall low numbers) do not seem highly striking, taking into account the increasing number of cases being carried over year on year. These statistics prove that the SPRK is prosecuting essentially the bare minimum of ML cases.

246. Overall, the case-flow bottleneck that is created at the SPRK results in a significant waste of resources upstream by the FIU and the DECCI-FIS in terms of outputs. For the FIU this essentially means that its unique added value stemming from spontaneous disseminations results in near 0% benefit for the criminal-justice chain downstream. Subsequently, as the DECCI-FIS is not able to pursue stand-alone ML based on FIU materials, the essential law enforcement function envisaged by the AML framework to protect the financial system from money laundering is also almost entirely undermined.

247. In these restrictive circumstances, another difficulty is that LEAs do not receive any feedback from the SPRK as regards the progress of their case in the courts. Such information could provide LEAs with some orientation as to the investigative strategies and evidence thresholds deemed appropriate by the courts. From the information provided it has been difficult for the assessment team to judge about the average time-spans of investigations, prosecutions and court proceedings. It should be noted however, that from some case examples quoted below the full length of the criminal justice process, starting from investigation to court proceedings phase may take several years (see for example Sitnica case, which was initiated in 2013 and where court proceedings are on-going).

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

248. As it has been noted in the analysis of IO 1, the system of measures in place to assess criminal threats and risks in Kosovo consists of a number of tools, including the NRA, SOCTA and permanently functioning risk analysis units at the Integrated Border Management (IBM) Centre and Kosovo Customs. For the purposes of IO 7, these tools taken together generally identify the scope of threats endemic and characteristic to Kosovo, namely: corruption, tax offences, crimes related to procurement and privatisation process, smuggling, human trafficking, organised crime, drug crimes, cybercrime, fraud and other financial crimes. Nevertheless, the lack of integration between the above-mentioned assessment tools and the differing methodologies used, leads to a fragmented understanding by Kosovo authorities of predicate criminality, and the volume and structure of its criminal proceeds.

249. In this context, the law enforcement and prosecutorial response to ML can be considered to be only in partial calibration with the findings of risk and threat assessments carried out in Kosovo. For the law enforcement bodies in particular the SOCTA process seems to take greater precedence than the NRA,

perhaps as it is led by the Ministry of Interior, which is the oversight body of the Kosovo Police. However the SOCTA is not ML-focused. The risk assessment mechanisms in place at the IBM and KC are significantly more operations-based, and reflect the reality on the ground, however they do not have an ML focus either.

250. The mandate of the National Coordinator for Combating Economic Crime is sufficiently broad, and includes responsibilities in terms of AML coordination. At the same time, it seemed to the assessment team that the Coordinator primarily focuses on issues pertaining to seizure and confiscation. The lack of specific focus on ML is partially logical in the current institutional and procedural context, given that the FIU has taken on a leading role in AML issues, and that the SPRK has the sole responsibility for investigating and prosecuting ML cases (see IO 7). However, if that context is to change and ML investigation and prosecution were delegated to non-SPRK prosecutors, the coordinating role of the NCCEC in the AML field should increase, in particular with respect to targeting law enforcement and prosecutorial action on high risk areas.

251. Kosovo authorities provided the following statistics for only a sample of predicate related criminality. To fill in the gaps, the numbers are drawn from a combination of sources (Mutual evaluation questionnaire, Kosovo Police, Kosovo Prosecutorial Council, SOCTA), which in some instances offered contradictory statistics. While it can be assumed that the statistical discrepancies are due to differing statistical collection methods, the statistics presented below cannot be considered as fully accurate and are provided for indicative purposes only:

Table 18:

Number of reported criminal offences / convictions (persons	2014	2015	2016	2017
Participation in an organised criminal group and racketeering	165 / no data	156 / 2	83 /no data	94 /-no data
Terrorism, including terrorist financing	105 / 15	74 / 16	103 / 17	81 / 7
Trafficking in human beings and migrant smuggling	118 / no data	86 / no data	40 / 3	50 / no data
Sexual exploitation, including sexual exploitation of children	93 / 24	67 / 5	76 / 14	74 / 16
Illicit trafficking in narcotic drugs and psychotropic substances	No data			
Illicit arms trafficking	793 / 177	654 / 145	991 / 192	1,256 / 219
Illicit trafficking in stolen and other goods	44 / 13	19 / 3	25 / 1	6/ no data
Corruption and bribery	153 / 67	166 / 80	180 / 140	134 / 88
Fraud	1,011 / 67	860 / 80	849 / 140	668 / 88
Counterfeiting currency	21/ no data	17/ no data	20/ no data	18/ no data
Counterfeiting and piracy of products	25 / 0	27 / 1	7 / 0	23 / 1
Environmental crime	No data			
Murder, grievous bodily injury	35/ no data	25/ no data	No data	
Kidnapping, illegal restraint and hostage-taking	82/ no data	103/ no data	63 / 66	74/ no data
Robbery or theft	404/ no data	281/ no data	No data	
Smuggling (including in relation to customs and excise duties and taxes)	181 / no data	No data		
Tax crimes (related to direct taxes and indirect taxes)	69 / no data	93 / no data	70 / 14	60 / no data
Extortion	52/ no data	61/ no data	No data	
Forgery	No data			

Number of reported criminal offences / convictions (persons	2014	2015	2016	2017
Piracy	No data			
Cybercrime	24 / no data	21 / no data	No data	
Insider trading and market manipulation	No data			
Other: Not specified	84 / no data	65 / no data	80 / no data	55 / no data

252. Kosovo authorities do not maintain (have not provided) statistics breaking down ML investigations or prosecutions by underlying predicate criminality, therefore a cross-comparison cannot be made to determine if ML is pursued sufficiently and proportionately across the range of predicate offences. At the same time, when taking the overall statistics for convictions, the disproportion between predicate criminality and money laundering becomes very visible. This is particularly striking in relation to such offences, as corruption and fraud, where it can be assumed proceeds were generated and laundered with regular frequency, but the judicial outcomes with regard to ML are negligible. Based on on-site interviews, it stems that one of the reasons for this significant quantitative discrepancy seems to be the overall inclination of the SPRK to regularly drop ML from indictments, with a similar tendency to drop ML by courts at the adjudication stage.

253. The only reliable source, where the link between the predicate offence and the ML activity could be reliably understood is the few cases, which were presented to the assessment team either at the stage of indictment or conviction.

"NATA" case

254. Predicate: facilitation of prostitution. Case type: self-laundering. This case was initiated at the request from the KP Directorate for Investigation of Trafficking in Human Beings to the KP OCD-IFIS to conduct a financial investigation (March 2012). The IFIS undertook investigative actions and requested/received info from the FIU, and concluded that the case contains elements of money laundering. Initially the financial investigations were carried out in relation to 10 persons, of whom 8 were foreign nationals. Analysing financial transactions, mainly those that were transfers and deposits, the investigations were extended to an additional two persons (including person X). Person X was identified by following a transfer to his account of EUR 11,000, from the account of the main suspect. The transfer was made with the description "Lending", on this occasion a request to the FIU was made, which showed that person X has a turnover in his bank accounts somewhat around EUR 2,000,000. A report the prosecutor was made, who rendered a ruling on the initiation of investigation. Investigations included 8 foreign nationals, out of which 7 from Ukraine and one from the Netherlands, 5 Ukrainian nationals have been found guilty of prostitution and by the direction of the Court were deported to Ukraine, and 2 of them were found guilty for prostitution and money laundering.

255. In this case, initial investigation started for the criminal offences of organised crime, trafficking in persons, facilitating prostitution, money laundering. In the final judgment, three accused persons of Kosovo nationality were found guilty for the criminal offences of facilitating prostitution and money laundering (sentenced respectively to 4 years plus EUR 50,000 fine; 2 years plus EUR 20,000 fine; and 2 years plus EUR 20,000 fine).

256. The money laundering conviction was obtained by proving that the suspects have benefited illegally from the proceeds by investing in immovable property and by depositing money into bank accounts and transferring them from one account to another with the purpose of concealing the origin of means. Different types of property were confiscated: real estate and land, vehicles, funds on bank accounts and cash. The case was prosecuted with the involvement of a prosecutor from EULEX[13].

[13] For purposes of this assessment cases involving EULEX at the prosecution and indictment stages are taken to illustrate the risk and threat profile of cases in Kosovo, however this assessment does not include in its scope the review of EULEX effectiveness.

China-transfer case

257. Predicate: tax evasion. Case type: third party money laundering. In 2012, Person X as the owner of a business was involved in tax evasion (tax on circulation through undeclared sales, VAT and personal income tax). In order to conceal the source of funds and avoid any tax reporting obligations, Person X used the bank account of Person Y to deposit funds and subsequently transfer them to the Republic of China (a total of 5 transfers were carried out). For his services Person Y received EUR 50 per transfer.

258. The defendants admitted their guilt and were convicted for ML (conviction took place in 2015):

- Person X: 1 year (suspended) and a fine of EUR 7,500 (self-laundering);
- Person Y: 6 months (suspended) and a fine of EUR 500 (3rd party ML).

"Sitnica" case

259. Predicate: drug trafficking. Case type: self-laundering. Directorate for Investigation of Trafficking in Narcotics filed a request in the IFIS, to initiate a financial investigation. The main suspect Person X belonged to an organised criminal group based in a Western European country and involved in drug trafficking. Person X was prosecuted for drug trafficking in that country, and fled to Kosovo, changing his surname to escape. A number of properties were purchased by Person X and transferred to 3rd parties. During the investigation Person X attempted to justify his property to authorities by claiming these were proceeds of a business, however an expertise conducted by TAK on the business demonstrated this not to be the case. Information exchange with Germany was carried out in this case. The following items were initially sequestrated: a house, two apartments, land, etc. The case is in on-going court proceedings.

"Perëndimi-West" case

260. Predicate: drug trafficking. Case type: third party laundering. The case was initiated by the Directorate for Investigation of Trafficking in Narcotics. The suspects were foreign citizens from a state in the Balkan region, they were arrested while they were transporting heroine. The IFIS started with the financial investigation, making it possible to identify the assets under possession of the suspects were obtained from sale of narcotic substances. International cooperation was conducted with his country of origin, which confirmed that he belonged to an organised criminal group. The nephew of Person X was involved in money laundering, purchasing a flat during the period of detention of Person X. The Nephew of Person X would have been indicted for abetting to ML and 3rd party ML, however he passed away before the indictment was filed. In the case, confiscation took place (decision PKR.P. No. 4/15) with regard to the flat and a vehicle.

"Klina Judge" case

261. A detailed description of "Klina Judge" case is provided under IO 6. The case resulted in a conviction in 2017, including imprisonment of 4 years and 6 months, a fine of EUR 5,000, confiscation of 6 real estate properties in Kosovo and Montenegro, a vehicle and cash. The predicate offences in this case were unlawful issuance of court decisions and misuse of official position (corruption-related offence). The ML charge was for self-laundering, which had occurred between 2002 and 2008, and the indictment was filed by the SPRK in 2011. The case was however sent by the Supreme Court for a retrial down to the 1st instance court, based on procedural inconsistencies identified during the initial handling of the case.

"Paradiso" case

262. A notable case, which illustrates the difficulties faced by Kosovo authorities in pursuing organised criminality and their proceeds of crime is the "Paradiso" case tried in Prizren. In this case the initial indictment for ML was filed, however the charges were subsequently dropped. The organised criminal group engaged in illicit gambling activities, loan sharking (forcing debtors to pay disproportionate interest) and drug trafficking. The Prosecution engaged an expert to evaluate the value of illicit property of the defendants, whereby EUR 300,000 in cash were seized, and Hotels were sequestrated. The court however did not agree with the prosecution's findings, citing a discrepancy between the time of the offences and the period when the property was obtained. The case (including the ML charge) is currently under consideration in the Appellate Court.

"Regional money laundering" case

263. The "Regional money laundering" case is described in IO 6. It is representative of the risk profile of Kosovo, which is used as a jurisdiction for the placement and layering of foreign proceeds of crime, emanating from organised criminality, smuggling and drug trafficking.

"MIA procurement fraud" case (EULEX case)

264. Person N.V. and accomplices appropriated EUR 1.4 million through fraud on a public procurement contract with the Ministry of Interior. The money was subsequently laundered through transfers to companies established by N.V. This case was prosecuted by an EULEX prosecutor and tried by an EULEX judge, although it is illustrative of the threats identified in the NRA with regard to procurement abuse and procurement fraud.

China Trade Case (stand-alone ML conviction - court decision PKR no. 33/14 of 28.03.2018)

265. Two defendants A and B laundered money acquired from tax evasion and misuse of permits. Two companies were established by the defendants for trade in goods with China. A trade-based money laundering scheme was identified by authorities, based on a discrepancy in the outgoing cash flows vs. imported produce. Defendant A was sentenced for ML to 3 years of imprisonment and a EUR 15,000 fine, while predicate charges (tax evasion) against him were dropped. Defendant B was sentenced for ML to 2.5 years of imprisonment and a EUR 10,000 fine. No predicate charges were filed for Defendant B. The case was initiated in 2009 based on a FIU dissemination to KP.

Examples of on-going investigations

266. Kosovo authorities further informed of a number of investigations currently on-going:

- *Corruption-related*: an investigation with regard to a high-level politician for tax evasion and related money laundering (with the involvement of TAK, FIU, SPRK and KP);
- *Cash-smuggling*: Kosovo Customs is currently investigating a suspicious case for money laundering, where the initial reason for suspicion was the border declaration of cash by a foreign citizen, stating that the cash was intended for a business in Kosovo. The business was checked and the operations of this business were deemed to be suspicious, as it involved bank transactions to personal accounts. The case as such is being processed by the Special Prosecutor. In this case, the FIU has also provided information from the country of origin of the money that is believed to be subject to laundering.
- *Trade*-based ML: in one case of Kosovo Customs according to its indicators noticed that there is grounded suspicion for money laundering, since an importing entity has imported goods and in a short time has re-exported them to the same country in Western Europe, declaring a ten-fold higher cost of the same goods. Kosovo Customs, based on the provisions of an international agreement on mutual administrative assistance, notified the country of origin of the goods, but the response from the country was negative as regards suspicions for money laundering.

267. Overall, the case examples of investigations, prosecutions and convictions described above reflect the ML risk and threat profile of Kosovo, in particular the significant categories of predicate offences identified in the NRA and SOCTA, including tax evasion, corruption, smuggling, human trafficking, and drug trafficking. In terms of the sectors, there is clear indication that construction/real estate and games of chance sectors are highly correlated with money laundering activity and this is reflected in the ML prosecutions and convictions. Confiscations of real estate properties and even hotels further confirm this.

268. The international dimension of money laundering risks faced by Kosovo is also reflected in some of the cases, where Kosovo is used as a jurisdiction for both the placement and layering of foreign proceeds, including through trade-based schemes. As the Sitnica and Perëndimi-West cases demonstrate, Kosovo is also used as a jurisdiction for the integration of criminal proceeds by Kosovar nationals and foreigners alike, which belong to international organised criminal groups.

269. That said, the cases brought to court and further adjudicated are too few in order to consider that the criminal justice response to any of these threats is in any way sufficient. The only exception in this area may perhaps be tax crimes, which indicate any cause-to-effect correlation between the risk and threat assessment processes and policies on one hand and the resulting criminal justice measures on the other.

Furthermore, some of these cases are too low-level (e.g. China transfer case) to be considered part of a prioritisation exercise based on a threat or risk assessment. Given the general limited nature of the NRA exercise (e.g. lack of guiding ML typologies), as well as its lack of correlation with the SOCTA, it can be concluded that law enforcement authorities are oriented in their investigative priorities by their own experience and understanding of the threat situation at hand rather than any specific mechanism for the prioritisation of ML investigations and any ML typologies that underlie them.

270. As discussed in IO 6, the only risk area where effective risk mitigation measures are taken (primarily through non-criminal justice means) is tax evasion. It should also be noted, that according to observations of the law enforcement units specialised in ML (especially DECCI-FIS), tax evasion constitutes the bulk of cases underlying suspicious economic activity and money laundering, which crosses their radar. In this sense, more operational prioritisation mechanisms need to be developed, so as to ensure appropriate focus of LEAs.

271. The issue of the length of case proceedings is a major negative factor. Perhaps the most illustrative example is the Klina Judge case, whereby 7 years have passed since the filing of the original indictment. In other cases described in this section, the length of time for the handling of case is shorter, but nevertheless can extend to 3 or more years.

272. Kosovo authorities informed the assessment team that in cases such as the Paradiso case, where violent organised criminality is involved (also prevalent in the sector of sale of fuel), both prosecutors and judges face physical threats and intimidation. This is of course alarming and additional security measures should be foreseen to provide protection for both judges and prosecutors handling such high-risk cases.

Types of ML cases pursued

273. As it has been described in the case examples above, Kosovo authorities pursue ML cases which are both self-laundering and third party money laundering. There are at least two instances, where self-laundering was pursued when the predicate offence was committed abroad (Sitnica Case and Perëndimi-West case).

274. Kosovo authorities have also pursued in at least one instance an indictment for ML, where the predicate offence was not known (case PPS. 66/2011 dated 1.10.2013), based on suspicious activity of a natural person attempting to deposit funds in a bank account. Since then apparently no stand-alone money laundering charges have been pursued, with the notable exception of the recent China Trade case. The position of the SPRK is not entirely clear, as on-site interviews with law enforcement and prosecutors demonstrated a general reluctance to pursue stand-alone ML. At the same time there seem to be instances which demonstrate the contrary, both in the 2013 indictment, as well as in the China Trade case.

275. The ambiguity in the AML/CFT Law seemed to at least partially contribute to this. Article 56 (para. 3.1) of the AML/CFT Law states that "a person may be convicted of the criminal offence of money laundering, even if he or she has not been convicted at any time of the predicate criminal offence from which the proceeds of crime in the criminal offence of money laundering were derived". While at first glance this Article could serve as substantiation to criminalise stand-alone money laundering prosecutions, it could also equally be interpreted as a substantiation to criminalise third-party money laundering (i.e. conviction for the person who carried out the ML, whereas another conviction is reached for the person who carried out the predicate). While the intent of lawmakers remains unclear with regard to this formulation, there is equally no strict conditioning laid down in Article 56, which would require a conviction for a predicate offence as a necessary precondition for an ML conviction. Furthermore, based on corresponding provisions of paragraphs 1 and 2 of Article 56 ("representations made as part of covert measures") the only proof required for an ML offence is the belief of the offender that property constitutes proceeds from crime, based on direct or indirect evidence gathered through special investigative means.

276. The China Trade case clearly demonstrates (as also confirmed by the Supreme Court during on-site interviews) that no prior or parallel predicate conviction is required for an ML conviction to take place. The fact is, however, that the SPRK has not yet brought any prosecutions of stand-alone ML since the 2013 indictment. The China Trade case was not an example of a stand-alone ML indictment, but rather a court decision to strike down the predicate offence charges. Hence the question remains whether as a matter of overall practice the SPRK demands a high standard of proof with regard to predicate offences in order to file an indictment for ML.

277. Criminal liability of legal entities has been established in accordance with Article 40 of the Criminal Code in Kosovo, however no statistics have been provided as to whether legal entities have been prosecuted for the offence of ML. Some of the statistics indicate, however, that legal entities may have been the subject of investigation (see law enforcement statistics above), however it is not clear whether this was solely for investigative or criminal process purposes.

Effectiveness, proportionality and dissuasiveness of sanctions

278. According to Article 56 of the AML/CFT Law, money laundering is punishable by a term of up to 10 years imprisonment or a fine of up to 3 times the amount of laundered funds. Such sanctions are potentially proportionate and dissuasive. As regards the effectiveness of their applicability, the assessors had difficulty in making the appropriate assessment, given the incomplete data that was provided. However from analysis of provided cases and court decisions the following statistics could be drawn in terms of sanctions for ML:

Table 19:

Case name/ref. no	Date	Judgement status	Prison sentence	Fine
NATA / PAKR. No. 351/2016	2016	Final	Person 1: 4 years	EUR 50,000
			Person 2: 2 years	EUR 20,000
			Person 3: 2 years	EUR 20,000
China-transfer / PKR. No.175/15	2015	Final	Person 1: 1 year (suspended)	EUR 7,500
			Person 2: 0,5 year (suspended)	EUR 500
Perëndimi-West / PKR.P No. 4/15	2016	Final	Person1: 2 years	EUR 15,000
Klina judge / PKR. No. 642/15		Sent by Supreme Court for retrial	Person 1: 4.5 years	EUR 5,000
Trade with China PKR No. 33/14	2018	Basic court	Person 1: 3 years Person 2: 2.5 years	Person 1: EUR 15,000 Person 2: EUR 10,000

279. It should be stated, that the low number of convictions from the outset undermines the potential dissuasive effect of the sanctions laid down in Article 56 of the AML/CFT Law. In two of the cases presented to the assessment team, the sentencing sanctions were in the middle range (4-4.5 years), which seems proportionate. The one case where the court issued a suspended sentence, the rationale seems justifiable on the grounds of a number of alleviating circumstances (it was the first legal transgression for both defendants; the second defendant was in a poor economic situation).

280. While confiscations were made in most of the cases, the range of imposed fines is clearly on the low side. In one case (Klina judge case) the sanction of interdiction of exercise of duties was also applied (as this case has been sent for retrial, and can only serve for illustrative purposes in this analysis).

281. Overall, from the few cases adjudicated by Kosovo authorities, it can be stated that authorities are capable of employing various types of sanctions, and potentially in a proportionate way, however absent a proper track record no conclusions confirming a positive level of effectiveness in this area can be drawn.

Other criminal justice measures

282. There are no additional mechanisms factually available to Kosovo authorities to pursue ML outside the regular criminal justice procedures described above. The Law No. 04/L-140 on extended powers for confiscation of assets acquired by criminal offence could have offered some additional tools to pursue criminal proceeds, however, this law is not applied in practice, due to several terminological discrepancies, which have made it unusable in the Kosovo legal context.

Overall conclusions for IO 7

283. Law enforcement authorities in Kosovo have prioritised the investigation of money laundering by institutionalising and devoting significant resources to financial investigations both within the context of parallel financial investigations and as follow-up to FIU disseminations. At the same time the extensive efforts of law enforcement in this area are throttled by the resource bottlenecks at the level of prosecution.

284. While the predicate criminality pursued in ML cases by law enforcement seems to be broadly in line with the risk and threat profile of Kosovo, the volume of cases ultimately prosecuted and adjudicated is negligibly low compared to the size of the threat stemming from predicate criminality and resulting ML in Kosovo. In the few cases of ML convictions, the sanctions seemed to be applied proportionately, however their number is too low to have any dissuasive effect on criminality in Kosovo. As a result Kosovo achieves only to a negligible extent the characteristics of an effective system to investigate, prosecute and convict for ML.

285. **Kosovo has achieved a moderate level of effectiveness for IO 7**.

Immediate Outcome 8 (Confiscation)

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

286. Kosovo has prioritised the confiscation of criminal proceeds and instrumentalities as a major policy objective. Although it is not explicitly mentioned in the AML/CFT Strategy, activities to enhance the confiscation regime are included in the AML/CFT Action Plan, including ensuring value-based confiscation (property of corresponding value); and the inefficient enforcement of confiscation judgements is identified in the NRA as one of the major issues.

287. Overall the prioritisation of the system of seizure and confiscation in Kosovo has effectively been the key objective of the institution of the National Coordination for Combating Economic Crime (NCCEC), which was specifically created for this purpose through a joint MoU between the Kosovo Prosecutorial Council, Kosovo Judicial Council, Ministries of Justice, Finance, Interior, FIU, Anti-Corruption Agency and Central Bank to the signatories of the MoU actively cooperate with the NCCEC, as the on-site visit has been able to ascertain. In fact, the National Coordinator holds significant authority in the law enforcement community and among prosecutors in the undertaking of his tasks in terms of coordination. The Coordinator dedicates significant efforts to awareness raising among law enforcement agencies and prosecutors on issues of seizure and confiscation through trainings and seminars, and discussion of specific cases. It does seem in fact, that these efforts have resulted in a significantly higher awareness of need to pursue seizures and confiscations and to conduct parallel financial investigations to trace property.

288. The National Coordinator publishes quarterly and annual reports on the state and results of seizure and confiscation efforts by Kosovo authorities, which aim to assess the state of play in this area. The analysis presented in these reports is quite thorough and honest in terms of judging the effectiveness of the confiscation system. In particular the NCCEC reports acknowledge that progress in ensuring confiscations "is very slow and not yet at the required level". In analysing retrospectively the statistics for confiscations for the years up to 2017 the NCCEC notes that "to date we only have a handful of final verdicts involving larger scale confiscation of assets acquired through criminal activity". The NCCEC also identified a number of shortcomings as regards the reporting methods with regard to sequestrations, in particular the failure of prosecutors to report on all seized items (e.g. vehicles), which apparently often do not make it into the final statistics for sequestration. Other problems were identified by the NCCEC at the adjudication stage, where judges ordered the return of instrumentalities (e.g. vehicles) used in the commission of a crime back to the defendants even in cases where a guilty verdict was pronounced. A recommendation was made to the Kosovo Judicial Council to review the issue and develop measures to remedy this practice.

289. Overall, it can be stated that the NCCEC is a highly useful and proactive institution in terms of monitoring and facilitating the effectiveness of provisional measures and confiscation in Kosovo. It was definitely a positive policy decision to crate this entity and its work should be further supported.

290. Kosovo has adopted specialised legislation (Law No. 04/L-140 on extended powers for confiscation of assets acquired by criminal offence), which would have allowed for extended confiscation powers, including the reversal of the burden of proof based on criminal lifestyle. However the adopted Law contained inconsistencies with criminal procedure legislation of Kosovo, hence it has had no significant

practical application. While new proposals are currently in draft to fix this problem, it has been many years that Kosovo is not able to adopt proper legislation in this field. This partially demonstrates ineffectiveness of confiscation policy at the high legislative level, which is undoubtedly of concern given the risk profile of Kosovo.

291. As it was mentioned under IO 7, Kosovo authorities undertake parallel financial investigations into acquisitive criminal offences and trace property on a routine basis, even though there are no standard procedures for doing so. This is done primarily by the Integrated Financial Investigation Sector, when it receives referrals from other KP departments to undertake a financial investigation. The referral system is somewhat a concern, given that it is left at the discretion of the department whether or not to engage the IFIS. At the same time, the IFIS reported that the parallel financial investigation and asset tracing has often been effective and beneficial even for the originating predicate investigation, whereby additional suspects were identified through the tracking of financial flows. Kosovo authorities also reported the creation of an asset recovery unit within the KP, however it is not clear to what extent this is operational, especially given the fact that the ARO was deemed to have existed since the last assessment undertaken by PECK in 2014, but no visible results had yet been demonstrated since.

292. The creation of the Agency for the Management of Seized and Confiscated Assets (AMSCA) can also be considered as demonstrating the focus of Kosovo authorities on seizure and confiscation. At the same time the volumes of seizures and confiscations, which are managed by the Agency, are still comparatively low in proportion to the overall risk profile of Kosovo.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

293. The system of provisional measures in Kosovo prior to confiscation includes a range of possible elements: freezing (Article 264 of CPC), temporary sequestration (Article 112 of CPC), temporary confiscation (Article 267), temporary measures to secure property (Article 268 of CPC). The architecture and terminology provided in the various articles of the CPC (English version) seems to be highly convoluted, providing for a number of parallel and/or overlapping processes for freezing and seizure.

294. For example Article 264 envisages an Order issued by the State Prosecutor and valid for 72 hours during which time the Prosecutor must immediately make an application to the pre-trial Judge for an 'Attachment Order' to freeze the assets. The Attachment Order lasts initially for 30 days during which time and giving three weeks' notice a hearing is scheduled to consider any challenge from those affected by the Attachment Order. At the hearing the judge may take the decision for a long-term seizure. At the same time, a parallel system exists under Article 112 of the CPC, whereby a prosecutor may issue a temporary sequestration order, which lasts for 5 days, whereby he must apply to a pre-trial judge for a temporary sequestration request, which then lasts until the end of the criminal proceedings. There is also a provision in Article 267, which requires the prosecutor to file a motion to secure property within 60 days of its temporary confiscation. During the on-site discussions it was not made clear which is the procedure normally followed by Kosovo authorities, and how they interpret the logic of the CPC. Furthermore, it was confirmed that even judges often confuse the various provisions with regard to freezing and confiscation, for example sending orders for frozen property to be handled by AMSCA, which is not in its domain of responsibility.

295. Furthermore, the possibility of freezing by the FIU also exists, and allows for a suspension of transactions for a period of up to 48 hours. As it was discussed under IO 6 FIU freezing orders lead to an average of one seizure per year, which is almost negligible. It therefore seems that this provisional measure has virtually no outcome in terms of effectiveness for the system of subsequent seizure and confiscation.

296. Overall, Kosovo authorities have agreed that the confiscations provisions and procedures are in need of reform, and have made the necessary proposals in the new draft CC and CPC.

297. Kosovo authorities provided only aggregated statistics for freezing and seizure taken under the CPC, which makes it impossible to judge the effectiveness of the various elements of the freezing or seizure system described above.

298. The statistics provided by various authorities also paint a very disparate picture as regards the volumes and numbers of seizures and confiscations. Different authorities, such as the NCCEC and the AMSCA maintain their own data, which stems from various sources. At the same time, some of this data is insufficiently detailed, so as to make a proper judgement on the effectiveness of the system.

299. The NCCEC maintains statistics for funds frozen plus seizures, and separate statistics for confiscations:

Table 20:

Period	Total sequestrations, freezing (EUR	Total confiscations (EUR
January-December 2017	15,237,208.76	1,330,133.88
January-December 2016	60,411,328.00 – 70,411,328.00	1,222,005.86
		+(333,534.92)
January-December 2015	20,568.934,00	70,487.00
January-December 2014	31,000,000.00	525,854.91 - 1,025,854.91

300. These statistics are apparently drawn from the database of the State Prosecutors Office, and have not been split up by type of predicate offence. What these statistics already demonstrate is the very low volume of final confiscation *versus* seizure, and this is a multi-year trend, which can barely be explained by referring to the delay of cases being carried over from year-to-year.

301. At the same time the reports of the NCCEC provide a detailed analysis of the confiscation results, and the specific cases, which underlie them. For example, as regards the confiscation statistic from 2017, this is almost entirely generated by the judgement of the Court of Appeals regarding the Klina Judge Case (see case description in IO 6 and 7), which amounted to EUR 1.2 million. At the same time, the assessment team was informed that the Supreme Court subsequently in 2018 submitted that case for a retrial all the way down to the 1st instance court, hence the volume of confiscations for 2017 becomes once again negligible.

302. It should be noted, that the Klina Judge Case is however quite illustrative in terms of its international dimension, which included the tracing and seizure of property acquired by the judge abroad. Furthermore, the prosecutor in this case filed a motion for confiscation based on Article 6 or the Law on Extended Powers of Confiscation, which was presented to the assessment team as largely non-operational due to discrepancies with the CPC. This is clearly an instance to attempt to use this law (there have been a handful of other attempts as well), however no final decisions of confiscation as per this law have been handed down thus far.

303. It should be noted, that until 2016 included EULEX prosecutors contributed a proportion of the seized assets (approx. EUR 25 million in 2016).

304. The statistical mechanisms available to Kosovo authorities unfortunately do not allow for the possibility to distinguish between seized/confiscated proceeds of crime vs. instrumentalities. It is clear, however from the cases completed thus far that instrumentalities are being regularly confiscated.

305. The figures from 2016 are generated from a few large cases, the largest of which is the NATA case (see case description in IO 7), which came to a close in the last quarter of 2016 with an overall confiscation of approximately EUR 600,000, including two apartments, one Hotel, two land properties, 11 vehicles and EUR 44,000 in cash.

306. One of the major confiscations in 2016 resulting in EUR 400,000 confiscated was obtained as a result of plea bargaining and a return of funding to the budget of the Ministry of Health. This case involved abuse of office by an official from the Ministry of Health and fraud, however there was no charge for money laundering.

307. Another case, which took place in 2016 labelled as PAKR. No. 216/15 is worth noting, as it resulted in the confiscation of two apartments worth EUR 122,000, which involved an injured party. The party was instructed to file a civil suit to obtain compensation.

308. Furthermore, a separate figure of 330 000 involved a return of taxes to the state budget by a group of singers (so-called "Estrada" case), which could not be considered by the assessment team as confiscation, even though undoubtedly it has contributed to the reduction of the grey economy, and is only partially relevant in the confiscation context.

309. The "Paradiso" case (see also description under IO 7), is a notable example, where hotels were sequestrated in 2016 and valued by the AMSCA at EUR 2.5 million, however the judge subsequently released the assets failing to see the direct link between the criminal offence and property acquisition. This

case potentially demonstrates the lack of consistent ability of Kosovo authorities to confiscate indirect proceeds of crime, although in the NATA case indirect proceeds were clearly confiscated.

310. The following statistics from the AMSCA were available:

Table 21: Integrated statistics for 2016

Status	No. of Rulings	Value (EUR
Sequestration	73	3,052,712.55
Confiscation	26	749,449.60
Auctions	13	104,981.58
Use	5	56,020.00
Returning	19	762,013.00

Table 22: Integrated statistics for 2017

Status	No. of decisions	Value (EUR
Sequestration	78	868,848.80
Confiscation	39	387,231.51
Auction	9	106,454.69
Use	3	48,500.00
Return	18	57,864.40
Sequestration - Cash		186,835.23
Confiscation – Cash		47,470.98

311. The statistics of the AMSCA are more moderate that those of the NCCEC (e.g. for 2016). It was not entirely clear to the assessment team what constitutes the grounds for the disparities. The AMSCA additionally provided the following data to the assessment team as regards 2017 in terms of the breakdown of seized and confiscated property split by type of asset:

Table 23:

Asset Category	Value of assets in Sequestration (EUR	Value of assets in confiscation (EUR
Means of transportation	267,065.10	22,901.80
Real estate assets	-	363,000.00
Jewellery (gold and silver)	594,906.70	-
Electronic equipment	3,791.00	1,240.25
Other	3,086.00	89.46
Total	**868,848.80**	**387,231.51**

312. It results from these statistics that the overall confiscation value for 2017 is approximately EUR 387,000, which is a mismatch with the information in the NCCEC report, especially if one does not consider the Klina Judge Case as a final confiscation.

313. Overall, all sets of statistics demonstrate the significant disparities between seizures and confiscations, which demonstrates once again the significant capacities invested by law enforcement authorities into asset tracing at the investigation stage, and the general inability of the criminal justice chain to carry forward these provisional measures to the final confiscation stage. Furthermore, the spikes in confiscations in 2014 and 2016 were followed by significant drops in 2015 and 2017 (taking into account the Klina Judge Case retrial decision). It can be seen, that the spikes were generally the result of three or four significant cases, which generated the overall volume of confiscations. This confirms indeed the conclusions reached by the NCCEC that the results achieved so far are somewhat unsystemic. This demonstrates that Kosovo does not yet have in place all the elements of an effective system of confiscation.

314. Property of corresponding value can be confiscated as per Kosovo legislation; however the assessment team was not made aware of any cases where this would have been done in practice. In addition, while in the previous PECK assessment report it was noted that instrumentalities intended to be

used in a criminal offence were not explicitly covered, the assessment team understood that in practice such items would and were seized. A non-ML related example was given to this effect (confiscation of a car with a hidden chamber for concealment of drugs, which was clearly intended to be used in drug trafficking, even if no drugs were found in it). It was however not made clear whether final confiscations for such items were carried out.

315. The AMSCA is a well-established asset management institution, which now has diverse experience in managing various types of assets, including such operations as the renting out of real-estate, if such is determined to produce significant profit. Even though it was mentioned to the assessment team that AMSCA has 7 professionals engaged in valuation, there have apparently been issues with the lack of certain specialised valuation expertise, for example, on precious metals and stones. The AMSCA opts often for the sale of seized property even before a final judgement is obtained, if it is deemed that the assets will devalue quickly. Apparently there have been issues with this practice raised by members of the Kosovo Prosecutorial Council, leading to some setbacks in the efforts to enhance the effectiveness of the provisional measures by the NCCEC. It should be noted, that while the international standards do not prescribe for a specific mandate to sell assets before a final judgement, this practice is not contrary to the international standards and should be pursued if authorities deem it to be the more effective solution to the quick depreciation of certain asset types.

316. Funds, which are processed by AMSCA as a result of confiscations, are subsequently transferred to the state budget. There is no specialised fund envisaged for confiscated property. In certain cases items may be maintained for the use by authorities themselves (e.g. automobiles).

317. The only case so far involving the repatriation of assets from abroad, which the authorities have faced where the AMSCA has been involved, is the Klina Judge Case. It seems that in this case there have been attempts to share and repatriate the assets held in a neighbouring country; however the arrangement could not be concluded due to legal and technical difficulties to find agreement with foreign counterparts.

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

318. Due to its geographic position and a large diaspora abroad, Kosovo faces a particularly broad set of risks in relation to the physical cross-border movement of cash and valuables. It is clear that regional and transnational organised crime groups which are involved in managing the narcotics trafficking along the Balkan route are well represented in Kosovo; organised groups are also involved in cross-border smuggling of goods and migrants, as well as human trafficking and arms trafficking. Members of the large diaspora of Kosovars abroad participate and act as organisers of transnational OCGs with ties back to Kosovo. The money laundering which occurs as a result has a significant cross-border element. Cash serves as one of the tools for the movement of funds in and out of Kosovo, which has been demonstrated in several of the abovementioned cases (e.g. see description of "Regional money laundering case" under IO 6 and 7). The common typology seems to be the transportation of cash into Kosovo by natural persons and its subsequent deposit into bank accounts, either for purposes of further investment into various commodities in Kosovo (e.g. real estate) or subsequent transfer abroad. The assessment team was informed by authorities that criminal groups and individuals seem to consider such movement of funds into Kosovo worthwhile due to their belief in the lax AML/CFT controls of banks in Kosovo. One such case, which started with a cash declaration by a foreigner at the border, is currently being investigated by the Kosovo customs (see description in IO 7).

319. Moreover, the assessment team was informed that Kosovo citizens have been using mechanisms of cash transportation through tourism operators and entertainment stars touring abroad in order to ensure the collection and movement of cash in and out of Kosovo from/to members of the diaspora. The border management authorities (Integrated Border Management Centre) are well aware of the typology, consider it high risk and have developed specific red flags, which have been disseminated to border crossing points. Other authorities consider that this practice exited in the end of the 1990s and are not particularly aware of the fact that it continues to this day. A number of instances of such cash transportation have been identified by the IBM Centre recently, however it was not clear how exactly they were dealt with, and whether any sanctions were applied.

320. Furthermore, the smuggling of precious metals and stones into Kosovo seems to be a major issue which has also been identified by the IBM Centre, and has been targeted in several large-scale law enforcement operations, with seizures both at the border, as well as searches and seizures conducted in the businesses of dealers in precious metals and stones in Kosovo. In this context, a comprehensive risk

assessment of the DPMS sector should be carried out by Kosovo authorities, including reviewing any potential indicators of related TF risks.

321. Kosovo has implemented a declaration system pursuant to Article 33 of the AML/CFT Law. The definition of Article 2, Para. 1.17 for monetary instruments to be declared is wide enough to include all required instruments under the definition of the glossary to the FATF recommendations. The declaration regime applies to every person entering or leaving Kosovo as well as to every person sending or receiving monetary instruments via post, cargo shipments or commercial courier. The threshold is set at EUR 10,000 or more.

322. Under paragraph 7 of Article 33 of the AML/CFT Law, KC has the power to seize monetary instruments across the borders suspected to be the proceeds of crime. This must be immediately notified to the Prosecutor for investigation. KC must also inform the FIU.

323. The following statistics were provided with regard to the physical cross-border declarations, however no breakdown by geographical location (border-crossing point) was provided. It would have also been helpful to understand the proportion of the volume of currency that was transported by natural and legal persons, respectively, as it seems the main volumes represented in this table are likely generated by the physical transportation of currency by banks.

Table 24: Number and volume of declarations[14]

Years	Legal Persons	Natural Persons	Incoming volume	Outgoing volume
2017	664	444	CHF 3,651,877.30 EUR 258,196,446.98 GBP 14,240.00 NOK 606,000.00 RSD 9,573,812,200.00 USD 1,937,300.00	AUD 77,070.00 BAM 680.00 CAD 277,450.00 CHF 28,312,550.00 DKK 2,889,300.00 EUR 3,121,095,205.00 GBP 6,337,530.00 HRK 405,260.00 NOK 24,865,350.00 RUB 5,000.00 SEK 9,616,150.00 USD 10,632,010.00
2016	732	424	CAD 19,750.00 CHF 5,314,900.00 DIN 73,232,680.00 EUR 94,512,311.56 GBP 50,000.00 NOK 6,000.00 USD 3,184,900.00	AUD 658,590.00 CAD 1,976,225.00 CHF 441,794,253.50 DKK 4,437,150.00 EUR 681,658,166.75 GBP 17,704,000.00 HKD 38,000.00 HRK 752,705.00 NOK 151,948,100.00 SEK 14,055,140.00 USD 36,186,200.00 MKD 25,000,000.00
2015	606	658	CHF 9,651,595.52 DIN 6,502,110,000.00 EUR 78,964,390.01 HRK 12,880.00 SEK 200,000.00 USD 5,378,71045.00	ALL (Lek) 4,781,000.00 AUD 2,002,665.00 CAD 1,120,820.00 CHF 394,626,580.00 DKK 3,100,750.00 EUR 620,629,669.87 GBP 13,433,500.00 HKD 895,000.00

[14] These figures include bulk cash transportation in and out of Kosovo by banks.

Years	Legal Persons	Natural Persons	Incoming volume	Outgoing volume
				HRK 821,745.00 NOK 98,975,110.00 SEK 28,734,950.00 USD 43,689,340.00

324. It seems that given the passenger flows in and out of Kosovo and potentially the volume of cash being transported by and for the diaspora community, these numbers of instances of declarations by natural persons are very low. Kosovo authorities have undertaken a campaign in 2017 informing travellers of their obligation to declare, however it is not clear if this has resulted in any change.

325. The following statistics were provided with regard to false declarations:

Table 25:

Years	False declarations	Restrained assets
2017	4	EUR 67,430 ALL 497,500
2016	2	EUR 6,802
2015	6	EUR 32,665.50 USD 5,000

326. Authorities have also informed that there have been 3 cases in 2018 of attempted transportation of false monetary instruments over EUR 10,000. Furthermore in one case over EUR 2.1 million of false currency were identified and confiscated at the border based on risk profiles developed by the NCBM.

327. There was also one suspicion of money laundering in 2015 (the case is not yet concluded). These statistics however generally do not coincide with the high level of awareness of Kosovo authorities as regards the risks linked to cross-border transportation of currency. It also results from the statistics provided that despite this awareness, the ultimate effectiveness of the efforts is still low at this stage. It seems that for the most part the IBM, while being an effective and well integrated structure involving both the MoI and KC, still focuses mainly on traditional law enforcement priorities to combat smuggling and other forms of cross-border crime, while not yet extensively targeting potential ML/TF, arising from physical cross border transportation of cash, even though measures to expand these efforts are being undertaken.

328. Furthermore, it is not clear how the above statistics at all correlate with the numbers of CTRs reported by the Kosovo Customs to the FIU, as clearly the number of declarations does not coincide neither with the number of CTRs nor the number of transactions that are apparently contained therein:

Table 26:

	2014		2015		2016	
	CTRs	Transactions	CTRs	Transactions	CTRs	Transactions
Kosovo Customs	12	2,005	12	1,264	12	2,087

329. As regards final confiscations, the statistics of restrained assets provided above seemed to represent the 25% fine for false declaration of cash. No statistics have been provided with regard to any instances of confiscation of cash or BNI based on a suspicion of ML or TF.

Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities.

330. AMSCA provided statistics with an approximate breakdown by predicate offence, however in these statistics seizures and confiscations are bundled together, making it difficult to draw precise conclusions.

Table 27: Criminal offences for which the assets have been sequestrated and confiscated

No. of cases	Type of criminal offences	Value of assets (EUR
	2016	
6	Pyramid scheme	296.22
1	Usury	17,700.00
15	Forgery	9,359.35
4	Robbery	2,192.00
1	Terrorist group	142.00
1	Abuse of office	204.00
9	Smuggling	15,696.00
3	Organised crime	34,078.50
4	Money Laundering	2,699,556.00
35	Narcotics	129,071.72
7	Theft	15,326.00
6	Miscellaneous	181,869.04
	2017	
11	Pyramid scheme	80,051.37
8	Smuggling	25,200.09
16	Forgery	18,155.95
1	Money Laundering	45,000.00
4	Terrorism	11,236.10
4	Prostitution - trafficking	399,278.37
1	Criminal group	655,440.70
8	Fraud, evasion, false declaration	14,465.45
6	Theft	51,368.35
3	Robbery	9,300.00
1	Endangering protected persons	1,000.00
13	Miscellaneous	30,955.98
	2018	
6	Pyramid scheme	205,203.66
1	Usury	29,000.00
5	Forgery	140,300.00
12	Narcotics	48,477.13
1	Terrorism	5.00
7	Miscellaneous	97,610.00

331. It should be noted that these stats are approximate, taking into account the explanation given by AMSCA that the confiscation orders it receives often contain more than one type of offence, making it difficult to make the split.

332. What is worth highlighting is the significant proportion of ML-related figures to the overall statistics. At the same time, the virtual absence of significant figures related to corruption, as well as narcotics trafficking and smuggling clearly does not correspond to the risk profile of Kosovo. It is also not clear why the figures provided do not seem to reflect the confiscations related to the recent terrorism cases, which were adjudicated in Kosovo.

333. In terms of the types of assets subject to seizure and confiscation, from the AMSCA statistics shown above, as well as from the cases described above, it is clear that the dominant types of property are real estate, precious metals and stones, as well as cash. This generally corresponds to the risk profile of Kosovo.

Conclusion

334. Overall it can be stated that despite the priority placed by Kosovo authorities on the issue of confiscation, and the significant efforts of the NCCEC, the framework and results of the confiscation system in Kosovo faces significant challenges. There is still a lack of systemic efforts in the prosecutorial and judicial system overall including all prosecutors and judges dealing with acquisitive crime cases to identify and properly tackle confiscation. The factors contributing to this include lack of knowledge and capacities as well as narrow judicial interpretation. Furthermore, seizures and confiscations do not fully reflect the risk profile of Kosovo, in terms of the dominant predicate offences, and taking into account the level and scope of cross-border risks.

335. **Kosovo has achieved a low level of effectiveness with Immediate Outcome 8**.

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key findings

IO 9

- The authorities demonstrated proper understanding of the terrorism risks affecting Kosovo and the region, however their awareness and focus on terrorist financing is uneven and has not as yet resulted in the development and implementation of a fully-fledged strategic risk mitigation mechanism for TF.
- Despite many terrorism-related convictions and the general capacity of the Kosovo investigating authorities to undertake financial investigations specifically in terrorism-related cases, no prosecutions were carried out in relation to TF offences in a number of cases where the funding aspects seemed to be clearly identified. Further focus should be made on stand-alone TF prosecution. There was only one final TF conviction.
- The alternative measures applied when it is not possible to secure a conviction do not seem to ensure a sustainable result, in particular in the NGO sector.
- The legislative framework for prosecuting various aspects of the TF offence has deficiencies and needs to be clarified and strengthened.

IO 10

- Despite some understanding of the terrorist financing risks in Kosovo and the region and some mitigating measures, authorities have not implemented a comprehensive system of targeted financial sanctions. The legal framework for targeted sanctions is lacking.
- Kosovo authorities attempted to assess the risks related to the NPOs although these attempts were neither timely nor resulted in adequate identification of the specific sector of NPOs carrying the most significant risk or in mitigating measures thereof. The lack of a targeted approach to NPOs was determined, on the one hand, by the deficiencies in assessing the TF risks in the sector but also stems from the involvement of certain NPOs in the informal economy and tax evasion.
- Oversight and awareness-raising in the sector of NPOs is compromised by the lack of sufficient cooperation, commitment of some authorities, lack of sufficient resources or a combination of these factors.
- With the exception of the deprivation of assets in the framework of terrorism-related investigations and prosecutions, the system in Kosovo has not generated tangible results in terms of deprivation of assets.

IO 11

- The mechanism implementing PF sanctions is similar to that for FT sanctions. However, the TFS framework pursuant to UNSCRs 1718, 1737 and their successor resolutions has not been implemented and is not part of Kosovar law. No PF-related assets or funds have been frozen so far.
- Kosovo has a legal system in place to apply targeted financial sanctions regarding terrorist financing; however serious technical shortcomings question the effectiveness of the system.

The designation and freezing mechanisms fall short of ensuring that the freezing measures can be carried out without delay, particularly in cases of urgency.

- Unlike most of the banks, other reporting entities are not aware of the UN sanctions regime related to the financing of proliferation. In the banking sector there is a general awareness of the existence of "lists" that need to be screened against but very little awareness as to the differences between FT and PF.
- A positive aspect of the system is the widespread use of automated or manual screening systems relying on commercial databases implemented by a number of private sector participants, mainly banks. While the use of commercial databases is positive, there appears to be over-reliance on them with no appreciation whatsoever of the difference between TFSs relating to FT, those that are in place to freeze assets connected to WMD and other types of sanctions that are unrelated. FIs and DNFBPs met on-site were not able to explain what additional measures would be taken to detect funds or other assets owned or controlled, directly or indirectly, by designated persons or entities.
- Even where reporting entities are aware, due to the absence of a regulatory framework on TFSs related to proliferation of WMD, no authority would have the power to implement these UN sanctions and freeze the related assets. There is an indirect mechanism for asset freezing that applies for FT, through an Administrative Instruction issued by the FIU following the receipt of a report suggesting that funds are held in relation to an individual or entity mentioned in the sanctions, however this cannot be applied to sanctions related to PF. Financial Institutions and DNFBPs that might be in possession of funds or other assets covered by the PF sanctions regime therefore have no obligation to freeze the assets and are in receipt of no direction as to what they would have to do in such circumstances.
- Moreover, insufficient evidence has been provided by the authorities to demonstrate the satisfactory level of co-ordination and cooperation (including on information/intelligence sharing) across all relevant authorities in relation to PF matters. The lack of supervision of some service providers (other than banks) concerning the implementation of TFS obligations also raises concerns.
- The fact that there is very little guidance on how to apply PF sanctions is an added difficulty. The only guidance actually in place relates to reporting of suspicious transactions for FT to the FIU, where a connection with the U.N., E.U. and OFAC sanctions is made, but this is not considered sufficient to ensure adequate and timely freezing of assets. Furthermore, the authorities themselves did not demonstrate adequate awareness and propensity to supervise the implementation of UNSCRs relating to the combating of PF.

Recommended Actions

IO 9

- Authorities should enhance their strategic focus on TF and consider integrating specific risks thereof in the other relevant strategies or through adopting specific instruments to ensure adequate action against TF. As part of this effort authorities should undertake additional measures to fully assess and address the impact of the use of cash and cross-border movements of cash with regard to the terrorism-financing risks.
- Kosovo authorities should undertake an assessment of the sufficiency of the legal basis for the prosecution of TF, especially in the case of the Law on prohibition of joining armed conflicts but also with regard to the remaining elements of TF required by the international standards.
- Authorities should build on the numerous prosecutions related to terrorism and make a concerted effort to assess the terrorism-related convictions in order to decide on further practical action and ensure proper guidance needed to encourage the investigation and prosecution of the TF elements in all cases.

- Additional trainings, particularly in the judicial system, should focus specifically on the financial investigations and prosecution of the TF elements for all suspected terrorist activities including the funding of FTFs and local persons joining paramilitary or terrorist groups in the conflict zones.
- Competent investigative authorities should increase their focus on the TF aspects outside the framework of the specific terrorism-related cases of recruitment and movement of terrorist fighters and beyond the considerations of expediency to prevent terrorist activity, without compromising efforts on the latter.
- Authorities should address the issues of effectiveness of the use of alternative measures. As the suspension of NPOs could potentially be a useful preventive tool authorities should consider regulating this instrument in a way to allow effective use while ensuring proper remedial measures are in place to prevent abuse of these powers.

IO 10

- A system of targeted financial sanctions should be implemented as a matter of urgency and measures to ensure full deprivation of assets should be implemented.
- Authorities should assess the sub-sectors of NPOs at risk, including any unregulated and unmonitored activities, in order to implement a targeted approach, and further institutional measures for registration, monitoring or control. Further to this, authorities should adopt and implement as a matter of urgency the actions envisaged in the plan to the NPO sectoral analysis specifically in relation to targeted sanctions, religious organisations, powers to suspend NPO activities. Further to supervision for AML/CFT purposes, Kosovo authorities should consider additional measures and authority to ensure comprehensive and coordinated NPOs supervision of registration and on-going activities.
- All authorities competent for registration and oversight should ensure outreach to the NPO sector is performed on a regular basis and covers the relevant NPO sub-sectors.
- Kosovo authorities should consider further measures in cooperation with the NPOs to ensure self-regulatory mechanisms are in place to assess and manage TF risks.

IO 11

- Kosovo should take measures to strengthen its ability to prevent the financing of the proliferation of weapons of mass destruction by introducing legislation to provide for measures for implementing targeted financial sanctions concerning the respective UNSCRs. The Kosovar authorities should adopt new legislation within the shortest time possible to regulate TFSs related to PF and carry out an adequate outreach programme for its fast and effective implementation, providing detailed guidance to reporting entities.

336. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Immediate Outcome 9 (TF investigation and prosecution)

Prosecution/conviction of types of TF activity consistent with the risk-profile of Kosovo

337. The TF offence was found to be partially compliant with the standard during the previous assessment of Kosovo for the application of the FATF standards due to a number of deficiencies which are largely related to the terrorism offence itself and the purposive element retained in the criminalisation of the various terrorist offences prescribed in the nine treaties annexed to the TF convention. The changes that were introduced in the period following the previous assessment were related to the introduction of TF offence in the AML/CFT Law and a related offence of funding the activities of organising, recruiting, leading or training persons or groups of persons for joining the armed conflicts outside state territory in

the Law on prohibition of joining the armed conflicts outside state territory. As noted under the relevant recommendation in the TC annex this method of criminalisation adds an additional layer of complexity in the interpretation of the TF provisions and creates discrepancies between the definitions. Furthermore, and of even greater significance, the financing offence in the Law on prohibition of joining armed conflicts actually would limit significantly the ability of Kosovo authorities to prosecute a number of activities, especially related to individuals travelling to conflict zones for the purpose of joining the armed conflict and logistical support of FTFs passing through Kosovo territory or supported without any element of organisation or leadership. This would explain to an extent, as noted below, the severely limited number of TF convictions despite the number of convictions associated with terrorism and with persons travelling to join terrorist organisations or conflict zones.

338. With regard to the identification and targeting of the major risks related to TF, the NRA conducted by Kosovo authorities is of limited relevance and moreover seems to contradict some of the findings related to terrorism threats and risks identified by the authorities. For example the identified illegal source of funds used predominantly for TF does not seem to be supported by the understanding of the authorities of the current TF situation and the development of the threats. The understanding of the use of non-profit organisations (NPOs) for the purpose of moving or diverting legal funds for the purposes of financing travel of the persons to conflict zones, radicalisation, or promoting political Islam is too general and does not provide adequate basis for further targeting the efforts of authorities.

339. Kosovo authorities rely on several relevant national strategies adopted following the NRA which show much more detail in the targeting of major risks associated with terrorism. These include the National Strategy Against Terrorism and Action Plan 2018–2022, the National Strategy for prevention of informal economy and money laundering, terrorism financing and financial crimes 2014-2018 and the Strategy for the Prevention of Violent Extremism and Radicalisation leading to Terrorism 2015–2020. Authorities also demonstrated significant understanding of the major risks and threats associated with terrorism.

340. The main challenges Kosovo faces in regard to terrorism are related to religious-based as well as, to a lesser degree, nationalist- and politically motivated extremism judging from the cases presented by the authorities where convictions were achieved. The major threats are identified as related to terrorist attacks by members of terrorist organisations, including with the involvement of foreign terrorist fighters, dormant cells or by radicalising sympathisers and supporters; indoctrination with extremist ideology; illegal migration, taking into account the geographic position of Kosovo and the foreign fighters phenomenon.

341. These threats are to a great extent related to the cross-border dimension and thus require significant effort and relevant countermeasures. Among these regional and international vectors of the threat the major elements noted are the indoctrination of extremist Islamic ideologies imported to Kosovo from the Middle East, together with the motivation provided by the conflict in Syria and Iraq, resulting for example in the significant number of persons from Kosovo travelling to the conflict zones for the purpose of participating in the conflict. A significant problem related to the latter and the evolution of the threat are related to the integration of the returnees and the potential risks thereof. The contribution of the propaganda, including internet-based[15], combined with economic and social grievances is also noted as a major factor for the threat. The aforementioned developments were also a factor in the relatively significant number of preparations for terrorist attacks in Kosovo and the region, as well as attempts to commit terrorist acts, which were prevented by security institutions in Kosovo.

342. In regard specifically to TF Kosovo authorities seem to be focusing mainly on the threat related to NPOs being financed with funds of unclear origin and for purposes of radicalisation and promoting what is termed in the adopted strategies as "political Islam", funds of specific geographic origin which might be used for the purposes of TF, the significant role of self-financing of essentially poor and deprived members of Kosovo society relying on the inadvertent assistance of family or relatives, the significant use of cash for the terrorist activities. The movement of funds through the formal financial system seems to be limited in the views of the Kosovo authorities and mainly related to the NPOs and usually going through umbrella organisations or sponsors in countries other than specific geographic areas which might be linked to conflict zones. Contribution to radicalisation is the main risk identified thereof without any proof of link to terrorist activities. In addition the authorities could not observe any link of this type of financing to major (designated) terrorist organisations both in terms of incoming or outgoing funds. At the same time

[15] UNODC (2017), Foreign Terrorist Fighters, Manual for Judicial Training Institutes South-Eastern Europe, Considering also the extremely high penetration of internet in Kosovo compared to the countries of the region, available at https://www.unodc.org

interlocutors met on-site would largely deny any indications of significant direct external financing and support of persons travelling to join the armed conflicts, including the financing of their families. It is also noted that in a large number of those cases families travelled together due to most probably the lack of adequate means to stay in Kosovo when member of the family left for the conflict zones. At the same time it is not clear to what extent Kosovo authorities explored the issue of some funds used by the returnees were proceeds from their participation in the conflict zones, thus increasing the risk of potential ML related to TF.

343. No confirmation of any involvement of persons residing in Kosovo with regard to TF activities for the purposes of propaganda, including internet-based, was provided by Kosovo authorities based on the thorough analysis of the competent authorities.

344. Authorities did not find the hawala phenomenon to be of major importance for the TF risks in Kosovo. There were no further findings of the assessors to confirm in practice the actual presence of this phenomenon.

345. Based on the above-mentioned conclusions, the use of cash seems to present greater risk than any funding that could go through the formal financial system. Despite the identification of cash as a major source of funding, the authorities did identify the risk stemming from the widespread traditional use of cash couriers in various forms, including cash carried in bulk by certain persons entering and leaving Kosovo territory (e.g. bus drivers), travel agencies potentially continuing to organise the transmittance of funds, certain cases of illegal transportation of precious metals. Nevertheless, these forms of cash movement did not appear as a specific focus in regard to TF, as mainly self-financing and financing in the limited scope of the local community seemed to be more pertinent. No major cases of terrorism-related crimes linked to this kind of cash movement seemed to have been identified. These cash movements still are assessed by the team to represent a significant risk, due to the links of the terrorist activities in the region and in Europe and the widespread use of cash for funding terrorist activity, as proved by a number of cases of terrorism investigations and convictions.

346. No link could be established by the authorities with regard to potential organised crime - TF nexus, although certain (potential) links with the relatively wide-spread arms trafficking phenomenon in the region were noted by some of the interviewees as a potential danger. Kosovo has a significant number of convictions for terrorism. A number of cases were discussed with the authorities and seem to correspond with the terrorism risk profile as discussed above. At the same time the number of convictions for illicit arms trafficking seems to be extremely high. The evaluators consider, also indicated by some of the interlocutors met on-site, that there might also be a link of the widespread crime of illicit arms trafficking to the phenomenon of terrorism and TF and a significant risk is posed by this phenomenon in terms of ensuring material support for terrorism. One such case including the element of illicit arms trafficking was related to potential attempted politically motivated terrorism.

Table 28: Convictions for terrorism and illicit arms trafficking

	2013	2014	2015	2016	2017
	Persons				
Terrorism and terrorism-related convictions (recruiting, organisation, travel, etc.)	22	15	16	17	7
Illicit arms trafficking	89	177	145	192	219

347. With regard to the convictions in Kosovo most of the cases are related to persons travelling from Kosovo to the conflict zones or foreign terrorist fighters, including recruitment and support. This is valid for several major cases discussed with the authorities, including the Imam case and Syria support case as described below, cases of FTFs stopped at Pristina and Skopje airport. A number of other cases of terrorist-related activities were also discussed, to include also terrorist attempts in the region and of possible ethno-nationalist motivation. Considering the number of cases and their nature it is a concern that in only one case the TF aspects of the activities were prosecuted and a conviction was achieved.

348. The case was presented to the assessors after the on-site visit even though the assessors conducted a significant number of meetings to address TF issues when on-site with a number of different authorities. This raises concerns as to the coherent and comprehensive attention of the authorities with regard to TF aspects of the terrorism-related cases. It is noted in this case that although the activities were related mainly to travel to conflict areas to join terrorist organisations the main indictment was for recruitment and this allowed the TF to be also pursued. It is noted that the amounts involved were very small, thus representing the attention of the authorities to the TF aspect even for smaller amounts (unlike the discussed cases below).

349. At the same time, it is noted that in a number of terrorism-related cases TF was not pursued. The *Imam case* involved indictments of 7 persons for: recruitment for Terrorism pursuant to Article 139 in conjunction with Article 31 of the CC, inciting national, racial, religious or ethnic hatred, discord or intolerance pursuant to Article 147, paragraph 2 in conjunction with paragraph 1 of the CC, organisation and participation in a terrorist group pursuant to Article 143, paragraph 2 of the CC, unauthorised ownership, control or possession of weapons pursuant to Article 374, paragraph 2 of the CC. Considering the highly organised character of the activities of the persons and the extent of the activities including lectures and providing funds to persons to travel to the conflict zones, as well as the indications of some of the witnesses with regard to the financing, the lack of indictment for TF seems an important omission. Furthermore, the financing is explicitly mentioned in the discussion of the activities of the defendants in the court decision. Taking into account this omission it is not clear also whether the investigation focused on what the source of the funds used in the Imam case was.

350. The *Syria support case* included a conviction of one person for organisation, support and participation in a terrorist group pursuant to Articles 137 and 139 of the CC of Kosovo. According to the indictment it has been proven that the accused has cooperated with other persons who were members of terrorist organisations, or persons convicted of terrorist offences, contributing to the recruitment of persons to be part of these terrorist organisations by making available to those persons his or her possessions to assist and support terrorist activities. With concrete actions, he has encouraged and supported the convicts for terrorist offences, to be part of terrorist groups. This was done through provision of funds and material resources and allowing his vehicles to be used by these people for going to the war zones in Syria. Plane tickets were paid by the defendant for other persons to travel to the war zones in Syria and to join terrorist organisations. According to the indictment the acquisition of the plane tickets was carried out through the account of a related person and the funds were initially deposited and taken for the sale of cars. Funds from this account were used to pay several airplane tickets for suspected persons travelling to conflict zones but it was not proven beyond any reasonable doubt that R. was the person funding the plane tickets due to the use of this separate account. Furthermore, rent for an improvised mosque was paid, which sheltered people who have supported and participated in terrorist organisations although there were additional circumstances found in the end related to the financing part being indirect and not linked to the defendant. The last count was also dismissed by the court.

351. The Syria support case could be considered a typical situation of TF even when taking into account the dismissal of some of the counts for the lack of sufficient evidence. It is clear that, in the first place, indictment for TF has not been included by the prosecution despite the obvious elements supporting this conclusion in the indictment. Furthermore, the case seems to be related to the Imam case where organisation and participation in terrorist organisation was clearly present. This case is understood by the evaluators as having a clear and significant TF aspect, i.e. the legally acquired funds used for facilitating terrorism and recruitment. It is not clear why TF was not pursued in this case (not included in the indictment and the final conviction). The view of the prosecution was that the indictment focused on the recruitment element due to mainly the advanced stage of investigation of this offence in the case while at the same time the sanction provided for in the CC would be equivalent. This is noted as being counterproductive in terms of pursuing TF cases. At the same time it seems to be in line with the principle of "absorption" in the criminal policy which was observed and endorsed by some interlocutors during the previous assessment round specifically in regard to ML cases, despite the conclusions of the report in regard to the lack of "adequate statutory basis" for such legal interpretation. Based on the interviews difficulties for prosecution of TF in this case were also related to the provision of material support where no actual movement of funds occurred (or very small amounts were used), thus discouraging the prosecution to further pursue TF. The case of Syria support provides a good point in this regard insofar as the direct funding of the mosque was found to be of very small amounts (below EUR 100). Another explanation of the authorities following the onsite is that, as the case was related to recruitment, which in itself includes the funding aspect, no

prosecution for TF was possible. This is not considered to contribute to a coherent policy with regard to dealing with the TF aspects.

352. A case of attempted terrorism in Albania in 2016 during an Albania-Israel football match was also related to significant cooperation with Albania and a number of arrests made in Kosovo (19) where the activities were mainly investigated and indictments were submitted. Discussing the funding element it was clear that cash was mainly used by the defendants and also some link to potential financing from a person in the conflict areas was detected, which was not possible to further pursue due to objective reasons (persons killed). Moreover, the extreme material hardships of the persons involved was discussed. This however is considered as an indication in the view of the assessors that the movement of funds from the conflict zones to Kosovo or other countries to be used for TF purposes is a real risk that needs further exploring, possibly also in this case.

353. The Special Prosecution Office of Kosovo would be responsible for the prosecution of cases involving terrorist financing based on the interpretation of the authorities of the Law on Special Prosecution of Kosovo, the Criminal Code of Kosovo and the Criminal Procedure Code of Kosovo. At the same time it is noted that there is no clear mandate stipulated in Article 5 of the Law on Special Prosecution of Kosovo. The lack of appropriate mandate would seem to have an impact on the TF prosecutions and decisions to pursue TF cases considering the total number of terrorism-related prosecutions and convictions. The TF offence would fall under the jurisdiction of the Serious Crimes Department of the respective courts pursuant to Article 21, paragraph 4 of the Criminal Procedure Code.

354. The investigations of cases of TF would be conducted in the Counterterrorism Directorate of the KP and only in some limited circumstances the Directorate sought technical assistance from the Directorate for Economic Crimes and Corruption Investigation within KP and the results were used by the Counterterrorism Directorate and attached to the case investigated. Only in June 2018, a team of financial investigations composed of two police officers was established within the Counterterrorism Directorate to enable financial investigations and dealing with all terrorism-related aspects by the staff of this directorate. The understanding of the evaluators assessors, corroborated by the structural change discussed above, is that authorities are taking care to ensure proper resource allocation also for the purposes of fully investigating the TF aspects and understanding the TF phenomena.

355. The assessors were presented with only one case of TF indictment and conviction of one subject as discussed above. Considering the terrorism risks identified, the gravity of the problem of persons from Kosovo having joined the activities in the conflict zones, the number of suspended NPOs, additional deficiencies and indicators related to certain NPOs and the potential for their external financing, as well as the regional and wider impact of terrorist activities with a link to Kosovo, the lack of indictments and convictions cannot be explained entirely by objective factors of self-financing or inadvertent financing by family members. A number of structural factors, as noted above, are hindering the successful prosecution of TF but they are aggravated by the lack of appropriate focus and targeting the TF offence.

TF identification and investigation

356. As mentioned above the KP CT Directorate in cooperation with the respective unit within the Directorate for Economic Crimes and Corruption Investigation of the KP, as well as the KIA and the FIU are the competent institutions responsible for monitoring the TF phenomena and conducting the relevant analysis, enquiries and investigations to detect and investigate TF cases.

357. Based on the information provided during the on-site visit the three institutions strongly focus on the pre-emptive action with regard to terrorism and potentially, in most cases, TF. This is implemented based on intelligence-led policing and the monitoring and development of financial intelligence by the FIU based on information received pursuant to the AML/CFT legislation, mainly STRs.

358. Several investigations were mentioned by the KP with regard to potential TF. There were 3 formal investigations in 2014 against 3 natural persons and 4 investigations in 2015 against 4 persons. The number of persons investigated are taken by the assessors as an indication for the lack of any investigations related to more sophisticated, complex and organised schemes of TF (thus mostly investigations related to self-financing cases). No tangible results of these cases were provided. Comparing the number of TF investigations with the terrorism investigations and convictions for the period 2012-2017, the formal investigations on TF carried out by Kosovo authorities seem disproportionate and unlikely to be effective which partially explains the lack of any TF convictions as discussed above. Reasons of expediency and the decisions of the prosecution not to fully exploit the possibilities of TF indictments on the basis of the

evidence collected are also contributing factor to discourage to an extent any further strict focus on the TF aspects.

359. KP informed the assessors that in each and every case of terrorism investigation despite the reliance on the KP own intelligence sources there would be information gathered from the FIU in order to try to identify potential transactions and movements of related funds as well as additional persons involved in the terrorism or related activities. The number of requests is provided below.

Table 29: Requests from KP to the FIU, terrorism-related, including potential TF

	2014	2015	2016	2017
Requests	17	9	20	21
Persons (natural and legal) involved	125	16	35	29

Table 30: Requests from KIA to FIU, terrorism-related, including potential TF

	2014	2015	2016	2017
Requests	23	19	28	31

360. The KIA is also cooperating to a large extent with the FIU mainly in regard to identification of relevant financial intelligence by the FIU. The information is used mainly for the initial checks and decision on further measures to be applied.

Case example

In the NGO "K." case the indictment was for the criminal offence of organised crime under Article 33 paragraph 5, in conjunction with Article 24 paragraphs 1, 3 and 4 of the Law no. 03/L-196 On the Prevention of Money Laundering and Combating Financing of Terrorism; as amended by the Law No. 04/L-178. During the investigation it was found that defendant and NGO "K." financially supported several other NGOs without reporting in advance to the Financial Intelligence Unit and using cash in violation of their obligations under the AML/CFT Law. No specific link to terrorism was found in this case (judging from the indictment) but it clearly demonstrated the ability of both the FIU and investigators to focus on the funding and financial movements.

361. The FIU demonstrated significant involvement not only on account of the aforementioned exchange of information but also on the basis of monitoring and analysis of its own information which focused on two major areas - the NPO activities related to potential abuse for TF purposes and the cases of FTFs or persons from Kosovo travelling to/returning from the conflict zones. The number of STRs that were received in relation to potential TF are listed below.

Table 31: STRs received by the FIU in regard to TF

Reporting entity	2014	2015	2016	2017
Banks	15	23	19	10
Other, including: (Supervisor) (DNFBPs)	1	3	17 (1) (15)	8 (8)
Total	**16**	**26**	**36**	**18**

362. The STRs received by the FIU demonstrated a clear surge in 2015 and 2016 which would correspond to the major risk in Kosovo related to FTFs or persons from Kosovo travelling to conflict areas and migration issues that might also have a terrorism-related component. In the period 2014-2017, FIU opened for analysis 141 suspected cases of terrorist financing. Around 54 NPOs were allegedly involved in these cases.

363. The picture demonstrated by several cases presented by the FIU would reveal several transactions suspended by the FIU including a case of more than half a million EUR suspended on TF suspicion. The FIU demonstrated their ability to act in order to check the suspicion which was not actually maintained in the mentioned case of significant suspension of funds. The ability to follow up on potential designated persons including on domestic lists of various countries based on reporting from the banking sector was demonstrated. The FIU disseminations represent a major trigger for further TF checks and investigations by the relevant authorities.

364. Additional factors that would hinder identification and investigation were discussed with the authorities met on-site and are stated as mainly related to the self-financing using extremely low amounts, the financing through family or relatives and the lack of significant financing going through the formal financial system. Some funding was also identified going from family for the return of fighters having joined the conflict zones, but no TF cases were identified on that basis (e.g. in relation to potential ransom payments). Moreover, no cases of investigation or prosecution seemed viable to the authorities in relation to detected transfer of funds from the conflict areas or surrounding jurisdictions linked to persons participating in the conflicts (e.g. potential ML with TF predicate). In addition, assessors were informed that proving TF and participation of many of the returnees in the conflict zones in activities directly related to or in support of terrorism became increasingly difficult as the returnees are aware of the consequences of their activity. The ability of suspected NPOs to disguise the movements of funds and hiding behind humanitarian activities was noted by the authorities as a reason for not being able to identify cases of actual TF to be prosecuted despite the measures for suspension of NPOs undertaken (see below under other measures used and IO 10). It was also noted that some NPOs and persons controlling them left Kosovo, but at the same time some of the NPOs reportedly continued their activities under different guise or despite the formal suspension (see below).

365. Based on the information provided by the interlocutors and despite the effort of authorities to fully grasp all aspects of the terrorism cases, the assessors are concerned that in a number of cases additional focus on the TF component was necessary and was not fully pursued whenever the terrorist or terrorism-related activity was actually disrupted. This is also demonstrated by several concrete cases of investigation mentioned by Kosovo authorities.

366. As discussed on-site, a potential obstacle to the full investigation into TF is related to the identification and pursuing of cases where activities of terrorism-related propaganda are diffuse and happening outside the framework of specific religious institutions. The Imam case was discussed as a specific case where prosecution was possible due to the activities mainly taking place in one mosque which allowed identification and further action. At the same time the fact that no TF indictment was pursued in this case and the elements identified for the funding of specific activities were dismissed due to the lack of sufficient evidence, demands further evaluation and potential action by the authorities.

367. A case of the use of social networks for attempted collection of funds to be used for terrorism purposes was detected. An account used in the process was closed and conviction was pronounced. At the same time the assessment team cannot confirm that sufficient action was undertaken to pursue also a TF conviction considering the typology and the clear purpose of the activity and the identified financial instruments.

368. The assessment team was informed of at least two cases where the TF offence is currently in an advanced stage of investigation. One of the cases was related to a dissemination from the FIU in relation to transactions taking place from/to the areas close to the conflict zones, which resulted in investigation of several persons for TF. In another case the TF element was identified and thoroughly analysed including links to a number of foreign countries used to move the funds. The FIU was involved in the investigation effort. The case however is still not completed and thus the evaluators are not in a position to make a final conclusion on the effectiveness of the authorities in this case.

369. Further to the mentioned cases, Kosovo authorities demonstrated significant mutual legal assistance requested and provided in relation to terrorism that corresponds largely to the international and regional dimensions of the threat. It is not clear whether any of the requests involved TF. It is also interesting that a number of requests involved money laundering or other crime but without any specific information on the cases, no further conclusions can be drawn.

370. In 2014 there were 3 incoming requests related to terrorism, one of which is also registered for ML. There were 6 outgoing requests made by Kosovo authorities. It is interesting that three of the cases also involved potential ML and one of the cases also involved economic crime and human trafficking.

371. The analysis of requests for 2015 show two incoming requests related to terrorism and three outgoing requests for MLA. One of the outgoing requests seemingly was also related to organised crime.

372. In 2016 there were 4 incoming requests and 5 outgoing MLA requests on terrorism.

373. The statistics for 2017 show 4 incoming MLA requests for terrorism, one of which also involved unauthorised possession or use of weapons and money laundering. There were 4 outgoing requests by Kosovo authorities for terrorism.

374. Despite the high level of informal economy in Kosovo and the widespread use of cash couriers, including significant cases of smuggling of precious metals, and monitoring through the Integrated Border Management (IBM) system, the assessors were not informed of any significant cases generated by this system with regard to potential TF. There were indications that information would be provided to the competent authorities in case of suspicion related to funds carried across borders but no TF-related STRs were reported to FIU in the period 2014-2017. It is also noted that no cases of TF were opened on the basis of CTR information.

Integration with national strategies

375. The TF-related risks seem to be separated from the other terrorism-related crimes in the counterterrorism strategies and are also not covered in adequate actionable detail through the Strategy and Action plan targeting the informal economy and money laundering, terrorism financing and financial crimes. Despite the relevant treatment of TF in conjunction with the risks related to informal economy and money laundering, there are no specific risks elaborated in regard to the types of terrorist activity observed and no update in regard to the evolution of the terrorist threats in Kosovo, the region and globally. Most of the issues discussed as part of this strategy are strictly-speaking related to vulnerabilities of the system of investigation and prosecution of cases of TF. The action plan is focusing more on proper implementation of international standards in this regard which is important but not sufficient in view of the lack of further specificity with regard to the risks and appropriate measures to be undertaken.

376. The authorities involved in the investigation and prosecution of terrorism and TF seem to be largely aware of specific risks mainly related to the undertaken prosecutions and convictions for terrorism as well as to a certain extent local services provided in regard to for example cash movement and seem to have been monitoring such kind of risks. Certain interpretations of the terrorism cases and the possibility to pursue the TF elements seem to be detrimental to the devising of a comprehensive approach in this regard at the strategic level. The aforementioned separation of TF from terrorism at the strategic level (as discussed above in regard to investigations) seems to be counterproductive for the general understanding of the TF risks and integration of the TF investigations into national counterterrorism efforts and strategies.

377. Although not provided to the assessors the Strategy for the Prevention of Violent Extremism and Radicalisation leading to Terrorism 2015-2020 seem to be resulting in a significant effort by Kosovo authorities as described below (Other measures).

Employing other criminal justice, regulatory or other measures to disrupt TF activities

378. Kosovo authorities seem to undertake some additional measures where it is not possible to secure a conviction. These measures mainly include the denial of entry into Kosovo, the deportations by Kosovo authorities and suspensions of NPOs.

379. Foreign nationals suspected to have been involved in terrorism-related activities have been detained in Kosovo and deported. In 2016 there were three deportations related to terrorism carried out by Kosovo authorities. In the absence of further detailed statistics and specific information on the cases of deportation, the assessment team is not in a position to evaluate the effectiveness of use of these measures.

380. Action in regard to suspension of NPOs has been undertaken by Kosovo authorities pursuant to Article 16, paragraph 4 of Law No. 04/L-57 on Freedom of Association in Non-Governmental Organisations which provides for a prohibition to finance organisations whose activity is considered illegal in Kosovo and international law. The DRLNGO is empowered to carry out the suspension pursuant to Article 18, paragraph 1 of Administrative Instruction QRK-No. 02/2014 on the Registration and Functioning of Non-

Governmental Organisations upon written request and justification of authorised security agencies. The Department for Non-Governmental Organisations at the Ministry of Public Administration suspended the activities of the following non-governmental organisations listed in the table below. Of those 5 NGOs were suspected of promoting radical religious ideology, but were according to the authorities subsequently prosecuted and investigated for ML. It is not clear whether any further results were achieved. Two organisations were linked to (radical) nationalist motivation and the rest have been religious-oriented and suspected of spreading extremist religious ideology

381. Potentially these powers of the DRLNGO acting together with the relevant security institutions understood to include KIA, would be a useful tool for taking alternative action when it is not possible to secure a TF conviction and in case NGOs are potentially involved in actual TF. Nevertheless, this tools seems to be of limited effectiveness considering the fact that in many cases it did not result in actual suspension of the activities due to lack of further control. Moreover, the persons involved in the control of the respective NPOs, were not prevented from opening new NPOs or continuing the activity through other legal entities. There have been only some cases when the responsible persons ultimately ceased the activities and left the country. Moreover, these suspensions have to be confirmed on an annual basis and on separate requests by security.

382. It is also noted that a number of these organisations were registered in the early 2000s and some of them acted for a significant period of time before becoming subjects of the action of security authorities and DRLNGO. The NPOs were suspended only in 2014 after adopting the aforementioned Administrative Instruction.

383. Moreover, the limited involvement of the DRLNGO in the process due to the formal character of the procedure and the lack of sufficient measures in the registration and on-going control process as described under IO 10 would be further detrimental to the application of such administrative measures. There were no cases of suspensions in the last three years and the authorities just confirmed the previous suspensions. The procedure itself has been subject of significant controversy due to the lack of any external control over the process, e.g. court control. Considering the significant number of suspended NGOs and the use of a temporary measure for ensuring permanent cessation of activities, the assessment teams has difficulty assessing the adequacy of the undertaken measures in the TF context, which did not include the follow-up of the cases through criminal proceedings in court. Furthermore, the assessors have concerns whether the actions in regard to NPOs, by not being sufficiently dissuasive, have contributed to those activities being further disguised and made more difficult to prosecute, e.g. by making the activities more diffuse and relying on forms other than NPOs. The views of some of the interlocutors from the private sector met on-site also might be relevant in this respect indicating that the major risks would be related to some religious organisations acting outside any formal system of accreditation or registration. Therefore these alternative measures currently used need to be complemented by additional enforcement efforts.

384. A number of these deficiencies limiting the effectiveness of action against NPOs have been identified by the authorities in their sectoral risk assessment of 2018 but it is not final and it is not clear what action has been envisaged to ensure effectiveness of the measures and whether these findings are properly taken into account as part of the elaboration of legislative amendments on the freedom of association.

Overall conclusion on Immediate Outcome 9

385. Despite the shortcomings of the Kosovo NRA, the competent authorities of Kosovo seem to be largely aware of the major risks associated with terrorism at the domestic, regional and global level as demonstrated in the adopted strategies against radicalisation and terrorism and the interviews conducted.

386. Despite a certain level of understanding of the various methods of TF, it was not clearly demonstrated that the authorities would equally focus on the TF issues as phenomena with their own specificity as a type of financial crime.

387. Certain deficiencies remain in the criminalisation of terrorism and respectively terrorism financing in Kosovo through the CC, the AML/CFT Law and the Law on Prohibition of Joining the Armed Conflicts outside State Territory. Nevertheless, Kosovo authorities have undertaken significant effort and demonstrated important achievements in preventing and prosecuting terrorist activities on their own and in cooperation with countries of the region as well as other international partners. At the same time, regardless of investigations involving joint interagency and international effort, there were limited prosecutions/convictions for TF demonstrated.

388. Alternative measures were applied when it was not possible to secure a conviction. Although potentially beneficial, they seem to have been largely limited by structural deficiencies in regard to NPOs oversight.

389. **Kosovo has achieved a low level of effectiveness with Immediate Outcome 9.**

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

390. Kosovo has not applied targeted financial sanctions in any systematic way due to the absence of adequate legal basis as discussed under Recommendation 6 in the TC Annex.

391. Some sporadic measures have been undertaken in this regard. One of the examples includes the measures undertaken to ensure awareness and reporting by the entities covered by the AML/CFT legislation. Examples of STRs submitted to the FIU based on matches with entities designated by both the UN Security Council under the relevant Resolutions and UN member states were provided. In addition the Integrated Border Management system implemented in Kosovo also seems to be taking into account these risks although no results in practice could be demonstrated. In addition, targeting of listed entities occurred at various moments in cooperation with other countries.

Targeted approach, outreach and oversight of at-risk non-profit organisations

392. Kosovo authorities did not properly assess the risks associated with NPOs in the NRA. The findings of the risk assessment cannot be considered as a useful tool to determine practical policies and mitigating measures and do not sufficiently contribute to the general understanding of the sectoral threats. Nevertheless as a result of the monitoring conducted by security and law enforcement authorities a number of NPOs were identified as posing a radicalisation threat and suspended as discussed under IO 9, which is considered to be a major driver for the continuous inclusion of NPOs both under the old and current AML/CFT legislation of 2016. Another explanation could be related to the seemingly widespread use of NPOs for purposes falling outside the Law on the freedom of association. There were 60 refusals of registration of NPOs just for 2018 based on activities contradicting the freedom of association - e.g. business or other activities. No cases of refusals were presented for reasons related to terrorism or TF.

393. The measures undertaken in terms of the authorities' CTF effort were not focused on specific subset of NPOs even though measures to ensure more effective targeting seem to have been undertaken already in 2015-2016 with the analysis coordinated by FIU on the flows associated with NPOs, assessing mainly the source of funding and geographic risks of flows and their repercussions for the NPOs in Kosovo. This exercise, despite resulting in potential cases for further investigation, did not result in any adequate targeted measures for the sector.

394. In 2017-2018 a more targeted approach for NPO sectoral risk assessment in cooperation with the NPOs was attempted. The NPO risk assessment relied on the involvement of a number of NPOs and authorities and identified a number of specific mainly structural vulnerabilities. Most of them are considered by the competent interlocutors to be largely valid and essential and are analysed below. Nonetheless, specific risks related to the subset of organisations carrying the most significant risks were not identified. A relevant example is that some of the risks understood by the NPOs in regard to e.g. the regional structure of terrorism-related activities do not seem to have been identified in the sectoral assessment and do not seem to have been followed up with specific measures. Some discrepancies were observed in regard to the findings of the sectoral risk assessment, the opinions of the relevant authorities and the private sector. Thus, the risk assessment still cannot be considered as a sufficient basis for implementing a targeted approach.

395. A number of issues were raised by the sectoral risk assessment which focus on the ability to use cash, divert funds, NPO accountability, fit and proper checks and discrepancies in the declared vs. actual activities of the NPOs. This largely corresponds to the findings and views of the representatives of NPOs met on-site. However, in the views of the interlocutors met from the private sector, this would not translate to any factual basis indicating TF involvement of NPOs.

396. One of the important issues identified in regard to the NPO regulation and also dealt with in the sectoral risk assessment was related to the reliability of the registers maintained in regard to the NPOs and the registration process and the measures implemented to ensure that the information is kept up to date.

First of all certain difficulties and deficiencies are noted in regard to the collection of full information (especially where the funding and identification of the controlling persons are concerned) in regard to specifically the NPOs that have foreign participation. It is worth noting that they would constitute about one fourth of all NPOs in Kosovo. The cooperation between authorities is obviously in place, specifically cooperation between the DRLNGO on one hand and the FIU, KP and KIA on the other hand. Still, difficulties in this regard are present and would present a significant obstacle. As it was noted in the sectoral assessment (despite disagreement by the DRLNGO) as well as by the private sector the register is not considered to be sufficiently up to date. It is also worth noting that there were delays and obstacles to maintaining full details on the persons involved and on the basic information of the NPOs.

397. Moreover, it is highly unlikely that the problem would be solely linked to passive (no operational activity) NPOs considering the high number of NPOs receiving public support (estimated by sector representatives to be about 3,000). Significant difficulties are noted in regard to identifying the active and passive organisations as no obligations are in place for such reporting and oversight. There are not always persons who would be responsible for communicating information. The issue is further aggravated by the DRLNGO focusing only on the NPOs acting for public benefit and no considerable measures in regard to other NPOs. Some changes and a new database were implemented in 2017, albeit without solving most of the pressing issues.

398. Certain supervisory activities of the TAK targeted the financial reporting of the NPOs including in relation to the specific requirements for tax statements but the situation in general seems unchanged in this regard, considering the problems of the FIU identifying and contacting in practice the NPOs selected as part of the risk assessment as recently as 2017. The assessment of some interlocutors was that less than 10% of NPOs are keeping properly documents for reasons of lack of training or lack of proportionate approach to the specific segment carrying major risks. This would also have a detrimental effect on financial reporting.

399. The fact that some religious organisations could represent a grey area in terms of registration and control is similarly compromising the actual ability of authorities to have an overview of the whole sector and focus their effort on areas of risk. This issue is raised in the sectoral assessment as "lack of national accreditation for religious NGOs" and was also a concern of a number of NPOs met on-site.

The authorities have reached out to the NPO sector and have conducted a number of trainings. The TAK was involved in trainings of the NPO sector which were mainly for tax purposes and implementation of measures which would allow more effective implementation of financial accountability measures. These measures are to be assessed in view of the deficient financial reporting mentioned by some interlocutors and the seemingly widespread use of NPOs for economic purposes in violation of the requirements of the Law on the Freedom of Association. Despite the benefit of these trainings in terms of accountability, it is noted that there was no specific focus which would contribute to the TF effort and moreover the interlocutors met on-site would not confirm the effect of these trainings on the awareness of NPOs. There has been no significant outreach carried out by the FIU (only training conducted in 2014 of 16 persons from NPOs) even though the cooperation effort for the sectoral assessment is noted. There was no involvement of the DRLNGO whatsoever in conducting outreach. Absence of outreach is the biggest problem in the opinion of the NPOs met but there was no actual consensus on the authority that is to assume the main responsibility for this. It is also clear that in the current institutional setup there are no sufficient resources dedicated to the task of conducting adequate outreach, probably with the exception of the TAK.

Table 32: TAK training of NPOs

Year	Number of workshops - subjects	Introduced Subjects
2018	5	Tax on Income and Pension Contributions, Tax on Rent, VAT and VAT Reimbursement, Corporate Tax – Annual CD Declaration, Reporting purchases over EUR 500
2017	26	Annual Declaration and Reporting Financial Statements, Application of VAT Reverse Charge to provide services in the domain of construction within the country; Reporting Purchase Book and Sales Book, through electronic system – EDI; The Law on Tax Administration and Procedures; The Law on Value

Year	Number of workshops - subjects	Introduced Subjects
		Added Tax; The Law on Taxes on Personal Income; The Law on Corporate Income; Treatment of NGO's on Taxes on Salaries and Pension Contribution; Treatment of NGO's on Tax on Rent; Treatment of NGOs on VAT – VAT Reimbursement; Treatment of NGO's on Taxes on Corporate – CD Annual Declaration; Reporting purchases over EUR 500; Declaration through Electronic System – EDI; Tax system in Kosovo; General Information on VAT; Flat rate of VAT for farmers; VAT Reimbursement; Tax at source (focus on tax at source according to special categories); Treatment of hired lands; Tax Declaration; Application of VAT Reverse Charge, for services purchased outside Kosovo; Treatment of debts, donations, and declaration of VAT.
2016	21	Annual declaration of individual businesses (PD); Annual declaration of Corporate (CD); Partnership declaration (DO); Reporting purchases over EUR 500; Reporting Financial Statements; Financial Reporting of enterprises in Kosovo; Tax on Salaries and Pension Contribution; Tax on Rent; VAT and VAT Reimbursement; Reporting Purchase Book and Sales Book, through electronic system – EDI; Application of VAT Reverse Charge to provide services in the domain of construction within the country; Tax at salary source and pension contributions; Objective and purposes of tax systems in general (The Law on Tax Administration and Procedures , VAT, TPI and TCI); Necessary information for self-employees; Obligations and Responsibilities towards TAK; Obligation to pay VAT in providing services in the construction domain - Application of VAT Reverse Charge within the country; Declaration and payment of Health Insurance; Developments in TAK, aiming to fulfil the tax obligations.
2015	24	Annual declaration of individual businesses (PD); Annual declaration of Corporate (CD); Partnership declaration (DO); Reporting purchases over EUR 500; Tax at source; Facilitations in declaration and payment of taxes – the New Electronic System – EDI; Tax on Salaries and Pension Contribution; Tax on Rent; VAT and VAT Reimbursement; Reporting purchases over EUR 500; Tax on Corporate – Annual Declaration – CD; Declaration through Electronic System – EDI; Value Added Tax – VAT; Tax on Personal Income – TPI; Tax on Corporate Income – TCI; Implementation of new tax package; Law No. 05/L-037 on Value Added Tax; Law No. 05/L-029 on Tax on Corporate Income; Law No. 05/L-028 on Tax on Personal Income; Law No. 05/L-043 on Public Debt Forgiveness; Administrative Instruction No. 03/2015 on application of law No. 05/L-037 on VAT; Law No. 05/L-043 on Public Debt Forgiveness; Administrative Instruction No. 03/2015 on application of law No. 05/L-037 on VAT; Treatment of long term contracts – Construction contracts from the aspect of Accounting and Taxes.

400. The supervision of the NPO sector is performed by the TAK and the FIU according to their respective competence. Thus, TAK focuses on tax control in order to ascertain the basis for the application of the tax exemptions. These would be largely related to reimbursement of the VAT, verifying bills etc. Inspections based on specific requests for competent institutions would also be the case but this would not go beyond verifying funds and expenditures. FIU has inspected over the last few years about 10 NGOs for compliance purposes with the AML/CFT Law. Some of them have been identified as not complying with the law in question. In order to improve the measures against ML/TF, the FIU has issued remedial measures (recommendations). Following these actions, most of these NGOs have taken action to implement the Law. The results of inspections mostly show lack of any awareness of the measures required by the AML/CFT legislation despite its being in force (in regard to NPOs) for a significant period of time. The assessors were also notified on additional measures taken - e.g. for one of the NGOs that did not take remedial measures, the FIU has issued an order for freezing funds, and has processed the case for criminal cases at the competent Prosecutor's Office. The FIU action was followed up with sequestration measures by court decision. Other two NPOs were suspended as a result of supervision. But those again tried to open other

organisation with different names. One of them tried to open two or three new NPOs with different names. Even considering the targeting of NPOs in cooperation with intelligence and KP the supervisory activities seem largely insufficient and not able to bring significant change in awareness and application of the AML/CFT measures, in addition to the lack of any further focus beside the exchange of information with law enforcement. The effectiveness is also assessed in view of the relatively limited results of the suspension measures as discussed under IO9. In terms of results related to the number of STRs from NPOs, the complete absence of such reports is noted.

401. The effects of the FIU outreach are visible in the monitoring and reporting by the banks under the requirements of the AML/CFT legislation. About one third of the STRs received by the FIU in regard to potential TF for the period 2014-2017 were related to NPO activities. At the same time a number of interlocutors discussed the derisking taking place as a result in the banks by pushing NPOs out of the formal financial system. This should be viewed in conjunction with the observations in the sectoral risk assessment on the issue of use of cash representing still a significant problem despite the threshold requirements in the AML/CFT legislation. This is clearly seen as a matter for further improvement of the supervision effectiveness but also a matter of implementing a practical targeted approach to NPOs.

Deprivation of TF assets and instrumentalities

402. As noted there have been no targeted sanctions applied by Kosovo authorities in a systematic way and this is noted also in the NPO sectoral risk assessment as a significant issue requiring urgent action to make possible the targeting of designated persons and organisations.

403. With regard to the identification of TF assets and instrumentalities it is noted that there were limited prosecutions and convictions for TF, thus limited deprivation of assets could take place, unlike the deprivation of property in terrorism-related cases mainly related to instrumentalities as discussed under IO 9.

404. In regard to the identification of such assets as part of suspicious transaction reporting and investigations related to potential TF, a number of cases were discussed and resulted in tracing such assets. As noted above the FIU has identified such potential assets based on suspicion of TF both as a result of supervisory activities and the STRs received from the banks as well as public authorities in some cases. The identification of funds related to NPO activities suspected of TF resulted in freezing action in several cases which were later released following comprehensive checks on the origin and purpose. At the same time analysis was performed by FIU in 2015-2016 in cooperation with the CBK for all transaction related to a number of jurisdictions and several cases were opened. Despite the large amounts involved and several cases of further investigations, the assessors were not informed of any significant funds secured. With regard to the risks of persons travelling to join the conflict zones, FIU activities resulted in at least one case in identification of movement of funds from/to conflict zone neighbouring areas and further action for potential TF was taken by the investigative authorities. As noted elsewhere, however, there has been no action taken by the authorities to check if any ML related to TF is taking place in some of the cases, especially linked to returnees and to secure funds in this regard.

405. With regard to deprivation of assets for terrorism the statistics provided by AMSCA show few cases and negligible amounts seized and confiscated. These include one case in 2016 for the amount of EUR 142, 4 cases in 2017 for EUR 11,236.10 and one case in 2018 for EUR 5.

Consistency of measures with overall TF risk profile

406. Kosovo authorities demonstrated significant understanding of the terrorist threats in its territory but not a comprehensive understanding of the related TF aspects despite significant effort to understand the modus operandi in the respective terrorism-related activities. It was not demonstrated either at the strategic or at the operative level that TF would be an equal priority to the prevention and prosecution of terrorist activities consistent with the risk.

407. Kosovo has developed the major structural elements necessary for the successful pursuing of TF cases and in many cases authorities demonstrated coordinated action in potential TF cases. Nevertheless, no results have been achieved and no significant asset identification occurred. The measures undertaken with regard to the NPOs are insufficient or implemented with a significant delay and due to the lack of identification of the subsectors carrying the major risks; NPOs have not been targeted adequately in regard to the TF threat. Despite the understanding of the TF risks in conjunction with the vulnerabilities and threats related to the informal economy, insufficient focus was put on the cash-related TF threats in Kosovo.

408. Last but not least, Kosovo has not implemented any thorough regime for targeting persons and assets pursuant to the UN SC requirements in regard to TF.

Overall conclusion on Immediate Outcome 10

409. Kosovo has not applied in any systematic way the required targeted sanctions under UNSCR 1267 and 1373. There are certain efforts of some of the authorities, most notably the FIU and the KC and Border Police, to apply certain preventive and targeted measures with regard to the mentioned UNSCRs but they are considered of marginal impact in the absence of further legal mechanisms.

410. A number of legislative deficiencies as well as administrative ineffectiveness seems to be impacting the application of preventive measures against NPOs, the most important being the lack of administrative powers for definite suspension of the NPO activities where it is not possible to secure a criminal conviction. The significant efforts of LEAs and the FIU did not seem to be significantly reflected in enhanced formal supervision and change of administrative practices.

411. It is also noted that the number of temporary suspensions of NPOs did not actually provide a strong impetus towards adopting a comprehensive targeted approach to the sector, although the Kosovo authorities have initiated partial efforts to ensure further development of the mitigating measures according to the risk.

412. Kosovo authorities demonstrated effective deprivation of the terrorists of the instrumentalities (usually small amounts or property of relatively limited value as shown under IO 9) but no significant success in focusing on potential assets of NGOs or terrorist financiers.

413. **Kosovo has a low level of effectiveness with Immediate Outcome 10.**

Immediate Outcome 11 (PF Financial Sanctions)

Implementation of targeted financial sanctions related to proliferation financing without delay

414. Kosovo has not taken adequate legislative or other measures to implement, without delay, TFSs concerning the UNSCRs relating to the combating of proliferation of weapons of mass destruction. Although generic legislation exists for the implementation of international sanctions, these laws have not been invoked to implement the UNSCRs relating to PF.

415. Moreover, a mechanism on the implementation of UN TFSs with regard to PF is not in place. The only measure taken is that the consolidated UN Security Council sanctions list of designated persons and entities is published on the FIU website, informing the regulated entities not only on FT-related TFSs but also on TFSs that relate to PF.

Identification of assets and funds held by designated persons/entities and prohibitions

416. Larger financial institutions, primarily banks that are subsidiaries or branches of an international group have processes and systems in place to implement the TFSs relating to PF (see also IO 10). Financial institutions and DNFBPs may use the FIU website as a source of information, however there is very limited awareness that the lists published on the FIU website contain data that goes beyond FT-related TFSs.

417. Reporting entities other than banks are evidently not aware of the UN sanctions regime related to PF. While in the banking sector there is a general awareness of the existence of "lists" that need to be screened against, there is very little awareness of the differences between FT and PF. In the DNFBP sector and in the case of non-bank financial institutions, awareness is negligible.

418. There have been no matches identified with the UNSCRs related to PF. Neither have PF-related assets been frozen so far.

419. In view of the fact that there are no legislative provisions on the implementation of the TFSs relating to PF, it is unclear what steps could be taken by the entities in case there is a match. Moreover, financial institutions, DNFBPs and the state authorities do not have the relevant powers and procedures to apply adequate measures with regard to freezing of assets of designated persons and entities.

420. The Kosovar authorities have argued that there is an indirect mechanism for asset freezing that applies for FT, through an Administrative Instruction issued by the FIU following the receipt of a report suggesting that funds are held in relation to an individual or entity mentioned in the sanctions, however

this cannot be applied to sanctions related to PF. Financial Institutions and DNFBPs that might be in possession of funds or other assets covered by the PF sanctions regime therefore have no obligation to freeze the assets and are in receipt of no direction as to what they would have to do in such circumstances.

FIs and DNFBPs' understanding of and compliance with obligations

421. The understanding of reporting entities of their obligations to freeze assets under UNSCRs 1718 and 1737 is very limited. As mentioned previously, with the exception of the larger banks, most reporting entities were not familiar with the UN sanctions regime related to PF.

422. Very little guidance on how to apply PF sanctions has been issued. The only guidance actually in place relates to reporting of suspicious transactions for FT to the FIU, where a connection with the U.N., E.U. and OFAC sanctions is made, but this is not considered sufficient to ensure adequate and timely freezing of assets. It is also clearly focused on the reporting of transactions and activity linked to FT and therefore has little relevance to the reporting entity in understanding the action to take to freeze assets linked to PF.

423. Furthermore, the authorities themselves did not demonstrate adequate awareness and propensity to supervise the implementation of UNSCRs relating to the combating of PF. Neither were the examiners satisfied with the level of coordination and cooperation at a national level.

Competent authorities ensuring and monitoring compliance

424. There is no legislation providing for a publicly known mechanism to implement obligations stemming from the UNSCRs relevant for IO.11. Moreover, the evaluation team has received no information indicating that supervisory authorities monitor financial institutions and DNFBPs for compliance with obligations regarding TFSs relating to PF.

425. Besides the inexistence of a legal framework established to implement TFSs related to PF, no competent authorities have been designated to carry out such implementation. Neither has any authority been vested with powers to ensure nor to monitor compliance of implementation of UN TFSs related to PF.

426. Furthermore, no specific regulatory actions appear to have been taken by supervisory authorities with regard to failure of compliance with the TFSs related to the PF regime. This appears to stem from the fact that supervisory authorities have not been assigned with any specific functions in this respect.

Overall conclusion on Immediate Outcome 11

427. Kosovo has not taken any adequate legislative or other measures to implement, without delay, targeted financial sanctions concerning the UNSCRs relating to the combating of PF of WMD. Other than the more prominent banks, other reporting entities are not aware of the UN sanctions regime related to PF. In view of the absence of a regulatory framework on TFSs related to proliferation of WMD, no authority even has the power to implement these UN sanctions and freeze any related assets identified. The system of combating PF overall therefore cannot be considered to be effective.

428. **Kosovo has a low level of effectiveness for Immediate Outcome 11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key findings

- Understanding of ML/TF risks significantly varies among the representatives of the private sector. Along with good awareness of contextual risk factors and higher risk segments, reporting subjects have far less explicit views on the methods and patterns through which perpetrators might misuse the financial and non-financial systems in Kosovo to launder money or finance terrorism.
- Banks and, to an extent commensurate to their risk exposure, other financial institutions (except for currency exchange bureaus) demonstrate a certain level of understanding of ML risks. The understanding of TF risks is largely confined to the use of lists published by the UN, EU and OFAC. Currency exchange bureaus and practically all DNFBPs have far less, if any, understanding and appreciation of ML/TF risks. Involvement in and awareness of the national and sectoral risk assessments, as a means to improve the understanding of ML/TF risks and AML/CFT obligations, is minimal among the banks and non-existent among other financial institutions and DNFBPs.
- Banks and other financial institutions (except for currency exchange bureaus) are fluent in describing their risk mitigation frameworks to comprise all three lines of defence (front office; compliance function; internal audit). They report to have implemented the requirement of the AML/CFT Law to periodically assess and document their risks. Nonetheless, findings of supervisory authorities, as well as interviews of the evaluation team reveal uneven compliance with this requirement.
- Effectiveness of the application of mitigating measures commensurate to the risks appears to be largely in place with banks, to a reasonable extent with other financial institutions, and non-existent with currency exchange offices and all DNFBPs.
- Banks and other financial institutions (except for currency exchange bureaus) demonstrate fair knowledge of the applicable requirements in the AML/CFT Law and relevant regulations regarding CDD and record-keeping. Nonetheless, understanding of beneficial ownership is exclusively confined to that through direct holding of 25 or more shares in a company as defined by the AML/CFT Law. Among the DNFBPs, only notaries and, to a limited extent, lawyers report to implement very basic CDD measures such as identification of customers and verification of their identity.
- Banks and other financial institutions (except for currency exchange bureaus) are able to understandably elaborate on their policies and procedures for the application of enhanced measures to PEPs and FATF-defined higher risk countries and, where applicable, to correspondent banking relations, new technologies and wire transfers. However, verification of the source of funds is oftentimes done in a rather formalistic way.
- Although targeted financial sanctions for TF and PF are not implemented in Kosovo legislation, in practice all banks and non-bank financial institutions report to be using the lists published by the UN, EU and OFAC to identify potential matches with the names of designated persons and entities. DNFBPs have little or, in most cases, no knowledge of the enhanced or specific measures to be applied with regard to TFS and in higher risk situations.
- Suspicious transaction reporting performance is highly uneven among the subjects of the AML/CFT Law, with banks and, to a much lesser extent, money transfer companies and micro-finance institutions remaining the only source of suspicious transaction reports. Moreover, it appears that there is a highly varying STR reporting performance even among banks. The authorities' statements on improved quality of STRs are somewhat inconsistent with the

steadily decreasing share of the FIU disseminations to the law enforcement agencies as a proportion of the number of received STRs.

- Discussions on STR reporting processes of the banks point out to the potential practices of superficial treatment of alerts, as well as issues with the quality of reported STRs. Measures for the prevention of tipping off appear to be at an adequate level in the banks, enabled by the separated AML compliance function with exclusive access to STR-related analyses and disseminations.
- Application of internal controls and procedures by banks and other financial institutions (except for currency exchange bureaus) appears to produce sound results, which cannot be presumed about currency exchange bureaus and DNFBPs due to the lack of AML/CFT knowledge on one hand and insufficient scope and intensity of supervision on the other hand.
- Banks refer to uncertainty with the authorities' current interpretation as to how independence of the AML function should be achieved in terms of institutional arrangements. Also, implementation of PEP-related obligations appears to go beyond the requirement of the FATF Standards thus creating sensible difficulties for the reporting subjects with high transactional activity.

Recommended actions

With regard to the **understanding of ML/TF risks and AML/CFT obligations**, Kosovo should take measures to:

- Promote better understanding of the reporting subjects about specific methods and patterns through which perpetrators might misuse the financial and non-financial systems in Kosovo;
- Further the understanding of the reporting subjects about TF risks beyond the use of lists published by the UN, EU and OFAC;
- Ensure better involvement of the reporting subjects in the national and sectoral risk assessments as a means to improve the understanding of ML/TF risks and AML/CFT obligations.

With regard to the **application of risk mitigating measures**, Kosovo should take measures to:

- Ensure appropriate implementation of the requirement for the reporting subjects to periodically assess and document their risks;
- Provide specific guidance to the reporting subjects on preparing and conducting risk assessments;
- Ensure appropriate application of mitigating measures commensurate to the risks by all reporting subjects in general, and by currency exchange offices and all DNFBPs in particular.

With regard to the **application of CDD and record keeping requirements**, Kosovo should take measures to:

- Promote the understanding of beneficial ownership beyond that through direct holding of 25 or more shares in a company;
- Consider providing more guidance and flexibility to the reporting subjects in deciding the frequency of full-scope updating of CDD information, particularly with regard to low risk customers;
- Ensure appropriate implementation of relevant CDD measures by all reporting subjects in general, and by currency exchange offices and all DNFBPs in particular.

With regard to the **application of enhanced or specific measures**, Kosovo should take measures to:

- Define and enforce more effective measures for verification of the source of funds, such as establishing minimum standards for the acceptable documentary proof on that;
- Ensure effective implementation of targeted financial sanctions for TF and PF, as well as uniform application of risk-sensitive measures based on the country risk factor by all reporting subjects;
- Require that banks and money transfer companies maintain advanced transaction screening software enabling regular or *ad hoc* analyses of transactions to and from locations neighbouring with higher risk zones.

With regard to the **reporting obligations and tipping off**, Kosovo should take measures to:

- Develop rules and practices for the provision of general and specific feedback to the reporting subjects on STR reporting;
- Revise the lists of indicators for identification of ML and TF suspicions considering characteristics of customers, transactions or business relationships, as well as specific features of various types of reporting subjects;
- Establish parameters of STR quality, and enforce precisely defined and stringently applied STR generation and reporting requirements.

With regard to the **internal controls and procedures**, Kosovo should take measures to:

- Ensure appropriate implementation of relevant AML/CFT programs by all reporting subjects in general, and by currency exchange offices and all DNFBPs in particular.

With regard to the **factors impeding effective implementation**, Kosovo should take measures to:

- Consider revising the approach to interpreting achievement of independence of the AML function having regard to the four basic elements underlying the concept of independence (see below);
- Consider establishing reasonable filters for exemptions from the requirement of senior management approval of PEP-related transactions as defined by the AML/CFT Law.

429. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The recommendations relevant for the assessment of effectiveness under this section are R.9-23.

Immediate Outcome 4 (Preventive Measures)

Understanding of ML/TF risks and AML/CFT obligations

430. Understanding of ML/TF risks significantly varies among the representatives of the private sector. The common shortcoming in how the reporting subjects understand and interpret risk is that they are well aware of, for example, the cash-based economy as a contextual risk factor and the construction sector as a higher risk segment, but have far less explicit views on the methods and patterns through which perpetrators might misuse the financial and non-financial systems in Kosovo to launder money or finance terrorism.

431. Banks and, to an extent commensurate to their risk exposure, other financial institutions (except for currency exchange bureaus) demonstrate a certain level of understanding of ML risks, characteristic to Kosovo. The most frequently cited ML typologies are related to tax evasion through the use of personal accounts for entrepreneurial activities and large-scale circulation of cash; opaque mechanisms in the financing of residential and other construction documented as barter transactions in the development stage and in-kind compensations in the realisation stage; and deposits and/ or transfers without reasonable articulation of the source of funds. The understanding of TF risks is largely confined to the use of lists

published by the UN, EU and OFAC. This is not commensurate to the factual exposure of Kosovo to TF risks through the large NPO sector with yet-to-be-assessed vulnerability to such risks.

432. Risk perception of financial institutions other than banks appears to be adequate and based on the specific features of the geographical coverage of their activities, customer base, products and services, and their delivery methods. For example, micro-finance institutions provide loans with an upper ceiling of EUR 25 thousand (applied to the total sum of all loans extended to the borrower and his/her interrelated persons), overwhelming majority of the borrowers are individuals, and the average amount of the loan is around EUR 2 thousand. Or, micro-finance institutions, leasing companies and insurance companies do not accept and make payments in cash – all receipts and payouts have to be done from/to a bank account. Major players in the MFI and NBFI market are part of larger international financial groups[16] and global payment systems[17], thus placed under an additional layer of group-wide policies and controls towards AML/CFT compliance.

433. Currency exchange bureaus and practically all DNFBPs have far less, if any, understanding and appreciation of ML/TF risks. This does not appear to be commensurate to the factual risk exposure given the significant contextual factors (as set out in the analysis for IO1) with adverse impact of the overall risk situation.

434. Involvement in and awareness of the national and sectoral risk assessments, as a means to improve the understanding of ML/TF risks and AML/CFT obligations, is minimal among the banks and non-existent among other financial institutions and DNFBPs. This means that the assessments initiated and conducted by the authorities have to become much more inclusive regarding the private sector, by means of relevant contribution in the implementation stage and appropriate communication in the propagation stage.

Application of risk mitigating measures

435. Banks and other financial institutions (except for currency exchange bureaus) are fluent in describing their risk mitigation frameworks to comprise all three lines of defence, i.e. the front office/ customer servicing function in charge of identifying and communicating the ML/TF alerts, the compliance function in charge of performing AML/CFT measures, and the internal audit function in charge of independently testing overall implementation of the AML/CFT requirements. They report to have implemented the requirement of the AML/CFT Law to periodically assess and document their risks. Such assessments are presented by the authorities as a cornerstone in the building of risk identification, assessment and mitigation framework, which underlies application of the risk-based approach. Nonetheless, findings of the supervision, as well as interviews of the evaluation team reveal uneven compliance with this requirement, with many of the financial institutions still elaborating on the methodologies and best practices for risk assessment.

436. The quality of the risk assessment exercise varies depending on the capacities of the financial institution, and the report made available to the evaluators for a bank has structural and substantial shortcomings undermining its usefulness for practical purposes. Most of the other financial institutions and all DNFBPs have not implemented this requirement of the AML/CFT Law yet. There is a definite need for more guidance in preparing and conducting risk assessments by the reporting subjects, preferably in the form of a methodology articulating the general principles and methods, as well as the specific approaches – considering the size and risk exposure of individual types of businesses – applicable for such assessments.

437. Risk-based treatment of customers entails their categorisation into high, medium and low risk groups (sometimes defining another, "very high" risk category as well). The general rule is to apply enhanced, standard and simplified CDD to, respectively, customers rated as high, medium and low risk. In all banks and other financial institutions (except for currency exchange bureaus) these risk ratings are said to be implemented into the core operational software thus facilitating the decision-making process as to the appropriate set of applicable measures. Some banks report to be applying standard CDD measures even for low-risk customers. The initially determined risk category is subject to revision based on substantial changes in constituent risk factors.

[16] E.g. Raiffeisen Bank International, BNP Paribas

[17] E.g. Western Union, MoneyGram

438. Overall, effectiveness of the application of mitigating measures commensurate to the risks appears to be largely in place with banks, to a reasonable extent with other financial institutions, and non-existent with currency exchange offices and all DNFBPs.

Application of CDD and record keeping requirements

439. Banks and other financial institutions (except for currency exchange bureaus) demonstrate fair knowledge of the applicable requirements in the AML/CFT Law and relevant regulations regarding the pillars of the preventative regime, i.e. CDD and record-keeping. Constituents of the CDD process are understood to comprise identification of customers and beneficial owners, verification of their identity, verification of the powers of authorised persons, establishment of the purpose and intended nature of the business relationship, and conducting on-going monitoring of transactions. None of the reporting subjects report to have practices of FATF-defined reliance on third parties to perform certain elements of the CDD measures.

440. Nonetheless, understanding of beneficial ownership is exclusively confined to direct holding of 25 or more shares in a company as defined by the AML/CFT Law. Notions of beneficial ownership through indirect holding of company shares and, more importantly, through direct or indirect ultimate effective control over the customer without any shareholding are hardly understood and do not seem to be ever applied in practice.

441. Updating of CDD information is done on annual, biannual and triennial basis for, respectively, high, medium and low risk customers. In this regard, the private sector looks for more guidance and, where appropriate, more flexibility in deciding the frequency of full-scope updating of CDD information particularly with regard to low risk customers. Should the authorities opt for allowing such flexibility, appropriate implementation of the risk-based approach and, specifically, adequate risk categorisation of customers by means of regular revisions of their risk profile needs to be ensured in the first place.

442. Among the DNFBPs, only notaries and, to a limited extent, lawyers (where law firms provide legal support to major economic transactions) report to implement very basic CDD measures such as identification of customers and verification of their identity. Nonetheless, even these DNFBPs do not properly understand the concept of beneficial ownership; neither do they see the need for identifying parties other than those who come to their offices for notarial or legal services. Other DNFBPs do not implement any CDD measures.

443. All reporting subjects refer to a minimum 5-year (or in some cases, even longer) period of retention for all records, documents and other information collected in the course of their business activities.

Application of enhanced or specific measures

444. Banks and other financial institutions (except for currency exchange bureaus) are able to understandably elaborate on their policies and procedures for the application of enhanced measures to PEPs and FATF-defined higher risk countries and, where applicable, to correspondent banking relations, new technologies and wire transfers.

445. Enhanced on-going monitoring, more frequent updates of CDD information and, in case of PEPs, senior management approval of transactional activity are the main enhanced vigilance measure applied to higher risk clients. Verification of the source of funds, which is required in case of cash transactions above EUR 10 thousand and any transactions with higher risk clients (including PEPs), is oftentimes limited to filling in the relevant field of the special form developed by the CBK with text that reads "savings", "financial assistance" and the like.

446. While understanding that in a heavily cash-based economy conjugated with significant inflows from the large diaspora of Kosovars living abroad customers might often have difficulty with explaining the source of funds, the evaluators consider that more effective measures such as, for example, establishing minimum standards for the acceptable documentary proof of the source of funds, are to be defined and enforced to ensure that funds with potentially illicit origin do not enter the economy in general and the financial system in particular.

447. Verification of PEP status is done using the list of the Anti-Corruption Agency in case of domestic PEPs and commercial databases[18] for foreign PEPs and representatives of international organisations. The

[18] Such as World Check and Dow Jones Watchlist etc..

list of the Anti-Corruption Agency provides names, surnames and other identification data of the local high level public officials and functionaries as defined by the AML/CFT Law. Most of the PEP clients are reported to be local ones. Insufficient understanding of the notion of beneficial ownership could have significant adverse impact on the efficiency of measures aimed at establishing the ultimate beneficial owners in relation to both individuals and legal entities.

448. Correspondent account network of banks is not extensive. In addition to NOSTRO/ LORO accounts held with other banks operating in Kosovo, banks have NOSTRO accounts with major European[19] and American banks, as well as with their own parent banks[20]. Banks in Kosovo do not provide correspondent services, do not refer to servicing payable through accounts and are well aware of their responsibilities in the framework of correspondent banking relations as defined by the AML/CFT Law.

449. Banks and other financial institutions are rather conservative in terms of developing and implementing new products and business practices, including new delivery mechanisms, as well as using new technologies. They are fluent in describing the processes and procedures for assessing and mitigating risks before launching or using such products, practices and technologies, if any.

450. Banks report to use the SWIFT system for all incoming and outgoing cross-border wire transfers. They are not involved as intermediary institutions in wire transfers, which is reasonable given their role within correspondent relations with other banks. Money transfer companies use their own systems (such as Western Union and MoneyGram). The uniform practice is presented as one requiring rejection of any wire transfers with missing originator or beneficiary information.

451. As far as implementation of targeted financial sanctions for TF and PF is concerned, the legislation in force does not provide measures to freeze without delay assets of persons and entities involved in terrorism and proliferation, and their financing. However, in practice all banks and non-bank financial institutions report to be using the lists published by the UN, EU and OFAC, either by means of implementing them into the core operational software (in case of all banks and money transfer companies) or of using them for manual searches (in case of other non-bank financial institutions, except for currency exchange bureaus) to identify potential matches with the names of designated persons and entities.

452. With regard to the approach towards FATF-defined jurisdictions identified as higher risk, banks and money transfer companies report to have implemented into the core operational software criteria of higher risk related to the customer's country of registration or operation (country risk factor), most often referring to the lists provided by the parent company and/or to those published on the FATF website (following the link on the FIU website). Leasing companies advise of applying enhanced measures in case of relationships and transactions with customers from higher risk countries, if any. Insurance companies state that they do not sell life insurance products to non-residents/foreigners. Currency exchange bureaus and DNFBPs do not take apply any risk-sensitive measures based on the country risk factor.

453. In terms of the approach to higher risk countries, it would be beneficial for banks and money transfer companies to maintain advanced transaction screening software enabling regular or *ad hoc* analyses of transactions, including credit card or direct payments, to and from locations neighbouring with conflict zones in Eastern Europe or Middle East. This is important given the significant presence of banks with extensive relations (parent companies) located and operating in countries immediately neighbouring with such zones.

454. Overall, DNFBPs have little or, in most cases, no knowledge of the enhanced or specific measures, and they mostly refer to their operational practices in dealing with the customers within routine business activities, but not to specific preventive measures with relevance for AML/CFT. Accordingly, poor implementation of the preventative measures by them is the presumed direct result of the insufficient knowledge in the area of AML/CFT.

Reporting obligations and tipping off

455. The table below provides some statistics on the number of STRs filed with the FIU over the period of 2014-2017:

[19] Located in Germany, Austria, France, Switzerland, Belgium etc.

[20] Located in Turkey, Albania, "former Yugoslav Republic of Macedonia"

Table 33: STRs submitted to FIU

	2014	2015	2016	2017
Financial institutions				
Banks	234	350	438	683
Micro-finance institutions	-	2	6	5
Currency exchange bureaus	1	-	-	-
Money transfer companies	58	39	34	34
DNFBPs				
Notaries	-	-	2	-
Other reporting subjects				
Customs	1	4	1	-
Sectoral supervisors	-	2	2	4
Other	1	1	2	2
Total STRs	**295**	**398**	**485**	**728**

456. Suspicious transaction reporting performance is highly uneven among the subjects of the AML/CFT Law. Whereas in terms of absolute numbers there is an obvious positive dynamics in STR reporting over the period of 2014-2017 with an annual average increase at around 40%, banks and, to a much lesser extent, money transfer companies and micro-finance institutions remain the only source of suspicious transaction reports. On the other hand, there is around 20% annual increase in the number CTRs (i.e. reports on cash transactions above the threshold of EUR 10 thousand) filed with the FIU, which, even if taken as the assumed result of the growing economy activity in Kosovo, is still indicative of a persistent use of cash with significant implications in terms of potential ML/TF risks.

457. Moreover, it appears that there is a highly variant STR reporting performance even among banks, with some of them feeling satisfied about implementation of the reporting requirement by filing CTRs and explaining this with the small size of the business or the low risk profile of the customer base, which indeed is not an exhaustive justification itself and needs to be substantiated by a fully functional system of internal controls. All representatives of the private sector stress the importance of receiving significantly more general and specific feedback from the FIU regarding compliance with the AML/CFT requirements in general and with the STR reporting performance in particular.

458. The FIU has produced two separate lists of indicators for identification of ML and TF suspicions. These lists with many indicators defined in the same/ similar wording would definitely benefit from a structured presentation of indicators for suspicion with regard to the characteristics of customers (e.g. identity, status, behaviour), transactions or business relationships (e.g. nature, type, implementation method), as well as indicators for suspicion specific to various types of financial institutions and DNFBPs.

459. The FIU refers to an improved quality of STRs over the period of the last 2-3 years without, however, clearly outlining the criteria for the measurement of such quality. This statement is somewhat inconsistent with the steadily decreasing share of the disseminations to the law enforcement agencies as a proportion of the number of received STRs (the indicators for the period of 2015-2017 are 22%, 21% and 15% respectively). This might be indicative of the need, first of all, to clearly define the parameters of STR quality and, along with the introduction of appropriate institutional arrangements for controlling compliance with the STR reporting requirement (as described in the analysis for IO 3) and the improvement of indicators of suspicious activity (as described above), to enforce precisely defined and stringently applied STR generation and reporting requirements.

460. Discussions on STR reporting processes of the banks point out to the potential practices of superficial treatment of alerts generated by the core operational software on the basis of embedded typologies and indicators of suspicious activity. Particularly, some banks report to handle 25-30 alerts per day per staff member, which does not seem a realistic exercise if comprehensive analysis is to be done for each alert with consideration of all pertinent risk factors. Defensive reporting also seems to be part of the current practices.

461. Measures for the prevention of tipping off appear to be at an adequate level in the banks, enabled by the separated AML function with exclusive access to STR-related analyses and disseminations.

References are made to training and educating the staff immediately involved in customer service on precautions to prevent tipping-off.

Internal controls and procedures

462. Overall, application of internal controls and procedures by banks and other financial institutions (except for currency exchange bureaus) appears to produce sound results, as also ascertained by the findings of supervision. The same cannot be presumed about currency exchange bureaus and DNFBPs due to the lack of AML/CFT knowledge on one hand and insufficient scope and intensity of supervision on the other hand.

463. Banks report to have implemented AML/CFT programs comprised of policies, procedures and controls with embedded elements to combat ML/TF. These include an independent AML compliance function, employee screening procedures, staff training program, and an independent internal audit function. Proper governance arrangements, such as approval of policies and procedures by the Board and communication to the management and staff are reported to be in place. Further control measures include, *inter alia*, monitoring performance of the staff with AML/CFT responsibilities and taking remediation measures as necessary.

Factors impeding effective implementation

464. Banks refer to uncertainty with the current interpretation of the authorities as to how independence of the AML function should be achieved in terms of institutional arrangements. Particularly, banks are not allowed to have the AML function located within the broader compliance structure (which is responsible for, *inter alia*, legal and regulatory compliance) in view of a perceived inconsistency between the FIU regulation on the compliance function and the fit and proper criteria for the compliance officer on one hand, and the CBK regulation on corporate governance of banks on the other hand. The evaluators recommend fine-tuning and harmonising this interpretation with the applicable international standards and best practices, particularly having regard to the four basic elements which underlie the concept of independence (i.e. formal status, head of function, no conflict of interest, and access to information and personnel).

465. Moreover, according to the AML/CFT Law, where a customer or beneficial owner is determined to be a PEP, reporting subjects should obtain senior management approval not only for establishing or continuing the business relationship, but also for performing every other occasional transaction irrespective of the amount, purpose and other risk parameters of the transaction. This goes beyond the requirement of the FATF Standards and is reported to create sensible difficulties for the reporting subjects with high transactional activity, particularly for banks, in terms of allocating resources to the scrutiny and approval of apparently standard or low risk transactions. Establishment of reasonable filters for exemptions (such as a monetary threshold of a couple of hundred Euros, certain types of transactions such as utility payments) would enhance meaningful and non-formalistic implementation of this requirement.

Overall conclusions for IO 4

466. Among the reporting subjects banks are the most effective institutions in applying preventative measures commensurate with their risks, while other FIs and DNFBPs demonstrate a superficial understanding and often lack proper risk mitigation frameworks. STR reporting is highly uneven in all sectors, including banks, and reporting is often superficial and ineffective.

467. **Kosovo has a moderate level of effectiveness for IO 4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key findings

- The FIU, the CBK and other sectoral supervisors are assigned shared responsibility for supervising AML/CFT compliance of financial institutions and DNFBPs. In practice, this arrangement may have impact in inefficiency of the supervisory regime in case of banks and financial institutions, and is non-functional in case of the FIU and other sectoral supervisors.
- There is a range of market entry measures in the financial sector with missing elements to prevent associates of criminals from entering the financial market as holders (or beneficial owners) of a significant or controlling interest. Moreover, references are made to the existence of a large number of persons without any registration and licensing involved in currency exchange activity and in money lending activity.
- With regard to the DNFBPs, the measures in place for the gambling sector also miss the elements to prevent the associates of criminals to enter the market. It is not clear whether relevant measures are in place with regard to notaries, lawyers, auditors and accountants. There are no entry requirements for real estate agents and dealers in precious metals and precious stones.
- Among supervisors, the FIU and the CBK demonstrate generally proper understanding of ML/TF risks. However, there is an uneven quality of risk assessment products, which are the means to further build capacities in identification and understanding of risks. Also, it appears that application of the risk profiling provisions in relevant supervisory manuals does not result in regular production and revision of written documents clearly articulating the findings and conclusions about the risk profile of individual supervised entities. Other sectoral supervisors have a rather vague understanding about specific ML/TF risk implications in relation to the businesses and professions supervised by them.
- The FIU and the CBK have adequate powers and operational independence to enforce their supervisory mandate. The relevant division of the CBK appears to have adequate staff resources, which is not the case with the FIU given the absence of supervisory responsibility sharing agreements with sectoral supervisors on one hand and the large number of entities supervised by the FIU on the other hand. Shortcomings in the risk profiling practices appear to have an adverse impact on all subsequent stages (i.e. planning, execution and follow-up) of the supervisory cycle.
- Inspections conducted by the FIU and the CBK cover different areas and ascertain various irregularities in activities of reporting subjects with regard to compliance with AML/CFT requirements, and recommend actions for addressing identified shortcomings and deficiencies. It seems that, in relation to controlling compliance of financial institutions, there is a duplication of effort in the work done by the FIU and the CBK and, to a certain extent, a controversy with the supervisory mandate of the FIU.
- Production of inspection reports is not followed by application of proportionate and dissuasive sanctions stipulated by the AML/CFT Law. Disproportionality of the fines established by the AML/CFT Law is seen as a possible reason underlying ineffective sanctioning practices for non-compliance with the relevant requirements.
- In relation to the financial sector, supervisors have appropriate communication mechanisms, channels and practices to promote a clear understanding of AML/CFT obligations and ML/TF risks among banks and, to a lesser extent, other financial institutions. The same is only partially true for DNFBPs. There is an overall concern about general and specific feedback provided to

the reporting subjects on STR reporting, which appears to impede improvement of reporting performance.

Recommended actions

With regard to the **general setup of the supervisory framework**, Kosovo should take measures to:

- Ensure that the FIU and other supervisors negotiate and conclude the agreements stipulated by the AML/CFT Law to enable a functional mechanism for shared supervisory responsibility;
- Ensure that the mechanism for shared supervisory responsibility provides: 1) with regard to the CBK – a practicable solution to the issue of adequate control of financial institutions' compliance with, *inter alia*, STR reporting requirements; and 2) with regard to other sectoral supervisors – a workable framework to use the resources of sectoral supervisors for controlling DNFBPs' compliance with relevant AML/CFT requirements.

With regard to the **licensing, registration and other market entry controls**, Kosovo should take measures to:

- Introduce the missing elements, as applicable, to prevent criminals or their associates from entering the financial and non-financial markets as holders (or beneficial owners) of a significant or controlling interest, or holding a management function;
- Make decisive efforts towards enforcement of effective measures to bring unlicensed currency exchange and money lending activities into the regulated system;
- Consider introducing market entry requirements for real estate agents and dealers in precious metals and precious stones.

With regard to the **supervisors' identification and understanding of ML/TF risks**, Kosovo should take measures to:

- Remedy the structural/substantial shortcomings and enhance the quality of risk assessment products, such as national and sectoral risk assessments;
- Implement the risk profiling provisions in relevant supervisory manuals of the FIU and the CBK so as to regularly produce and revise written documents clearly articulating the findings and conclusions about the risk profile of individual supervised entities;
- Develop manuals or similar instruments for other sectoral supervisors enabling identification and understanding of ML/TF risks through, *inter alia*, appropriate risk profiling of their supervised entities.

With regard to the **risk-based supervision of compliance with AML/CFT requirements**, Kosovo should take measures to:

- Provide sufficient staff resources to control compliance of financial institutions and DNFBPs with AML/CFT requirements;
- Ensure that written findings and conclusions of improved risk profiling practices are consistently applied in all stages (i.e. planning, execution and follow-up) of the supervisory cycle.

With regard to the **remedial actions and sanctions**, Kosovo should take measures to:

- Provide for imposition of proportionate and dissuasive sanctions stipulated by the AML/CFT Law for ascertained non-compliance by the reporting subjects;

- Consider developing a set of rules for consistent (precedence-based) application of sanctions ruling out discretionary and voluntary interpretation of what would amount to a violation or breach of an AML/CFT obligation;
- Consider revising the fines established by the AML/CFT Law to ensure better proportionality to the gravity of non-compliance and coherence with the fines established for non-AML/CFT irregularities;

With regard to **promoting a clear understanding of AML/CFT obligations and ML/TF risks**, Kosovo should take measures to:

- Intensify the use of communication mechanisms, channels and practices to promote understanding among lower capacity reporting subjects, especially DNFBPs;
- Increase investment in the provision of guidance and training to different categories of reporting subjects subsequent to a needs assessment.

468. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The recommendations relevant for the assessment of effectiveness under this section are R.26-28 & R.34 & 35.

Immediate Outcome 3 (Supervision)

General setup of the supervisory framework

469. The FIU, the CBK and other sectoral supervisors are assigned responsibility for supervising AML/CFT compliance of financial institutions and DNFBPs. The AML/CFT Law defines that such responsibility may be shared between the FIU and sectoral supervisors on the basis of specific written individual arrangements. As of the time of the on-site visit, no agreements have been concluded. Nonetheless, the CBK exercises its mandate for prudential supervision, as well as the authorisation for controlling compliance of financial institutions with all applicable AML/CFT requirements except the one on reporting to the FIU (for which the latter has exclusive supervisory competence). As to the DNFBPs, the FIU practically bears the totality of responsibility for supervising their AML/CFT compliance insofar as the respective sectoral supervisors do not interfere and are not practically involved in that area.

470. Practical sharing of supervisory responsibility between the FIU and the CBK is an issue apparently causing significant ambiguity and subsequent inefficiency of the supervisory regime, as a result of differing interpretations of the provisions in Articles 34-38 of the AML/CFT Law.

471. In particular, the FIU interprets these provisions to legally entitle the CBK to control compliance of financial institutions with all requirements of the Law except for the one on reporting to the FIU[21]. In practice, this means that the CBK has access to all records, documents and other information except for: 1) the fact whether an STR on a person or transaction has been filed with the FIU; and 2) the contents of any STRs filed with the FIU. On that issue, the FIU states that whenever the CBK needs to ascertain whether an STR on a potentially suspicious person or transaction has been sent to the FIU, it can do so by applying to the FIU for permission of access to the fact of reporting, but not to the contents of the STR. Very few cases of granting such access have been enacted through a scheme whereby the commercial bank asks the FIU permission and then provides access to the CBK.

472. Then, along with a somewhat similar legal interpretation of the provisions in the AML/CFT Law on shared responsibility of supervisory responsibility, the CBK looks at the abovementioned issue from the standpoint that, since the FIU has exclusive competence for controlling compliance with the STR reporting requirement, the efforts of the CBK need to be reasonably limited to ascertaining implementation of all relevant requirements up to the point where the reporting subject decides whether or not to file an STR – and not beyond that as a matter of principle. Hence, the very fact whether a potentially suspicious person or transaction has been reported to the FIU and the contents of any reported STRs - remain outside of the scope of on-site inspections carried out by the CBK. Such practice is also explained by the intention not to intervene with the supervisory mandate of another government agency. As a result, quantitative and

[21] As set out Article 26 of the Law.

qualitative indicators of STR reporting performance are not subject to comprehensive and consistent supervisory control.

473. In order to address this significant gap in the AML/CFT supervisory regime, the authorities need to urgently find a solution involving inter-agency cooperation and intra-agency regulation elements so as to ensure that the complete value chain of the preventive measures implemented by the financial institutions, and specifically the reporting of STRs as a logical deliverable of that chain, is controlled for compliance in an uninterrupted and consistent manner. To achieve this objective, the FIU and the CBK should first negotiate and conclude the agreement stipulated by the AML/CFT Law.

474. Among possible options for resolving the issue of inadequate control of compliance with STR reporting requirements, the authorities might consider: 1) assigning or seconding[22] one or several staff members, presumably in the capacity of liaison officers of the CBK to the FIU, or vice versa, authorised for access to the STR data under relevant security and confidentiality arrangements and responsible for controlling the whole process of STR generation and reporting; or 2) ensuring that FIU is without failure informed of all findings of the CBK inspections regarding compliance of the reporting subjects with the preventive measures up to the point where they decide whether or not to file an STR, and is obliged to follow up on each case of factual failure to report to the FIU. The evaluators presume that the first option could be given preference insofar as it enables a more holistic solution of the issue.

Licensing, registration and other market entry controls

475. There is a range of market entry measures in the financial sector, which need to be improved by introducing, *inter alia*, provisions to prevent associates of criminals from entering the financial market as holders (or beneficial owners) of a significant or controlling interest. The CBK as the competent authority with exclusive mandate for licensing and registration of banks and other financial institutions applies a structured process, which, depending on the type of the to-be-licensed entity, comprises assessment of ownership structure and governance, strategic and operational plans, internal controls and risk management, as well as prior consent of the home supervisor (in case of licensing a branch of a foreign bank). These measures provide for banning entry of potentially shell participants into the system.

476. Checks on suitability of major shareholders (including ultimate beneficial owners) and senior management, clean criminal records, as well as relevant professional experience and compliance with reputational standards are reported to be performed on routine basis. The CBK refers to several dozens of refusals for registration of board members, senior managers, internal auditors and other core staff for reasons such as unsuitability due to reputational issues[23], lack of adequate professional experience, failure to meet educational standards, on-going bankruptcy proceedings regarding the applicant, etc. The CBK is also able to apply reverse action, i.e. withdraw the license or registration of an institution, or request removal of senior management. So far, no such action has been initiated against banks or other major participants of the financial market.

477. References are made to the existence of a large number of persons without any registration and licensing involved in currency exchange activity (the so called curb brokerage or street trade) and in money lending activity (the so called gombeen business). Should that be the case, the authorities need to make decisive efforts towards enforcement of effective measures to bring these persons into the regulated system in view of very high risks of potential ML pertinent to such non-registered activities in obvious non-compliance with any AML/CFT requirements.

478. With regard to the DNFBPs, the measures in place for the gambling sector comprised of operators of slot machines, sports betting and lotteries[24] need to be improved regarding prevention of the associates of criminals to enter the market. There are no entry requirements for real estate agents and dealers in precious metals and precious stones. This, while not a mandatory requirement of the FATF Standards, is a major concern as it minimises the authorities' ability to recognise and reach out the individuals and persons practically involved in these activities, against a background of high risks associated with, particularly, the construction sector and the shadow economy.

[22] Whichever term is better practicable under Kosovo law

[23] Based on the opinion of the Anti-Corruption Agency

[24] There are no casinos licensed and operating in Kosovo

479. Notaries, lawyers, auditors and accountants are licensed and/or certified, but it is not clear whether the available measures provide for the prevention of criminals or their associates from being professionally accredited, or holding (or being the beneficial owner of) a significant or controlling interest, or holding management functions in these DNFBPs.

Supervisors' identification and understanding of ML/TF risks

480. Among supervisors, the FIU and the CBK demonstrate rather advanced views and understanding of ML/TF risks. They are fluent to describe the factors with overarching impact on the risk situation in the financial and non-financial sectors, and to articulate typologies or patterns that could be used by perpetrators for laundering illicit money or financing terrorism. Such understanding of risk is facilitated by the national risk assessment conducted in 2013. While recognising the usefulness of this exercise in general and the findings of the 2013 NRA in particular, the evaluators note the structural and substantial shortcomings of the NRA report (as set out in the analysis for IO 1) and emphasise the need for enhancing the quality of risk assessment products as a means to further build capacities in identification and understanding of risks.

481. Standard Operational Procedures on Compliance Supervision of the FIU (2017) and Anti-Money Laundering Examination/Inspection Manual of the CBK (2014) set out processes for risk profiling of individual financial institutions. Particularly, the first one builds the broader framework for risk-based supervision on general risk analysis[25], risk-based rating[26] and targeting of supervised entities coupled with trigger-based and rotation-based modalities of supervision. The second one, while predominantly referring to supervision of banks and mostly focusing on the on-site aspect of supervision, sets out the supervisory cycle[27] to comprise the stage of understanding the unique characteristics or risk profile of supervised entities informed by the findings of previous inspections, the data on their operational and transactional activity etc.

482. Nonetheless, it appears that risk profiling provisions of both the FIU procedures and the CBK manual are applied to tentatively guide the efforts of supervisors without regular production and revision of written documents clearly articulating the findings and conclusions about the risk profile of individual supervised entities. Such products of risk profiling are necessary if the authorities want to ensure a consistent supervisory process unreceptive to the influences caused by factors such as, for example, staff turnover.

483. Other sectoral supervisors, while displaying general knowledge about contextual factors (such as the cash-based economy) and higher risk segments (such as the construction sector), have a rather vague understanding about specific ML/TF risk implications in relation to the businesses and professions supervised by them. They do not have manuals or similar instruments enabling identification and understanding of ML/TF risks through, *inter alia*, appropriate risk profiling of their supervised entities. Some sectoral and topical risk assessments, such as the ones on the games of chance industry and the construction sector, could facilitate the supervisors' improved understanding of risk if and when translated into practicable risk management instruments (e.g. strategies, action plans and monitoring tools).

Risk-based supervision of compliance with AML/CFT requirements

484. The FIU and the CBK have adequate powers and operational independence to enforce their supervisory mandate. Both agencies employ methods of supervision such as off-site surveillance and on-site inspections, and they use tools for supervision such as standard operational procedures and manuals. Regarding adequacy of supervisory resources, the Money Laundering Prevention Division subordinated to the Deputy Governor of the CBK reports to be sufficiently staffed and, whenever necessary, supported by

[25] General risk analysis is comprised of the following four stages: 1) collection of information in order to identify ML/TF risks, 2) risk identification and assessment; 3) acting upon the ML/TF risk assessment to mitigate risks; and 4) monitoring and follow-up actions.

[26] The rating exercise is to be done by assessing the institution's inherent risk against one predefined scale, then assessing the quality of its AML/CFT system against another predefined scale, and multiplying the respective scores for these two to achieve the final risk rating.

[27] The whole supervisory cycle is comprised of the following four stages: 1) understanding the institution (its unique characteristics or risk profile); 2) assessing the institution's risks (identifying the ML/TF risk); 3) planning / scheduling supervisory work (developing the scope of supervision and documenting the plan of work); and 4) performing on-site inspection (testing and validating data provided by the institution).

relevant divisions of the Bank Supervision Department (which is also responsible for the supervision of MFIs and NBFIs).

485. In contrast, adequacy of the FIU resources *vis-à-vis* its responsibility of supervising all DNFBPs is not obvious and would be a hardly achievable goal unless agreements are concluded to distribute that responsibility evenly between the FIU and sectoral supervisors (as described in the section on the general setup of the supervisory framework) or, alternatively, unless the FIU staff is increased significantly to be able to deal with its supervisory tasks (especially in view of the large number of DNFBPs operating in the non-financial sector). Of these two options, the first one seems to be apparently more relevant for cost and efficiency reasons.

486. Planning, execution and follow-up are defined as constituents of the supervision cycle both within the FIU and the CBK. Standard Operational Procedures on Compliance Supervision of the FIU (2017) and Anti-Money Laundering Examination/Inspection Manual of the CBK (2014) set out processes for risk-based annual planning and implementation of supervision. Planning is reported to be done on annual basis and is formalised through developing annual supervision plans endorsed by, respectively, the Head of the FIU and the Deputy Governor of the CBK. Follow-up includes monitoring implementation of supervisory recommendations, instructions and decisions. AML/CFT compliance program, internal controls, customer risk classification system, CDD procedures, as well as cash and suspicious transaction reporting are among areas stipulated by supervisory guidelines for examination in the course of on-site inspections.

487. Nonetheless, the shortcomings in the risk profiling practices of both the FIU and the CBK appear to have an adverse impact on all subsequent stages (i.e. planning, execution and follow-up) of the supervisory cycle. This is confirmed by the analysis of the annual inspection plans and performance indicators on supervision. For example, the planned and implemented activities of the FIU in terms of controlling compliance of the reporting subjects in 2017 are presented below:

Table 34:

Reporting subject	Planned		Implemented		Performance		Total number of reporting subjects	Industry-level coverage, planned	Industry-level coverage, actual
	Off-site	On-site	Off-site	On-site	Off-site	On-site			
Bank	2	1	10	1	500%	100%	10	30%	110%
Micro-finance institution	3	0	11	0	367%	0%	11	27%	100%
Insurance company	3	1	0	0	0%	0%	15	27%	0%
Money transfer company	0	3	5	0	-	0%	5	60%	100%
Exchange bureau	0	4	0	32	0%	800%	41	10%	78%
Game of chance	0	5	0	0	0%	0%	42	12%	0%
Notary	0	10	12	1	-	10%	74	14%	18%
Lawyer	0	10	0	0	0%	0%	840	1%	0%
Auditor	0	3	0	0	0%	0%	20	15%	0%
Real estate agent	0	5	0	0	0%	0%	46	11%	0%
DPMS	-	0	0	0	-	-	411	0%	0%
Total	**8**	**42**	**38**	**34**	**-**	**-**	**1,515**	**-**	**-**

488. In the table above, the rationale behind selecting a pool of banks, MFIs and insurance companies for planned off-site supervision and actually supervising a different pool of banks, MFIs and money transfer companies is not clear, also because ideally this method of supervision should cover all reporting subjects in a way that enables their risk-based profiling and further earmarking for on-site control. Then, the choice of the pool of reporting subjects planned for on-site inspections and the very different factual performance indicators do not appear to stem from a risk-based judgment about sectoral or individual risks. Overall, performance indicators are quite low and indicate problems at least related to staff resources. Finally,

industry-level coverage of planned and implemented activities is highly uneven and is not indicative of any targets for the periods to complete the full cycle in any industry[28].

489. A picture certainly different in structure but somewhat similar in nature can be seen with regard to planned and performed supervisory activities of the CBK, as presented below:

Table 35:

Reporting subject	2016			2017			Total number of reporting subjects	Industry-level coverage, actual (2017
	Planned	Implemented	Performance	Planned	Implemented	Performance		
Bank	6	6	100%	6	7	117%	10	70%
Non-bank financial institution	1	1	100%	2	1	50%	55	2%
Micro-finance institution	2	2	100%	2	3	150%	11	27%
Insurance company	2	2	100%	1	0	0%	15	0%
Money transfer company	0	0	0%	0	0	-	24	0%
Total	**11**	**11**	**-**	**11**	**11**	**-**	**115**	**-**

490. In the table above, whereas performance indicators are rather high (with actually implemented inspections sometimes even more than the planned ones), again, industry-level coverage of planned activities is highly uneven and is not indicative of any targets for the periods to complete the full cycle in any industry. This does not appear to be commensurate with the higher risks related to certain types of NBFIs, such as currency exchange offices. Also, the rationale behind individual targets of inspections is not clear in the absence of a formal document articulating the findings and conclusions of the individual risk profiling exercise.

Remedial actions and effective, proportionate, and dissuasive sanctions

491. Sanitised reports of the inspections conducted by the CBK cover various areas and ascertain irregularities in financial institutions with regard to sufficiency of AML staff; customer on-boarding process; identification, verification and updating of client data; risk-based categorisation of clients; definition and implementation of indicators for transaction monitoring; implementation of training programs etc. Supervisors recommend actions for remedying identified irregularities within a fixed deadline or on a continuous basis.

492. Inspections conducted by the FIU cover different areas and ascertain various irregularities in financial institutions and DNFBPs with regard to internal AML/CFT policies and procedures; customer identification and record-keeping; suspicious transaction reporting; training and capacity building etc. Sanitised reports of such inspections recommend actions for addressing identified shortcomings and deficiencies, again establishing fixed deadlines or assigning continuous implementation. Hence, whereas in case of DNFBPs such inspections of the FIU are the relevant means to ensure compliance with the AML/CFT requirements, in case of financial institutions the fact that the FIU conducts inspections with coverage and detail similar to those of the CBK seems to be duplication of effort and, to a certain extent, in controversy with the supervisory mandate of the FIU as defined by the AML/CFT Law, which stipulates for

[28] E.g. inspecting at least three banks in a year thus covering the whole industry within three years.

it to control compliance of financial institutions with the requirements on assessing and preventing risk and STR reporting only.

493. It does not appear that proportionate and dissuasive sanctions stipulated by the AML/CFT Law are imposed on the reporting subjects subsequent to the production of inspection reports by either the FIU or the CBK. Particularly, in 2016 the sanctions imposed by the FIU and the CBK totalled 4 written warnings and two fines amounting EUR 12,000 with regard to banks only. In 2017, the respective indicators were one written warning and one fine amounting EUR 20,000 with regard to banks only. At that, supervision has not identified any other AML/CFT infringements with all other reporting subjects supervised off-site or inspected on-site. The supervisors explain this to reflect the fact that banks have improved their AML/CFT compliance over the last several years, and in the majority of cases the deficiencies ascertained during on-site inspections involve minor inconsistencies or, as defined by the AML/CFT Law, "random or isolated violations", for which no sanctions are applied; instead, reporting subjects are recommended to address these inconsistencies in due manner and timeframe.

494. Nonetheless, inspection reports of the FIU and the CBK refer to findings that seem serious enough to be sanctioned (e.g. implementation of ML/TF suspicious transaction indicators), whereas the evaluators' interviews with the reporting subjects inform that certain requirements of the AML/CFT Law are not implemented consistently (e.g. the one on conducting risk assessments). In the context of a very specific definition of violations and sanctions in the AML/CFT Law and in consideration of the major gap related to controlling compliance with the STR reporting requirement (as described in the section on the general setup of the supervisory framework), the evaluators tend to assume that either the inspections are not comprehensive enough to enable identification of irregularities, or such identification is not followed by imposition of sanctions as required by the AML/CFT Law, or the situation involves any combination of these and other possible factors inhibiting appropriate sanctioning practices.

495. On the background of the ineffective application of proportionate sanctions as a dissuasive measure against non-compliance with the applicable AML/CFT requirements, representatives of the private sector refer to the disproportionate nature of the fines established by the AML/CFT Law for what are defined as very serious, serious and minor violations of the legislation. Such fines are several times higher than the ones for the violation of prudential requirements under the banking and other financial activity laws, and it appears that, in the absence of a sufficient precedence of practical application, there is a potential for discretionary and voluntary interpretation of what would amount to a violation or breach of an AML/CFT obligation.

496. Overall, disproportionality of the fines established by the AML/CFT Law could be one of the reasons underlying ineffective sanctioning practices for non-compliance with the relevant requirements.

Promoting a clear understanding of AML/CFT obligations and ML/TF risks

497. In relation to the financial sector, both the FIU and the CBK have appropriate communication mechanisms, channels and practices to promote a clear understanding of AML/CFT obligations and ML/TF risks among banks and, to a lesser extent, other financial institutions. The same is only partially true for DNFBPs, of which real estate agents and dealers in precious metals and precious stones are not subject to market entry controls, i.e. are hardly recognisable and sporadically reachable for supervisory and awareness-raising purposes. With regard to all DNFBPs, significantly more training, guidance and feedback is needed to ensure an appropriate level of understanding of AML/CFT obligations and ML/TF risks.

498. In practice, provision of guidance and training appears to be an area where supervisors generally and the FIU specifically need to invest significantly more resources. Whereas banks and some of the other financial institutions report to hold meetings and discussions with the FIU on regular basis, most of the NBFIs and DNFBPs do not recall more or less recent contacts with supervisors for guidance on routine business activities or regular training events. Given the low level of AML/CFT awareness among this second group of reporting subjects and, subsequently, the presumed non-compliance with their obligations under the AML/CFT Law, they should be given priority as beneficiaries of the authorities efforts in this direction. Such efforts would be more effective if preceded by a needs assessment among different categories of reporting subjects.

499. There is an overall concern about general and specific feedback provided to the reporting subjects on STR reporting. Banks, which are virtually the only source of STRs, refer to the lack of the regular practice to provide feedback on the usefulness of their reports, which would definitely help fine-tuning any future reporting. Some of them note that general feedback has been provided once in 2018 on the STRs filed in

2016. There is a unanimous agreement among banks that regular feedback is of key importance to enhance reporting practices in both quantitative and qualitative terms. Other financial institutions, as well as all DNFBPs do not report any feedback received from the FIU.

Overall conclusions on Immediate Outcome 3

500. The supervisory regime in Kosovo mostly led by the CBK and FIU has a number of functional components, however significant loopholes with regard to market entry, risk assessment and risk management practices, in particular for the non-banking sector, as well as supervisory overlaps and piecemeal inspections coverage/practices significantly impact overall effectiveness.

501. **Kosovo has a moderate level of effectiveness for IO 3**.

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key findings

- Under the laws of Kosovo, all legal persons are required to be registered. Basic information is publicly available through the Business Registry (KBRA) and is, therefore, transparent. Although there is no beneficial ownership registry, banks and financial institutions appear to be generally aware of their need to identify the beneficial owner of a legal entity or arrangement, however the understanding of what constitutes beneficial ownership varies. Furthermore services are still in certain cases offered if the ultimate owner is obscured through complex structures.
- There does not appear to be a process for verifying the information that is provided to the Business Registry or for checking whether it requires updating. While there is a legal requirement for changes of basic information in respect of all legal persons to be reported to the Business Registry within fifteen days from when such changes are made, failure to comply is not subject to any penalty. Nevertheless, the adequacy, accuracy and currency of most of the information at the registry appear to be satisfactory.
- The authorities have not assessed the ML/TF risks associated with the types of legal entities created in Kosovo. Moreover, the possible use of strawmen and the illegitimate use of nominees have not been explored sufficiently and very little appreciation of the risks posed by these phenomena was encountered.
- Kosovo uses basic mechanisms to ensure that information on the beneficial ownership is accurate and up-to-date. Law enforcement authorities and the FIU use existing information obtained by banks under their CDD requirements. Since there have been very few investigations involving the use of legal entities and the need to obtain beneficial ownership information, the Kosovo Police seemed unaware as to whether in such cases they would be able to obtain adequate, accurate and current information beyond the information available on the Business Registry and from whom they would be able to obtain it.
- The information on the BO is generally held by banks; however it is very doubtful whether other financial institutions and DNFBPs are even aware of this obligation. Banks are mostly reliant on the Business Registry for shareholder information; however, except for banks that are subsidiaries of larger groups, very little comfort was given that in the case of corporate customers incorporated in foreign jurisdictions there is any knowledge as to how to obtain beneficial ownership information and how to ascertain that the information provided is true. Reliance is sometimes made on declarations made by the customers and this modality raises issues relating to the lack of accuracy and veracity of the information gathered.
- In the course of its supervisory work, the CBK assesses the level of verification of beneficial ownership information by reporting entities while conducting on-site examinations. The CBK checks whether it is adequate, accurate and current. The effectiveness of the sanctions framework of the CBK is questionable and so is the dissuasiveness of the sanctions. While there have been occasional gaps that have been identified in relation to beneficial ownership, no penalties have ever been imposed.
- There appears to be a very limited understanding of the risks posed by legal persons and legal arrangements. The authorities do not seem to appreciate that every country faces the risk of having indirect ownership of legal persons and legal arrangements through complex structures and that there might be an interest in investing illicitly-obtained funds through corporate entities incorporated in another country. Neither are they sufficiently aware of the

mechanisms whereby legal arrangements such as trusts and foundations can be set up in a foreign country and used to operate within the territory of a different jurisdiction. Indeed, the only authority that during the onsite part of the assessment demonstrated an appreciable level of understanding of the concept of control being exercised by a third party who is not officially an owner of a legal person was the Tax Administration of Kosovo.

- The financial sector and DNFBPs also do not appreciate sufficiently the fact that even though most of their customers are domestic, it is very possible for ownership to be obscured through complex structures and the use of nominees. Failure to appreciate this risk exposes them to being used unwittingly for ML/TF purposes.
- The Kosovar legal framework does not recognise trusts, although the operation of legal arrangements established under foreign law is not prohibited. The assessment team was not convinced that authorities or obliged entities are adequately aware of ML/TF risks related to legal arrangements as they lack sufficient understanding of their structures and the nature of their activities.

Recommended actions

Kosovo should take measures to strengthen its ability to identify beneficial ownership and to limit the misuse of legal persons and legal arrangements for the purposes of ML/TF by:

- Carrying out a risk assessment at a national level that examines the different types of legal persons with a view to assessing their vulnerabilities and attractiveness to be misused for ML/TF purposes;
- Introducing an administrative penalty that may be imposed for the failure to notify the KBRA of changes in shareholding;
- Increasing the level of supervision and the number of on-site inspections, especially in relation to the DNFBP sector, to ensure *inter alia* that beneficial ownership information is being collected and maintained;
- Imposing administrative sanctions that are dissuasive, effective and proportionate both in the financial sector and in the DNFBP sectors whenever breaches are identified in relation to the obligation to maintain beneficial ownership information;
- Increasing the level of awareness within the Kosovo Police of the manner in which legal persons and legal arrangements can be used for ML and FT purposes, the way legal arrangements may be set up in foreign jurisdictions and how they can operate in Kosovo and the need to ensure access to beneficial ownership information for the purpose of pursing domestic investigations and to provide this information to foreign counterparts when a request for information is made.

502. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R.24 and 25.

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

503. Information on the creation of various types of legal entities in Kosovo is publicly available. The legislation does not provide for the establishment and operation of trusts and other legal arrangements in Kosovo. Although there is no legal framework allowing for the setting up of legal arrangements under Kosovar law, however, there is no prohibition. Therefore trusts and legal arrangements such as foundations can be registered as shareholders of companies incorporated in Kosovo, can access the services of obliged entities and can purchase movable and immovable property in Kosovo.

504. The Business Registry of Kosovo (KBRA) provides information free of charge to the public through its website (https://arbk.rks-gov.net). The information provided includes the type of legal person, the name of the legal person, together with the registration number, the date of establishment, the address, the

names of the authorised persons and the names of the owners. Information on the types and forms of legal persons that can be set up in Kosovo is also available publicly.[29]

505. Currently, the Business Registry contains 161,155 companies in total. Of these 128,976 were registered as IB, 3,503 as GP, 87 as LP, 27,061 as LLC, 513 as JSC, 809 as foreign companies, 30 as Socially Owned Enterprises, 10 as Public Enterprises, 133 as Agricultural Cooperatives, 33 under jurisdiction of Kosovo Privatisation Agency.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

506. The NRA carried out in 2013 does not examine the different types of legal persons with a view to assess their vulnerabilities and attractiveness to be misused for ML/TF purposes. It is a concern that the NRA does not even mention in passing the issue of beneficial ownership information, and use of legal entities for ML purposes in any of its findings. This is however mentioned in the SOCTA, which recognises both the use of shell companies and offshore companies in ML activity in Kosovo, however does not provide any further detailed findings or recommendations on this issue.

507. Neither were risks associated with misuse of legal persons examined in the other generic and sector-specific reviews carried out after the NRA was completed, except for the NPO sector (see also IO 1, 9 and 10). Indeed, an overall view of the threat, vulnerability and impact of legal persons, their links to tax evasion, corruption, smuggling, organised crime, the black economy and wire transfers has never been formed. Neither is there a clear understanding of the number of shareholders of registered legal persons that are either foreign individuals or foreign entities or foreign-based trustees.

508. Moreover, other contextual information such as the purposes for which legal persons are used and the pattern of their ownership seems to have never been assessed. During the on-site part of the assessment it was made clear that although it is possible for a Kosovar legal person to be owned by a foreign shareholder (that could either be a natural person or a legal person resident or incorporated in a foreign jurisdiction), the KBRA does not consider such arrangements as posing a higher or at least different risk to legal persons that are purely domestic. Although the vast majority of companies incorporated in Kosovo are owned by natural persons, when ownership is vested in a legal persons no distinction appears to be made as to whether that legal person is acting as a nominee, trustee or in a fiduciary capacity or is based in an offshore jurisdiction. It is also evident that the possible use of strawmen has not been explored sufficiently and very little appreciation of the risks posed by this phenomenon was encountered.

509. In addition, there is no evidence that the vulnerabilities and risks of legal persons have ever been taken into account to form the strategy to counteract the ML and FT risks prevalent in Kosovo.

510. The only exception, where this is the case, is the NPO sector, which was reviewed as a separate risk assessment exercise by the authorities in 2018. Despite some of the methodological shortcomings and inconsistencies, the risk assessment report noted a number of useful risks and vulnerabilities in the NGO sector. In terms of the regulatory and oversight framework, it was noted in particular that: there is a lack of national accreditation for religious NGOs (which is considered by the assessment team as one of the key vulnerability factors in the TF context); the government NGO database is out of date and inaccurate; time limited suspension period for NGOs suspected to be linked to TF; lack of capacity within NGO Registration Department. The assessment notes a number of difficulties, experienced by financial institutions in identifying and monitoring the financial activities of NGOs, in particular: difficulties with the verification of sources of foreign NGO funding; deliberate misidentification of NGO classification to disguise true nature of activities; previously closed NGOs linked to TF re-open under new names; banks holding dormant NGO accounts unable to accurately check current status. These findings are all important in terms of formulation of future policies, however given that the NGO assessment was finalised only recently, it is impossible to judge to what extent the policies recommended therein will actually be taken on board by authorities.

Mitigating measures to prevent the misuse of legal persons and arrangements

511. Kosovo authorities have taken a number of steps aimed at preventing and mitigating the misuse of legal persons. These include, as stated above, transparency of basic information through registration and

[29] New legislation regulating basic ownership information had been introduced at the time of the on-site visit, however was brought to the attention of the assessment team only after the on-site, and therefore could not be taken into account for the purposes of this assessment.

a requirement to update the information at the KBRA within 15 days, CDD obligations for obliged entities, the prohibition of issuing of bearer shares and providing for access to information by the authorities.

512. With regard to transparency, the information held by the KBRA is publicly available and transparent. The KBRA checks that the information provided to it is complete and operates on the presumption that the data which has been provided is accurate because documents submitted to the registry must be original documents or a copy of the original certified by a notary and the submission of false data to the registry is a criminal offence under the general provisions of the Criminal Code (Article 403).

513. A legal obligation is in place under Article 17.8 of the Law on Business Organisations that requires any changes of basic information (including changes in shareholding) in respect of all legal persons to be reported to the KBRA within fifteen days from when such changes are made. Nevertheless, there does not appear to be a process for verifying the information that is provided to the Business Registry or for checking whether it requires updating. Neither is it possible to impose a penalty for the failure to notify the KBRA of changes in shareholding. On-site discussions led to some concerns as to the accuracy of data in the KBRA in the context of the abovementioned weaknesses, which tend to raise some doubts as to the ability of the authorities to guarantee the integrity and reliability of the data.

514. The KBRA has not observed or reported any failings in the adequacy, accuracy or currency of information it holds, and there have been no cases in the courts in relation to failures to provide information to the KBRA or the provision of inadequate information to the KBRA.

515. In the absence of a register of beneficial owners, only reporting entities hold beneficial ownership information where such information is different to basic ownership, as they are subject to the beneficial ownership requirements under the AML/CFT Law. Therefore, beneficial ownership information is available only from reporting entities.

516. Although there is no beneficial ownership registry, banks and the larger financial institutions appear to be generally aware of their need to identify the beneficial owner of a legal entity or arrangement and what needs to be done to confirm ownership. The guidance provided by the CBK in its instruction of the 26th December 2017 on the identification of beneficial owners has potentially helped in this regard. There actually also appear to be cases where the 25% threshold is ignored and the full ownership and control structure is identified and verified. However, from the on-site part of the assessment it has resulted that this is not the case in the majority of circumstances and services may in certain circumstances still be offered if the ultimate owner is obscured through complex structures. The fact that there are significant weaknesses in the supervision of DNFBPs and that there have been no penalties imposed by any supervisory body on a bank or financial institution for failure to maintain beneficial ownership information demonstrate that the deficiencies in the system leave room for potential abuse.

517. The authorities have taken a number of predominantly operational measures to prevent the misuse of NPOs for terrorism financing purposes, however these were predominantly limited to temporary suspensions of activities (see IO 9 and 10), however no other measures of a preventative nature have taken with regard to that sector.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons and legal arrangements

518. The KBRA does not verify the accuracy, adequacy and currency of the information received since this function does not fall within the role of a national registry of legal persons. Neither are there explicit provisions requiring legal persons to maintain adequate, accurate and current basic ownership information. Although the KBRA has not observed any problems with the adequacy, accuracy or currency of the information held, this information cannot be considered as wholly reliable in the absence of checking mechanisms or meaningful sanctions in relation to any failure to notify changes to ownership information.

519. As regards the quality of beneficial ownership information, only reporting entities subject to CDD requirements are obliged to obtain beneficial ownership information and to update changes to beneficial ownership. The paragraphs under IO 4 provide further information on CDD by reporting entities.

520. It is worrying to note that total reliance is being placed by the authorities on the information held by the KBRA. Where investments are made through legal persons that are incorporated outside Kosovo, the KBRA does not have any visibility whatsoever of the ultimate ownership of that entity, meaning that reliance will need to be placed on reporting entities that might be providing services to that legal person.

There could easily be situations, however, where an investment is made to Kosovo by a legal person that is not set up in Kosovo but in another jurisdiction. If no banking or other services are provided to the legal person by a financial sector entity, it will be very possible for the investment to be made without anybody identifying the ultimate beneficial owner. If it is only DNFPSs, such as notaries and real estate agents, that are used in a transaction taking place in Kosovo, where the level of supervision is low (see IO 4) and the bank used for the transfer of funds is a foreign bank, it is very likely that the relevant competent authorities such as the law enforcement bodies would never be in a position to identify the beneficial owner and to pass on that information to their foreign counterparts.

521. Banks are therefore key in the ability of the Kosovo authorities to have timely access to adequate, accurate and current information on beneficial ownership. This is especially true given that all legal entities in Kosovo are obliged to hold a bank account. Representatives of banks were convincing in stating to the evaluation team that they would not enter into a business relationship unless the beneficial owner would be identified, however there was clearly differing understanding as to what constitutes beneficial ownership. Given the lack of sanctions being imposed by supervisory authorities for lack of availability of beneficial ownership information or inaccurate beneficial ownership information could raise doubts as to the effectiveness of the controls. Most of the DNFBPs were unaware of their obligations to identify the beneficial owner and the vast majority of the operators and professionals interviewed could not even make a distinction between ownership and control. Even the more sophisticated representatives of the DNFBP sector, such as notaries and auditors from Big-Four firms failed to convince the assessors that beneficial information was invariably being requested from clients and maintained on file. These findings suggest that relevant CDD on beneficial owners is not always available and Kosovar authorities would not always have access to beneficial information for the purposes of domestic investigations or for cross-border sharing of information.

522. Since it is possible for legal persons to purchase real estate, DNFBPs clearly have an important role to play in ensuring that beneficial ownership information is available in relation to the real estate and construction sector. These sectors are particularly important as they have been identified by practically all interviewees from the private sector as being the highest risk area for money laundering in Kosovo. It is not compulsory to use real estate agents in the purchase of immovable property but, when used, they should verify the identity of beneficial owners and that information should be made available to the supervisor during on-site inspections. From the interviews carried out during the assessment it transpired that CDD is not being carried out by real estate agents and beneficial ownership is not available. Neither are real estate clients subject to a risk-assessment. The lack of adequate oversight of these operators, notwithstanding the findings of the sector-specific risk assessment of the construction business in Kosovo in October 2017, leaves the door wide open for sale of property to be carried out without knowledge of who the ultimate beneficial owner of the purchasing company is and no record being maintained for evidentiary purposes. The mechanism to identify BO of purchasing companies through their bank accounts held in banks would not be the most effective remedy in this case.

523. Similar conclusions can be reached in relation to notaries and lawyers involved in real estate transactions, who demonstrated very little knowledge of AML/CFT obligations during the on-site part of the assessment and in practice evidently make very little effort, if any, to identify the beneficial owner (other than one particular lawyer representing a firm regularly involved in large commercial transactions who could give examples of what beneficial ownership information is requested and spoke of situations where business was refused due to lack of beneficial ownership information). Other than this one solitary lawyer, all notaries, legal professionals and real estate agents met on-site confirmed to the assessors that beneficial ownership information is not something that is maintained. Some auditors and accountants, most of which represented large multinational audit and consultancy firms, were in the same situation as the other professionals, while some others demonstrated more knowledge on the requirement to obtain beneficial ownership information. This situation, exacerbated by the fact that the level of supervision and sanctioning of DNFBPs is very low,[30] gives rise to the real possibility that in situations where Kosovar banks are not used for transactions, competent authorities would not be able to access adequate, accurate and current beneficial ownership information.

524. In truth there have been very few investigations involving the use of legal entities and, according to the Kosovo Police, there have been very few situations where there has been the need to obtain

[30] In the case of notaries, thirty-five inspections have actually been carried out in the past four years, but notwithstanding several failures identified in relation to beneficial information, no administrative sanctions were ever imposed.

beneficial ownership information. This, however, does not mean that there could be other potential cases that require investigation that have not been identified because of the limited awareness and knowledge about corporate matters and the use of foreign-owned legal persons and arrangements. The Kosovo Police were of the view that all information on beneficial owner information is maintained by the KBRA and by the banks but could not state what would be done in those situations where the information is not available. The Kosovo Police appear to be unaware as to whether in such cases they would be able to obtain adequate, accurate and current information beyond the information available in the Business Registry and from whom they would be able to obtain it.

525. Although the FIU is granted powers to access beneficial owner information from obliged entities, which could still be problematic in those cases where the information is not obtained in the first instance as part of the CDD process, the law is silent on the powers of the Kosovo Police to obtain such information. The respondents from the Police force present during the on-site part of the assessment claimed that so far, in the few cases involving legal persons, the ownership of the legal person was always obtained from the KBRA. There have been no cases where the Police have made a request for information to their foreign counterparts and in those cases where a request from a foreign Police force is received, the Kosovo Police claimed that they would be able to obtain beneficial ownership information through a domestic request for information to the KBRA, Customs, the TAK and the FIU. Direct access to banking information is possible only in the context of an on-going formal investigation. Neither was there any awareness as to the possibility that the beneficial ownership behind complex structures might not be that easy to decipher.

526. As stated earlier, the authorities do not seem to appreciate that every country faces the risk of having foreign owners of legal persons and legal arrangements who could be interested in investing illicitly-obtained funds through corporate entities incorporated in Kosovo or that legal arrangements such as trusts and foundations can be set up in a foreign country and used to operate within the territory of Kosovo. The only authority that demonstrated an appreciable level of understanding of situations where control is vested in a third party who is not officially an owner of an undertaking was the TAK. Powers are granted at law to the TAK to investigate persons who benefit from the activity of a company and to hold that person responsible for the activities of the company. This power can be exercised even in cases of ML and even if the person is not officially the shareholder of a company.

527. With regard to legal arrangements, as stated earlier in the report, these cannot be established under Kosovo law. Reporting entities are obliged to comply with all CDD requirements should they conduct transactions in which foreign trusts and other legal arrangements are involved. According to information provided during the on-site part of the assessment, there have been no investigations, prosecutions or mutual legal assistance requests involving legal arrangements. Neither have there been any cases involving trusts. Whether this is attributable to the absence of trusts and other legal arrangements being involved in commercial transactions in Kosovo or whether it is caused by the lack of knowledge and experience in this area could not be determined by the assessors. Accordingly, the accuracy, adequacy and currency of information held by reporting entities on foreign trusts and other legal arrangements has not been tested by use as evidence.

Effectiveness, proportionality and dissuasiveness of sanctions

528. The administrative sanctions applicable to reporting entities for the failure to obtain or maintain beneficial ownership information are the following: either a private warning or a fine between EUR 20,000 and an amount not exceeding 5% of the net value of the reporting entity. Alternatively, the fine can be equivalent to the amount of economic volume of a transaction plus 50% of that amount, but not less than EUR 20,000. It is also possible for a flat fine of EUR 30,000 to be imposed. Fines on individuals responsible for a violation and who hold an administrative or managerial post within the entity are also possible.

529. The CNK and the FIU have carried out a number of supervisory on-site examinations and in a number of these inspections it was determined that there were breaches of the obligation to maintain beneficial ownership information that is accurate, adequate and up-to-date. Notwithstanding the identification of these breaches, no sanctions have ever been applied. Supervisory authorities are expected to apply the sanctioning provisions so as to ensure that the obligations that apply at law are taken seriously by reporting entities and implemented strictly. In any case, it is the considered view that the maximum penalty applicable at law is not sufficiently dissuasive for a reporting entity with substantial means such as a bank and therefore the value of the penalties should be revised.

530. Submission of false data to the KBRA would constitute a criminal offence under Article 403 of the Criminal Code punishable with a term of imprisonment of between 3 months and five years. Although no prosecutions for such cases have been registered so far, the criminal punishment for such offence is considered to be sufficiently dissuasive.

531. Article 17.8 of the Law on Business Organisations requires legal persons to inform the KBRA of any changes in registered data within a period of 15 days. The law, however, does not impose any penalty for failure to meet this deadline and one would expect a penalty to be included for failure to notify that is effective, proportionate and dissuasive.

Overall Conclusions on Immediate Outcome 5

532. The NRA and other risk assessments carried out at a national level do not examine the different types of legal persons with a view to assessing their vulnerabilities and attractiveness to be misused for ML/TF purposes (except for NPOs). Nor is there any evidence that the vulnerabilities and risks of legal persons have ever been taken into account to form the country's strategy to counteract the ML and FT risks prevalent in Kosovo.

533. Although certain steps have been taken by the Kosovo authorities to curb the misuse of legal persons and legal arrangements, there does not appear to be a process for verifying the information that is provided to the KBRA or for checking whether it requires updating. Neither is it possible to impose a penalty for the failure to notify the KBRA of changes in shareholding.

534. In the absence of a register of beneficial owners, beneficial ownership information is available only from reporting entities. While banks and a number of financial institutions appear to be sufficiently aware of what needs to be done to confirm beneficial ownership, the vast majority of other obliged entities do not determine who the beneficial owner is when providing services to legal persons and legal arrangements.

535. Where DNFBPs based in Kosovo are used to carry out a transaction, but the banks involved in the transactions happen to be foreign, there is a real possibility that competent authorities would not be in a position to access adequate, accurate and current beneficial ownership information. This scenario would undoubtedly impact negatively on the ability to pursue domestic investigations of financial crime and it will certainly inhibit cross-border sharing of beneficial owner information. In a country where it is widely claimed by interlocutors that the construction industry and the purchase of immovable property are attractive for money laundering purposes, the inability to ascertain the beneficial owners of legal persons purchasing property in Kosovo is a serious shortcoming. The low level of awareness within the Kosovo Police on the manner in which legal persons and legal arrangements can be misused for ML/TF purposes and their lack of interaction with foreign counterparts in such cases makes the jurisdiction even more susceptible to ML and FT through the use of legal persons and legal arrangements whose ownership is obscured by complex structures.

536. **Kosovo has a low level of effectiveness for Immediate Outcome 5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

- Kosovo authorities have established a comprehensive system and exert significant efforts to provide a wide range of MLA, however some issues related to the legislative requirements and complex procedures in the international MLA cooperation have an impact on the timeliness of assistance. Remedial action has been undertaken by the authorities, but further measures are needed to address the remaining issues.
- Systems and procedures for prioritisation of MLA requests received by Kosovo have not been implemented by all authorities.
- Kosovo authorities did not demonstrate the active use of MLA for the purposes of ML and TF investigation and prosecution in Kosovo.
- The FIU exchanges actively information on ML, associated predicate offences and TF, which is used in its own analyses and to support the LEAs' effort. The assessors have no indication of any issues related to the timeliness of provision of information. Nevertheless, the deficiencies identified under IO 6 with regard to the access to information might be affecting the effectiveness of cooperation.
- Despite the significant effort of LEAs in international information exchange, it was not sufficiently demonstrated that it would adequately focus on ML and TF cases. The supervisory cooperation in this regard seems to be limited.
- The general deficiencies with regard to the access to beneficial ownership information affect also the international cooperation.

Recommended Actions

- Kosovo authorities should undertake further legislative measures and implement additional interagency cooperation mechanisms to ensure the timeliness of responding to MLA requests.
- Authorities should further focus on the use of direct cooperation, ensure that there is an adequate formal basis for this cooperation and implement measures to adequately monitor and avoid redundancies in this cooperation where legally possible.
- Kosovo authorities should ensure the systematic prioritisation of MLA cases by all competent institutions based on enhanced internal procedures and case management systems.
- Kosovo authorities should urgently undertake measures to assess the reasons for the decreasing use of the MLA channel of cooperation for pursuing ML cases and ensure that in all cases of potential ML the international legal assistance is adequately exploited based solely on the investigative priorities and despite procedural obstacles that could be related to the established practices (as observed under IO 7).
- FIU should further enhance its ability to timely access and use all information, particularly the information accessed indirectly from external sources, for the international information exchange purposes.
- Kosovo LEAs should proactively seek international cooperation to ensure that all cases of potential ML and TF are adequately explored.
- Continuing and sustainable training should be organised on a regular basis for all Kosovo investigative authorities on the seeking and use of international legal assistance.

537. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

Providing and seeking constructive and timely MLA and extradition

538. The risk profile of Kosovo renders the provision of international cooperation a matter of utmost importance. This is related not only to the regional links and property of criminal origin in the neighbouring countries but also the large diaspora community Kosovo has in the EU and EEA countries. Most of the terrorism cases discussed also seem to have a significant foreign dimension, at the regional and more broadly the European level, including but not limited to the targets of terrorist activities in the region, the FTF issue and members of local communities joining terrorist or paramilitary organisations, the NPO phenomenon and its financing.

539. The provision of legal assistance in criminal matters is based on a sufficiently broad legal framework in Kosovo although it is impacted by several factors mainly related to the limited number of international agreements[31] (although mitigated by the application of the reciprocity principle of cooperation and the active efforts of the authorities to ensure further agreements), and especially by the issues linked to the timeliness and lack of specific deadlines, including the cumbersome procedures in some cases.

540. The incoming requests for MLA are handled in Kosovo through a centralised mechanism that in many cases is affected by issues which are detrimental to the effectiveness. The procedures involve the central authority in the Ministry of Justice but also provide for certain requirements for the use of diplomatic channels (although there were no recent cases of use of the diplomatic channels in practice). Furthermore, the prosecution and courts are involved in the procedure. It is prolonged by occasional deviations until a request reaches the competent authority for execution. In the case of extradition requests to Kosovo the procedures of appeal after the final decision of the courts provided for in Articles 28-30 of Law on International Legal Cooperation in Criminal Matters adds further complexity and impacts the timeliness of execution, sometimes more than 6 months. The situation is negatively affected by the lack of strict deadlines for the execution of requests at each stage. Additionally, despite the use of an advanced case management system in the central authority in the Ministry of Justice, no such system is implemented in the Prosecution Office and in the courts, where it was reported to be handled through paper-based ledgers. Furthermore, it is noted that in a number of cases the effectiveness of cooperation could be negatively affected by the requirement to send the request to the respective Basic Prosecution Office despite the fact that the case might be of the competence of e.g. in ML cases of the SPRK which adds an unnecessary element in the execution chain. Authorities are aware of most of the negative effects and have actually undertaken steps to remedy the situation although these were not finalised by the end of the on-site visit and are consequently not taken into account.

541. The introduction of the points of contacts in the Basic Prosecution Offices in 2017 was aimed to contribute to the effectiveness and timeliness of cooperation especially with regard to the priority cases and it allows to overcome some of the complexities noted above.

542. The direct cooperation with foreign counterparts is not allowed except for urgent cases under Article 4, paragraph 2 of the MLA Law which allows for the provision of assistance even if the request is directly received (to be followed by confirmation in writing through the official channel). In practice direct communication between Prosecutor's Offices seems to be widely used and of benefit for the prosecutors' efforts. Many cases were discussed and positive examples were provided to the assessors by both the Ministry of Justice and the respective authorities involved in direct cooperation, despite the lack of comprehensive statistics. It is also noted that in many cases the use of this system would be negatively affected by the lack of any formal agreements to this end. Another issue that might affect the effectiveness

[31] Agreement on Mutual Legal Assistance, Extradition and Transfer of Convicted Persons with the Republic of Albania, Agreement on Mutual Legal Assistance, Extradition and Transfer of Convicted Persons with the "former Yugoslav Republic of Macedonia", Agreement on Judicial Cooperation in Criminal Matters with the Federal Republic of Germany, Agreement on Mutual Legal Assistance with the Republic of Hungary, Agreement on Mutual Legal Assistance and Extradition with the Republic of Italy, Agreement on Mutual Legal Assistance with the Republic of Croatia, Agreement on Transfer of Convicted Persons with the Republic of Switzerland, Agreement on Mutual Legal Assistance with the Republic of Turkey, Agreement on Transfer of Convicted Persons with Belgium.

is the lack of regular notification of the Ministry of Justice on the direct cooperation taking place that could additionally have a detrimental effect on the timeliness considering the requirement for official confirmation following the direct cooperation and potential confusions and duplications of effort.

543. The requests for MLA received by the Department of International Legal Cooperation in the Ministry of Justice in relation to various acquisitive crime range for the period 2015-2017 between 85 and 96 per year. The crimes to which the majority of the requests were linked included counterfeiting and piracy of products (a total of 96 cases for the period), robbery or theft (a total of 51 cases); trafficking in human beings and migrant smuggling (a total of 27 cases); sexual exploitation (a total of 16 cases) and illicit trafficking in narcotic drugs and psychotropic substances (a total of 17 cases).

544. Kosovo authorities provided the following statistics on requests related to ML. The ML requests received were respectively 5 in 2015, one in 2016 and 4 in 2017 out of the aforementioned number of requests received annually. It is noted that in 2015 the competent Department for International Legal Cooperation in the Ministry of Justice sent 3 replies related to ML requests, in 2016 there were 2 replies and in 2017 – 4 replies. The on-site visits confirmed that refusal of cooperation occurred in very limited circumstances (in only one case in the last 5 years) related to constitutional grounds and in no manner can be interpreted as negatively affecting the provision of cooperation. No further statistics were provided to demonstrate the time for execution of the requests and no definitive conclusion can be reached in this regard. During the on-site visit several specific cases were discussed in order to determine the time necessary for providing the necessary assistance. Several incoming cases of MLA (from Romania, France, etc.) took an average of 6-8 months to provide assistance although these were considered by Kosovo authorities as complex cases involving many subjects and thus not sufficiently indicating the effectiveness of the international legal cooperation provided by Kosovo. Nevertheless, despite some sympathy of the assessors with this view, no comprehensive statistics that could demonstrate effectiveness were provided. It is noted that in 2017 measures were implemented with regard to ensuring direct communication with the prosecution office through contact points that contributed to a more efficient procedure. Kosovo authorities also demonstrated their ability to react rapidly in high-priority cases following efficient cooperation and coordination procedures (e.g. in terrorist-related cases). Direct communication is also contributing to the timeliness although its exact impact cannot be confirmed by the assessors. In relation to the quality of the assistance provided the general satisfaction of a number of countries requesting assistance was noted by the authorities although in the absence of an independent feedback received in the framework of the current assessment project from the partnering countries it is not possible to reach a conclusion in this regard.

545. Kosovo authorities do not maintain separate statistics with regard to TF requests and no conclusion can be made in this regard, as it seems that no cases of exchange of information took place in regard to TF. There were 12 MLA requests (also for cases started in previous years) for the period 2015-2017 related to terrorism. The assessors were presented with several cases related to terrorism where an extremely rapid reaction was ensured, in a matter of hours and the required information was provided to the requesting authorities.

546. The extradition requests were 11 for 2015, 13 for 2016 and 28 for 2017. None of these requests were related to ML. There is also no information on any requests to Kosovo for extradition that are linked to terrorism financing although there was a total of 5 requests linked to terrorism. Nevertheless, with regard to the effectiveness of execution of extradition requests in general, it is noted that the legal procedure of appeal after the final decision of the court (i.e. after the necessary time to assess the request and reach a conclusion) would actually add an average of 6 months to the procedure and this remedy has been widely used by the persons sought to be extradited.

547. The dual criminality issue has not so far been found to present an issue for Kosovo authorities although the legal requirements in this regard are applicable as discussed in the TC annex.

548. The central MLA authority in Kosovo uses a sophisticated case management system for detailed assessment and conducting of MLA, although it could benefit from a level of improvement and addition of further features to facilitate the prioritisation of cases, e.g. the possibility for alerts, etc. It is also noted that no statistics were actually generated from the system and provided to the assessors on the response times and some issues related to the established practice in keeping the statistics need to be addressed, for example the aforementioned lack of statistics on TF as a separate offence.

549. The international legal assistance with regard to the seizure and confiscation of assets for the period 2014–2018 was quite limited. It is noted that all requests to Kosovo authorities were executed but no further conclusions on the effectiveness or explanation for the infrequent use of MLA for such purposes are possible considering the lack of information on the specific cases.

Table 36: MLA cases related to seizure and confiscation of assets, 2014-2018

Type of Case	Case Category	Sub-Category	From	To	Status
Sequestration	Criminal	Theft	Basic Court Gjakova branch Rahovec	Italy	Pending
Freezing	Criminal	Fiscal evasion	Germany	Basic Prosecution Office Pristina	Executed
Confiscation	Criminal	Trafficking of narcotic substances	Switzerland	Basic Court Pristina	Executed
Confiscation	Criminal	Drug trafficking, money laundering	Germany	Basic Court Gjakova	Executed

550. The outgoing requests (new cases initiated) for MLA in relation to ML were 4 out of a total of 22 requests for 2015, one out of 12 for 2016 and two out of a total of 9 requests for 2017. Taking into account these statistics it is a concern for the assessors that the new cases of requests related to ML are actually diminishing and largely corresponding to the findings under IO6 and IO 7. These statistics combined with the generally low total number of requests might be an indicator of insufficient use of the potential of MLA by Kosovo authorities.

551. Considering the additional requests for international legal cooperation in criminal matters within already initiated cases of cooperation, there is a significant number of requests related to ML (out of a total of 250 such additional requests for 2015-2017 within already initiated cases), including requests for extradition.

552. These requests demonstrate the ability and active engagement of Kosovo authorities in cooperation with a number of countries outside the concluded agreements. The requests are roughly corresponding to the cross-border threats Kosovo is facing, with a strong emphasis on the regional cooperation which does not seem unfounded.

Case example – Klina Judge Case
A case where MLA was used to identify assets abroad was the case of former judge discussed under IO 6 and IO 7. In this case, the ex-judge was found to have transferred assets abroad, to Montenegro, and that such property has been identified and subsequently sequestrated and final confiscation was decided by the court. It is not however clear whether the confiscation actually was enforced in regard to this property.

553. At the same time Kosovo has demonstrated its ability to cooperate in a number of cases with other countries in relation to terrorism, although Kosovo authorities did not fully demonstrate the use of the legal cooperation for the purposes of pursuing TF cases *per se*. There were only three cases of requests for TF provided by Kosovo authorities for 2018.

Case example – Use of extradition in a TF investigation
An ongoing case is linked to preparation of terrorist activity and respectively TF carried out from an EU country. Several transactions were identified coming from the respective country and linked with a person in Kosovo. The funds were to be used for the purpose of TF. A request for extradition was initiated on the same person (who was extradited). The case started by direct communication of the prosecution offices. Then the official international assistance request was prepared with regard to extradition.

554. Considering the extremely limited use of MLA for the purposes of seizure and confiscation of assets, Kosovo has not demonstrated effectiveness in this regard.

555. At the same time it is not possible to make any further conclusions with regard to the effectiveness with which Kosovo authorities are making use of the MLA channel to pursue cases of ML and TF in view of the lack of further statistics and independent feedback on: the quality of requests, number of refusals, time needed for the execution of these requests, requests deferrals, the requests related to TF specifically, etc.

Providing and seeking other forms of international cooperation for AML/CFT purposes

The FIU

556. The FIU actively engages in international cooperation and information exchange based on its wide powers under the AML/CFT Law, the MoUs concluded with a number of countries and strictly observing the Egmont Group principles as a member of the organisation since 2017. FIU does not need a MoU as a prerequisite for the exchange of information but it has concluded 16 MoUs, including reviews and renewals of MoUs with some countries, demonstrating additional effort to pursue information exchange with its most important regional partners.

Table 37: MoUs signed by FIU

Jurisdiction	Year
Albania (DPPPP)	2009
Macedonia (MLPD)	2009
Montenegro (APML)	2009
San Marino (FIA)	2009
Slovenia (OMLP)	2009
Croatia (AMLO)	2010
Turkey (MASAK)	2012
Czech Republic (FAU-CR)	2012
Finland (FIU)	2013
Poland (GIIF)	2014
Albania (DPPPP) – renewal	2014
Hungary (HFIU)	2015
"The former Yugoslav Republic of Macedonia" (FIO) – renewal	2015
Ghana (FIC)	2015
Lithuania (FNTT)	2016
Jordan (AMLU)	2018

557. The international information exchange of FIU is regulated also by three internal SOPs on the use of goAML system, the international information exchange and the intelligence and analysis function of the FIU. There are no strict prioritisation rules included in these SOPs but there is a practice established by the FIU that takes into account the risk ratings used for the analytical function of the unit. Requests received are prioritised depending on the case and the type of request and in accordance with principles for exchange of information. Additional criteria have been drafted in two new SOPs proposed.

Table 38: FIU international information exchange

International co-operation	2011	2012	2013	2014	2015	2016	2017	Total
Foreign requests received by the FIU	10	10	7	19	18	16	33	113
Foreign requests executed by the FIU	11	13	6	20	18	14	22	104
Foreign requests refused by the FIU	0	0	0	0	0	0	0	0
Spontaneous sharing of information received by the FIU	0	0	2	1	1	1	7	12
Average number of days to respond to requests from foreign FIUs	49	33	26	29	23	16	13	
Refusal grounds applied	0	0	0	0	0	0	0	0
Requests sent by the FIU	/	/	/	25	18	13	37	93
Spontaneous sharing of information sent by the FIU	3	0	3	6	8	11	5	36
TOTAL (outgoing requests and information)	**/**	**0**	**3**	**31**	**26**	**24**	**42**	**129**

558. So far, no international requests were refused. The number of average days for responses to international inquiries has declined sharply in 2017, which is considered progress in addressing inquiries for international exchange of information. To this end, the FIU pays special attention to foreign inquiries and is making efforts to efficiently execute international requests in a timely manner and without unreasonable delays. In this context, the average response time in 2017 was 13 days although it was relatively longer in the previous years. FIU has drafted and set the following timeframe for responding to requests:

Table 39:

Types of responses	Response within
Negative (no information was found)	2 days
Information available from FIU databases	5 days
External information where FIU has direct access and which is available to the public (open sources)	5 days
Information outside FIU which is not directly accessible	30 days
Response to urgent requests	As soon as possible

559. The assessors have no concerns with regard to the ability of FIU to provide available information in a timely manner and based on the priority that has been given to information exchange. The indirect access to certain types of information and the deficiencies in the maintenance of certain databases as noted under IO 6 could have a detrimental effect on the ability of the FIU to provide comprehensive and timely cooperation in some circumstances and especially where information from outside sources is to be used.

560. Until 2016, most of the requests for international exchange of information between the FIUs were requests of countries of the region, while in 2017 about 52% of requests came from EU countries. About 24% were from countries of the region, while the same percentage was from other international countries outside the continent. This trend is assessed as corresponding to the risk profile of Kosovo, its significant diaspora and significant external flows.

561. Legislation in the field of AML/CFT gives the FIU the authority to spontaneously exchange information with any foreign counterpart which carries out similar functions and is subject to similar obligations to preserve confidentiality, regardless of the nature of the counterpart and within the local legal

framework of each party. It is, thus, questionable whether FIU is entitled to direct cooperation with non-counterparts. FIU would actively engage in diagonal cooperation along the principles of Egmont Group and ensuring the confidentiality of the information exchanged by using the FIU-to-FIU channel.

562. With the aim of offering a broad range of international cooperation between 2013 and 2017, the FIU has shared a total of 48 spontaneous intelligence reports with foreign counterparts, which were distributed and accepted for the purpose of further analysis and investigation. This indicates an ever-increasing trend in the distribution of such intelligence reports.

563. In addition to exchanging international requests, for the purpose of preventing and combating money laundering, the FIU has continued as an activity through the distribution of spontaneous reports, forwarding 11 spontaneous reports in 2016 and 5 in 2017 for suspicions found during analysis of cases based on information provided from foreign counterparts. Information exchanged between counterparts is not used as evidence but only in an authorised manner and for intelligence purposes. It is also noted that for the period 2014-2017, FIU, based on international information exchange, has frozen funds in the amount of about one third of all frozen funds within its competence.

Case example – Asset identification based on FIU cooperation followed by MLA request

Upon receiving an STR from one of the reporting entities, the FIU has analysed and identified that the content of the report also includes foreign nationals from country B. Data from open sources indicate their involvement in illegal activities in the country of origin. Immediately, the FIU filed a request for information in Country B and based on their response and other analyses conducted, the FIU issued an order for freezing transactions in a significant amount of about EUR one million. In this case the FIU sent a spontaneous detailed report to Country B and at the same time notifies the Special Prosecutor about the freezing of funds.

In the meantime, movements of funds were identified with more than 15 other foreign countries to which the FIU sent a request and in most of these countries it received responses that there are suspicious transactions in those countries as well.

In addition, after a short time, the FIU and other competent authorities accept the request from country B for international legal assistance in this field and for sequestration measures.

Case example – Asset identification based on FIU cooperation followed by MLA request

The FIU received a spontaneous report from one of the regional FIUs in relation to a group of persons who were conducting suspicious cash transfers to country A. Very shortly the FIU conducted an analysis of the financial data and disseminated the report for further investigation to the respective police unit. In the meantime, this unit had already been investigating this case for organised crime and other related offences. The FIU report and spontaneous information from country A raised even more doubts for involvement in money laundering, in addition to other offences.

Police investigators and FIU analysts were in continuous contact and made maximum effort to trace and identify all assets that eventually could have been generated from criminal activity, including assets outside the country. Assets in the amount of up to EUR 4 million were sequestered.

Eventually after successful investigations and trials, the persons involved in the case were sentenced to imprisonment and fine.

Case example – Asset freeze in another country on request from FIU
The FIU received information from the relevant police unit that a local company was deceived by a citizen of country B. This fraud was suspected to be related to cyber-crime. After analysing data and research of open sources, it was found that the person allegedly involved in fraud was involved in several criminal activities in country B. Therefore, for the purpose of preventing a criminal offence, the FIU sent an urgent request to country B, in order to freeze the transaction and to prevent person X from withdrawing the funds in country B. The request was successful and the funds returned to the country of origin, and a cyber-crime was prevented.

564. The FIU takes significant care to ensure the security and confidentiality of information it holds and exchanges within its means.

Law enforcement agencies

565. The International Law Enforcement Coordination Unit (ILECU) is the unit within the Ministry of Interior of Kosovo responsible for providing a wide range of operational information exchange also on behalf of the KC and TAK in relation to their investigative activities. The founding document[32] of ILECU stipulates exact timeframe for the provision of information from its counterparts in Kosovo including in very urgent cases immediate provision of information, within 24 hours in urgent cases and within three (3) working days in priority cases. The timeframe for normal cases is within seven (7) working days.

566. Despite the ability of LEAs to use all their powers to obtain information, due to limitations in obtaining financial data, the FIU powers are mainly used in this regard.

567. Kosovo has so far signed 74 Police Cooperation Agreements with 18 different countries, and 5 organisations (FRONTEX, CEPOL, OLAF, SEEFEG and TSC). Of these 74 Agreements, 27 cover general police co-operation, 28 cover cross-border cooperation, 9 in terms of Operations and 10 Agreements between Kosovo Police and EULEX. In addition, regarding countries with which there is no cooperation agreement in place, the principle of reciprocity applies both in terms of information sharing and the legal aid procedure as well as in terms of extraditions.

Table 40:

International co-operation	2014		2015		2016		2017	
Incoming requests	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**
Foreign requests received by law enforcement authorities related to ML	4		1		10		9	
Foreign requests executed	4		1				3	

568. KP also participates in joint investigation teams and examples were provided on such initiatives with Swiss investigators as well as with Belgium and France, aimed at identifying assets in Kosovo of criminal origin.

569. No information whatsoever was provided with regard to outgoing requests sent by Kosovo LEAs in relation to ML. According to the authorities Kosovo Police ILECU has in 2017 dealt with 136 cases (requests) of economic and financial crimes out of a total of 3318 new cases related to international police cooperation. No relevant information for AML/CFT purposes could be extracted from these statistics. This is considered by the assessors an issue of important concern and an obstacle to conclude on any effectiveness of the use of the ILECU channel for the purposes of pursuing ML cases. Despite some examples mentioned on the use of law enforcement exchange, the assessors are not in a position to take

[32] Government of Kosovo (2011), MoU for coordination and support for ILECU of 2011, available at http://www.psh-ks.net

this as sufficient to demonstrate the relevant use of this channel and its contribution on the effectiveness of the AML/CFT system in Kosovo.

570. Kosovo Customs are exchanging information pursuant to 12 International Agreements on Mutual Cooperation in Customs Matters with other countries. These include Albania, Finland, Italy, Turkey, Poland, Slovenia, Hungary, "the former Yugoslav Republic of Macedonia", Montenegro, France, Austria and the United Kingdom. Further to this exchange of information is undertaken also through ILECU. KC have received in 2016 and 2017 one request each year related to ML (out of respectively 74 and 61 total requests) and have provided information within 30days. In 2017 there was one outgoing request for information.

571. The TAK cooperates based on MoUs for cooperation for evading double taxation. The statistics are provided below. According to authorities, a significant level of cooperation seems to be undertaken by the TAK in relation to ML, although no specific cases were provided by the authorities for further assessment of this cooperation. The understanding of the assessment team, based on the examples provided, is that this cooperation is strictly related to tax matters, especially tax evasion and not ML *per se*.

Table 41:

International co-operation by TAK	**2014**		**2015**		**2016**		**2017**	
Incoming requests	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**
Foreign requests received by tax authorities related to ML	6		7		4		4	
Foreign requests executed	6		7		4		4	
Foreign requests refused	0		0		0		0	
TOTAL	**12**	**0**	**14**	**0**	**8**	**0**	**8**	
Average time of execution (days)	11		6		8		8	
Outgoing requests	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**
Requests sent by tax authorities related to AML/CFT specifically	6		3		2		4	
Number of requests sent and executed by foreign authority	6		3		2		4	
Number of requests sent and refused by foreign authority	0		0		0		0	
Average time of execution (calendar days)	33		114		65		71	
TOTAL	**12**	**0**	**6**	**0**	**4**	**0**	**8**	

572. The CBK has discussed with the assessment team the exchange of information for supervisory purposes which had an ML angle and some cases of action taken in regard to refusal of registration of entities were mentioned. At the same time, in the absence of exact statistics and the description of the cases of exchange of information, it is not possible to conclude on the sufficient exchange of information undertaken by the supervisor.

Providing and responding to requests for basic and beneficial ownership information of legal persons and arrangements

573. Kosovo authorities are exchanging actively information including where necessary to identify the ownership and control of legal persons. No legal arrangements that could provide significant obstacles to the identification of the controlling persons are known and registered in Kosovo.

574. The general deficiencies identified in relation to the business register in Kosovo would apply also in the framework of international cooperation and the ability of Kosovo authorities to provide timely and accurate information in this regard. There are no mechanisms (register of BO, register of accounts) to allow for exchange of rapid beneficial ownership identification, especially when the Business Register contains inaccurate data or information is missing. Deficiencies related to the BO identification by reporting entities other than banks would apply also in this context.

575. The information exchange of the FIU, albeit timely and efficient, would require additional time for indirect access to the relevant information. The assessors have concerns in regard to the possibility of the LEAs to provide such information using their own competence where this information is not readily available in the business register due to limited access to financial data outside the framework of a formal investigation.

Overall conclusion on Immediate Outcome 2

576. While significant efforts are exerted by the MoJ to coordinate MLA and extradition requests effectively, the complexity of the mechanism in its subsequent cascading stages is detrimental in some cases to the timeliness and efficiency of the cooperation, especially in relation to extradition requests.

577. The situation is negatively affected by the lack of strict deadlines for the execution of requests at each stage. Furthermore, despite the use of an advanced case management system in the central authority in the Ministry of Justice, no such system is implemented in the Prosecutor's Office. Up till 2017 the provision of timely international legal assistance in criminal matters was not demonstrated. Some changes undertaken in 2017 seem to have contributed to the timeliness and the direct cooperation occurring between authorities has a positive effect on the cooperation.

578. Kosovo authorities have not demonstrated that they actively requested cooperation with regard to TF issues, despite the wide use of MLA in terrorism-related cases. Furthermore, the MLA channel does not seem to have been sufficiently used in ML cases undertaken by Kosovo authorities and the assessors are concerned with the decreasing reliance on this cooperation. There were a number of examples provided with regard to actual cooperation being carried out for asset identification but again in very limited circumstances in relation to asset seizure and confiscation.

579. The cooperation implemented by the FIU is active and based on both requests and spontaneous information. As evidenced from data provided to assessors, FIU practice correlates with the internal requirements and international best practices. The cases presented and the discussions allow the assessment team to conclude that the obtained information is widely used in the analytical function of the FIU; it is extensively provided to the competent authorities and used with regard to ML, potential associated predicate offences, and TF purposes.

580. The powers for police cooperation and exchange of information are widely used, but it is not clear due to the absence of specific statistics to what extent they are actually related to ML and TF cases. The cooperation of customs authorities in Kosovo also seems to be very active although rarely linked specifically to ML. It was not demonstrated that CBK would engage actively in international cooperation specifically for ML and TF purposes.

581. **Kosovo has achieved a moderate level of effectiveness with Immediate Outcome 2.**

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report (MER).

Recommendation 1 – Assessing risks and applying a risk-based approach

2. ***Criterion 1.1*** *(Partly met)* **–** Kosovo authorities undertook a National Risk Assessment (NRA) in 2013, which was coordinated by the Financial Intelligence Unit of Kosovo (FIU) and drafted with the support of a Working Group on the NRA. In addition to the NRA, sectoral assessments were carried out to evaluate ML risks in the construction sector, gambling sector and for non-profit organisations. Reviews on the Extent of the Informal Economy in Kosovo are also periodically carried out, which has an indirect but relevant relationship to the assessment of ML risks. Kosovo authorities have also informed that on-going risk assessment work is performed on a constant basis by the Kosovo Customs, namely its Joint Intelligence, Risk Analysis and Threat Analysis Unit, and by the Kosovo Police in cooperation with the Financial Intelligence Unit.

3. The assessment of risks has significant methodological shortcomings at the level of the NRA, sectoral assessments, including the confounding of threats, vulnerabilities and consequences. The SOCTA process and operational mechanism do not comprehensively compensate for these shortcomings. Hence, for the most part, ML/TF risks have not been identified.

4. ***Criterion 1.2*** *(Mostly met)* – The NRA was carried out pursuant to a specific Article in the AML/CFT Law (Article 27) with an ensuing Administrative Instruction of the Ministry of Finance (MoF) No. 04/2013 detailing the process and scope of the NRA, as well as related risk management mechanisms. According to this instruction, the scope and criteria of the NRA are defined by the MoF, which also takes the decision to initiate the NRA process. According to the same Instruction the NRA itself is carried out by the FIU, while other agencies and reporting entities are obliged to support it in this work. For the 2013 NRA exercise, the Working Group comprised a range of government agencies, including but not limited to the Central Bank, Tax Authority, Police, Prosecutorial Council, Customs, as well as external actors such as the U.S. Treasury and an EU-funded Project on combating financial crime. The NRA process also involved private sector entities. A Serious and Organised Crime Threat Assessment (SOCTA) has also been carried out, which contains some elements of ML risk analysis; however, no coordination between the SOCTA and NRA processes has been established. This leads the assessment team to conclude that while there has been a designation made, it does not have the full mandate to coordinate actions to assess risks.

5. ***Criterion 1.3*** *(Mostly met)* – According to Article 18 of the AML/CFT Law, the NRA shall be performed every 3 years, although according to a preceding FIU regulation the requirement was established at 5 years. To date, the first and only NRA was performed in 2013. Kosovo authorities have undertaken sectoral risk assessments since the last NRA and have informed that they plan to undertake a second NRA in 2018, which will mean that the gap between NRAs will reach 5 years. A 5-year time-span seems to be too extensive given the risk context in Kosovo.

6. ***Criterion 1.4*** *(Mostly met)* – The dissemination mechanism for the NRA is decided on by the Government, which receives the NRA report for approval from the MoF with recommendations for dissemination. The NRA was initially classified and thus distributed only to competent authorities. In 2016, Kosovo authorities subsequently disseminated the NRA to the private sector entities registered in the FIU system (goAML); however, this did not include a large number of DNFBPs. The time lag between the adoption of the report and dissemination to the private sector is considered to be unjustifiably lengthy.

7. ***Criterion 1.5*** *(Mostly met)* – The National Risk Assessment Report has served as one of the base documents for the development of the National Strategy of Kosovo for the Prevention and Fight against Informal Economy, Money Laundering, Terrorism Financing and Financial Crimes 2014-2018, and the related Action Plan for the same period. The Strategy declares risk mitigation as a priority in

developing the AML/CFT policy framework, and is itself considered by Kosovo authorities to be a ML/TF risk management tool. Furthermore, Kosovo authorities have informed that the implementation of the Strategy was integrated into decision-making in terms of budget and performance plans of ministries and responsible public institutions, though only documents indicating as such were provided by the FIU and CBK. The Government reviews progress achieved *vis-à-vis* the Strategy's performance indicators every 6 months to see if adjustments in risk mitigation measures are needed. Furthermore, year-end reviews are also carried out by the Government to determine whether the risk assessment and scope of management are still appropriate. A range of agencies contribute to these reviews. It does not appear that these review exercises retranslate into periodic resource reallocation.

8. A Performance and Resource Plan was developed for the Financial Intelligence Unit of Kosovo for the period 2015-2017 and a new Performance Plan 2018-2020 was drafted in 2018. Kosovo authorities inform that these plans are based on and take into account the priorities of the NRA. Risk-adaptable policies in the field of law enforcement operations seem to have been set up by the Kosovo Customs and the Tax Authority of Kosovo (TAK), as well as in the area of supervision, to a limited extent, by the CBK and FIU.

9. ***Criterion 1.6*** *(Not applicable)* – In accordance with Article 14, subparagraph 1.11.3 of the AML/CFT Law, FIU may issue sub-legal acts in order to exempt certain reporting entities from obligations to report. FIU Administrative Instruction No. 1/2017 envisages certain exemptions for CTR/threshold reporting (e.g. payments of municipal obligations, payments of taxes), which falls outside of the mandatory reporting requirements of the FATF Recommendations.

10. ***Criterion 1.7*** *(Not met)* – There is no legislative or regulatory mechanism, whereby reporting entities are required to take into account high ML/TF risks identified by Kosovo authorities, nor to incorporate them into their own risk assessments. Financial institutions are free to determine high ML/TF risks on their own in accordance with provisions of Article 18 of the AML/CFT Law.

11. ***Criterion 1.8*** *(Partly met)* – Simplified measures for the implementation of the FATF Recommendations are not envisaged by Kosovo legislation, other than simplified due diligence (see criterion 1.12). At the same time SDD is not calibrated to any risk identification process undertaken by authorities.

12. ***Criterion 1.9*** *(Partly met)* **–** FIs and DNFBPs are subject to supervision and sanctions (Article 17.2.9 and Article 18 of the AML/CFT Law) for the implementation of requirements related to risk assessment and risk mitigation and the deficiencies identified in this regard apply (see Recommendations 26, 28 and 35).

13. ***Criterion 1.10*** *(Partly met)* – FIs and DNFBPs are required to determine the degree of risk they are exposed to in the course of conducting their business through the provision of products, services, their geographic location and delivery mechanisms and channels (Article 18.2 of the AML/CFT Law).

    a. All reporting entities are required to provide their risk assessments to the FIU, which makes the requirement of documenting them implicit.

    b. Reporting entities under CBK supervision are explicitly required to determine their overall level of risk/risk profile for the organisation (Article 7 of CBK AML/CFT Regulation). The options for risk mitigation by reporting entities are not explicitly provided, with the only concrete example being enhanced due diligence.

    c. Reporting entities are required to keep assessments up-to-date, only when they determine that the risk of ML/TF is high (Article 22.1 of the AML/CFT Law). It seems there is no obligation to update risk assessments in other circumstances.

    d. There is a mechanism envisaged by Article 18.2 of the AML/CFT Law which requires reporting entities to provide their risk assessments to the FIU and the Central Bank.

14. ***Criterion 1.11*** *(Partly met)* – Reporting entities are required to issue written policies and procedures to prevent and detect ML/TF (Article 17.2). The range of topics to be explicitly addressed in these procedures according to the AML/CFT Law does not explicitly include risk mitigation; there is also no requirement that such policies and procedures be approved by the senior management of the organisation. The exceptions to this are reporting entities subject to CBK regulation:

a. For all reporting entities, there is also no requirement to monitor the implementation of risk-oriented controls and enhance them if necessary, other than updating the list of suspicious indicators.

b. In cases where high risk is identified financial institutions are required to undertake enhanced due diligence (Article 22.1 of the AML/CFT Law).

15. ***Criterion 1.12*** *(Mostly met)* – Simplified due diligence may be applied by reporting entities in accordance with Article 23 of the AML/CFT Law, in situations when the entity has identified the risk to be low, and this has been confirmed by FIU and sectoral supervisors, though in practice this has never occurred.

Weighting and conclusion

16. Kosovo has conducted one NRA, three sectoral risk assessments, and a SOCTA; however on a technical and methodological level ML/TF risks in Kosovo have not been properly identified, and the risk assessment coordination function is not comprehensive. Kosovo authorities did not ensure proper dissemination of the NRA Report to the private sector. Some elements of resource reallocation based on NRA results have been put in place for the FIU and CBK though not specifically for other authorities. Risk mitigation measures have been integrated into the AML/CFT Strategy, Action Plan, supervisory framework (to a limited extent) and law enforcement operations. No exemptions from FATF requirements have been allowed. High risks identified by Kosovo authorities are not addressed at the level of reporting entities, and simplified measures are not allowed except for simplified CDD. SDD is not calibrated to any risk identification process undertaken by authorities. Risk assessment and internal control policies for FIs and DNFBPs have been determined to have a number of gaps.

17. **Kosovo is partially compliant with Recommendation 1.**

Recommendation 2 – National co-operation and co-ordination

18. ***Criterion 2.1*** *(Met)* – The Government of Kosovo adopted a five-year National Strategy and Action Plan for the Prevention of and Fight against the Informal Economy, Money Laundering, Terrorist Financing, and Financial Crimes (2014-2018). An Action Plan annexed to the Strategy outlines concrete activities to achieve the specific objectives and implementation goals in the Strategy, identifies which public institution has the primary responsibility for implementation and reporting, as well as provides a timeline and estimated costs for implementation. Both documents are drafted on the basis of the NRA and are to be reviewed regularly. The Government reviews progress achieved *vis-à-vis* the Strategy's performance indicators every 6 months and again on annual basis. There is also a built-in monitoring process to review and assess the implementation of the Strategy and Action Plan (see also criterion 1.5). Additionally, in September 2017 Kosovo adopted a National Strategy against Terrorism and Action Plan (2018-2022), as well as strategies in the field of combating organised crime and border management.

19. ***Criterion 2.2*** *(Met)* – The Government of Kosovo is responsible for defining strategic policies relating to ML/TF. For this purpose, Kosovo has established a Governmental Working Group (GWG) which is responsible for drafting, revising, adopting, implementing and monitoring the National Strategy and Action Plan 2014-2018 and meets at least twice a year. The Financial Intelligence Unit of Kosovo (FIU) under the Ministry of Finance is competent to determine state policies on AML/CFT (in accordance with Law No. 05/L-096 on AML/CFT (2016)). The FIU's Supervisory Board carries out coordination duties for high-level AML/CFT policy in cooperation with other institutions and relevant stakeholders, and meets at least twice a year. It is also responsible for coordination and cooperation relating to the drafting and implementation of other national level strategies.

20. ***Criterion 2.3*** *(Partly met)* – At the policy level, coordination is carried out by the GWG with the participation of the Minister of Finance (Chair), Minister of Justice, Minister of Internal Affairs, Minister of Trade and Industry, Minister of Labour and Social Welfare, Director of Kosovo Police, Director of Kosovo Customs, Director of the Kosovo Tax Administration, Chief State Prosecutor, Governor of the Kosovo Central Bank, President of the Kosovo Supreme Court, Director of the Kosovo Anti-Corruption Agency, and the Director of the Kosovo Financial Intelligence Unit. Furthermore, the GWG also includes representatives from private and third sector institutions in its proceedings. Supporting the GWG is a Secretariat and a Technical Working Group, both chaired by the Ministry of Finance, the latter

acts as a focal point of the represented institutions and collects information needed to monitor the implementation of the National Strategy and Action Plan. Additionally, under the AML/CFT Law, the FIU Supervisory Board is entitled to set up working groups to coordinate activities related to ML/TF. In January 2014, a National Coordinator for Combating Economic Crime (NCCEC) was appointed with the main purpose of increasing cooperation among all the relevant institutions, particularly in relation to promoting increased prosecutorial effectiveness to combat economic crime and to increase the effectiveness of confiscation measures. The work of the National Coordinator for Combating Economic Crime is overseen by the Kosovo Prosecutorial Council (KPC) and a Consultative Council chaired by the Minister of Justice. Other National Coordinators are in place for counterterrorism and border management issues at the level of Minister of Interior and Deputy Minister of Interior respectively. There does not seem to be evidence, however, that policy coordination between the areas of AML/CFT, counterterrorism, and border management is taking place.

21. At the operational level, Kosovo authorities have adopted a Comprehensive Agreement on Exchange of Information, Risk Assessment and Coordination between Institutions and Law Enforcement Agencies, which also sets up several coordination groups for the purposes of combating and preventing economic and financial crimes, including the Strategic Level Group, Tactical Level Group, and the Analytical Level Group (Quality Management). Additionally, for the Kosovo Customs, operational coordination is on the basis of bilateral agreements between relevant institutions, with liaison officers to facilitate the exchange of information at the FIU, the International Law Enforcement Cooperation Unit (ILECU), and the National Centre for Border Management (NCBM). A number of operational coordination and information exchange issues still exist between the various authorities (see IOs 1 and 6).

22. ***Criterion 2.4*** *(Not met)* – The Ministry of Foreign Affairs is responsible for coordinating the implementation of PF-related sanctions (in accordance with Law No. 03/L-183 on the Implementation of International Sanctions). Additionally, Kosovo has established a Committee for the control of trade in strategic goods (under Law No. 04/L-198 on Trade of Strategic Goods, which includes weapons of mass destruction under Article 1(6)), consisting of five members and deputy members, representing: Ministry of Trade and Industry, Ministry of Foreign Affairs, Ministry of the Security Force, Ministry of Internal Affairs, and Kosovo Customs.

23. The Action Plan (2014-2018) also indicates that the coordination of PF-related sanctions is undertaken by the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Finance, and the National Coordinator for Combating Economic Crime. However, no further supporting documentation regarding such coordination has been provided to the assessment team.

Weighting and conclusion

24. Kosovo has established a robust system for AML/CFT policy-setting and coordination under the auspices of the Ministry of Finance and FIU. Law enforcement coordination is carried out through interagency mechanisms and with the involvement of the National Coordinator for Combating Economic Crime. At the same time, there is little evidence of coordination with adjacent mechanisms in the field of counterterrorism and integrated border management. No PF-related coordination mechanisms have been set up.

25. **Kosovo is largely compliant with Recommendation 2.**

Recommendation 3 – Money laundering offence

26. In the 2014 AML/CFT Assessment Report, Kosovo was rated partially compliant with former FATF Recommendations 1 and 2. The Assessment identified a number of deficiencies, including the fact that the offence of market manipulation is not covered as a predicate offence to ML; inadequate regulation of the required level of proof for the predicate crime; unclear and inadequate formulation of the provision that defines the coverage of self-laundering; harmonisation required between the AML/CFT Law and the Criminal Code (CC) in terms of concept and terminology as regards ancillary offences; the exclusion of tax evasion from the range of potential predicate offences to ML; and, self-laundering not being considered to be prosecutable together with the predicate offence. Serious uncertainty in legislation was noted in the 2014 report with regard to the basics of corporate criminal liability, together with ineffective and mild sanctioning provisions of legal entities for criminal

offences (low range of punishment), and the need for harmonisation between AML/CFT Law and CC or Law on Liability of Legal Persons for Criminal Offences (LLP Law) in respect of the knowledge standard applicable in case of ML offences.

27. ***Criterion 3.1*** *(Met)* – The ML offence reflects much of the terminology of the model ML offence as defined in paragraph (1) of Article 6 of the Palermo Convention. The main types of laundering activities listed in subparagraphs (a/i), (a/ii) and (b/i) of paragraph (1) of Article 6 of the Palermo Convention are in fact addressed and adequately covered by the wording of the law.

28. The Criminal Code (Article 308) states that the commission of the offence of money laundering is punishable under the Law on the Prevention of Money Laundering and Combating Terrorist Financing. Article 56 of AML/CFT Law then defines the offence of money laundering, providing the detailed elements of the offence. While the AML criminal legislation of Kosovo had already been significantly in line with the wording of the Vienna and Palermo Conventions in respect of the material elements of the offence, this standard has been followed even more closely since the adoption of the new AML/CFT Law. Moreover, Kosovo appears to have addressed the issues raised in the 2014 AML/CFT Assessment Report in relation to certain domestic "extra" offences and the duplicate definition of money laundering.

29. ***Criterion 3.2*** and ***Criterion 3.3*** *(Mostly met)* – An all-crimes regime is adopted under the laws of Kosovo. Paragraph 1.3 of Article 2 of the AML/CFT Law, in fact, defines criminal activity as "any kind of criminal involvement in the commission of a criminal offence as defined under the legislation in force". Proceeds of crime (Paragraph 1.41) are defined as "any property derived directly or indirectly from a predicate criminal offence". The law then goes on to specify that property derived indirectly from a predicate criminal offence includes property into which any property directly derived from the predicate criminal offence was later converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the commission of the predicate criminal offence (Predicate criminal offence refers to "any offence, which generates proceeds of crime" – Article 2, Paragraph 1.47). All serious offences therefore appear to be covered by these blanket provisions in the legislation, with the exception of market manipulation, which has still not been introduced as a criminal offence since the last assessment.

30. ***Criterion 3.4*** *(Met)* – The ML offence extends to any type of property, regardless of value, that directly or indirectly represents the proceeds of crime, as per the definition of "proceeds of crime" in Paragraph 1.41 of Article 2 of the AML/CFT Law cited in the Paragraph above. The criterion is therefore fully met.

31. ***Criterion 3.5*** *(Met)* – Under the AML/CFT Law, a person need not be convicted of a predicate offence when proving that the property is the proceeds of crime. Article 56, Paragraphs 3.1 and 3.2, establish that a person may be convicted of the criminal offence of money laundering, even if he has not been convicted at any time of the predicate criminal offence from which the proceeds of crime in the criminal offence of money laundering were derived. Paragraph 2 of the same article also provides that the proceeds of crime need not be proven for the offence of money laundering to subsist, implying that a conviction for the predicate offence is not necessary.

32. ***Criterion 3.6*** *(Met)* – This criterion is addressed through the provisions of Article 56, Paragraph 3.3 of the AML/CFT Law. This provision grants the courts of Kosovo jurisdiction over a criminal offence of money laundering, even where the predicate criminal offence from which the proceeds of crime derived occurred outside the country.

33. ***Criterion 3.7*** *(Met)* **–** This criterion is met through Paragraph 3.2 of Article 56 which states that the same person may be prosecuted and convicted in separate proceedings of the criminal offences of ML and the predicate criminal offence from which the proceeds of crime in the criminal offence of ML were derived.

34. ***Criterion 3.8*** *(Met)* – There is no specific reference in the AML/CFT Law to inference of criminal intent through objective factual circumstances. The wording of Paragraph 1 of Article 56, which refers to the objective criteria of "having cause to know", however, seems to suggest that if objective circumstances exist that the potential perpetrator was privy to enough information for knowledge of proceeds of crime to be presumed, then the required mental element for the ML offence would subsist. Article 22 of the Criminal Code, which establishes as a general principle that knowledge, intention, negligence, or purpose is required as an element of any criminal offence may be inferred from factual circumstances, also applies.

35. ***Criterion 3.9*** *(Met)* – The criminal offence of money laundering is punishable with imprisonment of up to ten (10) years and a fine of up to three (3) times higher than the value of the property which is the subject of the criminal offence. This is outlined in Article 56, Paragraph 1 of the AML/CFT Law. The punishment for the offence can be seen as being proportionate to the gravity of the offence and sufficiently dissuasive.

36. ***Criterion 3.10*** *(Partly met)* – Criminal liability for legal persons is dealt with in Article 40, Paragraph 1 of the Criminal Code, which states that a legal person is liable for the criminal offence of the responsible natural person who commits a criminal offence when acting on behalf of the legal person with the purpose of gaining a benefit for that legal person. This formulation would seem to exclude instances when a culpable natural person cannot be clearly identified, which is often the case in large corporate structures, where the responsibilities are significantly diffused.

37. The liability of the legal person applies even when the actions of the legal person were in contradiction with the business policies or the orders of the legal person. Article 40 CC also states that the liability of the legal person is based on the culpability of the responsible person. Even though this does not constitute a direct infringement of the AML/CFT standards, the latest trend in application of criminal liability to legal persons allows for the application of a so-called compliance defence, which would not be possible if the current formulation were to be maintained.

38. It should be noted that the texts prescribing liability of legal persons in the AML/CFT Law (Article 60) and the CC differ and require harmonisation.

39. Furthermore, a specific law is in place, Law No. 04/L-030 on the Liability of Legal Persons for Criminal Offences (LLP Law) which regulates the liability of legal persons for criminal offences and sets out the criminal sanctions that may be imposed on legal persons and the special provisions that regulate the applicable procedure against the legal person. The LLP Law provides for criminal sanctions under Article 9(1), which stipulates a fine of not less than EUR 1,000 and not more than EUR 100,000.

40. Furthermore, Article 9(2) then specifies that in the case of criminal offences committed by legal persons, where the punishment provided for is imprisonment from fifteen (15) days to three (3) years, the court may impose a fine on the legal person that ranges from EUR 1,000 to EUR 5,000. In the case of criminal offences which carry a punishment of imprisonment from three (3) to eight (8) years, the court may impose a fine that ranges from EUR 5,000 to EUR 15,000. Where the punishment provided for is imprisonment from eight (8) to twenty (20) years, a fine of between EUR 15,000 to EUR 35,000 may be imposed, whereas for criminal offences where the punishment may be a long-term prison sentence, the fine imposed by the court ranges from EUR 35,000 to EUR 100,000.

41. The proportionality and dissuasiveness of a maximum fine of EUR 100,000 in the case of corporate criminal liability, even where the offence, if committed by a natural person, would carry with it a term of imprisonment that exceeds twenty years, would not be adequate. Such a fine is unlikely to deter corporates from carrying out criminal offences that have a large financial benefit. The absence of any link between the punishment imposed and the benefit derived from the crime makes it less probable that the penalty imposed would be considered proportionate to the gravity of a particular offence.

42. Furthermore, it was noted that there appears to be no specific legislation that allows for parallel criminal, civil or administrative proceedings and it is not clear whether this is allowed under the general principles of law.

43. ***Criterion 3.11*** *(Met)* – Article 56, Paragraph 1.6 of AML/CFT Law states that a criminal offence is committed if one participates in, associates to commit and aids, abets, facilitates and counsels the commission of any of the actions mentioned in sub-paragraphs 1.1 to 1.5 of the same paragraph. Participation, association, conspiracy, aiding and abetting and complicity seem to be covered by this provision. Attempt is specifically referred to in the body of the text in Paragraphs 1.1 to 1.5.

Weighting and conclusion

44. Most of the criteria are met. However, the lack of proportionality and dissuasiveness of penalties that apply both for natural and legal persons and the failure to include market manipulation as a predicate offence remain the main obstacles in achieving full compliance with this Recommendation.

45. **Kosovo is largely compliant with Recommendation 3.**

Recommendation 4 – Confiscation and provisional measures

46. In the 2014 AML/CFT Assessment Report, Kosovo was rated non-compliant with former FATF Recommendation 3. The Assessment identified a number of technical deficiencies, including the fact that there was no procedure or standard of proof indicated in the Criminal Procedure Code (CPC) to allow for the confiscation of instrumentalities intended for the use in a criminal offence; a conflict between the provisions of third party confiscation in the Criminal Code (CC) and the supporting Articles of the CPC, an unjustifiably high standard of proof for a *bona fide* third party; the absence of authority to take steps to prevent or void actions (contractual or otherwise) where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation; low effectiveness of the existing measures due to an insufficiency of prosecutions resulting in low levels of confiscation of the proceeds of crime; no meaningful statistics on seized and confiscated property being kept; and, the lack of proactive asset tracing and recovery by LEAs and prosecutorial authorities when pursuing any acquisitive crime.

47. ***Criterion 4.1***– The seizure and confiscation framework is regulated by the Criminal Code and the Criminal Procedure Code, which provide for the confiscation of objects held by criminal defendants or third parties.

48. Under Article 69 of the CC, objects *used* or destined for use in the commission of a criminal offence or objects derived from the commission of a criminal offence are required to be confiscated, even if they are not the property of the perpetrator, or if confiscation is considered to be necessary for general security or moral reasons. Moreover, mandatory confiscation of an object may be provided by the law.

49. The law also provides that material benefits acquired through the criminal offence cannot be retained and the material benefit shall be confiscated by the court establishing the criminal offence (Article 96). This covers all crimes that generate criminal proceeds, including ML, TF and other predicate offences.

50. Furthermore, material benefits are required to be confiscated from the perpetrator or, when confiscation is not possible, the perpetrator shall be obliged to pay an amount of money corresponding to the material benefit acquired. If the material benefit has been transferred to another person, such benefit may be confiscated from the person to whom it has been transferred without compensation or with compensation that does not correspond to the real value, if such person knew or should have known that the material benefit was acquired through the commission of a criminal offence. When the material benefit has been transferred to a member of the family, the benefits are to be confiscated from the member of the family unless such member of the family proves that he or she gave compensation for the entire value (Article 97).

51. In order to undertake the confiscation of material benefit, the criminal proceedings must be concluded with a judgement in which the accused is pronounced guilty (Article 280 CPC) except in case of property originating from acts of corruption (Article 281 CPC). The Prosecutor is required to list property subject to confiscation in the indictment (Article 274 CPC). Failure to do so can trigger an application for the property to be released to its owner.

52. For the confiscation of property *used* in a criminal offence (instrumentalities) the prosecutor must prove at the main trial that the asset was used in the criminal offence (Article 283 CPC). It is not entirely clear whether a guilty verdict is needed in order to confiscate such instrumentalities apart from property subject to automatic forfeiture pursuant to Article 282 CPC (property items that are inherently dangerous or illegal). The CPC does not however include any standard of proof or procedure for the final confiscation of instrumentalities intended for use in the commission of an offence, which raises doubts about the possibility of their final confiscation.

53. On the basis of the above legal provisions, criterion 4.1 (a), (b) and (d) are *mostly met*, even though certain provisions of the CPC impose certain limitations that weaken the confiscation regime. As for criterion 4.1(c), funds may be confiscated when they are the proceeds of a terrorist act, or if they are used to finance acts of terrorism. It is doubtful whether funds may be confiscated on the basis of financing of terrorists or terrorist organisations without a specific link to a terrorist act (e.g. social, medical needs, travel, etc.). Criterion 4.1(c) is therefore only *partly met*.

54. ***Criterion 4.2(a)*** (*Met)* The law enforcement agencies such as KP and KC have sufficient powers to search for and seize property that is, or is suspected to be, the proceeds of crime (CPC Article 105).

55. ***Criterion 4.2 (b)*** *(Mostly met)* – Article 264 of the CPC sets out a system for temporary freezing of assets that are the proceeds of crime or evidence in the investigation as a preventative measure to prevent removal or dissipation. This includes an Order issued by the State Prosecutor and valid for 72 hours during which time the Prosecutor must immediately make an application to the pre-trial Judge for an "Attachment Order" to freeze the assets. The Attachment Order lasts initially for 30 days during which time and giving three weeks' notice, a hearing is scheduled to consider any challenge from those affected by the Attachment Order. Article 112 also allows for temporary sequestration of objects and the definition includes the material benefits from the commission of a criminal offence. It is unclear from the drafting if this relates solely to objects found in the course of a search as this section follows on from the articles concerning searches with and without a Court Order. The language of the text is inconsistent as it refers to temporary sequestration and temporary confiscation in the same breath.

56. The system of provisional measures in Kosovo prior to confiscation includes freezing (Article 264 CPC), temporary sequestration (Article 112 CPC), temporary confiscation (Article 267 CPC), and temporary measures to secure property (Article 268 CPC). However, the terminology provided in the various articles of the CPC appears to be inconsistent and raises doubts as to whether the system of provisional measures could work in practice (see IO 8).

57. ***Criterion 4.2 (c)*** *(Not met)* - There appears to be no power at law to take steps to prevent or void actions, contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

58. ***Criterion 4.2 (d)*** *(Met)* - Appropriate investigative measures can be taken by Kosovo authorities, as provided further on in the paragraphs dealing with Recommendations 30 and 31.

59. ***Criterion 4.3*** *(Met)* – Under Article 270 of the CPC, third parties are granted the opportunity to voice their objections to any provisional measures taken with regard to their property that has been used as instrumentalities in an offence. In this regard, the third party must prove that he/she did not or could not have known about the use of the property in a criminal offence, that the property cannot be used again in the commission of an offence and that the provisional measures unreasonably harm the interests of the third party.

60. In cases where the third party's property is linked to the material benefit obtained from an offence, this third party must prove that:

- he/she has had a property interest in the property for over 6 months prior to the temporary confiscation of the property;
- he/she paid a market rate for the property interest in the building, immovable property, movable property or asset;
- he/she did not know of acts in furtherance of the criminal offence;
- the suspect or defendant would be unable to use, transfer, or otherwise access the building, immovable property, movable property or asset; and
- the temporary measure being proposed would unreasonably harm the interests of the person objecting.

61. ***Criterion 4.4*** *(Met)* – Law No. 05/L-049 on Management of Sequestrated and Confiscated Assets defines the functions and responsibilities of the Agency for the Management of the Sequestrated and Confiscated Assets (AMSCA). Article 19 of the same law provides information on the management of confiscated assets, whereby the Agency "preserves and controls the asset ordered to be confiscated and ensures its protection". The same provision authorises the Agency to undertake necessary measures to adequately preserve and secure the confiscated asset to preserve its value. Article 18 also provides for the management of sequestrated assets. In relation to the disposing of property, Article 19, Paragraph 4 of the same law states that the Agency may perform the sale of the items or the handing over for use to the Government.

Weighting and conclusion

62. While the legal framework on confiscation and provisional measures complies with most of the criteria, there are a number of important criteria that are not met, including the requirement to

identify and trace assets and the requirement to be able to take steps to prevent or void actions that prejudice the freezing of assets or seizure or recovery of property subject to confiscation. It is also unclear to what extent it is possible to confiscate assets connected to the financing of terrorists or terrorist organisations without a specific link to a terrorist act. Furthermore, there are a number of overlapping procedures for provisional measures, which create confusion in their practical application.

63. **Kosovo is partially compliant with Recommendation 4.**

Recommendation 5 – Terrorist financing offence

64. Special Recommendation II in the Assessment Report of 2014 has been assessed as partially compliant due to a number of deficiencies in the criminalisation of the financing of terrorism, most importantly the duplicate criminalisation of FT; lack of criminalisation of financing of an individual terrorist (for any purpose) in the CC; deficient coverage of "act of terrorism" as required by Paragraph (1) of Article 2 of the FT Convention; and, sanctions not considered dissuasive.

65. ***Criterion 5.1*** *(Partly met)* – Terrorist financing is criminalised as a separate offence in Article 138 of the Criminal Code in the framework of facilitation of terrorism.[33] Additionally, the following provisions of the CC are applicable to the TF offence: Article 144, Paragraph 4 (Preparation of terrorist offences or criminal offences); Article 137, Paragraph 3 (Assistance in the commission of terrorism); and Article 139 (Recruitment for terrorism as well as of financiers of terrorism). The terrorist act is interpreted with reference to Article 136 and the definition of "terrorism, act of terrorism or terrorist offence" in Article 135 of the CC.

66. As these provisions have not changed since the previous assessment report, the same deficiencies identified in that report apply.

67. Thus, the criminalisation of the various terrorist offences prescribed in the nine treaties annexed to the same Convention pursuant to Paragraph (1)(a) of Article 2 is limited due to not fully covering all of those offences as terrorism, mainly in relation to the purposive element in Paragraph 1 of Article 135.

68. The "generic" offence of terrorist act is not fully in line with the definition provided by Paragraph (1)(b) of Article 2 due to the potential narrowing of the scope of any act intended to cause death by referring only to specific criminal offences, as well as uncertainty with regard to the applicability of the definition of a terrorist act in Article 135 to the terrorism-related offences in Article 137, 139-144.

69. At the same time, the financing of terrorism is explicitly defined as a criminal offence in Article 57 of the AML/CFT Law and related to the definition of TF in Article 2 of the same law. The negative repercussions of the duplicate criminalisation of TF remain fully as described in the previous Assessment Report without contributing to compliance with the TF Convention due to the applicability of the same definitions of the CC.

70. It is also noted that the financing of travel for the purpose of participating in an armed conflict outside the territory of Kosovo is also provided for in Article 3, Paragraph 2 of the Law No. 05/L-002 on Prohibition of Joining the Armed Conflicts outside State Territory. The financing, however, only covers the activity stipulated in Paragraph 1 of the same article, i.e. organising, recruiting, leading or training persons or groups of persons. Thus, the financing of individuals joining, participating in conflict areas, inciting others, and providing logistical support are omitted from the scope of the terrorist financing offence. It is noted in this case that the general TF offence provided for in Article 138 would not be sufficient due to the lack of any reference to terrorism in the Law on Prohibition of Joining the Armed Conflicts outside State Territory.

71. The proposed new draft of the Criminal Code retains the scope of the definition of terrorism, terrorist act, or terrorist offence of the current CC. At the same time, the proposed provision for the facilitation of terrorism, while enlarging the scope of the offence (discussed below under respective criteria), still does not fully solve the aforementioned deficiencies.

[33] Paragraph 1 of Article 138 provides that "Whoever by any means directly or indirectly provides, solicits, collects or conceals funds or material resources with the intent, knowledge or reasonable grounds for belief that they will be used in whole or in part, for or by a terrorist group or for the commission of a terrorist act shall be punished by imprisonment of five (5) to fifteen (15) years".

72. ***Criterion* 5.2** *(Partly met)* – Assessing the TF offence in the Criminal Code as discussed above, the most important deficiency in regard to criterion 5.2 remains the lack of coverage concerning the financing of an individual terrorist.

73. The criminalisation in Article 57 of the AML/CFT Law does not entirely remedy the situation with the financing of an individual terrorist for any purpose. The issue of conflicting criminal law provisions remains.

74. The proposed Article 131 of the draft CC remedies these deficiencies by including financing of individual terrorists for any purpose and introducing a definition of a terrorist in Article 128 in line with the FATF requirement. Some uncertainty however arises in regard to the exclusion of Article 131 from the express provision of Article 139, stipulating that it shall not be necessary, insofar as the offences referred to in Articles 132, 133, 134 and 137 are concerned, to establish a link to another offence in the CC.

75. ***Criterion 5.2 (bis)*** *(Partly met)* – There are no explicit provisions with regard to financing the travel or the providing or receiving of training in the CC. Insofar as the CC is concerned, the elements of financing travel for the purpose of perpetration, planning, preparation of or participating in a terrorist act could be subsumed by the general provision of Article138, the deficiencies in the criminalisation of the financing of individual terrorists and the uncertainty regarding the coverage of the financing of training (Article 140) or financing of the acts in Article 144 severely impact compliance with this criterion.

76. The Law No. 05/L-002 on the Prohibition of Joining Armed Conflicts outside State Territory (Article 3, Paragraph 2) cannot be considered as covering the requirements for financing of travel for terrorist or TF purposes, when such travel does not concern terrorist activities taken outside the context of an armed conflict. Moreover, Article 3, Paragraph 2 of the Law on Prohibition of Joining Armed Conflicts outside State Territory only covers the activity stipulated in Paragraph 1 of the same article, i.e. organising, recruiting, leading or training persons or groups of persons. Thus, the financing of individuals joining, participating in conflict areas, inciting others and providing logistical support is also omitted from the scope of the terrorist financing offence.

77. The new draft CC explicitly introduces in Article 137 the offence of travelling for the purpose of terrorism. The uncertainty, however, remains in regard to the extent that the financing of terrorism (facilitation) also covers travelling for the purpose of terrorism.

78. ***Criterion 5.3*** *(Met)* – Criterion 5.3 is fully met (both in the CC and the current AML/CFT Law).

79. ***Criterion* 5.4** *(Mostly met)* – Article 138 of the CC does not have the requirement that funds are actually used to carry out or attempt a terrorist act or that there is a link to a specific terrorist act as the provision of Paragraph 1 detaches financing for the purpose of the commission of terrorist act from the financing of terrorist organisations.

80. In the case of Article 57 of the AML/CFT Law, however, which stipulates that funds are "to be used in full or in part to commit a terrorist act by a terrorist, or by a terrorist organisation", the general purpose of committing a terrorist act remains linked to the funding of a terrorist or terrorist organisation.

81. The proposed Article 139 of the draft CC actually introduces additional concerns in terms of links to a specific terrorist act as discussed under criterion 5.2.

82. ***Criterion 5.5*** *(Mostly met)* – In the CC context, the criterion is fully met through Article 22. It is not clear whether this provision would apply also in the context of the criminal provisions of the AML/CFT Law.

83. ***Criterion 5.6*** *(Met)* – The sanctions could be considered proportionate and dissuasive especially after the amendments brought through Article 57 of the new AML/CFT Law, which introduced punishments of imprisonment (equivalent to the CC) and a simultaneous pecuniary sanction (which used to be an alternative to imprisonment and thus compromised the sanctioning regime).

84. Sanctions in the proposed Article 131 of the new draft CC are equivalent to the aforementioned sanctions in Article 57 of the AML/CFT Law.

85. ***Criterion 5.7*** *(Partly met)* – No changes to the legislation have occurred since the previous assessment report, apart from the change of the relevant requirement of the AML/CFT Law from Article 34 to Article 60. Thus, the discrepancies found in the previous assessment report remain valid, including the

internal discrepancies between the Paragraphs of Article 40 of the CC (respectively in Article 5 of the Law on Liability of Legal Persons on Criminal Offences), and the discrepancy with Article 60 of the AML/CFT Law.

86. The proposed Article 37 of the new draft CC would, in practice, reconcile any conflicting interpretation with Article 60 of the AML/CFT Law by adopting and clarifying the general requirements of Article 60. The conflict with the Law on Liability of Legal Persons, however, remains, as well as the lack of clarity with the application of the proposed equivalent provision (Paragraph 3 of Article 37 of the draft) to Paragraph 2 of Article 40 of the current CC. Furthermore, deficiencies identified under criterion 3.10 apply.

87. ***Criterion 5.8*** *(Mostly met)* – Attempt and ancillary offences are covered by Articles 28 (attempt), 32 (incitement), 31 (co-perpetration), 33 (assistance), 34 (criminal association), 35 (agreement to commit) and the requirements of Article 145 of the CC. The relevant provisions of the AML/CFT Law are Paragraphs 2 and 4, which includes aiding, abetting, facilitating or counselling the commission of the offence. While Article 57, paragraph 1 of the AML/CFT Law explicitly includes organising or directing others, the CC has no similar provision in Article 138. Another issue remains with the different wording used in Paragraph 4 of Article 57 of AML/CFT Law compared to the CC without further clarifying the underlying concepts.

88. The proposed Article 131 of the new draft CC would include the elements of organising and directing others in the TF offence.

89. ***Criterion 5.9*** *(Met)* – Criterion 5.9 is fully met.

90. ***Criterion 5.10*** *(Met)* – Considering the absence of any relevant limitation in Article 138 of the CC and Article 57 of the AML/CFT Law there is no detrimental effect of the lack of specific positive legislation implementing this criterion.

Weighting and conclusion

91. A number of deficiencies identified in the previous assessment remain, including the deficiencies in the criminalisation of the various terrorist offences prescribed in the nine treaties annexed to the TF Convention and the "generic" offence of a terrorist act not being fully in line with the relevant standards. At the same time, the possibility to prosecute the financing of travel is limited by the existing provisions of the CC and the Law on Prohibition of Joining the Armed Conflicts outside State Territory.

92. **Kosovo is partially compliant with Recommendation 5.**

Recommendation 6 – Targeted financial sanctions related to terrorism and terrorist financing

93. The previous assessment report rated the relevant Special Recommendation III as non-compliant due to the lack of any mechanisms to implement targeted financial sanctions. It is noted that no changes have actually occurred apart from the adoption of a new AML/CFT Law which could have some indirect relation to the application of targeted sanctions (as noted below) and even in that case the relevant mechanisms for comprehensive application have not been adopted.

94. ***Criterion 6.1*** and ***Criterion 6.2*** *(Not met)* – No specific legal or institutional mechanism is available in Kosovo in regard to criterion 6.1. Law No. 03/L-183 deals with the Implementation of International Sanctions, including financial sanctions. Financial sanctions are defined under Article 2, Paragraph 1 as "restrictions on the rights of entities, to which international sanctions are implemented, to manage, use or dispose of cash, securities, goods, other assets and property rights; payment restrictions for entities to which international sanctions are implemented; other restrictions on financial activities". Pursuant to Article 3, Paragraph 1 of the Law on Implementation of International Sanctions, the implementation of international sanctions shall be laid down and changed by decision of the Government of the Kosovo, which should be the basis of the respective mechanisms for various sanctions. No such mechanism is in place in regard to proposing persons or entities for designations under the UN Security Council Resolutions 1267/1989 and 1988 and following. In practice, the government could adopt a decision to propose persons for designation on an *ad hoc* basis. However, this is problematic due to the lack of a formal and active mechanism including specific competences

and criteria for identifying those persons and proposing them. Pursuant to Article 10, the Ministry of Foreign Affairs shall co-ordinate the implementation of international sanctions in Kosovo and provide natural and legal persons with information. No specific mechanisms are available in practice for applying the international standard in regard to the mentioned UNSCR. At the same time, Article 11 provides for institutions responsible in general for the implementation and supervision of sanctions.

95. The aforementioned is valid also for criterion 6.2. Despite the presence of some authorities vested with competence under the Law on International Sanctions, there are no specific procedures in place or any further requirements in regard to the relevant UNSC Resolutions.

96. ***Criterion 6.3*** *(Not met)* – Despite the lack of formal mechanism and procedures, authorities responsible for the analysis, investigation and prosecution of terrorist financing could in practice collect or solicit information that would be necessary to meet the criteria for designation within their respective competence. This, however, cannot be considered to meet the criteria as this would not be done on a systematic basis, according to a basic standard, and would not apply in all cases under the relevant UNSC Resolutions.

97. ***Criterion 6.4*** *(Not met)* – Targeted financial sanctions have not been implemented.

98. ***Criterion 6.5*** *(Not met)* – Despite the designation of several authorities under the Law on the Implementation of International Sanctions as discussed above, no authorities have been designated in accordance with the required standards and procedures under criterion 6.5. There are some partial requirements (e.g. in Article 8 of the mentioned law) for the persons and entities for applying financial sanctions which are not applicable due to the lack of the necessary respective institutional mechanisms for implementation (including communication, supervision etc.). The requirement of Administrative Directive FIU No. 03/2015 on the Prevention and Detection of Terrorist Financing is understood as a mechanism aimed at detecting potential cases of terrorist financing and not as a formal mechanism that could lead to the imposition of targeted sanctions for terrorism and TF, at least not on a regular basis and not for all reporting entities due to various level of required internal controls among the different sectors. Moreover, this mechanism does not apply to all persons and entities in Kosovo, which is the purpose of the UNSCR sanctions. It is also not clear whether any form of cooperation for this purpose has been established with the other authorities which would have significant competence in this regard (not allowing transactions with assets of designated persons) including the Department for Registration and Liaison with NGO (DRLNGO), Business Registry and Cadastre.

99. ***Criterion 6.6*** *(Not met)* – No such specific procedures have been implemented.

Weighting and Conclusion

100. The authorities have not implemented any systematic mechanism for targeted financial sanctions related to terrorism and terrorist financing.

101. **Kosovo is non-compliant with Recommendation 6.**

Recommendation 7 – Targeted financial sanctions related to proliferation

102. Recommendation 7 sets new requirements that were not part of the previous 2014 AML/CFT Assessment Report.

103. ***Criterion 7.1*** *(Not met)* – Law No. 03/L-183 deals with the Implementation of International Sanctions, including financial sanctions. Financial sanctions are defined under Article 2, Paragraph 1 as "restrictions on the rights of entities, to which international sanctions are implemented, to manage, use or dispose of cash, securities, goods, other assets and property rights; payment restrictions for entities to which international sanctions are implemented; other restrictions on financial activities". Article 3, Paragraph 1 of this law states that the Government of Kosovo shall lay down and amend the implementation of all international sanctions set out in the Resolutions of the Security Council of the United Nations, as well as the decisions of other international organisations on international sanctions. Moreover, Article 6 states that the Government of Kosovo will also implement the decisions of the General Assembly of the United Nations, the Organisation for Security and Cooperation in Europe (OSCE), and other international organisations of which Kosovo is a member or takes part, recommending imposing international sanctions on particular entities.

104. The Ministry of Foreign Affairs of Kosovo is responsible for the implementation of specified exemptions as outlined in Article 4, Paragraph 2 of the same law.

105. Article 1, Paragraph 2 of the Law No. 04/L-198 on the Trade in Strategic Goods states the purpose of the law as being "to further the state security and foreign policy interests of Kosovo, to fulfil international commitments and agreements with regard to the non-proliferation of weapons of mass destruction and other strategic goods used for military purposes, and to contribute the international and regional efforts to regulate the trade of strategic goods".

106. Notwithstanding the above, it was ascertained that UNSCR 1718 concerning the Democratic People's Republic of Korea and UNSCR 1737 concerning the Islamic Republic of Iran have not been implemented under the laws of Kosovo. Moreover, Recommendation 7 requires the implementation of targeted financial sanctions "without delay", in line with the FATF definition meaning "ideally, within a matter of hours of a designation''. In this respect, there does not appear to be any reference in the law to the applicability of any adequate timeframe within which targeted sanctions are to be implemented and imposed.

107. ***Criterion 7.2*** *(Partly met)* **–** Law No. 03/L-183 on the Implementation of International Sanctions refers to the various institutions responsible for the co-ordination of the implementation and supervision of the implementation of international sanctions (specifically Articles 10 and 11). As outlined in Article 10, Paragraph 1, the Ministry of Foreign Affairs is designated to co-ordinate the implementation of international sanctions in Kosovo, whereas Article 11, paragraphs 1/1.2 states that the responsible institutions for the supervision of the implementation of financial sanctions are the Ministry of Internal Affairs, the Kosovo Police under the coordination of the Ministry for Internal Affairs, and the Ministry of Economy and Finance.

108. ***Criterion 7.2 (a - f)*** – There is no evidence that Kosovo requires all natural and legal persons to freeze funds or other assets of designated persons and entities, and to have mechanisms in place in this regard. There are also no measures for the protection of rights of *bona fide* third parties acting in good faith when implementing the obligations of Recommendation 7.

109. ***Criterion 7.3*** *(Not met)* – There are no measures for monitoring and ensuring compliance by financial institutions and DNFBPs with the relevant laws or enforceable means governing the obligations.

110. ***Criterion 7.4*** *(Not met)* – No procedures have been developed and implemented to submit de-listing requests to the UN Security Council in the case of designated persons and entities that do not or no longer meet the criteria for designation.

111. ***Criterion 7.5*** *(Not met)* – No measures are in place to permit the addition to the frozen accounts of interests or other earnings due on these accounts or payments due under contracts, agreements or obligations that arose prior to the date on which accounts became subject to targeted financial sanctions.

Weighting and Conclusion

112. Kosovo has not adopted legislation or satisfactory measures and procedures to implement targeted financial sanctions to comply with UNSCRs relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing.

113. **Kosovo is non-compliant with Recommendation 7.**

Recommendation 8 – Non-profit organisations (NPOs)

114. Kosovo was rated NC in the previous assessment of the respective FATF Special Recommendation VIII due to a significant number of deficiencies. This included the lack of a risk assessment of the sector, no outreach, absence of prudential supervisory oversight; absence of AML/CFT supervisory oversight; no obligation to maintain governance information on a continuous basis in all instances; prudential sanctions not available for all breaches under the Law on NGOs; conflicts between AML/CFT Law and Law on NGOs; no empowering provisions for DRLNGO to demand any other information it may require; and concerns over the identification of NGOs that should be investigated and hence possibility of investigations.

115. There have been no amendments to the Law on Freedom of Association of Non-Governmental Organisations (NGOs) since the previous assessment report, and thus Kosovo retains the noted deficiencies to a large extent, mainly in regard to the status of prudential supervision and role of the DRLNGO, although as noted below a new AML/CFT Law was adopted further clarifying some issues related to NGOs.

116. The NGO sector in Kosovo, pursuant to the Law on Freedom of Association of NGOs, includes associations and foundations. The former is a membership organisation established by at least three persons and the latter is an organisation without membership established to manage properties and assets. In addition, foreign and international NGOs which meet the requirements of Article 4 of the Law could fall under the jurisdiction of the law. The logic of the Law seems to allow foreign NGOs to still operate in Kosovo without being subject to registration and oversight requirements by Kosovo institutions. In addition, it is doubtful that foreign NGOs are subject to the general requirement for domestic associations and foundations (Article 6, Paragraph 6) to not engage in activities inconsistent with their respective founding instruments and statutes. At the same time, it is noted that both domestic and foreign NGOs that fall under the jurisdiction of the Law are subject to the requirement of Article 4 of the Law concerning the non-distribution of earnings and profits and not to provide benefits to any founder, director, officer, member, employee or donor except for the reasonable remuneration for the work performed.

117. It is also noted that NGOs could also be registered as micro-financial institutions with relatively large capital and as such could also participate to a limited extent in the ownership of banks. All this deems relevant additional assessment of associated risks and mitigating measures, especially considering the significant resources which in principle should be managed there.

118. Religious organisations (religious centres) are excluded from the scope of the Law on Freedom of Association of Non-Governmental Organisations and no authorisation is required thereof. No information was provided to the Assessment Team in regard to the risk profile and likelihood of abuse in that sector.

119. ***Criterion 8.1*** *(Not met)* – Kosovo authorities have undertaken, but still not completed, a relevant assessment of the NGO sectoral risks that would allow for the comprehensive and proper identification of all NGOs that would fall under the FATFs definition (despite significant efforts in selecting a proper sample of NGOs for the purposes of the sectoral risk assessment). Furthermore, the assessment aimed to identify the nature of the threats posed to NGOs, to review the adequacy of measures in view of proportionate responses, and to conduct a periodic reassessment of the risks. At the same time, it is noted that all NGOs continue to be reporting entities under the new AML/CFT Law, with even extended obligations compared to the previous legislation. This is related to the Kosovo authorities' understanding of the inherent risks associated with the NGO sector, although this understanding is still open to discussion considering the lack of any further information provided on the conclusions, and the limited availability of information to corroborate these risks in respect of each of the competent authorities.

120. ***Criterion 8.2*** *(Partly met)* **(a)** – The Law on Freedom of Association of NGOs and the AML/CFT Law stipulate requirements in regard to promoting accountability, integrity and public confidence in the administration and management of NPOs. These include the requirements to register with the competent authority under the Ministry of Public Administration (Department for Registration and Liaison with NGOs (DRLNGO)) as well as providing a range of information on the founders, authorised representatives, governing body, Board, purpose and range of activities, and the procedures for electing and dismissing members of the management. Detailed requirements are in place regarding internal governance and conflicts of interests, etc. NGOs having public beneficiary status are subject to further extensive reporting requirements pursuant to Articles 17-19 of the Law on Freedom of Association of NGOs (Law on NGOs). The competent authority for registration could also request further information in regard to the specific documents that must be submitted for registration, and are to be updated regularly or where a change occurs. All this information related to registration should be publicly available.

121. Article 29 of the AML/CFT Law stipulates further accountability procedures including limitations to certain transactions in cash, maintaining data on all income and expenditures, the appointment of a compliance officer (who should, under Article 21, theoretically be subject to fit and proper

assessment), and preventing abuse by requiring the NGOs to take appropriate due diligence measures.

122. Nevertheless, the positive aspects of the regime are compromised by certain deficiencies, some of which were noted under the previous assessment report. These include the lack of fit and proper corresponding requirements in the Law on NGOs as well as the limitations to the powers of the competent authority thereof to request further information, including on the property and resources used. The reasons for denial of registration do not seem to fully account for the significant risks related to TF or money laundering as evidenced by the inclusion of the NGOs as a category under the AML/CFT requirements. It is at the same time noted that no requirements for the identification of beneficial ownership of the NGOs are actually in place (especially where they might differ from the founders or managers due to indirect control). Another related issue seems to arise from the lack of requirement for the natural persons involved in the management to actually submit full identification data during registration or update (apart from names and address). An issue might also be related to the requirements for submitting financial statements for the NGOs of public beneficiary status that do not seem to conform to the adopted accounting standards in regard to other legal persons (e.g. different than those applicable for NGOs that are MFIs pursuant to the Law on Banks).

123. ***Criterion 8.2*(b)** – Kosovo authorities have undertaken an outreach campaign based on several national strategies focused on terrorist financing, terrorism, violent extremism and radicalisation. Pursuant to Article 14, Paragraph 1.9 of the AML/CFT Law, FIU is required to organise and/or conduct regular training, including awareness and outreach regarding the prevention of money laundering, predicate offences, terrorist financing and the obligations of reporting subjects. This requirement covers all reporting entities, including NGOs.

124. At the same time, it is noted that the Law on NGOs does not contain express requirements for conducting outreach. Tax authorities conduct outreach to the NGOs within the remit of their respective competence.

125. ***Criterion 8.2*(c)** – There are no formal requirements or any substantial action taken that would meet this criterion and ensure cooperation with NGOs, although some NGOs have been included in the working group established to assess sectoral risks.

126. ***Criterion 8.2*(d)** – This criterion is covered through the requirements of Article 29, paragraphs 1 and 2 of the AML/CFT Law which introduced explicit requirements for conducting all income and expenditure transactions through banks and financial institutions licensed by the CBK. This requirement does not apply in regard to e.g. transactions in goods (such as donations in kind, or provision in kind to beneficiaries).

127. ***Criterion* 8.3** *(Mostly met)* – Additional measures apply in regard to a number of NGOs that are public beneficiaries as well as to the NGOs that are also MFIs. At the same time it is not demonstrated that these additional measures are related to TF risk and not mainly to e.g. risks of tax abuse or state funds abuse.

128. ***Criterion 8.4*** *(Partly met)* – The issues related to the supervision by the DRLNGO are duly noted in the previous assessment report and are still valid in the context of criterion 8.3. The relevant provision of the AML/CFT Law (Article 34) would still require the respective competence of the DRLNGO to be applied effectively in regard to the issues of prudential supervision, but also in terms of AML/CFT prevention which seem to be entrusted to the prudential supervisors as well. The issue would be further complicated by the supervisory remit of the CBK over the specific activities of the MFIs being NGOs.

129. These issues are further aggravated by the lack of a targeted approach in supervision based on assessment of risk and focusing on NPOs at risk.

130. The Law on NGOs provides for sanctions of suspension or revocation of registration as well as revocation of the public beneficiary status of NGOs. At the same time, deficiencies remain as noted previously, e.g. regarding the distribution of earnings requirement, and the update of the information on management. Pursuant to Article 11 of the Law on NGOs officers, directors and employees of registered NGOs shall be personally liable for wilful or grossly negligent performance or neglect of duty, but there are no corresponding provisions to ensure that this liability is realised in practice through any sanctions. It is also not clear how the provisions of Articles 13 to 16 of the Law on NGOs

in regard to internal governance, financial operations, or conflicts of interest would be enforced in practice.

131. Violations by NGOs of provisions of the AML/CFT Law are considered serious and subject to sanctioning under Article 44 of the law. Sanctions which could be considered effective, proportionate and dissuasive with regard to NGOs could be imposed also on natural persons responsible for the violations pursuant to Article 44, Paragraph 2.

132. ***Criterion 8.5*** *(Partly met)* - **(a)** *(Partly met)* – The Law on NGOs does not provide for any mechanism in relation to cooperation of the competent authority under the law (DRLNGO). Moreover, no mechanisms are provided for or required to be established through additional legal instruments in regard to potential cooperation with other authorities which could have significant relevance for the oversight of the NGOs, including CBK (on MFIs), tax authorities (as tax exemptions and recovery in case of revocation are essential and a number of limitations apply to NGO activities), customs authorities (in regard to both cash carried across border and potentially contributing to NGO activities, donations in kind, etc.), FIU (any suspicion of ML/TF or related predicate crime, checks of UNSCR lists, etc.), LEA (in regard to issues concerning whether the management and ownership of NGOs is fit and proper), and the business registry. A Memorandum of Understanding on the Exchange of Information between the FIU and the DRLNGO was signed in 2011, but does not seem to enable clear procedures for the exchange of information for registration purposes, nor for establishing e.g. whether ownership or management of NGOs are fit and proper. No information has been provided on the availability of any cooperation agreements that could be relevant in this context.

133. Another concern remains the lack of powers for the DRLNGO to request all relevant information from the NGOs, unless it is part of the registration process. The issue is also aggravated by DRLNGO's own interpretation of the Law on NGOs in the sense that it lacks any mandate to carry out prudential supervision of the NGOs. Thus, a number of limitations and requirements for the activities of the NGOs are left to the NGOs discretion without any ability to ascertain their application, including the activities of the NGOs having public beneficiary status, distribution of remaining assets of an NGO after revocation of registration, transactions with affiliated entities, restrictions on the distribution of dividends and profit, activities of the NGOs remaining strictly within the limits of the founding instruments or statutes, and financing political parties, etc. Thus, no instruments to identify such relevant information are available at the first level of oversight of the NGOs (i.e. the registering authority).

134. The FIU, on the other hand, has significant access to information from reporting entities (pursuant to Article 14, Paragraph4 and Article 29 of the AML/CFT Law). The aforementioned issue related to the specific information access to NGO information and potential restrictions needs to be clarified in this respect. At the same time, it is noted that this NGO information is not information received or accessed systematically (e.g. information on income and expenditures is provided by NGOs on request as per Article 29) and therefore somewhat limits the ability of authorities to identify cases of abuse of NGOs taking into account the aforementioned competences of the DRLNGO. The FIU is required to cooperate with all relevant authorities pursuant to Article 14, Paragraph 3 of the AML/CFT Law but, even in this case, no further information is provided on any specific procedures and rules regarding cooperation with DRLNGO. Moreover, the interpretation of the assessment team of Article 15 of the AML/CFT Law would be that no specific dissemination from FIU's own sources could be provided to DRLNGO, e.g. in the framework of its own activity to ascertain whether there are any risks of abuse for TF purposes. It is not clear whether the FIU (or another authority) also exchanges information with the DRLNGO on a regular basis concerning designated persons in the framework of UNSCRs, which should be extremely important considering the deficiencies in the implementation of the targeted sanctions as required under FATF Recommendation 6.

135. ***Criterion 8.5*****(b)** *(Not met)* **–** No information is provided by Kosovo authorities in regard to any expertise and capacity building, special operating procedures or other mechanisms which satisfy this criterion.

136. ***Criterion 8.5*****(c)** *(Partly met)* – The criterion can only be partially met based on the reliance of the procedures in the Law on NGOs and the information accessed and processed by the DRLNGO for the aforementioned restrictions. It is also noted that no full and up-to-date identification data of all persons related to the ownership and management of the NGOs would be available, as well as to the

aforementioned deficiency linked to the lack of requirements for proper identification of beneficial ownership of NGOs.

137. ***Criterion 8.5*(d)** *(Met)* – FIU has extensive powers to request information from NGOs considering that they are reporting entities under the AML/CFT Law in addition to their other obligations under the AML/CFT Law. In addition, the FIU is empowered to provide relevant information for the purposes of this criterion. An issue might arise in regard to ensuring proper, timely and regular information to the NGOs in regard to the designated persons by the relevant UNSCRs.

138. ***Criterion 8.6*** *(Met)* – FIU became a member of the Egmont Group in 2017, thus abiding by its principles of information exchange including for the purposes of criterion 8.6. Kosovo authorities also engage in police cooperation through International Law Enforcement Coordination Unit (ILECU). At the same time, the instrument of mutual legal assistance is also applicable along the lines described under Recommendation 37.

Weighting and conclusion

139. The lack of risk-based approach negatively impacts all other measures in place. There are significant deficiencies with regard to the registration, outreach and oversight of the sector for CFT purposes.

140. **Kosovo is partially compliant with Recommendation 8.**

Recommendation 9 – Financial institution secrecy laws

141. In the 2014 AML/CFT Assessment Report, Kosovo was rated largely compliant with former FATF Recommendation 4. The assessment identified that there was a need for legal clarity to lift confidentiality for the CBK with regards to the provisions of the AML/CFT Law beyond prudential matters.

142. ***Criterion 9.1*** *(Mostly met)* – The analysis of financial institution secrecy laws *vis-à-vis* unhindered implementation of AML/CFT measures in Kosovo is provided below:

143. *Access to information by competent authorities* – According to Article 63 of the AML/CFT Law, professional secrecy may not be invoked as a ground for refusal to provide information that is subject to disclosure or is collected and maintained pursuant to the Law and is sought by either the FIU or, in connection with an ML/TF investigation ordered by or carried out by the Police under the supervision of a Prosecutor or Investigative Judge. This provision is without prejudice to information that is subject to the lawyer-client privilege as defined under Paragraph 7 of Article 31 and Paragraph 5.2 of Article 35 of the AML/CFT Law.

144. *Sharing of information between competent authorities domestically* – Paragraph 1 of Article 15 of the AML/CFT Law defines that the FIU may disclose, at its own initiative or upon request, information to public and governmental bodies, if such disclosure is deemed necessary by, or of assistance to, the FIU for the performance of its functions. Such information may include any identifying data on a person or entity, on a transaction, as well as any other data deemed appropriate for preventing and combating ML, predicate offences and TF. According to Paragraph 2 of the same article, information can be disclosed to domestic authorities with relevant competences, including law enforcement bodies. The authorities also refer to the memorandum of understanding concluded in April 2011 between the Ministry of Internal Affairs, the Ministry of Justice, the Ministry of Finance and the State Prosecutor for the exchange of information to functionalise the International Law Enforcement Coordination Unit (ILECU) within the Kosovo Police as a complementary tool that facilitates the sharing of information between domestic competent authorities.

145. Paragraph 2 of Article 38 of the AML/CFT Law sets out that the CBK and other sectoral supervisors shall immediately inform the FIU in writing whenever, in exercising the duties within their competences, they suspect or identify activities which are or may be associated with ML/TF. Paragraph 2 of Article 74 of the Law on the CBK defines that, notwithstanding confidentiality requirements imposed on the CBK, it may disclose non-public information to regulatory and supervisory authorities in the

performance of their duties.[34]

146. At the same time, it is not clear whether information may be obtained from competent authorities pertaining to strategic analysis, considering that no specific provision on obtaining information from competent authorities (e.g. supervisory authorities or NPO supervisor) for the concrete purpose of identifying trends is included in the AML/CFT Law. Therefore it is not clear whether any professional secrecy limitations could be invoked to prevent such cooperation as the derogation under Article 63 is referring in general to information disclosed pursuant to the AML/CFT Law. An example is the Law on Banks, which in Article 80 provides for the disclosure of information obtained by the CBK under secrecy conditions only pursuant to the Law on the CBK.

147. *Sharing of information between competent authorities internationally* – Paragraph 4 of Article 15 of the AML/CFT Law defines that the FIU may exchange internationally all information accessible or obtainable directly or indirectly by the FIU, spontaneously or upon request, with any foreign counterpart that performs similar functions and is subject to similar confidentiality obligations, regardless of the nature of the counterpart and within the framework of each counterpart's domestic legislation. The exchanged information shall be used only for the requested purpose, with the prior consent of the providing agency, and only for the purpose of fighting ML, predicate offences and TF.

148. No legal requirements concerning MLA or other types of LEA cooperation were found under the respective analyses under Recommendations 37-40 to place unduly restrictive conditions for the exchange of information, including on the possibility to exchange information where fiscal matters are involved, professional secrecy (Article 63 of the AML/CFT Law), and the nature and status of the counterpart authority (within the specified purposes of the law).

149. The provision in Paragraph 2 of Article 74 of the Law on the CBK allowing it to disclose non-public information to regulatory and supervisory authorities in the performance of their duties may be interpreted to comprise disclosures to foreign regulatory and supervisory authorities as well.

150. Paragraph 1 of Article 79 of the Law on Banks, MFI and NBFI defines that the CBK may exchange information on supervisory matters with financial supervisory authorities in Kosovo and in other countries. The exchange of such information may include confidential information, provided that the CBK has satisfied itself that the information will be used for supervisory purposes and will be subject to confidential treatment that is similar to that which the CBK would be required to apply.

151. *Sharing of information between financial institutions* – The AML/CFT Law provides for the obligation of the banks and other financial institutions to take measures in relation to respondent institutions in the case of cross-border correspondent banking or other similar relationships as set out under Recommendation 13 (Paragraph 4 of Article 22), to obtain and transmit the necessary information to the beneficiary financial institutions in the case of wire transfers as set out under Recommendation 16 (Paragraphs 6 and 7 of Article 24) and to implement group-wide AML/CFT programs including information exchange policies and procedures as set out under Recommendation 18 (Paragraph 5 of Article 24). In this regard, it is not clear whether the laws of Kosovo inhibit sharing of information between financial institutions where this is required by Recommendation 17.

Weighting and conclusion

152. The following facts and circumstances have been considered to determine the rating for Recommendation 9:

- The assessment team has not been provided references to legal provisions that enable sharing of information internationally by supervisors other than the FIU and the CBK for AML/CFT purposes.
- It is not clear whether the laws of Kosovo inhibit sharing of information between financial institutions where this is required by Recommendation 17.
- It does not seem to be the case that information necessary for AML/CFT strategic analysis conducted by the FIU can be provided by other authorities.

153. **Kosovo is largely compliant with Recommendation 9**.

[34] Articles 83 and 113 of the Law on Banks, MFI and NBFI require all financial institutions in Kosovo to comply with the AML/CFT Law, and Article 23 of the Law on CBK empowers the latter to supervise all financial institutions in Kosovo for compliance with applicable legislation.

Recommendation 10 – Customer due diligence

154. In the 2014 AML/CFT Assessment Report, Kosovo was rated partially compliant with former FATF Recommendation 5. The assessment identified technical deficiencies related to, *inter alia*: legal ambiguity on the obligation to apply full CDD measures; the lack of explicit prohibition for keeping accounts in fictitious names; unclear threshold for wire transfers; insufficient legal obligation to identify beneficial owner for legal arrangements and life insurance policies; lack of guidance on the obligation to understand the ownership and control structure of the customer and the purpose and intended nature of the business relationship; insufficient obligation to exercise on-going monitoring of business relationship in all circumstances beyond high risk customers; lack of guidance on implementing a risk based approach; and, inconsistencies in the timing of the verification process against the timing of the identification process.

155. ***Criterion 10.1*** *(Met)* – Paragraph 1 of Article 24 of the AML/CFT Law prohibits banks and other financial institutions from keeping anonymous accounts or accounts under fictitious names.

When CDD is required

156. ***Criterion 10.2*** *(Partly met)* – Paragraph 2 of Article 19 of the AML/CFT Law defines that reporting subjects shall apply customer due diligence measures when: 1) establishing a business relationship; 2) carrying out occasional transactions in cash at or above EUR 10,000 or equivalent foreign currency, whether it is performed as a single transaction or several transactions that are related[35]; 3) there are suspicions about the accuracy and adequacy of the customer identification data obtained; and 4) there is a suspicion of money laundering or financing of terrorism.[36] The authorities advise that the term "related" is interpreted in the meaning of "multiple transactions" as set out in Paragraph 2 of Article 24 of the AML/CFT Law.

157. Furthermore, Paragraph 2 of Article 24 of the AML/CFT Law defines that, in addition to the CDD-related obligations set out under Article 19 of the Law, banks and other financial institutions shall verify the identity, and, in the case of natural persons, also verify the date of birth of all clients when: 1) opening bank accounts; 2) taking stocks, bonds, or other securities into safe custody; 3) granting safe-deposit facilities; 4) performing a domestic or international bank transfer of funds[37]; 5) prior to performing occasional transactions; and 6) engaging in any single transaction in currency[38] of EUR 10,000 or more. Regarding the latter, multiple currency transactions shall be treated as a single transaction if the bank or financial institution has knowledge that the transactions are conducted by or on behalf of one person or entity, and a total of EUR 10,000 or more is achieved in a single day.

158. Hence, the AML/CFT Law does not require banks and other financial institutions to undertake all applicable customer due diligence measures (as opposed to client identification and verification of identity only) in case of: a) non-cash occasional transactions[39] above the designated threshold of EUR 10,000[40]; and, b) transactions that are wire transfers and are conducted through financial institutions other than banks.

Required CDD measures for all customers

159. ***Criterion 10.3*** *(Mostly met)* – According to Paragraph 1.1 of Article 19 of the AML/CFT Law, CDD measures to be applied by all reporting subjects include identifying the client and verifying the client's identity "through independent sources, documents, data or credible information". According to

[35] If the amount of the transaction is unknown at the time of the operation, the identification shall be done as soon as the amount becomes known or the threshold is reached.

[36] Similar provisions are contained in Paragraph 2 of Article 17 of the CBK Regulation on AML/CFT.

[37] Paragraph 2(e) of Article 17 of the CBK Regulation on AML/CFT uses the expression "when conducting out a domestic or international electronic transfer of funds", which could be interpreted in a way requiring identification and verification of identity in case of all – both bank and non-bank – wire transfers; however, insofar as this provision defines obligations for the reporting subjects beyond the scope and coverage of those articulated in the AML/CFTCFT Law, it may be challenged in case of legal dispute.

[38] The authorities present that the "transactions in currency" refers to any type of transaction (e.g. cash deposit, wire transfer, currency exchange, cash withdrawal).

[39] For example, acceptance of traveller and other checks, money orders, trade in money market instruments, transferable securities etc..

[40] As the provision in Paragraph 2 of Article 24 of the AML/CFT Law regarding all occasional transactions (irrespective of the amount) requires identification and verification of identity only, which does not amount to taking all applicable CDD measures.

Paragraph 3.1 of the same article, a natural person is identified by presentation of an original, unexpired official document[41] that bears a photograph of such person. The person's address and date of birth shall be verified by the presentation of document(s) capable of providing proof thereof. Here, the formulation "through independent sources, documents, data or credible information", that is defining "independent sources" as a subject unrelated to and not necessarily describing the qualities of "documents, data or credible information" creates uncertainty as to whether the FATF requirement about "using reliable, independent source documents, data or information" is met.

160. Details of identification and verification for the identity of legal entities such as business organisations, NGOs or political subjects (as set out in Paragraph 3.2 of Article 19 of the AML/CFT Law), as well as of other legal entities and arrangements (as set out in Paragraph 4 of Article 19 of the AML/CFT Law) are presented in the analysis for criterion 10.9 below.

161. ***Criterion 10.4*** *(Partly met)* – Paragraph 7 of Article 19 of the AML/CFT Law stipulates that persons acting as authorised agents shall present documents in accordance with Paragraph 3 of that article for themselves and for the authorising person or entity, and shall provide a document authorising them to conduct transactions on behalf of such a person or entity. Hence, this requirement does not cover the situations whereby the reporting subjects: a) engage in relations with persons purporting to act on behalf of the customer beyond the scope of conducting transactions (i.e. when they try to establish business relationships without conducting a transaction); and b) deal with legal entities other than business organisations, NGOs, or political subjects stipulated under Paragraph 3.2 of Article 19 of the AML/CFT Law, as well as with legal arrangements.

162. In addition, the requirement for authorised agents to present certain documents does not amount to a requirement for the reporting subjects to "identify and verify the identity of … any person purporting to act on behalf of the customer" as required under criterion 10.4.

163. The provision in Paragraph 8 of Article 19 of the AML/CFT Law stating that notwithstanding compliance with Paragraphs 3 to 7 of that article (i.e. those on identification and verification of identity clients and authorised agents), "a reporting subject shall take any additional reasonable measure necessary to identify every person and entity on behalf of which a person engaging in a transaction shall act… [as a client subject to CDD], including the owner and beneficiary of the property", is not clear enough to give a specific scope of the objects and subjects, as well as the actions to be taken under that provision.

164. ***Criterion 10.5*** *(Partly met)* – Paragraph 1.36 of Article 2 of the AML/CFT Law defines beneficial owner as the natural person who ultimately owns or controls a customer and/or a natural person on whose behalf a transaction or activity is being conducted, or the person who ultimately exercises effective control over a legal person or arrangement. This definition is a transposition of the one in the FATF Glossary. Details of the definition of beneficial owners of legal entities and arrangements, as well as of the information used for their identification and verification of identity are presented in the analysis for criteria 10.10-10.11.

165. According to Paragraph 1.2 of Article 19 of the AML/CFT Law, CDD measures to be applied by all reporting subjects include "identifying the beneficial owner" and, where reporting subjects consider that the ML/TF risk is high, taking "reasonable measures to verify his or her identity" so as to be convinced that they know who the beneficial owner is. Hence, this provision falls short of requiring that the reporting subjects: a) use relevant information or data from a reliable source when taking reasonable measures to verify the identity of the beneficial owner, and b) take such measures in situations other than those considered high risk.[42]

[41] The authorities present that the "official document" means a document issued by responsible authorities (e.g. a passport, driver's license, identification document) bearing the holder's photographs and personal data (e.g. name, surname, date of birth and personal identification number), as defined in the Law No. 03/L-037 on Travel Documents, the Law No. 03/L-099 on Identity Cards etc.

[42] According to Paragraph 2(b) of Article 8 of the CBK Regulation on AML/CFT, customer due diligence is composed of "determining the beneficial owner and taking appropriate risk-based measures in order to verify his/her identity", which could be interpreted in a way requiring implementation of reasonable measures for verification of identity of the beneficial owner in situations other than those considered to be high risk; however, insofar as this provision defines obligations for the reporting subjects beyond the scope and coverage of those articulated in the AML/CFT Law, it may be challenged in case of legal dispute.

166. ***Criterion 10.6*** *(Met)* – According to Paragraph 1.3 of Article 19 of the AML/CFT Law, CDD measures to be applied by all reporting subjects include understanding and obtaining information on the purpose and targeted nature of the business relationship.

167. ***Criterion 10.7*** *(Partly met)* – According to Paragraph 1.4 of Article 19 of the AML/CFT Law, CDD measures to be applied by all reporting subjects include "conducting continuous monitoring of the business relationship, including the supervision of transactions performed during this entire relationship to ensure that the performed transactions are compliant to the insights of the client, business profile and risk, including, where necessary, source of funds, and guarantee that documents, data or information are kept up to date".

168. Paragraph 1 of Article 22 of the AML/CFT Law further defines that when reporting subjects determine that the ML/TF risk is high, they shall take reasonable measures "to keep up to date the information collected pursuant to Article 19 of this Law" and apply necessary enhanced due diligence measures to monitor the business profile and risk, including the source of funds, and "ensure that records and other information held are kept up to date".

169. The above provisions in Article 19 and 22 certainly repeat each other in requiring to keep up to date "documents, data or information" in one case and "records and other information" in the other case, thus creating uncertainty as to whether these requirements relate to the same (or different) scope and composition of "documents, data or information collected under the CDD process" as required under c.10.7 (b). There is another overlap within the text of Paragraph 1 of Article 22 twice speaking about keeping up to date the "information collected pursuant to Article 19 of this Law" and the "records and other information".

170. None of the above provisions require the reporting subjects to ensure that the documents, data or information collected under the CDD process is "relevant", and that this is achieved "by undertaking reviews of existing records", which indeed is different from "conducting continuous monitoring of the business relationship" where reference is to be made to the provision in Paragraph 1.4 of Article 19.

Specific CDD measures required for legal persons and legal arrangements

171. ***Criterion 10.8*** *(Partly met)* – According to Paragraph 1.2 of Article 19 of the AML/CFT Law, in the course of identifying the beneficial owner of the customer, where reporting subjects consider that the ML/TF risk is high, they are required to take risk-based and adequate measures to understand the ownership and control structure of the customers that are legal persons, trusts and similar legal arrangements. Hence, this provision falls short of requiring that the reporting subjects understand the ownership and control structure of the customers in situations other than those considered to be high risk[43]. Moreover, the requirement to take "risk-based" measures appears to go beyond the FATF requirement under criterion 10.8 insofar as it could be interpreted as one allowing to take very few (or no) measures towards understanding the ownership and control structure of the customer whenever the ML/TF risk is considered to be medium or low.

172. According to Paragraph 1.3 of Article 19 of the AML/CFT Law, CDD measures to be applied by all reporting subjects include understanding and obtaining information on the purpose and targeted nature of the business relationship such that reporting subjects may develop the business and risk profile of their customers.

173. ***Criterion 10.9*** *(Mostly met)* – Paragraph 3.2 of Article 19 of the AML/CFT Law defines that all reporting subjects shall identify their clients and, in case of legal entities, verify their identity by the presentation of: a) a business registration certificate issued pursuant to the Law on Business Organisations of Kosovo; b) an NGO registration certificate issued pursuant to the Law on Freedom of Association in Non-Governmental Organisations; and c) proof of registration of a political subject pursuant to the legislation in force. According to Paragraph 4 of the same article, where an entity is not a business organisation, NGO or political subject, the reporting subject shall take any other document(s) enabling verification of the identity, legal form, address, directors, trustees of the entity and provisions

[43] According to Paragraph 4 of Article 10 of the CBK Regulation on AML/CFT, for customers that are legal persons, financial institutions should "take significant measures in order to understand the ownership and control structure of entity", which could be interpreted in a way requiring to understand the ownership and control structure of the customers in situations other than those considered to be high risk; however, insofar as this provision defines obligations for the reporting subjects beyond the scope and coverage of those articulated in the AML/CFT Law, it may be challenged in case of legal dispute.

regulating the power of agents, officers or directors that are engaged in the entity. Hence, the above provisions do not require obtaining information on the principal place of business of a legal entity or arrangement if different from the address of the registered office.

174. ***Criterion 10.10*** *(Partly met)* – Further to the definition of beneficial owner, as provided in Paragraph 1.36 of Article 1 the AML/CFT Law, Clause 1 under this paragraph defines that, in case of legal persons, the beneficial owner shall include at least: a) the natural person who ultimately owns or controls the legal entity through direct[44] or indirect[45] ownership or control over a sufficient percentage of shares or voting rights[46] in that legal entity, including also holders of bearer shares[47]; and b) the natural person who otherwise exercises control over the management of a legal entity.

175. As set out in the analysis for criterion 10.5, the reporting subjects are not required to take reasonable measures to verify the identity of the beneficial owner in situations other than those considered to be high risk. Moreover, there is no requirement to establish the identity of the relevant natural person(s), who holds the position of senior managing official, in cases where no natural persons are identified pursuant to the definition of beneficial owner as provided in Paragraph 1.36 of Article 1 the AML/CFT Law.

176. Finally, the language in Paragraph 1.2 of Article 19 of the AML/CFT Law articulating that CDD measures to be applied by all reporting subjects include "identifying the beneficial owner and/or natural person or persons who directly or indirectly control twenty five percent (25%) or more of a legal person" leaves room for the interpretation that, in the case of legal entities, the requirement for identifying the natural person(s) directly or indirectly controlling 25% or more (presumably, shares) of a legal person is an option that, due to the connective "and/or", can be employed instead of, and interchangeably with, the one for identifying the beneficial owner of a legal entity as defined in Paragraph 1.36 of Article 1 the AML/CFT Law.

177. ***Criterion 10.11*** *(Partly met)* – Further to the definition of beneficial owner as provided in Paragraph 1.36 of Article 1 the AML/CFT Law, Subparagraph 1.36.2 defines that, in the case of legal entities such as foundations, and legal arrangements such as trusts, that administer and distribute funds, the beneficial owner shall include: a) when future beneficiaries have already been determined – the natural person who is the beneficiary of 25% or more of the property of the legal arrangement or legal entity; b) when future beneficiaries have yet to be determined – the class of persons in whose main interest the legal arrangement or entity is set up or operates; and c) the natural person who exercises control over 25% or more of the property of the legal arrangement or entity. Hence, this definition does not designate as beneficial owners the beneficiaries who are identified by certain characteristics, as required under c.10.11 (a), footnote 36.

178. As set out in the analysis for criterion 10.5, the reporting subjects are not required to take reasonable measures for verification of identity of the beneficial owner in situations other than those considered to be high risk. Moreover, there is no requirement to establish the identity of the settlor, the trustee(s) and the protector (if any), while, regarding beneficiaries and other natural persons exercising ultimate effective control over the trust (including through a chain of control/ownership), only those benefiting from or exercising control over 25% or more of the property of the legal arrangement are to be identified.

179. Furthermore, the law does not define that, where beneficiaries of trusts are designated by characteristics or by class, reporting subjects should obtain sufficient information concerning the beneficiary to satisfy themselves that they will be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights. Finally, there is no requirement to identify persons in equivalent or similar positions for other types of legal arrangements.

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[44] A shareholding of 25% or more shares or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership.

[45] A shareholding of 25% or more shares or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership.

[46] A percentage of 25% or more shares shall be deemed sufficient to meet this criterion.

[47] Excluding the cases when that is a company listed on a regulated market that is subject to disclosure requirements consistent with international standards, which ensure adequate transparency of ownership information.

180. Obviously, the lack of FATF-defined language on trusts and similar arrangements in the AML/CFT Law reflects the fact that Kosovo law does not recognise trusts as a distinct type of legal arrangement and, subsequently, the use of trust-related terms in the AML/CFT Law has theoretical significance only in the pursuit of literally meeting the FATF Standard.

181. Paragraph 7 of Article 10 of the CBK Regulation on AML/CFT states that for other legal arrangements such as trusts, in addition to the identification of the trustee, the settlor and/or director, financial institutions shall identify, where beneficiaries have been defined, the beneficiaries of the trust of 25% or more of the property or, where beneficiaries have not been defined, the classification of persons on whose interest the legal arrangement has been concluded or operates. For other types of legal agreements, the financial institutions shall identify persons with equivalent or similar position. These provisions, even where providing better language towards compliance with the requirements under criterion 10.11, define obligations for the reporting subjects beyond the scope and coverage of those articulated in the AML/CFT Law and, therefore, may be challenged in case of legal dispute.

CDD for beneficiaries of life insurance policies

182. ***Criterion 10.12*** *(Partly met)* – According to Paragraphs 5.1-5.3 of Article 19 of the AML/CFT Law, for life and other investment related insurance business the reporting subjects shall, in addition to standard and enhanced CDD measures set out in the law, identify the beneficiaries and: 1) where the beneficiary is identified as a named natural or legal person, record the name of the person; 2) where the beneficiary is designated by characteristics or by class or by other means, obtain and maintain sufficient information regarding the beneficiary such that the reporting subject is able to establish the identity of the beneficiary at the time of payout; and 3) in both cases, verify the identity of the beneficiaries at the time of payout. Hence, this provision does not require the reporting subjects: a) to take the above actions as soon as the beneficiary is identified or designated; and b) where the beneficiary is identified as a named legal arrangement, to record the name of the arrangement.

183. ***Criterion 10.13*** *(Mostly met)* – According to Paragraph 5.4 of Article 19 of the AML/CFT Law, for life and other investment related insurance business the reporting subjects shall, in addition to standard and enhanced CDD measures set out in the law, identify the beneficiaries and, where the identified beneficiary is a legal person or a legal arrangement and the reporting subject determines that such a beneficiary presents a higher risk, take reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary at the time of payout. Hence, the law does not require the reporting subjects to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable.

Timing of verification

184. ***Criterion 10.14*** *(Partly met)* –Article 19 of the AML/CFT Law providing the circumstances where CDD measures (including verification of identity) are to be applied uses the language "when…", meaning that the appropriate timing to apply such measures is before or, at the latest, during the realisation of such circumstances. However, as shown in the analysis for criterion 10.5 and criteria 10.10-10.11, verifying the identity of the beneficial owner is not required in situations other than those considered to be high risk, i.e. in such situations the requirement under criterion 10.14 to verify the identity of the beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers is not met.

185. Paragraph 2 of Article 24 of the AML/CFT Law further defines that, in addition to the CDD-related obligations set out under Article 19 of the Law, banks and other financial institutions shall verify the identity all clients when: 1) opening bank accounts; 2) taking stocks, bonds, or other securities into safe custody; 3) granting safe-deposit facilities; 4) performing a domestic or international bank transfer of funds; 5) prior to performing occasional transactions; and 6) engaging in any single transaction in currency of EUR 10,000 or more.

186. Hence, the above provision does not require banks and other financial institutions to: a) verify the identity of the beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers; and b) verify the identity of the customer before or during the course of establishing a business relationship other than those specified in Paragraph 2 of Article 24.

187. ***Criterion 10.15*** *(Not met)* – Paragraph 1 of Article 17 of the AML/CFT Law establishes a general obligation for all reporting subjects to take actions and measures for the prevention and detection of ML/TF before, during the course of, and following the execution of a transaction or establishing of a business relationship. This, however, does not amount to requiring that the reporting subjects adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.

Existing customers

188. ***Criterion 10.16*** *(Partly met)* – Article 68 of the AML/CFT Law defines that reporting subjects shall apply the new provisions of the law to existing customers on a materiality and risk basis as part of the on-going monitoring of accounts and business relationships. According to Paragraph 1.4 of Article 19 of the AML/CFT Law, CDD measures to be applied by all reporting subjects include "conducting continuous monitoring of the business relationship" … [to] "guarantee that documents, data or information are kept up to date".

189. The above provision does not amount to requiring the reporting subjects to conduct due diligence on existing customers taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.

Risk-based approach

190. ***Criterion 10.17*** *(Partly met)* – Paragraph 2 of Article 18 of the AML/CFT Law requires all reporting subjects to periodically determine the ML/TF risk that they are exposed to through the provision of their services, products, geographic location and delivery mechanisms and channels. This formulation misses "transactions" as a potential object with associated ML/TF risks (as stemming from the requirement in criterion 1.10).[48]

191. Paragraph 5 of Article 18 of the AML/CFT Law further requires all reporting subjects to determine, on an on-going basis, the ML/TF risk presented by their clients and other persons to whom they provide financial and professional services and, whenever they consider that the ML/TF risk is high, take measures set forth under Paragraph 1 of Article 22 of the law.

192. Hence, within Article 18 of the AML/CFT Law there is a disconnect between the ML/TF risk determined with regard to the objects specified in Paragraph 2 (i.e. services, products, geographic locations and delivery mechanisms) and those specified in Paragraph 5 (i.e. clients and other persons), for which enhanced CDD is required. Moreover, the requirement to "determine" the ML/TF risk does not necessarily amount to the one to "take appropriate steps to identify, assess, and understand their ML/TF risks" (as stemming from the requirement in criterion 1.10).

193. Moreover, according to Paragraph 1 of Article 22, in the presence of high ML/TF risk, reporting subjects should take reasonable measures "to keep up to date the information collected pursuant to Article 19 of this Law" and apply necessary enhanced due diligence measures to monitor the business profile and risk, including the source of funds, and "ensure that records and other information held are kept up to date". As shown in the analysis for criterion 10.7, the repetitive and overlapping references to keeping up to date CDD information creates uncertainty about the objects of that measure as a key constituent of enhanced CDD.

194. In relation to that, the law does not define what might be other constituents of enhanced CDD measures[49] as opposed to the standard ones defined under Article 19 of the AML/CFT Law (again, linked to monitoring the business relationship and keeping CDD information up to date). Certain additional measures[50] are required under Paragraph 2 of Article 22 for non-face-to-face relationships,

[48] According to Paragraph 2 of Article 7 of the CBK Regulation on AML/CFT, "financial institutions shall prepare a risk analysis and draft the risk assessment for customers, business relationships, products or transactions related to the possibility of abusing them for money laundering or terrorist financing", thus adding "transactions" as a potential object with associated ML/TF risks; however, insofar as this provision defines an obligation for the reporting subjects beyond the scope and coverage of that articulated in the AML/CTF Law, it may be challenged in case of legal dispute.

[49] For example, increasing the number and timing of controls applied, selecting patterns of transactions that need further examination, obtaining additional information and updating more regularly the identification data of the customer and the beneficial owner, obtaining additional information on the intended nature of the business relationship, obtaining the approval of senior management to commence or continue the business relationship for customers other than PEPs.

[50] Such as requiring that the first payment is made through an account opened with the customer's name in a bank.

which, however, are just one out of many possible factors of potentially higher risk situations requiring enhanced CDD.

195. For banks and other financial institutions, additional measures in case of enhanced CDD are defined in Paragraph 5 of Article 18 of the CBK Regulation on AML/CFT and include, *inter alia*, obtaining additional information and documents to verify the identity of the customer and beneficial owner as necessary, to establish the source of wealth and source of funds, the intended nature of the business relationship as well as increasing the monitoring and scrutiny of business relationships, transactions and accounts, the frequency of updating available information on the customer's identity, risk level and business profile, and the frequency of periodic reporting to senior management.

196. ***Criterion 10.18*** *(Partly met)* – According to Article 23 of the AML/CFT Law, when reporting subjects identify areas with lower risk, FIU may permit them to apply simplified CDD measures. Before applying for FIU permission, reporting subjects should determine that the business relationship or transaction represents a low level of risk. At that, they must ensure appropriate monitoring to enable detection of unusual or suspicious transactions. In assessing the ML/TF risk[51], reporting subjects should consider at least factors and situations that potentially present a lower risk, which shall be determined by the FIU in cooperation with sectoral supervisors.

197. Hence, the above provisions do not explicitly require that the application of simplified CDD is permitted only where lower risks have been identified through adequate analysis of risks by the jurisdiction (FIU) or the reporting subjects. They also do not explicitly define that simplified measures should be commensurate with the lower risk factors, but are not acceptable whenever there is suspicion of ML/TF, or specific higher risk scenarios apply. The law does not define what might be the constituents of those simplified CDD measures[52] as opposed to the standard ones defined under Article 19 of the AML/CFT Law.

Failure to satisfactorily complete CDD

198. ***Criterion 10.19*** *(Partly met)* – Paragraph 9 of Article 19 of the AML/CFT Law stipulates that where a reporting subject is unable to complete the customer due diligence measures of the client, the beneficial owner or the beneficiaries of life and other investment related insurance business in accordance with that article, the relevant transaction should not be performed, business relationship should be terminated or not commenced, and the account should be closed. Such action is without prejudice to the reporting subject to file a STR and additional information to the FIU pursuant to, respectively, Paragraphs 1.1 and 2 of Article 26 of the law.

199. Hence, the above provision does not explicitly require the reporting subjects not to open the account, commence business relations or perform the transaction, or to terminate the business relationship, whenever they are unable to comply with all relevant CDD measures (and not only with those set out under Article 19 of the AML/CFT Law). Also, while establishing that the reporting subjects are not anyhow restricted in the opportunity to file a STR pursuant to Article 26 of the Law (i.e. whenever they have ML/TF suspicions), the Law does not explicitly require the reporting subjects to consider making a STR in relation to the customer whenever they are unable to comply with relevant CDD measures (i.e. irrespective of suspecting ML/TF)[53].

CDD and tipping-off

200. ***Criterion 10.20*** *(Not met)* – Applicable legislation does not establish that, in cases where reporting subjects form a suspicion of ML/TF and they reasonably believe that performing the CDD process will tip-off the customer, they should be permitted not to pursue the CDD process, and instead should be required to file a STR.

[51] Which, according to Paragraph 4 of article 23 of the AML/CFT Law, might be associated with types of clients, geographical location of countries, specific products, services, mechanisms and channels of distribution, but not with, for example, transactions.

[52] Which might be defined using the same logic as the one to be used for defining the constituents of enhanced CDD.

[53] Paragraph 9 of Article 9 of the CBK Regulation on AML/CTF provides a clearer language requiring financial institutions to consider filing an STR whenever they are unable to comply with customer identification and verification requirements; however, insofar as this provision defines obligations for the reporting subjects beyond the scope and coverage of those articulated in the AML/CTF Law, it may be challenged in case of legal dispute.

Weighting and conclusion

201. The following facts and circumstances have been considered to determine the rating for Recommendation 10:

- Banks and other financial institutions are not required to undertake all applicable customer due diligence measures in case of: a) non-cash occasional transactions above the designated threshold of EUR 10,000; and, b) wire transfers conducted through financial institutions other than banks (c.10.2);
- The requirement to use reliable and independent source documents, data or information is not clearly defined (c.10.3);
- The requirement to verify the authorisation of any person purporting to act on behalf of the customer does not cover the situations whereby the reporting subjects: a) engage in relations with persons purporting to act on behalf of the customer beyond the scope of conducting transactions; and b) deal with legal entities other than business organisations, NGOs or political subjects, as well as with legal arrangements (c.10.4);
- The provision on establishing beneficial ownership falls short of requiring the reporting subjects to: a) use relevant information or data from a reliable source when taking reasonable measures to verify the identity of the beneficial owner, and b) take such measures in situations other than those considered to be high risk (c.10.5);
- Provisions on on-going due diligence do not require the reporting subjects to ensure that the documents, data or information collected under the CDD process is relevant, and that this is achieved by undertaking reviews of existing records (c.10.7);
- Reporting subjects are not required to understand the ownership and control structure of the customers in situations other than those considered to be high risk (c.10.8);
- There is no requirement to obtain information on the principal place of business of a legal entity or arrangement if different from the address of the registered office (c.10.9);
- There is no requirement to establish the identity of the relevant natural person, who holds the position of senior managing official, in cases where no natural persons are identified pursuant to the definition of beneficial owner (c.10.10);
- Beneficiaries of legal arrangements identified by certain characteristics are not designated as beneficial owners, and requirements for the identification of beneficial owners in case of legal arrangements are not appropriately defined (c.10.11);
- Provisions on beneficiaries of life insurance policies do not require the reporting subjects: a) to take the relevant actions as soon as the beneficiary is identified or designated; and b) where the beneficiary is identified as a named legal arrangement, to record the name of the arrangement (c.10.12);
- Reporting subjects are not required to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable (c.10.13);
- In situations other than those considered to be high risk, the requirement to verify the identity of the beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers is not established (c.10.14);
- Reporting subjects are not required to adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification (c.10.15);
- There is no requirement to conduct due diligence on existing customers taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained (c.10.16);
- The requirement to perform enhanced due diligence where the ML/TF risks are higher is not appropriately defined (c.10.17);
- Elements and preconditions for allowing simplified CDD are not appropriately defined (c.10.18);
- There are no explicit requirements with regard to the reporting subjects not to open the account, commence business relations or perform the transaction, or to terminate the business relationship, whenever they are unable to comply with all relevant CDD measures (c.10.19); and
- Provisions to prevent tipping-off are not available (c.10.20).

202. **Kosovo is partially compliant with Recommendation 10**.

Recommendation 11 – Record-keeping

203. In the 2014 AML/CFT Assessment Report, Kosovo was rated non-compliant with former FATF Recommendation 10. The assessment identified technical deficiencies related to: the lack of provisions for the commencement retention period for linked occasional transactions; lack of guidance on methodology of record retention; lack of legal power for the extension of the five (5) year retention period for both transaction and identification records when necessary; inconsistency with international standards on the timing for the commencement of the retention period for identification records; and, ambiguity on the availability of records to competent authorities.

204. ***Criterion 11.1*** *(Met)* – According to Paragraph 1of Article 20 of the AML/CFT Law, reporting subjects are required to keep "all data on the information collected pursuant to this Law", including information "to enable reconstruction of transactions, which are executed or tried to be executed" for at least 5 years after the attempt to execute or the execution of the transaction.[54] In relation to this provision, it can be inferred that the broader requirement to keep all data (even along with the less explicit "data on the information") and information that permits reconstruction of transactions would presumably include all necessary records on transactions, as required under criterion 11.1.

205. Paragraphs 1 and 2 of Article 16 of the CBK Regulation on AML/CFT state that financial institutions shall keep all necessary records of transaction, both domestic and international, for at least 5 years following completion of the transaction or completion of the last transaction in a series of related transactions (or longer, if requested by FIU, CBK or other competent body in special cases). This requirement applies regardless of whether the business relationship is on-going or has been terminated.

206. ***Criterion 11.2*** *(Partly met)* – According to Paragraph 1.1 of Article 20 of the AML/CFT Law, reporting subjects should keep copies of documents that attest to the identity of customers and beneficial owners, account files and business correspondence for at least 5 last years upon termination of business relations. Paragraph 1.2 of the same articles further requires keeping written reports established in compliance with Article 25 of the Law, i.e. analyses on complex and unusual transactions and those with customers from non-compliant countries, for at least 5 years after the attempt to execute or the execution of the transaction.[55]

207. Hence, the above provisions do not require the reporting subjects to keep all records obtained through CDD measures other than the identification of customers and beneficial owners, results of analyses undertaken other than those specified in Article 25 of the law, as well as any records obtained through CDD measures and any analyses undertaken with regard to occasional transactions (insofar as the retention period is defined "at least 5 last years upon termination of business relation[s]").

208. ***Criterion 11.3*** *(Met)* – The language of Paragraph 1 of Article 20 of the AML/CFT Law, as set out in the analysis for criterion 11.1 above, is not specific enough to require that the transaction records are sufficient to provide evidence for prosecution of crime. Nevertheless, Paragraph 2 of Article 16 of the CBK Regulation on AML/CFT explicitly states that transaction records must be sufficient to permit the reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

209. ***Criterion 11.4*** *(Met)* – According to Paragraph 1 of Article 20 of the AML/CFT Law, reporting subjects should keep all data on the information collected pursuant to the law and ensure that the documentation and collected information is ready and available to the FIU and other competent authorities.

210. Paragraphs 6 and 8 of Article 16 of the CBK Regulation on AML/CFT require financial institutions to make available, upon request by the FIU, CBK or any other competent authority, all records and available information on a customer, beneficial owner or holder of power of attorney and all requested transaction records, in a form and manner that is complete, timely and comprehensible. Financial

[54] According to Paragraph 1.4 of article 20 of the AML/CFT Law, when the transaction information relates to a report filed to the FIU in relation to a suspicious act or transaction, the five (5) year period shall commence with the date of the filing of the report in accordance with Article 26 of the law.

[55] Similar provisions are contained in Paragraphs 3 and 4 of Article 16 of the CBK Regulation on AML/CFT.

institutions should retain backup copies in electronic form and available in readable form for FIU, CBK and competent authorities according to the applicable legislation.

Weighting and conclusion

211. Most of the criteria are met. However, as the requirement to keep all records obtained through CDD measures and results of analyses is not comprehensive (c.11.2), Kosovo cannot be considered in full compliance with this Recommendation.

212. **Kosovo is largely compliant with Recommendation 11**.

Recommendation 12 – Politically exposed persons

213. In the 2014 AML/CFT Assessment Report, Kosovo was rated partially compliant with former FATF Recommendation 6. The assessment identified technical deficiencies related to: shortcomings in the definition of a politically exposed person (PEP); lack of legal clarity on the application of enhanced measures to domestic PEPs; no obligation to identify if a beneficial owner is or becomes a PEP; no obligation for senior management approval for continuation of business relationship with a PEP; no obligation to have appropriate risk management systems in place; and, unclear legal obligation to identify the source of wealth.

214. According to Paragraph 1.33 of Article 2 of the AML/CFT Law, politically exposed persons are defined as: a) domestic or foreign natural persons, who are or have been entrusted with prominent public functions, as well as directors, deputy directors and members of boards or equivalent positions in international organisations; b) family members of the categories of persons referred to in point "a" of this paragraph; and c) persons known as close associates to the categories of persons referred to in point "a" of this paragraph.

215. As such, in addition to persons designated as "primary" PEPs due to the prominent public functions they are or have been entrusted with, the very definition of PEP designates family members and close associates of these persons as "secondary" PEPs, thus introducing legal ambiguity as to the scope and coverage of the measures to be applied with regard to family members and close associates of the latter category (i.e. a second or any subsequent tier family member or close associate of the first tier family member or close associate of a "primary" PEP).

216. The list of prominent public functions mostly transposes the relevant provisions in the FATF Glossary (and Directive (EU) 2015/849, also known as the 4th AML Directive) except that it does not provide the categories of persons, who are or have been entrusted with prominent public functions, in the form of examples, thus restricting the notion of PEPs specifically to those functions articulated in the AML/CFT Law.[56] Moreover, the list provided in Paragraph 1.33 of Article 2 of the AML/CFT Law misses some important functions, both domestic and international, such as important political party officials (other than management board members of political parties), senior judicial officials (other than members of the Constitutional Court, Supreme Court or any other high-level judicial adjudicating body) and senior military officials.

217. The definition of family members and close associates transposes the relevant provisions of Directive (EU) 2015/849.

218. ***Criterion 12.1*** *(Partly met)* – Paragraph 5 of Article 22 of the AML/CFT Law requires that the reporting subjects take reasonable measures to define whether their customers, beneficial owners and beneficiaries of life or other investment related insurance business or, where appropriate, the beneficial owner of the beneficiary are domestic, foreign or international organisation PEPs as defined by the law. Paragraph 2(e) of Article 5 of the CBK Regulation on AML/CFT defines that internal policies and procedures of banks and other financial institutions should establish the procedure for PEP identification. Hence, this provision does not require the reporting subjects to put in place risk management systems – as opposed to taking (an undefined set of) reasonable measures – to determine whether a customer or the beneficial owner is a foreign PEP.

[56] Whereas the FATF Glossary provides the list of prominent functions as examples only, except for the persons who are or have been entrusted with a prominent function by an international organisation, to whom the reference is very specific and includes members of senior management, i.e. directors, deputy directors and members of the board or equivalent functions, as set out in Paragraph 1.33 of Article 2 of the AML/CFT Law.

219. According to Paragraph 5 of Article 22 of the AML/CFT Law, where a customer or beneficial owner is determined to be a PEP, the reporting subjects should: a) obtain the approval of a senior manager of the reporting subject to establish or to continue the business relationship or to perform the occasional transaction; b) take adequate measures to establish the source of wealth of the customer and origin of assets used in the relationship or transaction; and c) ensure continuous and enhanced monitoring of the account and the relationship. Hence, this provision does not require the taking of reasonable measures to establish the source of wealth of the beneficial owners identified as PEPs.

220. ***Criterion 12.2*** *(Met)* – The measures provided by the AML/CFT Law with regard to PEPs are equally applicable to domestic, foreign and international organisation PEPs, since all these categories of persons are covered by the PEP definition in Paragraph 1.33 of Article 2 of the AML/CFT Law. Hence, the determination of a customer's or a beneficial owner's PEP status is done as described under the analysis for criterion 12.1, and the "reasonable measures" specified in criterion 12.1 (b) to (d) are required in all (including higher risk) business relationships with PEPs.

221. ***Criterion 12.3*** *(Partly met)* – Family members and close associates to PEPs are themselves included in the PEP definition; hence, all relevant requirements of criteria 12.1 and 12.2, as described above, are applicable to them. However, there is a legal ambiguity, as described in the preamble of the analysis for this Recommendation, regarding the scope and coverage of the measures to be applied with regard to family members and close associates of PEPs.

222. ***Criterion 12.4*** *(Partly met)* – Paragraph 6 of Article 22 of the AML/CFT Law defines that in cases of beneficiaries of life or other investment related insurance business or, where applicable, the beneficial owner of the beneficiary, where it is determined that they are domestic, foreign or international organisation PEPs as defined in the law, and there are higher risks identified, the reporting subjects should: a) inform a senior manager before the payout of the policy proceeds; b) conduct enhanced scrutiny on the whole business relationship with the policyholder; and c) consider making a suspicious transaction report.

223. Hence, this provision does not stipulate that the determination of whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary are PEPs should occur, at the latest, at the time of the payout.

Weighting and conclusion

224. The following facts and circumstances have been considered to determine the rating for Recommendation 12:

- Reporting subjects are not required to put in place risk management systems to determine whether a customer or the beneficial owner is a PEP (c.12.1);
- There is a legal ambiguity regarding the scope and coverage of the measures to be applied with regard to family members and close associates of PEPs (c.12.3); and
- There is no requirement that the determination of whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary are PEPs should occur, at the latest, at the time of the payout (c.12.4).

225. **Kosovo is partially compliant with Recommendation 12.**

Recommendation 13 – Correspondent banking

226. In the 2014 AML/CFT Assessment Report, Kosovo was rated largely compliant with former FATF Recommendation 7. The assessment identified technical deficiencies related to: the lack of definition of correspondent banking relationship; lack of legal clarity in distinguishing between "correspondent" and "respondent" banks; and, lack of obligation to identify whether the foreign ("respondent") bank has been subject to a ML or FT investigation or regulatory action.

227. ***Criterion 13.1*** *(Mostly met)* – Paragraphs 4.1-4.4 of Article 22 of the AML/CFT Law defines obligations for banks and other financial institutions in case of cross-border correspondent banking or other similar relationships.

228. The language of this provision, although certainly brought into proximity to the FATF terminology, does not appear to be clear enough to provide for compliance with the FATF requirements under criterion 13.1 including with that on requiring correspondent financial institutions to find out whether the respondent has been subject to a ML/TF investigation or regulatory action.

229. Much clearer provisions are set out in Article 14 of the CBK Regulation on AML/CFT, which virtually repeats and helpfully interprets the requirements set out under criterion 13.1 with regard to gathering information on the respondent institution (including on whether it has been subject to a ML/TF investigation or regulatory action), assessing its AML/CFT controls, obtaining senior management approval before establishing new correspondent relationships, and clearly understanding AML/CFT responsibilities of each institution. However, the language of this article is quite precise and refers to banks only, leaving aside other similar relationships, which are nevertheless reported to be non-existent in Kosovo.

230. ***Criterion 13.2*** *(Mostly met)* – Paragraph 4.5 of Article 22 of the AML/CFT Law defines obligations for banks and other financial institutions in case of the use of payable-through accounts by their respondents. Again, the language of this provision is not clear enough to provide for compliance with FATF requirements under criterion 13.2, whereas Article 14 of the CBK Regulation on AML/CFT sets forth much clearer requirements for the preconditions to allow the use of payable-through accounts by respondent banks. As in the case of criterion 13.1, the language of this article is quite precise and refers to banks only while again avoiding mention of similar relationships.

231. ***Criterion 13.3*** *(Mostly met)* – Paragraph 1.7 of Article 2 of the AML/CFT Law defines a shell bank as "a bank or institution engaged in equivalent activities, established in a country where it has no physical presence, which makes possible to exercise an actual direction and management without being affiliated with any regulated financial group". This appears to overlook certain elements of the FATF definition of a shell bank, i.e. the lack of physical presence in the country in which the bank is licensed (as opposed to being incorporated only), and the lack of affiliation with a regulated financial group that is subject to effective consolidated supervision (as opposed to being subject to non-effective and/or non-consolidated supervision).

232. Paragraph 7 of Article 22 of the AML/CFT Law provides that "financial intermediaries cannot open or maintain correspondent accounts with a shell bank or a bank which is known to allow the use of its accounts by shell banks". The authorities interpret the term "financial intermediaries" as one encompassing all institutions involved in the provision of financial intermediation services (i.e. all banks and other financial institutions licensed and operating in Kosovo).

Weighting and conclusion

233. The following facts and circumstances have been considered to determine the rating for Recommendation 13:

- Relationships between financial institutions other than banks are not covered (c.13.1 and c.13.2); and
- The definition of shell bank overlooks certain elements of the FATF definition of the same (c.13.3).

234. **Kosovo is largely compliant with Recommendation 13**.

Recommendation 14 – Money or value transfer services

235. In the 2014 AML/CFT Assessment Report, Kosovo was rated partially compliant with former FATF Special Recommendation VI. The assessment identified technical deficiencies related to, *inter alia*: the absence of a legal mandate for CBK to apply its prudential supervisory powers under the financial legislation for the purposes of the AML/CFT Law; lack of legal clarity on the type of agents that may be appointed; no obligation for MVT service providers to maintain a list of agents; lack of effective, proportionate and dissuasive administrative sanctions where the MVT service provider is not a legal person; and, a low number of on-site examinations.

236. ***Criterion 14.1*** *(Met)* – According to Paragraph 1 of Article 3 of the Law on Payment Systems, banks and other non-bank financial institutions may engage in payment services specified by authorisation.

Article 94 of the Law on Banks, MFI and NBFI defines that non-bank financial institutions may engage in the type of activity "transfers and remittances of money, or payment services, on payments originating within or outside the country".[57] Article 92 of the same law defines that the registration of a non-bank financial institution (NBFI) is approved for an indefinite period of time and is not transferable. Article 23 of the Law on CBK provides that the Central Bank is exclusively responsible for, *inter alia*, licensing and registration of banks and other financial institutions. All registered NBFIs are required to be listed in the register of financial institutions maintained by the CBK. According to the CBK Regulation on the Registration, Supervision and Activities of NBFIs agents, i.e. persons acting on behalf of an NBFI for exercising payment service activity shall be approved by the CBK, whereas when an agent is a bank, a branch of a foreign bank, or a registered financial institution, the NBFI shall notify the CBK.

237. ***Criterion 14.2*** *(Met)* – Article 91 of the Law on Banks, MFI and NBFI provides that no person shall engage in the business of an NBFI without being first registered with the CBK under the provisions of that law and without being at all times in full compliance with that law and all applicable regulations and orders issued by the CBK. According to Paragraph 1 of Article 3 of the Law on Payment Systems, banks and other NBFIs may engage in payment services specified by authorisation. Paragraph 1 of Article 21 of the same law defines that any person who contravenes the said provision is guilty of an offence and, upon conviction, may be subject to imprisonment for up to 7 years and a fine of up to EUR 30 thousand.

238. ***Criterion 14.3*** *(Met)* – Paragraph 1 of Article 16 of the AML/CFT Law defines banks and other financial institutions (including MVTS) as reporting subjects under the law. Accordingly, all obligations of the reporting subjects under the AML/CFT Law apply to MVT service providers, with the CBK and the FIU sharing responsibility for supervising implementation of those obligations as described in the analysis for Recommendations 26 and 27. For the purpose of obtaining the authorisation to conduct the MVTS, banks and other financial institutions are required by Paragraph 3.14 of Article 3 of the Law on Payment Systems to provide proof of their ability to comply with the AML/CFT Law.

239. ***Criterion 14.4*** *(Met)* – Paragraph 1.1 of Article 1 of the Law on Payment Systems defines agents as persons acting on behalf of banks or other payment institutions to provide some of their services. Article 13 of the same law establishes that banks and other authorised payment institutions shall be permitted to use agents under special authorisation by the CBK. In the case of issuing the authorisation, the CBK lists the agent in a register available to the public. Payment institutions shall ensure that agents acting on their behalf inform payment service users of this fact.

240. ***Criterion 14.5*** *(Met)* – Paragraph 4 of Article 24 of the AML/CFT Law requires banks and other financial institutions to ensure that natural or legal persons which act as branches, subsidiaries or agents on their behalf are included in the programs for the prevention and fighting of ML/TF, as well as monitor their compliance with the provisions of the law.

Weighting and conclusion

241. All criteria establishing requirements regarding money or value transfer services are met. **Kosovo is compliant with Recommendation 14**.

Recommendation 15 – New technologies

242. In the 2014 AML/CFT Assessment Report, Kosovo was rated largely compliant with former FATF Recommendation 8. The assessment identified technical deficiencies related to the legal ambiguity on the application of non-face-to-face business relationships.

243. ***Criterion 15.1*** *(Met)* – Paragraph 1 of Article 18 of the AML/CFT Law establishes that the FIU shall periodically ensure and co-ordinate national ML/TF risk assessments to identify, assess and evaluate risks and make recommendations to the Government to implement policies, strategies and risk management measures to mitigate the identified risks. Paragraph 3 of the same article defines that, within the framework ML/TF risk assessments, reporting subjects should further identify and assess the ML/TF risks that may arise in relation to the development of new products and new business

[57] Post of Kosovo is registered as an MVT service provider engaged in "payment services for juridical, personal ID, vehicle registration, tax and other payments".

practices, including new distribution mechanisms and channels and the use of new or developing technologies for new or existing products.

244. ***Criterion 15.2*** *(Met)* – The provisions in Paragraph 3 of Article 18 of the AML/CFT Law and in Paragraph 8 of Article 7 of the CBK Regulation on AML/CFT require financial institutions to identify and assess ML/TF risks that may arise in relation to: a) development of new products and business practices, including new distribution mechanisms, and b) usage of new or emerging technologies, both for new and pre-existing products. Such a risk assessment should be carried out prior to the launch or use of new products, business practices, new or emerging technologies. Financial institutions should take appropriate measures to manage and reduce these risks.

Weighting and conclusion

245. All criteria establishing requirements regarding new technologies are met. **Kosovo is compliant with Recommendation 15.**

Recommendation 16 – Wire transfers

246. In the 2014 AML/CFT Assessment Report, Kosovo was rated partially compliant with former FATF Special Recommendation VII. The assessment identified technical deficiencies related to: the absence of legal clarity due to lack of definition of terminology used; no link to CDD measures between wire transfers and customer due diligence; legal ambiguity on the retention of records related to wire transfers; absence of guidance for use of wire transfers in batch files; unconditional use of a unique reference number; no obligation for banks and other financial institutions to have risk-based procedures to scrutinise wire transfers; and, concerns on application of sanctions.

247. According to Paragraph 9 of Article 24 of the AML/CFT Law, wire transfer requirements shall not apply to transfers executed as a result of credit card or debit card transactions, provided that the credit card or debit card number accompanies the transfer resulting from the transaction, nor shall they apply to transfers between banks and/or financial institutions where both the originator and the beneficiary are banks or financial institutions acting on their own behalf. Hence, this provision does not stipulate that wire transfer requirements may be abandoned in case of transfers that flow from a transaction using a credit or debit or prepaid card if they are only used for the purchase of goods or services, and that they should be applied whenever a credit or debit or prepaid card is used as a payment system to effect a person-to-person wire transfer, also ensuring that the necessary information should be included in the message.

Ordering financial institutions

248. ***Criterion 16.1*** *(Partly met)* – Paragraph 1.44 of Article 2 of the AML/CFT Law defines wire transfer as any transaction carried out on behalf of an originator person, both natural and legal, through a financial institution by electronic means with a view to making an amount of money available to the beneficiary person at another financial institution.

249. Paragraph 6 of Article 24 of the AML/CFT Law requires banks and other financial institutions, whose activities include wire transfers, to obtain and verify the full name, account number, the address or, in absence of address, the national identity number or date and place of birth, including where necessary the name of the financial institution, of the originator of such transfers. The information shall be included in the message or payment form accompanying the transfer. If there is no account number, a unique reference number shall accompany the transfer.

250. Paragraphs 1 and 2 of Article 13 of the CBK Regulation on AML/CFT further require banks and other financial institutions to obtain and maintain full information of the originators of electronic transfers and to verify that the information is accurate and meaningful. Such information should at a minimum contain: a) the name of the originator; b) the originator's account number, or a unique reference number if there is no account number; c) the originator's address, official identification number, date and place of birth; d) the name of the beneficiary; e) the beneficiary's account number where such an account is used to process the transaction.

251. Hence, the above provisions do not require that: a) the originator account number accompanying the wire transfer is specifically the number of the account used to process the transaction (as opposed to the number of any other account of the originator); b) in the absence of an originator account, the

unique reference number: b.1) is that of the specific transaction (as opposed to any other unique reference number that could be assigned to the client); and b.2) is one that permits traceability of the transaction; and c) in the absence of a beneficiary account and where the originator account number is used to process the transaction (i.e. a unique transaction reference number is not generated as part of the required originator information), a unique transaction reference number permitting traceability of the transaction accompanies the wire transfer.

252. ***Criterion 16.2*** *(Partly met)* – Applicable legislation does not specifically provide for cases where several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries. Paragraph 3 of Article 13 of the CBK Regulation on AML/CFT requires banks and other financial institutions to include the full originator information, as set out in Paragraph 2 of the same article (i.e. including the name of the beneficiary and the beneficiary's account number where such an account is used to process the transaction), in the message or payment form accompanying the transfer. Hence, for batch file transmission of information, the deficiencies identified in the analysis for criterion 16.1 (regarding required and accurate originator information and full beneficiary information) are relevant for the purposes of criterion 16.2 as well.

253. ***Criterion 16.3*** *(Not applicable)* – Applicable legislation does not establish a minimum threshold for the application of wire transfer requirements, i.e. such requirements are applied to all wire transfers irrespective of the amount.

254. ***Criterion 16.4*** *(Met)* – Paragraph 1 of Article 13 of the CBK Regulation on AML/CFT requires banks and other financial institutions to verify in all cases (i.e. irrespective of whether and including when there are ML/TF suspicions) that full originator information, as set out in Paragraph 2 of the same article, is accurate and meaningful.

255. ***Criterion 16.5*** *(Partly met)* – Paragraph 4 of Article 13 of the CBK Regulation on AML/CFT defines that in the case of domestic electronic transfers, it is sufficient for the ordering financial institution to include only the originator's account number or, where no account number exists, a unique identifier, within the message or payment form, providing that full originator information can be made available to the beneficiary bank or other beneficiary financial institution and to the FIU or the CBK.

256. Hence, this provision requires originator information to be made available to, interchangeably, the FIU or the CBK, and does not require making available such information to other appropriate authorities, such as law enforcement or prosecutorial authorities. Moreover, the deficiencies identified in the analysis for criterion 16.1 (regarding the lack of specificity about the account number and unique reference number) are relevant for the purposes of criterion 16.5, as well.

257. ***Criterion 16.6*** *(Not applicable)* – Applicable legislation does not provide for other means that can be used for making the information accompanying domestic wire transfers available to beneficiary financial institutions and appropriate authorities.

258. ***Criterion 16.7*** *(Partly met)* – Paragraph 2 of Article 20 of the AML/CFT Law provides that in the case of wire transfers, banks and other financial institutions shall maintain a registry of all relevant information on the payer that accompanies a transfer, all information that is received on the payer and all other information that accompanies a transfer when they act, *inter alia*, as an originator institution respectively for a period of 5 years from the date of execution of the transaction. This general provision referring to "all other information that accompanies a transfer" does not amount to requiring the ordering financial institutions that beneficiary information collected in case of wire transfers is maintained in accordance with Recommendation 11.

259. In relation to this, the requirement in Paragraph 8 of Article 13 of the CBK Regulation on AML/CFT defining that ordering financial institutions shall keep full originator information accompanying the transfer of funds for a period of 5 years also falls short of the requirement in criterion 16.7 insofar as it does not provide for maintaining all beneficiary information and certainly rules out the maintenance of such information that could be inferred from the requirement of Paragraph 2 of Article 20 of the AML/CFT Law to maintain "all other information that accompanies a transfer when [banks and other financial institutions] act as originator …institution".

260. ***Criterion 16.8*** *(Not met)* – Applicable legislation does not define that the ordering financial institution is not allowed to execute the wire transfer if it does not comply with all relevant requirements as set out in the analysis for criteria 16.1 to 16.7 above.

Intermediary financial institutions

261. ***Criterion 16.9*** *(Partly met)* – According to Paragraph 7 of Article 24 of the AML/CFT Law, banks and other financial institutions should maintain all information obtained under the law and transmit it when they act as intermediaries in a chain of payments. Hence, regarding the requirement to retain all originator and beneficiary information accompanying a wire transfer, the deficiencies identified in the analysis for criterion 16.1 are relevant for the purposes of criterion 16.9 as well.

262. ***Criterion 16.10*** *(Met)* – Paragraph 2 of Article 20 of the AML/CFT Law provides that in the case of wire transfers, banks and other financial institutions shall maintain a registry of all relevant information on the payer that accompanies a transfer, all information that is received on the payer and all other information that accompanies a transfer when they act, *inter alia*, as an intermediary institution respectively for a period of 5 years from the date of execution of the transaction. Paragraph 10 of Article 13 of the CBK Regulation on AML/CFT further requires intermediary financial institutions to keep records on all information accompanying the transfer of funds for a period of 5 years. These requirements apply in all cases and are not limited to the situations when technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer.

263. ***Criterion 16.11*** *(Party met)* – Paragraph 10 of Article 24 of the AML/CFT Law defines that if banks and other financial institutions receive wire transfers that do not contain full originator information, they shall take measures to obtain and verify the missing information from the ordering institution or the beneficiary. Hence, this provision does not amount to requiring intermediary financial institutions to take reasonable measures, which are consistent with straight-through processing, to identify cross-border wire transfers that lack required originator information or required beneficiary information.

264. ***Criterion 16.12*** *(Partly met)* – According to Paragraph 10 of Article 24 of the AML/CFT Law, whenever banks and other financial institutions receive wire transfers that do not contain full originator information, they shall take measures to obtain and verify such information or, otherwise, refuse acceptance of the transfer and report it to the FIU. Hence, this provision does not amount to requiring intermediary financial institutions to have risk-based policies and procedures for determining: a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and b) the appropriate follow-up action.

Beneficiary financial institutions

265. ***Criterion 16.13*** *(Partly met)* – Paragraph 5 of Article 13 of the CBK Regulation on AML/CFT stipulates that beneficiary banks and other financial institutions should have risk-based procedures to identify and scrutinise wire transfers that are not accompanied by full originator information. Hence, this provision does not require beneficiary financial institutions to take reasonable measures[58] to identify cross-border wire transfers that lack required beneficiary information.

266. ***Criterion 16.14*** *(Partly met)* – Paragraph 2 of Article 24 of the AML/CFT Law defines that, in addition to the CDD-related obligations set out under Article 19 of the Law, banks and other financial institutions shall verify the identity of all their customers (i.e. including the beneficiaries of wire transfers) when, *inter alia*, performing a domestic or international bank transfer of funds. In this regard, the deficiency in relation to transactions that are wire transfers and are conducted through financial institutions other than banks, as set out in the analysis for criterion 10.2, is relevant for the purposes of criterion 16.14 as well.

267. Paragraph 2 of Article 20 of the AML/CFT Law provides that in the case of wire transfers, banks and other financial institutions shall maintain a registry of all relevant information on the payer that accompanies a transfer, all information that is received on the payer and all other information that accompanies a transfer when they act, *inter alia*, as a beneficiary institution respectively for a period of 5 years from the date of execution of the transaction. This general provision referring to "all other information that accompanies a transfer" does not amount to requiring the beneficiary financial institutions that verified information on the identity of the beneficiary in case of wire transfers is maintained in accordance with Recommendation 11.

[58] This may include post-event monitoring or real-time monitoring, where feasible.

268. ***Criterion 16.15*** *(Partly met)* – Paragraph 5 of Article 13 of the CBK Regulation on AML/CFT defines that beneficiary banks and other financial institutions should have risk-based procedures to identify and scrutinise wire transfers that are not accompanied by full originator information. According to Paragraph 10 of Article 24 of the AML/CFT Law, whenever banks and other financial institutions do not obtain full originator information, they shall refuse acceptance of the transfer and report it to the FIU. Hence, these provisions do not amount to requiring beneficiary financial institutions to have risk-based policies and procedures for determining: a) when to execute or suspend a wire transfer lacking required originator information; b) when to execute, reject, or suspend a wire transfer lacking required beneficiary information; and b) the appropriate follow-up action.

Money or value transfer service operators

269. ***Criterion 16.16*** *(Met)* – Paragraph 1 of Article 16 of the AML/CFT Law defines banks and other financial institutions (including MVTS) as reporting subjects under the law. Accordingly, all obligations of the reporting subjects under the AML/CFT Law, including those on wire transfers, apply to MVT service providers. Paragraph 4 of Article 24 of the AML/CFT Law requires banks and other financial institutions to ensure that natural or legal persons which act as branches, subsidiaries or agents on their behalf are included in the programs for the prevention and fighting of ML/TF, as well as monitor their compliance with the provisions of the law.

270. ***Criterion 16.17*** *(Partly met)* – Applicable legislation does not specifically refer to situations where MVTS providers control both the ordering and the beneficiary side of a wire transfer. According to Paragraph 10 of Article 24 of the AML/CFT Law, whenever banks and other financial institutions do not obtain full originator information, they shall refuse acceptance of the transfer and report it to the FIU. Hence, this provision does not amount to requiring banks and other financial institutions: a) to take into account all the information from the beneficiary side; and b) to file an STR in any country affected by the suspicious wire transfer.

Implementation of Targeted Financial Sanctions

271. ***Criterion 16.18*** *(Not met)* – Applicable legislation does not require banks and other financial institutions to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities in the context of wire transfers, as per obligations set out in the relevant UNSCRs relating to the prevention and suppression of terrorism and terrorist financing, such as UNSCRs 1267 and 1373, and their successor resolutions.

Weighting and conclusion

272. The following facts and circumstances have been considered to determine the rating for Recommendation 16:

- Provisions on wire transfers do not require that: a) the originator account number accompanying the wire transfer is specifically the number of the account used to process the transaction; b) in the absence of an originator account, the unique reference number: b.1) is that of the specific transaction; and b.2) is one that permits traceability of the transaction; and c) in the absence of a beneficiary account and where the originator account number is used to process the transaction, a unique transaction reference number permitting traceability of the transaction accompanies the wire transfer (c.16.1);
- The same deficiencies are relevant regarding regulation of batch file transfers (c.16.2);
- Originator information on domestic wire transfers is required to be made available to, interchangeably, the FIU or the CBK, but not to other appropriate authorities, and the deficiencies identified in the analysis for criterion 16.1 are relevant regarding domestic wire transfers a (c.16.5);
- Ordering financial institutions are not required to maintain beneficiary information collected, in accordance with Recommendation 11 (c.16.7); and are not forbidden to execute the wire transfer if they do not comply with all relevant requirements specified in criteria 16.1 to 16.7 (c.16.8);
- The deficiencies identified in the analysis for criterion 16.1 are relevant regarding intermediary financial institutions in cross-border wire transfers (c.16.9);
- Intermediary financial institutions are not required to take reasonable measures, which are consistent with straight-through processing, to identify cross-border wire transfers that lack

required originator information or required beneficiary information (c.16.11); and to have risk-based policies and procedures for determining: a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and b) the appropriate follow-up action (c.16.12);

- Beneficiary financial institutions are not required to take reasonable measures to identify cross-border wire transfers that lack required beneficiary information (c.16.13);
- Verification of identity of the beneficiary is subject to the deficiencies set out in the analysis for criterion 10.2. Beneficiary financial institutions are not required to maintain verified information on the identity of the beneficiary, in accordance with Recommendation 11 (c.16.14); and to have risk-based policies and procedures for determining: a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and b) the appropriate follow-up action (c.16.15);
- Banks and other financial institutions controlling both the ordering and the beneficiary side of a wire transfer are not required: a) to take into account all the information from the beneficiary side; and b) to file an STR in any country affected by the suspicious wire transfer (c.16.17); and
- Applicable legislation does not require banks and other financial institutions to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities in the context of wire transfers, as per obligations set out in the relevant UNSCRs relating to the prevention and suppression of terrorism and terrorist financing (c.16.18).

273. **Kosovo is partially compliant with Recommendation 16**.

Recommendation 17 – Reliance on third parties

274. In the 2014 AML/CFT Assessment Report, Kosovo was rated non-compliant with former FATF Recommendation 9. The assessment identified technical deficiencies related to the absence of clear legal provisions and the consequent absence of criteria for reliance which is being done in practice.

275. ***Criterion 17.1*** *(Not met)* – Applicable legislation is silent about reliance on third-party financial institutions and DNFBPs to perform certain elements of CDD measures (i.e. identification of the customer; identification of the beneficial owner; and understanding the nature of the business) or to introduce business. This means that such reliance, while not explicitly allowed, is neither specifically prohibited in Kosovo and, subsequently, there are no conditions or obligations applicable in case the reporting subjects practice it on routine or *ad hoc* basis.

276. ***Criterion 17.2*** *(Not met)* – Applicable legislation does not provide regulation and conditions for determining the countries in which the third party can be based.

277. ***Criterion 17.3*** *(Not met)* – According to Paragraph 5 of Article 24 of the AML/CFT Law, banks and other financial institutions shall implement AML/CFT programs within the group that cover their foreign branches and majority-owned subsidiaries, including information exchange policies and procedures within the group for the purposes of the law. This, however, could be taken as providing for partial compliance with criterion 17.3 (a) only (regarding group-wide AML/CFT programs in accordance with Recommendation 18), while all other elements of criterion 17.3 are not met.

Weighting and conclusion

278. None of the criteria under Recommendation 17 are met.

279. **Kosovo is non-compliant with Recommendation 17.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

280. In the 2014 AML/CFT Assessment Report, Kosovo was rated partially compliant with former FATF Recommendation 15 and non-compliant with former FATF Recommendation 22. The assessment identified technical deficiencies related, *inter alia*: to the absence of adequate criteria for the appointment of the compliance officer; absence of adequately defined roles and responsibilities of the compliance officer; absence of appropriate legal provisions for the powers of the compliance officer for timely access to information; function of internal audit limited to testing the reporting and

identification system under the AML/CFT Law; lack of statistics on training; legal inconsistency in screening obligations for new recruits; and, no legal or regulatory provisions on the application of AML/CFT measures for branches and subsidiaries outside Kosovo.

281. ***Criterion 18.1*** *(Partly met)* – Paragraphs 1 and 2 of Article 17 of the AML/CFT Law require all reporting subject to take actions and measures for the prevention and detection of ML/TF before, during the course of, and following the execution of a transaction or establishing of a business relationship. For that purpose, the reporting subjects are required to issue internal written policies and procedures, establish and implement controls to prevent and detect ML/TF. Hence, this provision does not require that the programs of the reporting subjects against ML/TF consider the ML/TF risks and the size of the business.

282. *Compliance management arrangements* – According to Paragraph 2.4 of Article 17 of the AML/CFT Law, the policies, procedures and controls of the reporting subjects should provide for the nomination of the compliance officer. Article 21 of the law defines the obligation to appoint the compliance officer (for banks, also the deputy compliance officer on permanent basis) to a position with powers allowing for an effective and quality performance of all the duties specified in the law in an uninfluenced manner. Other compliance management arrangements include providing the compliance function with access to data, information and documentation, human, material, IT and other resources, office space and technical conditions.

283. For banks, the compliance function is led by a senior manager and is independent of all other functions of the reporting subject provided that it has sufficient administrative capacity to do so. Hence, except for banks, there is no provision requiring appointment of the compliance officer at the management level.

284. *Employee screening* – According to Paragraph 5 of Article 21 of the AML/CFT Law, FIU shall issue by-laws to define the "fit and proper" criteria for compliance officers. To this end, FIU in 2017 issued the Regulation No. 01/2017, which defines fit and proper criteria for the compliance function in banks and certain types of other financial institutions.[59] Hence, these criteria are not defined for all types of financial institutions, and no similar criteria/ screening procedures[60] are established for hiring staff with functions relevant for AML/CFT (e.g. employees responsible for contacting the customers, executing transactions, conducting CDD and related measures).

285. Paragraph 2 of Article 20 of the CBK Regulation on AML/CFT states that financial institutions should implement general measures to ensure that their employees, especially the staff that have contact with customers or are involved in the execution of transactions, as well as the staff within the AML/CFT function, do not have a criminal record or are not subject to on-going criminal prosecution for financial crimes, terrorism, or any other serious crime that may raise doubts as to their credibility.

286. *On-going training* – According to Paragraph 2.5 of Article 17 of the AML/CFT Law, the policies, procedures and controls of the reporting subjects should provide for the organisation and financing of the employee training program on the responsibilities imposed by the law. Moreover, according to Paragraph 4.4 of article 21 of the AML/CFT Law, reporting subjects are obliged to provide the compliance officer with on-going professional training for the prevention of ML/TF. Paragraph 3 of Article 20 of the CBK Regulation on AML/CFT further requires banks and other financial institutions to provide training on a regular basis (at least once a year) on AML/CFT for all staff that have contacts with customers or are involved in the execution of transactions.

287. *Independent audit function* – According to Paragraph 2.6 of Article 17 of the AML/CFT Law, the policies, procedures and controls of the reporting subjects should provide for the establishment of adequate bodies of regular internal control for the implementation of the obligations defined in the law and audit function to test the reporting and identification system, except the reporting subjects with limited staff number. Hence, this provision does not require the availability of an independent audit function for an unidentified scope and number of financial institutions "with limited staff number", while the requirement for audit test covers reporting and identification systems only, leaving aside other constituents of the AML/CFT system.

[59] Such as insurance companies, micro-finance institutions, money transfer agencies, and currency exchange offices.

[60] To provide for, *inter alia*, educational and professional standards, clean criminal record requirements etc.

288. Paragraph 1 of Article 21 of the CBK Regulation on AML/CFT further requires that the Internal Audit Department of banks and other financial institutions performs audits at least once a year to ensure that the policies and procedures for AML/CFT are implemented fully and in accordance with all requirements of the AML/CFT Law and the said regulation.

289. ***Criterion 18.2*** *(Partly met)* – Applicable legislation does not provide a definition of financial groups. According to Paragraph 5 of Article 24 of the AML/CFT Law, banks and other financial institutions shall implement AML/CFT programs within the group that cover their foreign branches and majority-owned subsidiaries. However, neither the law nor other regulations specify that such group-wide programs should be appropriate (in addition to being applicable) to all branches and majority-owned subsidiaries, and that they should include the measures set out in criterion 18.1 (i.e. compliance management arrangements, employee screening, employee training and independent audit function).

290. *Information sharing policies and procedures* – Paragraph 5 of Article 24 of the AML/CFT Law defines that AML/CFT programs implemented by banks and other financial institutions and covering their foreign branches and majority-owned subsidiaries should include information exchange policies and procedures within the group for the purposes of the law (i.e. including CDD and ML/TF risk management).

291. *Provision and receipt of information from/to branches and subsidiaries* – The general provision in Paragraph 5 of Article 24 of the AML/CFT Law stipulating the availability of information exchange policies and procedures within the group for the purposes of the law does not specifically require that, at group-level compliance, audit, and/or AML/CFT functions, branches and subsidiaries: 1) provide customer, account, and transaction information when necessary for AML/CFT purposes[61]; and 2) receive such information when relevant and appropriate to risk management[62].

292. *Safeguards on confidentiality and tipping-off* – The general provision in Paragraph 5 of Article 24 of the AML/CFT Law stipulating the implementation of AML/CFT programs within the group for the purposes of the law does not specifically require that such group-wide programs should include adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off.

293. ***Criterion 18.3*** *(Not met)* – Paragraph 4 of Article 24 of the AML/CFT Law defines that banks and other financial institutions shall monitor compliance of natural or legal persons that act as branches, subsidiaries or agents on their behalf with the provisions of the law. Hence, applicable legislation does not provide that, where the minimum AML/CFT requirements of the host country are less strict than those in Kosovo, banks and other financial institutions should ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the requirements in Kosovo to the extent that host country laws and regulations permit. More importantly, there is no requirement to ensure that, where the host country does not permit the proper implementation of AML/CFT measures consistent with the requirements in Kosovo, banks and other financial institutions apply appropriate, additional measures to manage the ML/TF risks, and inform the supervisors in Kosovo.

Weighting and conclusion

294. The following facts and circumstances have been considered to determine the rating for Recommendation 18:

- Reporting subjects are not required to implement programs against ML/TF having regard to the ML/TF risks and the size of the business (c.18.1); except for banks, there is no provision requiring appointment of the compliance officer at the management level (c.18.1 (a)); employee screening procedures/ criteria are not defined for all types of financial institutions (c.18.1 (b)); the availability of an independent audit function is not required for an unidentified scope and number of financial institutions "with limited staff number" (c.18.1 (c));
- Legislation does not specify that group-wide programs against ML/TF should be appropriate to all branches and majority-owned subsidiaries; and that they should include the measures set out in criterion 18.1 (c.18.2);

[61] Which should also include information and analysis of transactions or activities which appear unusual (if such analysis was done), and could include an STR, its underlying information, or the fact than an STR has been submitted.

[62] With the country to determine the scope and extent of the information to be shared, based on the sensitivity of the information, and its relevance to AML/CFT risk management.

there is no requirement that, at group-level compliance, audit, and/or AML/CFT functions, branches and subsidiaries: 1) provide customer, account, and transaction information when necessary for AML/CFT purposes; and 2) receive such information when relevant and appropriate to risk management (c.18.2 (b)); legislation does not require that group-wide programs against ML/TF should include adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off (c.18.2 (c)); and

- There are no provisions to require that: 1) where the minimum AML/CFT requirements of the host country are less strict than those in Kosovo, banks and other financial institutions should ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the requirements in Kosovo to the extent that host country laws and regulations permit; and 2) where the host country does not permit the proper implementation of AML/CFT measures consistent with the requirements in Kosovo, banks and other financial institutions apply appropriate, additional measures to manage the ML/TF risks, and inform the supervisors in Kosovo (c.18.3).

295. **Kosovo is partially compliant with Recommendation 18.**

Recommendation 19 – Higher-risk countries

296. In the 2014 AML/CFT Assessment Report, Kosovo was rated partially compliant with former FATF Recommendation 21. The assessment identified technical deficiencies related to: non-application of obligations to relationships with "other financial institutions"; lack of guidance on determination of high risk countries; no requirements to examine background and purpose of transactions; lack of clear requirement for the retention of the findings of the examination; and, no legal or other provisions for the authorities to apply counter-measures.

297. ***Criterion 19.1*** *(Partly met)* – According to Paragraph 6 of Article 18 of the AML/CFT Law, all reporting subjects shall apply enhanced due diligence measures that are effective and proportionate to the risks identified for business relationships and transactions with natural and legal persons, including financial institutions, from countries as may be stipulated by the FIU on the basis of international measures against such countries. Hence, this provision makes the application of enhanced due diligence contingent on the decision to be made by the FIU, as opposed to the requirement in criterion 19.1 for financial institutions to apply enhanced CDD whenever this is called by the FATF. The authorities refer to the guideline issued by the FIU on May 8, 2018 recommending application of enhanced CDD with regard to natural and legal persons related to jurisdictions listed by the FATF. Although the guideline defines that the failure to comply with this recommendation would represent an administrative violation pursuant to Paragraph 1.7 of Article 43 of the AML/CFT Law, the legal status of the guideline as a non-enforceable mean does not provide for compliance with the requirement of criterion 19.1.

298. Paragraph 2 of Article 25 of the AML/CFT Law stipulates that reporting subjects should pay special attention to business relations and transactions with persons, including legal persons and arrangements and financial institutions, from or in countries that do not or insufficiently apply the relevant international standards on AML/CFT. This paragraph also does not provide for compliance with the requirement of criterion 19.1.

299. ***Criterion 19.2*** *(Partly met)* – As defined in Paragraph 6 of Article 18 of the AML/CFT Law, the FIU shall determine appropriate, effective and proportional countermeasures to be applied in relation to business relationships and transactions with natural and legal persons, including financial institutions, from certain countries. Whereas this provision enables application of proportionate countermeasures by the authorities independently of any call by the FATF to do so, it does not amount to requiring that such countermeasures are without failure applied whenever called to do so by the FATF.

300. ***Criterion 19.3*** *(Partly met)* – The FIU website provides links to FATF, MONEYVAL, Egmont Group and other relevant websites. Other than that, the assessment team was not informed about measures in place towards compliance with criterion 19.3. The assessment team considers that there is room for improvement in taking proactive action (such as providing up-to-date information on most recent statements, revised lists, publishing notifications etc.) to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.

Weighting and conclusion

301. The following facts and circumstances have been considered to determine the rating for Recommendation 19:

- Reporting subjects are not required to apply enhanced due diligence to business relationships and transactions with persons from countries for which this is called by the FATF (c.19.1);
- There is no requirement to apply countermeasures proportionate to the risks when called upon to do so by the FATF (c.19.2); and
- Measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries are not sufficient (c.19.3).

302. **Kosovo is partially compliant with Recommendation 19.**

Recommendation 20 – Reporting of suspicious transactions

303. In the 2014 AML/CFT Assessment Report, Kosovo was rated partially compliant with former FATF Recommendation 13 and non-compliant with former FATF Special Recommendation IV. The assessment identified technical deficiencies related to: the lack of reporting obligations in situations where information available indicates possible ML or FT activities; absence of specific and strategic feedback and guidance to the reporting subjects leading to low quality STRs and numerous additional information requests bringing an excessive burden on the FIU and industry; no reporting obligation for transactions suspected to be linked to the FT; and, concerns over non-filing of suspicious CTRs as STRs and over the outcome of STRs that could involve tax matters.

304. ***Criterion 20.1*** *(Mostly met)* – Paragraph 1.1 of Article 26 of the AML/CFT Law establishes that all reporting subjects shall report to the FIU, in the manner and format specified by the FIU, all suspicious activities or transactions within 24 hours from the time the activity or transaction was identified as suspicious.

305. Paragraph 1.2 of Article 2 of the AML/CFT Law defines a suspicious act or transaction as "an act or transaction, or an attempted act or transaction, that generates a reasonable suspicion that the property involved in the act or transaction, or the attempted act or transaction, is proceeds of crime or is related to terrorist financing and shall be interpreted in line with any sub-legal act issued by the FIU on suspicious acts or transactions".

306. Proceeds of crime, in turn, are defined in Paragraph 1.41 of the same article as "any property derived directly or indirectly from a predicate criminal offence. Property derived indirectly from a predicate criminal offence includes property into which any property directly derived from the predicate criminal offence was later converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the commission of the predicate criminal offence".

307. The obligation to report is further limited by the deficiencies in the criminalisation of money laundering (including the lack of criminalisation of market manipulation) and terrorism financing, as set out respectively in the analysis for Recommendation 3 and Recommendation 5.

308. ***Criterion 20.2*** *(Met)* – The obligation to report covers all suspicious transactions, included the attempted ones, regardless of the amount of the transaction.

Weighting and conclusion

309. The following facts and circumstances have been considered to determine the rating for Recommendation 20:

- The obligation to report is limited by the deficiencies in the criminalisation of money laundering and terrorism financing (c.20.1).

310. **Kosovo is largely compliant with Recommendation 20**.

Recommendation 21 – Tipping-off and confidentiality

311. In the 2014 AML/CFT Assessment Report, Kosovo was rated non-compliant with former FATF Recommendation 14. The assessment identified technical deficiencies related to: the unclear provision of safe harbour protection for disclosures regarding directors, officers and employees, temporary or permanent; lack of prohibition of disclosure (tipping off) with respect to banks and financial institution as entities; legal inconsistency on prohibition and penalties for banks and other financial institutions; lack of specific prohibition of disclosure (tipping off) applying to both permanent and temporary employees; prohibition of disclosure (tipping off) not covering situations where an investigation is being or may be carried out; legal uncertainty on the protection of personal data of employees making the report or providing information; and, limitations on lifting of prohibition of disclosure in specific circumstances.

312. ***Criterion 21.1*** *(Met)* – According to Article 61 of the AML/CFT Law, "no civil or criminal liability action may be brought nor any professional sanction taken against any person or entity or a reporting entity under this Law or to any of their directors, officers and employees whether temporary or permanent based solely on the good faith transmission of information, submission of reports, or other action taken pursuant to this Law, or the voluntary good faith transmission of any information concerning a suspicious act or transaction, suspected money laundering or terrorist financing to the FIU". This protection is not contingent on the precise knowledge about and factual occurrence of the underlying criminal activity.

313. Moreover, Paragraph 7 of Article 26 of the AML/CFT Law stipulates that "the FIU, any investigating, prosecuting, judicial or administrative authority and reporting subjects or other persons and entities that are in possession of personal information of employees and other officers of reporting subjects who report suspicions of money laundering or the financing of terrorism or who provide related information, either internally or to the FIU, in accordance with this Law shall protect and keep confidential such personal information".

314. Finally, Paragraph 4.6 of Article 21 of the AML/CFT Law requires the reporting subjects to "provide the compliance officer with …protection with respect to disclosure of data about compliance officer to unauthorised persons, as well as protection of other procedures which may affect an uninterrupted performance of duties and unauthorised access to data".

315. ***Criterion 21.2*** *(Mostly met)* – Paragraph 4 of Article 26 defines that "reporting entities, directors, officers, temporary or permanent employees of the reporting entity that prepare or transmit reports pursuant to this Law shall not disclose the fact that a report has been submitted or is in the process of being submitted, neither provide this report, nor communicate any information contained in that report or regarding that report, including where such information is being prepared to be submitted accordingly, or that a money laundering or financing of terrorism investigations are being or may be carried out, to any person or entity, including any person or entity involved in the transaction which is included in the report, other than the FIU, unless authorised in writing by the FIU, a public prosecutor, or a court".

316. The formulation in the above provision prohibiting relevant staff of the reporting subjects "that prepare or transmit reports pursuant to this Law" to disclose the filing of a STR or related information leaves room for the interpretation that such prohibition does not apply to staff who are not involved in the preparation or transmission of reports under the law. Moreover, the provision lifting the prohibition to disclose filing of STR or related information "unless authorised in writing by the FIU, a public prosecutor, or a court" negates the requirement under criterion 21.2 prohibiting the disclosure of such information to third parties (indeed, besides the FIU to which the STR or related information is filed).

317. The provisions prohibiting disclosure of the fact of reporting an STR or related information to the FIU do not specifically establish that these are not intended to inhibit information sharing under Recommendation 18.

Weighting and conclusion

318. The following facts and circumstances have been considered to determine the rating for Recommendation 21:

- The provisions prohibiting the disclosure of filing of STR or related information leaves room for the interpretation that they do not apply to the whole staff of reporting subjects and negate the requirement prohibiting disclosure of such information to third parties (besides the FIU to which the STR or related information is filed) (c.21.2); and
- No specific regulation is available to ensure that these provisions are not intended to inhibit information sharing under Recommendation 18 (c.21.2).

319. **Kosovo is largely compliant with Recommendation 21**.

Recommendation 22 – DNFBPs: Customer due diligence

320. In 2014 AML/CFT Assessment Report, Kosovo was rated non-compliant with former FATF Recommendation 12. The assessment identified technical deficiencies – in addition to the weaknesses identified for the financial sector under former FATF Recommendations 5, 6 and 8-11 – related to: legal ambiguities in the AML/CFT Law on the application of the relevant Recommendations; lack of clarity on who constitutes a client for certain DNFBPs such as NGOs and Political Entities; lack of clarity on the status of gaming houses and licensed objects of games of chance as reporting subjects; scope of AML/CFT measures for the accountancy profession failing to cover situations stipulated by the Recommendations; and, lack of clarity on the application of additional obligations under the AML/CFT Law for certain DNFBPs.

321. In the analysis presented below, the deficiencies identified in relation to financial institutions' compliance with the FATF requirements under the respective Recommendations are also relevant, where applicable, for the DNFBPs, unless specified otherwise.

322. Reference is made to the analysis for Recommendation 10 on the general coverage of CDD requirements within Kosovo legislation. According to Paragraph 4 of Article 31 of the AML/CFT Law, the term "related transactions" means all transactions conducted between the client and the covered professional[63] within a 24 hour period or those conducted over a period of more than 24 hours, if the recipient is aware or has reasons to be aware that each transaction is one of a series of connected transactions. Numerous payments made to a lawyer for representation in a single case are related transactions.

323. ***Criterion 22.1*** *(Partly met)* – Paragraph 1 of Article 16 of the AML/CFT Law designates the following FATF-defined DNFBPs as reporting subjects under the law[64]: a) casinos, including internet casinos and licensed objects of the games of chance; b) real estate agents and real estate brokers; c) lawyers and notaries when they prepare for carrying out or engage in transactions for their client concerning certain activities[65]; d) accountants, auditors and tax advisers; e) trust and company service providers that are not covered elsewhere in the AML/CFT Law, providing certain services[66] to third parties on a commercial basis; and f) sellers of precious metals and precious stone traders.

324. *Casinos* – Paragraph 2 of Article 30 of the AML/CFT Law defines that, in accordance with Articles 19 and 22 of the law, casinos and games of chance shall verify and record in permanent fashion the identity of a client before entering into a single, multiple or linked transaction(s) to sell, purchase, transfer, or exchange gambling chips, tokens, or any other evidence of value in an amount of EUR 2,000 or more or the equivalent value in foreign currency.[67] If the casino and the games of chance

[63] Paragraph 1.34 of Article 2 of the AML/CFT Law defines covered professionals as "lawyers, notaries, accountants, auditors and tax advisors".

[64] In addition, the AML/CFT Law designates as reporting subjects a) natural or legal persons trading in goods when receiving payment in cash in an amount of EUR 10,000 or more; and b) NGOs. Within the framework of this assessment, compliance of these subjects with the AML/CFT framework has not been assessed as it is beyond the scope of the 2013 FATF Methodology.

[65] The activities transpose those provided by the definition in the FATF Glossary, except that of "other independent legal professionals", which is not defined as a designated profession under the law.

[66] The services transpose those provided by the definition in the FATF Glossary, except that of "performing the equivalent function for another form of legal arrangement", which is not defined as a designated service under the law (in addition to the "acting as (or arranging for another person to act as) a trustee of an express trust" as defined in the FATF Glossary and set out in the law).

[67] Moreover, according to Paragraph 3 of Article 30 of the AML/CFT Law, games of chance shall not engage in any of the following transactions: a) exchange cash for cash with a client, or with another recipient on behalf of the client, in any transaction in which the amount of the exchange is EUR 2,000 or more; b) issue a check or other negotiable instrument to a client, or to another recipient on behalf of the client, in exchange for cash in any transaction in which the amount of the exchange is EUR 2,000 or more; and c) transfer

are not able to verify the identity of a client, they shall not enter into the transaction. This provision, while in line with the FATF-defined situations for the said category of DNFBP to comply with the requirements set out in Recommendation 10, does not require that they apply all CDD measures (as opposed to customer identification and verification of identity) whenever the customers engage in financial transactions equal to or above the designated threshold. Moreover, the law does not require casinos to ensure that they are able to link CDD information for a particular customer to the transactions that the customer conducts in the casino.

325. The identity verification and recording also extends to financial transactions such as the opening of an account, including the saving account, an electronic transfer or a currency exchange in the amount of EUR 2,000 or more (or the equivalent value in foreign currency). In relation to this, it is not clear what might be the practical instances and applicable mechanisms for casinos to open an account (including a savings account), perform an electronic transfer, or carry out a currency exchange as these are types of transactions pertinent to financial institutions but not casinos. This provision also appears to contradict Paragraph 3 of Article 30 prohibiting casinos to engage in certain transactions, including currency exchange and electronic transfer in the amount of EUR 2,000 or more.

326. *Real estate agents* – Applicable legislation does not define specific situations which qualify real estate agents and brokers as reporting subjects under the law, i.e. it is applied to them in general terms whenever reference is made to all reporting subjects. At that, they are not required to comply with the requirements set out in Recommendation 10 with respect to both the purchasers and the vendors of the property. In relation to this, the authorities present that both purchasers and vendors in real estate transactions are considered as clients of real estate agents, thus becoming equally subject to applicable CDD requirements.

327. *Dealers in precious metals and dealers in precious stones* – The definition in Paragraph 1.10 of Article 16 of the AML/CFT Law designating "sellers of precious metals and precious stone traders" as reporting subjects under the law leaves room for legal uncertainty as to whether traders or dealers in precious metals and precious stones are covered when they act in the capacity of the buyer in relevant transactions. The authorities advise that these types of DNFBPs are required to comply with the CDD requirements set forth in Paragraph 2.2 of Article 19 of the AML/CFT Law "when carrying out occasional transactions in cash in an amount of EUR 10,000 or more, or equivalent value in foreign value, whether it is performed as a single transaction or several transactions that are related".[68] This provision appears to be in line with the FATF-defined situations for the said category of DNFBP to comply with the requirements set out in Recommendation 10.

328. *Lawyers, notaries, other independent legal professionals and accountants (tax advisors)* – Paragraph 1.6 of Article 16 of the AML/CFT Law designates lawyers and notaries as reporting subjects when they prepare for carrying out or engage in transactions for their client concerning the following activities: buying and selling of real estate; managing of client money, securities or other client assets; management of bank, savings or securities accounts; organisation of contributions necessary for the creation, operation or management of companies; and creation, operation or management of legal persons or arrangements, and buying and selling of business entities. With the exception of "other independent legal professionals", which are not designated as reporting subjects under the law this provision appears to be in line with the FATF-defined situations for the said category of DNFBP to comply with the requirements set out in Recommendation 10.

329. The same article of the law designates accountants without making it contingent on a specific type of activity/transaction or any other quantitative or qualitative characteristics to qualify as a reporting subject under the law. Unless there is a clear definition and interpretation of the situations in which accountants become reporting subjects under the law, this general designation may create legal uncertainty regarding the circumstances for them to comply with the requirements set out in Recommendation 10.

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funds electronically or through other methods to a client, or to another recipient on behalf of the client, in exchange for cash in any transaction in which the amount of the exchange is EUR 2,000 or more.

[68] However, such an interpretation does not appear to stem from the structure and logic of the law, which requires conduct of CDD – virtually, by any person or entity – in case of engaging in cash transactions at or above EUR 10,000 without making it contingent on a specific type of activity/transaction or any other quantitative or qualitative characteristics to qualify as a reporting subject under the law.

330. *Trust and company service providers* – Paragraph 1.8 of Article 16 of the AML/CFT Law designates trust and company service providers that are not covered elsewhere in the AML/CFT Law as reporting subjects under the law whenever they provide the following services to third parties on a commercial basis: acting as a formation agent of legal persons; acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; acting as, or arranging for another person to act as, a trustee of an express trust; acting as, or arranging for another person to act as, a nominee shareholder for another person. With the exception of "performing the equivalent function for another form of legal arrangement", which is not defined as a designated service under the law, this provision appears to be in line with the FATF-defined situations for the said category of DNFBP to comply with the requirements set out in Recommendation 10.

331. ***Criterion 22.2*** *(Partly met)* – Reference is made to the analysis for Recommendation 11 on the general coverage of record-keeping requirements within Kosovo legislation (with the exception of the parts on CBK Regulation on AML/CFT, which applies to banks and financial institutions only[69]). The assessment team has not been provided with legislation or other enforceable measures setting out specific provisions furthering those articulated in the AML/CFT Law and relevant for the compliance of DNFBPs with AML/CFT requirements under Recommendation 11.

332. ***Criterion 22.3*** *(Partly met)* – Reference is made to the analysis for Recommendation 12 on the general coverage of PEP requirements within Kosovo legislation. The assessment team has not been provided with legislation or other enforceable measures setting out specific provisions furthering those articulated in the AML/CFT Law and relevant for the compliance of DNFBPs with AML/CFT requirements under Recommendation 12.

333. ***Criterion 22.4*** *(Mostly met)* – Reference is made to the analysis for Recommendation 15 on the general coverage of new technologies requirements within Kosovo legislation (with the exception of the parts on CBK Regulation on AML/CFT, which applies to banks and other financial institutions only[70]). The assessment team has not been provided with legislation or other enforceable measures setting out specific provisions furthering those articulated in the AML/CFT Law and relevant for the compliance of DNFBPs with AML/CFT requirements under Recommendation 15.

334. ***Criterion 22.5*** *(Not met)* – Reference is made to the analysis for Recommendation 17 on the general coverage of third party reliance requirements within Kosovo legislation. The assessment team has not been provided with legislation or other enforceable measures setting out specific provisions furthering those articulated in the AML/CFT Law and relevant for the compliance of DNFBPs with AML/CFT requirements under Recommendation 17.

Weighting and conclusion

335. The following facts and circumstances have been considered to determine the rating for Recommendation 22:

- Legislation does not require casinos to apply all CDD measures (as opposed to customer identification and verification of identity) whenever the customers engage in financial transactions equal to or above the designated threshold; and to ensure that they are able to link CDD information for a particular customer to the transactions that the customer conducts in the casino (c.22.1 (a)); there is room for legal uncertainty as to whether traders/ dealers in precious metals and precious stones are designated as reporting subjects when they act in the capacity of the buyer in relevant transactions (c.22.1 (c)); "other independent legal professionals" are not designated as reporting subjects under the law (c.22.1 (d)); and "performing the equivalent function for another form of legal arrangement" is not defined as a designated service under the law (c.22.1 (e)); and

[69] Particularly Paragraph 2 of Article 16 of the CBK Regulation on AML/CFT, which establishes that transaction records must be sufficient to permit the reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity, thus enabling a "met" rating for criterion 11.3 covering banks and other financial institutions, but not for criterion 22.2 covering DNFBPs, to whom this Regulation does not apply.

[70] Particularly Paragraph 8 of Article 7 of the CBK Regulation on AML/CFT, which, *inter alia*, requires taking appropriate measures to manage and mitigate the ML/TF risks that may arise in relation to new products, practices and technologies, thus enabling a "met" rating for criterion 15.2 covering banks and other financial institutions, but not for criterion 22.4 covering DNFBPs, to whom this Regulation does not apply.

- Relevant requirements are mostly met regarding Recommendations 11 (c.22.2) and 12 (c.22.3) and not met regarding Recommendation 17 (c.22.5).

336. **Kosovo is partially compliant with Recommendation 22**.

Recommendation 23 – DNFBPs: Other measures

337. In the 2014 AML/CFT Assessment Report, Kosovo was rated non-compliant with former FATF Recommendation 16. The assessment identified technical deficiencies related to, *inter alia*: the lack of requirement for some DNFBPs to submit an STR when they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity, as well as for all DNPBPs to report situations where information available indicates that a person may be or may have been involved in ML or the FT; lack of prohibition for directors, officers and employees of some DNFBPs to disclose the fact that a STR or related information is being reported or provided to the FIU; lack of requirement for all or some DNFBPs to establish and maintain internal procedures, policies and controls to prevent ML and FT, to develop appropriate compliance management arrangements, to appoint a compliance officer, to maintain an adequately resourced and independent audit function, to establish on-going employee training programs, to put in place screening procedures ensuring high standards when hiring employees; failure to advise DNFBPs of concerns about weaknesses in the AML/CFT systems of other countries/jurisdictions; lack of obligation to document the findings of the analysis of large complex transactions; and, lack of provisions for relevant competent authorities to take counter-measures in circumstances where a country or jurisdiction does not apply or insufficiently applies the FATF Recommendations.

338. In the analysis presented below, the deficiencies identified in relation to the compliance of financial institutions with the FATF requirements under respective Recommendations are also relevant, where applicable, for DNFBPs, unless specified otherwise.

339. ***Criterion 23.1*** *(Mostly met)* – Reference is made to the analysis for Recommendation 20 on the general coverage of STR reporting requirements within Kosovo legislation. Self-regulatory organisations of DNFBPs in Kosovo have no legally defined competence for receiving STRs.

340. *Lawyers, notaries, other independent legal professionals and accountants (tax advisors)* – According to Paragraph 6 of Article 31 of the AML/CFT Law, the requirement set out in Paragraph 1.1 of Article 26 to report all suspicious activities or transactions to the FIU applies to lawyers and notaries whenever they engage in the following activities: 1) assistance to or representation of clients in: 1.1) purchasing or selling of immovable property or business organisations; 1.2) handling of clients' money, securities, or other assets; 1.3) opening or managing bank accounts, passbooks or securities accounts; 1.4) organisation of contributions necessary for the creation, operation or management of companies; 1.5) creation, operation or management of companies, trusts or similar structures; or 2) acting on behalf of or for the client in any financial or immovable property rights transaction.

341. The above provision certainly differs from the one provided in Paragraph 1.6 of Article 16 of the AML/CFT Law qualifying lawyers and notaries as reporting subjects under the law (as described under the analysis for criterion 22.1 (d)). Particularly, articulation of the activities listed under the first point in the above paragraph does not meet the FATF requirement insofar as it does not apply to all situations when the covered professionals engage in a transaction "on behalf of or for a client" (as the latter is defined under the second point only).

342. According to Paragraph 7 of Article 31 of the AML/CFT Law, a lawyer shall not, without authorisation from the client or by court order, provide information he or she received from or obtained on a client in order to represent the client in criminal or judicial proceedings, unless the lawyer reasonably believes that the client is seeking the lawyer's advice or assistance to commit a criminal offence.

343. Hence, with the exception of "other independent legal professionals", which are not designated as reporting subjects under the law (and are therefore not required to file STRs) and the missing element in the situations qualifying covered professionals as reporting subjects under the law, the above provisions appear to be in line with the FATF-defined qualification for the said category of DNFBP to comply with and, where applicable, to be exempt from the STR reporting obligation.

344. *Dealers in precious metals and dealers in precious stones* – The requirement set out in Paragraph 1.1 of Article 26 to report all suspicious activities or transactions to the FIU applies to sellers in precious metals and dealers in precious stones whenever they qualify as reporting subjects under the Law (as described under the analysis for criterion 22.1(c). With the exception of "buyers of precious metals and precious stones" which are not designated as reporting subjects under the law (and, therefore, are not required to file STRs), this appears to be in line with the FATF-defined qualification for the said category of DNFBP to comply with the STR reporting obligation.

345. *Trust and company service providers* – The requirement set out in Paragraph 1.1 of Article 26 to report all suspicious activities or transactions to the FIU applies to trust and company service providers whenever they qualify as reporting subjects under the Law (as described under the analysis for criterion 22.1(e). With the exception of "performing the equivalent function for another form of legal arrangement", which is not defined as a designated service under the law (and, therefore, is not covered by the requirement to file STRs), this appears to be in line with the FATF-defined qualification for the said category of DNFBP to comply with the STR reporting obligation.

346. ***Criterion 23.2*** *(Partly met)* – Reference is made to the analysis for Recommendation 18 on the general coverage of internal control requirements within Kosovo legislation (with the exception of the parts on CBK Regulation on AML/CFT, which applies to banks and financial institutions only). The assessment team has not been provided legislation or other enforceable measures setting out specific provisions furthering those articulated in the AML/CFT Law and relevant for the compliance of DNFBPs with AML/CFT requirements under Recommendation 18.

347. According to Paragraph 5 of Article 21 of the AML/CFT Law, FIU shall issue by-laws to define the "fit and proper" criteria for compliance officers. However, such by-laws have not been issued for DNFBPs, and no screening procedures[71] are established for hiring staff with functions relevant for AML/CFT (e.g. employees responsible for contacting customers, executing transactions, conducting CDD and related measures).

348. Moreover, according to Paragraph 2.6 of Article 17 of the AML/CFT Law, the policies, procedures and controls of the reporting subjects should provide for the establishment of adequate bodies of regular internal control for the implementation of the obligations defined in the law and an audit function to test the reporting and identification system, except for reporting subjects with limited staff numbers. Hence, this provision does not require the availability of an independent audit function for an unidentified scope and number of DNFBPs "with limited staff numbers", while the requirement for an audit test covers reporting and identification systems only, leaving aside other constituents of the AML/CFT system.

349. ***Criterion 23.3*** *(Partly met)* – Reference is made to the analysis for Recommendation 19 on the general coverage of the requirements regarding high-risk countries within Kosovo legislation. The assessment team has not been provided with legislation or other enforceable measures setting out specific provisions beyond those articulated in the AML/CFT Law and relevant for the compliance of DNFBPs with AML/CFT requirements under Recommendation 19.

350. ***Criterion 23.4*** *(Mostly met)* – Reference is made to the analysis for Recommendation 21 on the general coverage of the tipping-off and confidentiality requirements within Kosovo legislation. The assessment team has not been provided with legislation or other enforceable measures setting out specific provisions beyond those articulated in the AML/CFT Law and relevant for the compliance of DNFBPs with AML/CFT requirements under Recommendation 21.

Weighting and conclusion

351. The following facts and circumstances have been considered to determine the rating for Recommendation 23:

- Qualifications for lawyers, notaries, other independent legal professionals and accountants (tax advisors) to report suspicious transactions do not meet the FATF requirement insofar as they do not apply to all situations when these professionals engage in a transaction "on behalf of or for a client"; "other independent legal professionals" are not designated as reporting subjects under the law and, therefore, are not required to file STRs (c.23.1 (a)); buyers of precious metals and precious stones are not designated as reporting subjects under the law and, therefore, are not required to file STRs (c.23.1 (b)); "performing the equivalent function for

[71] To provide for, *inter alia*, educational and professional standards, clean criminal record requirements etc.

another form of legal arrangement" is not defined as a designated service under the law and, therefore, is not covered by the requirement to file STRs (c.23.1 (c));

- In addition to the deficiencies identified in relation to compliance with the requirements of Recommendation 18, no by-laws to define the "fit and proper" criteria for compliance officers have been issued for DNFBPs, and no screening procedures are established for hiring staff with functions relevant for AML/CFT; there is no requirement for the availability of an independent audit function for an unidentified scope and number of DNFBPs "with limited staff numbers", while the requirement for audit test covers reporting and identification systems only, leaving aside other constituents of the AML/CFT system (c.23.2); and
- Relevant requirements are partly met regarding Recommendations 18 (c.23.2) and 19 (c.23.3), and mostly met regarding Recommendation 21 (c.23.4).

352. **Kosovo is partially compliant with Recommendation 23.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

353. In the 2014 AML/CFT Assessment Report, Kosovo was rated Partially Compliant with former FATF Recommendation 33. A number of deficiencies were identified to substantiate the rating, which included the absence of a direct obligation to inform the Kosovo Business Registration Agency (KBRA) on shareholding and directorship changes immediately when they occur; concerns over the accuracy and timeliness of information available; concerns on due diligence on founders and major shareholders; concerns over the timeliness of availability of information to competent authorities; the absence of procedures for competent authorities (except for TAK) for identification whether a number of business organisations belong to the same individual; no procedures for competent authorities for the identification of inter-connections between business organisations where some companies may own each other; concerns over the easiness of registration; legal ambiguity on foreign business organisation with bearer shares being shareholder in a JSC registered in Kosovo; and, legal ambiguity whether a foreign business organisation with bearer shares can register a branch in Kosovo, together with consequent effectiveness issues.

354. ***Criterion 24.1*** *(Mostly met)* – **(a)** The following types/forms of legal persons are defined in Kosovo legislation - general partnership, limited partnership, limited liability company, and joint stock company.

355. The law also caters for the Individual Business (IB). The IB, the General Partnership and the Limited Partnership do not have legal personality, as outlined in Articles 48, 49.4 and 66.2 respectively of the Law on Business Organisations. Moreover, Article 37.1 of the law also mentions 'Foreign Business Organisations' and states that "a foreign business organisation may engage in business activity in Kosovo to the same extent as a Kosovo business organisation, but only if it first registers with the Registry as a "Foreign Business Organisation".

356. The Law No. 2003/9 on Agricultural Cooperatives provides that any Farmer's Cooperative created in Kosovo is required to be registered in the office for the registration of legal entities and shall come into existence only once such registration takes place.

357. ***Criterion 24.1 (b)*** **–** The Law on Business Organisations provides for the process of the creation of a legal person and for the submission of basic information to the Registry, being the Kosovo Registry of Business Organisations and Trade Names established as an agency within the Ministry of Trade and Industry (Article 6).

358. For Limited Liability Companies, Article 33.1 requires the founder to sign and submit to the Registry the charter of the limited liability company, containing the company's official name, principal place of business in Kosovo, registered office and the name of the company's registered agent at that address, business purpose, name and address of each of the company's founders, number of persons who will serve as the company's directors and their name and address, issued share capital, paid up share capital, issued share capital that has not been paid up at the time of registration, names and addresses of the owners and their respective ownership interests, together with a statement affirming that the person signing and submitting the charter is an "authorised person" and that such person has the authority to sign and submit the charter to the Registry.

359. Whereas reference is made in letter (k) to the owner and to ownership interest, the term "owner" does not also extend to beneficial ownership. On the basis of this wording and its interpretation in practice, the criterion is only partly met.

360. Similarly, Article 35.1 on the Registration and Establishment of a Joint Stock Company requires the founder to sign and submit to the Registry the charter of the joint stock company containing the company's official name, principal place of business in Kosovo, registered office, the name of the company's registered agent at that address, business purpose, name and address of each of the company's founders, the number of members who will be on the company's Board of Directors and their names and address, par value per share of the common stock, the number of shares of common stock that will be issued at the time of the registration, the maximum number of shares of common stock that the company is authorised to issue, a description of each class of preferred stock which is authorised including the par value per shares of such class, the dividend, liquidation, voting and other rights and preferences of such class, the number of shares of such class that will be issued at the time of registration, the maximum number of shares of such class that the company is authorised to issue, the issued share capital; the paid up share capital, the share that has not been paid up at the time of registration and any deadline of payment (if applicable), the number and type of shares that will be issued for non-monetary compensation at the time of the company's registration, a description of the nature of such non-monetary compensation, and the name and address of any person or organisation providing such compensation; the amount (or an estimate of the amount), of all costs that are payable by the company or chargeable to it for work done to accomplish its registration and establishment, a description of any special advantage that has been granted to any person or organisation that has taken part in the work leading to its registration and establishment, together with a statement affirming that the person signing and submitting the charter is an "authorised person" and that such person has the authority to sign and submit the charter to the Registry.

361. Given that the law fails to provide for a specific legal obligation to obtain and record beneficial ownership information, the criterion is partly met.

362. ***Criterion 24.2*** *(Not met)* – Kosovo authorities have to date not assessed ML/TF risks emanating from the various types of legal persons.

363. ***Criterion 24.3*** *(Mostly met)* – The Law on Business Organisations requires limited liability companies and joint stock companies to submit the company details to the Registry, as outlined in 24.1(b) above. Moreover, legal persons are required to submit the company documents to the Registry for public information purposes. This is outlined in Article 33.3 and 35.4. As stated earlier, Agricultural Cooperatives are also required to be registered.

364. The Registry of Kosovo provides the following information free of charge to the public through its website (https://arbk.rks-gov.net):

- Type of legal person;
- Name of legal person;
- Registration number of legal person;
- Date of establishment of the legal person;
- Address of the legal person;
- Names of authorised persons; and
- Names of owners.

365. On the basis of Article 11 of the Law of Business Organisations, which provides a list of the information which is made public in relation to each company registered with the Registry, it was established that there is no specific legal requirement for the registry to obtain, update and publish proof of incorporation of the legal entity and documents laying out the basic regulatory powers in a legal entity.

366. ***Criterion 24.4*** *(Mostly met)* – The Law on Business Organisation establishes the records which a limited liability company must maintain. This includes the company's charter, the company's agreement, the names and addresses of owners and the date when they became owners. If an ownership interest is owned by more than one owner, a list of the names and addresses of each co-owner and the

document naming the co-owners must be kept. The company must also maintain the names and addresses of all managers, a list of all transfers and pledges of, and encumbrances placed on, any ownership interest made or permitted by an owner, together with copies of financial documents. Although Article 87 includes a list of shareholders, it does not specify the requirement to retain the number of shares held by each shareholder and the categories of the shares. It does however specify that the information should be maintained at the registered office or principal place of business of the legal person. Agricultural Co-operatives too are required to maintain a register of co-operative members indicating the number of shares owned by each member as well as records of every transfer of shares.

367. On the other hand, the Law of Business Organisations does not require joint stock companies to maintain a register of their shareholders or members, containing the number of shares held by each shareholder and the categories of the shares. The criterion is therefore not fully met.

368. ***Criterion 24.5*** *(Partly met)* – The Law on Business Organisations requires limited liability companies and joint stock companies to submit amendments to the company details, directors or shareholders to the Registry, through Articles 34 and 36. The measures in place to ensure that the information is accurate and up-to-date, however, are therefore not considered to be satisfactory. The same can be said for Agricultural Co-operatives.

369. ***Criterion 24.6 (a) and (b)*** *(Not applicable)* – As outlined in criterion 24.5 above, the Law on Business Organisations requires limited liability companies and joint stock companies to submit amendments relating to the information on a legal person to the Registry. Moreover, as per criterion 24.4 above, the Law on Business Organisation lists the records which a limited liability company must maintain under Article 87, which also includes a list of shareholders which should be maintained at the registered office or principal place of business of the legal person. Although the 'owners' of the company are mentioned, this does not extend to persons having a beneficial interest in the company when the owner is a legal person. Moreover, this requirement to retain the records of owners is not replicated for joint stock companies.

370. ***Criterion 24.6 (c)*** *(Partly met)* **–** Even though financial institutions are relied upon by competent authorities to obtain some forms of beneficial ownership information, the deficiencies identified under Recommendation 10 do not allow the assessment team to consider this an entirely credible practice in the case of Kosovo.

371. ***Criterion 24.7*** *(Not met)* – As referred to above, the Law on Business Organisations requires limited liability companies and joint stock companies to submit amendments of information relating to a legal person to the Registry. This, however, does not extend to beneficial ownership. Neither is there a legal obligation on the company that specifically requires the retention of accurate and up-to-date beneficial ownership information. Neither does this requirement apply to Agricultural Co-operatives.

372. ***Criterion 24.8*** *(Not met)* – In the absence of a register of beneficial owners, there are no provisions which establish mechanisms for cooperation between the legal person and competent authorities with regard to the provision of beneficial ownership information either directly, through DNFBPs, or through any other comparable mechanism.

373. ***Criterion 24.9*** *(Partly met)* **–** The Law on Business Organisations provides that the Registry is required to maintain in perpetuity all of its records and documents, including documents received or registered (Article 18). In fact, Article 19 states that the Registry shall maintain the original paper copies of its records for at least five (5) years. Paper records that are more than five (5) years old cannot be destroyed but should be transferred to the Archive of Kosovo. The AML/CFT Law also provides for the retention of records for a five-year period in relation to reporting subjects.

374. Notwithstanding the above, the obligation to retain records for a period of five years does not necessarily subsist in instances when a company is dissolved or otherwise ceases to exist as the law is silent on this matter. Neither should it be assumed that this requirement covers the retention of beneficial ownership information as it is not specifically mentioned. Moreover, the Law on Agricultural Co-operatives is silent on this matter.

375. ***Criterion 24.10*** *(Partly met)* – The Law on Prevention of Money Laundering and Combating Terrorist Financing provides for the possibility of the FIU to request from reporting entities any data, documents or information needed in pursuance of its functions. The data, documents or information

shall be provided within the timeframe established by FIU (Article 14, Paragraph 1.4). Access to information for the FIU and other authorities is also available through the KBRA. However, such information does not incorporate beneficial ownership information.

376. ***Criterion 24.11*** *(Partly met)* – The Law on Business Organisations states, in Article 141, Paragraph 5, that joint stock companies shall not have any authority to issue, and shall not issue, bearer shares or other bearer securities. The law establishes that any shares or securities issued in violation of this Article, and any purported rights or claims arising from such shares or securities, shall be null, void and unenforceable.

377. While bearer shares seem to be prohibited, bearer share warrants are not.

378. ***Criterion 24.12*** *(Not applicable)* – The Law on Prevention of Money Laundering and Combating Terrorist Financing lists the reporting entities under its Article 16 which caters for the possibility of Trust and Company Service Providers (TCSPs) to act as nominee directors or shareholders. It does not appear to be the case that nominees could function as directors or shareholders in a Kosovar legal entity under Kosovo legislation.

379. ***Criterion 24.13*** *(Not met)* – Kosovo has not introduced proportionate and dissuasive sanctions for legal and natural persons and therefore there is non-compliant with the requirements of this criterion.

380. ***Criterion 24.14*** *(Not met)* – The ability of law enforcement bodies to constrain reporting entities and companies to provide beneficial owner information in a timely manner is not established by law. It is therefore not considered possible for this information to be obtained and shared with counterparts in accordance with criterion 24.14, especially where there are confidentiality and professional secrecy obligations in place.

381. ***Criterion 24.15*** *(Not met)* – The criterion is not met since Kosovo does not monitor the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership information, or requests for assistance in locating beneficial owners residing abroad.

Weighting and conclusion

382. Kosovo has not undertaken an assessment of ML/TF risks associated with the different types of legal persons and does not have mechanisms in place to identify and describe the process of identifying and recording beneficial ownership information. Not all basic ownership information on legal entities is made publicly available by the Registry, and joint stock companies are not required to maintain all shareholder information. The measures in place to ensure that the information in the Registry is accurate and up-to-date are not considered to be satisfactory. Requirements are not in place to ensure availability of BO information, its updating or maintenance. Domestic and international cooperation mechanisms for sharing BO information are not specifically in place. Bearer share warrants are not regulated or prohibited in Kosovo.

383. **Kosovo is partly compliant with Recommendation 24.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

384. In the 2014 AML/CFT Assessment Report, Recommendation 34 was considered to be 'not applicable' to Kosovo. It was established that although references in the AML/CFT laws were made to 'trusts' and 'legal arrangements', this was more the result of a verbatim adoption of the FATF Recommendations than of the applicability of the laws to an established trust regime in Kosovo. In fact, it was expressed that the concepts of trusts and other legal arrangements do not exist under the laws of Kosovo and there is no legal infrastructure for the establishment, registration and the granting of legal status to such arrangements.

385. Since the last assessment, there has been no introduction of legislation to govern the establishment or regulation of trusts and other legal arrangements. However, the FATF Recommendations have been revised in the meantime and now clarify that Recommendation 25 does apply to countries even where the legal concept of trusts is not provided for by domestic legislation.

386. The authorities have been clear in indicating that there is no statute governing the formation and operation of trusts or other legal arrangements in Kosovo, meaning that trusts cannot be established in Kosovo. Nevertheless, there is nothing in the law that precludes foreign trustees, foundations or

other legal arrangements from entering into a business relationship with a financial institution or DNFBP in Kosovo. Neither is it prohibited for a trustee or other legal arrangement to purchase property in Kosovo.

387. ***Criterion 25.1*** *(Not applicable)* – As indicated above, there is no trust law in Kosovo and Kosovo is not a signatory to the Hague Convention on Laws Applicable to Trusts and their Recognition. (a) In accordance with criterion 25.1(a), this does not apply to Kosovo as neither trusts nor other legal arrangements are recognised under domestic law. However, there is no prohibition on foreign trusts operating in Kosovo. (b) There are no trusts governed under the law of Kosovo. (c) A person acting as a professional trustee of a foreign law trust would be subject to the AML/CFT Law and subject to its record-keeping requirements.

388. ***Criterion 25.2*** *(Met)* – The requirements in the AML/CFT Law for the identification and verification of beneficial owners refers also to trusts and legal arrangements and the parties thereto. This requirement would apply to trustees of foreign owned trusts.

389. ***Criterion 25.3*** *(Partly met)* – While the law refers to the identification of the trustee, there is no explicit requirement for trustees to disclose their status to reporting entities when forming a business relationship or carrying out a transaction above the threshold. In addition, there does not appear to be an obligation for reporting entities to determine whether the customer is acting on behalf and (or) for the benefit of another person.

390. ***Criterion 25.4*** *(Met)* – There do not appear to be provisions in law or enforceable means which would prevent trustees from providing information to the competent authorities.

391. ***Criterion 25.5*** *(Partly met)* – The AML/CFT law applies de facto to foreign trusts even though trusts do not exist/are not recognised under domestic law. There do not appear to be any impediments other than those mentioned under criterion 31.1 to the ability of competent authorities to access the information held by trustees of foreign trusts; however, since there is no requirement for such trustees to declare their status to the subjects of the AML/CFT Law, there is no systematic way for the competent authorities to determine whether such subjects are acting as trustee.

392. ***Criterion 25.6*** *(Mostly met)* – The general provisions for cooperation with competent authorities in other countries apply to requests on beneficial ownership information on trusts and other legal arrangements. However, the potential absence of trust-specific information and the limitations under Criterion 25.3 need to be kept in mind.

393. ***Criterion 25.7*** *(Met)* – Persons acting as professional trustees of a foreign law trust will be subject to a sufficiently proportionate and dissuasive sanction for failing to comply with CDD and record-keeping requirements in the AML/CFT Law.

394. ***Criterion 25.8*** *(Met)* – The power to require information relevant for criminal proceedings by LEAs from any person under the criminal law provisions would apply in this respect, subject to punishment for lack of compliance with the request. In cases where the information on a trust is held by a reporting entity, provisions of the AML/CFT Law would be applicable. It was noted that there are no specific provisions covering anything other than the aforementioned situations.

Weighting and conclusion

395. The criteria which apply in Kosovo have been broadly met. The system, however, would benefit from amendments to the law which would address in a direct manner measures to prevent the misuse of trusts/legal arrangements. In particular, measures should be taken to introduce a legal requirement for a trustee to disclose his/her status to FIs and DNFBPs when forming a business relationship and the respective sanctions.

396. **Kosovo is largely compliant with Recommendation 25.**

Recommendation 26 – Regulation and supervision of financial institutions

397. In the 2014 AML/CFT Assessment Report, Kosovo was rated partially compliant with former FATF Recommendation 23. The assessment identified technical deficiencies related to: the absence of a mandate for a supervisory competent authority designated to issue AML/CFT rules and regulations; lack of obligation to inform CBK on divestment of shareholding; need to strengthen criteria for the

approval of changes in shareholding in relation to AML/CFT issues; and, divergences in the definition of "financial institution".

398. ***Criterion 26.1*** *(Mostly met)* – The definition of banks and other financial institutions provided in Paragraphs 1.6 and 1.16 of Article 2 of the AML/CFT Law, as well as the definition of permitted financial activities provided in Paragraph 1 of Article 44 (for banks), Paragraph 3 of Article 93 (for MFI) and Paragraph 2 of Article 94 (for NBFI) of the Law on Banks, MFI and NBFI appear to be broadly in line with the one in the FATF Glossary.

399. According to Paragraph 3 of Article 34 of the AML/CFT Law, FIU, CBK and other sectoral supervisors shall supervise the compliance with the provisions of the AML/CFT Law during the exercise of their competencies pursuant to that law and other relevant laws. To that end, Paragraph 5 of the same article states that the FIU shall enter into specific written individual arrangements with other sectoral supervisors in order to establish a supervisory competence and responsibilities, procedures and relevant co-operation.

400. Paragraph 4 of Article 34 of the AML/CFT Law establishes that the CBK shall conduct compliance supervision for the reporting subjects in the subparagraphs 1.1 and 1.2 of Article 16 of the law, i.e. banks and other financial institutions such as microfinance institutions[72] and non-bank financial institutions[73] operating under the Law on Banks, MFI and NBFI. This is reinforced by the provision of Paragraph 1 of Article 23 of the Law on the CBK establishing that the Central Bank shall be exclusively responsible for, *inter alia*, regulation and supervision of banks and other financial institutions as further specified in the relevant laws.

401. Then, Paragraph 3 of Article 35 of the AML/CFT Law defines that the FIU may conduct on-site compliance inspections, applying the competences vested in it by that law, also on banks and other financial institutions supervised by the CBK for assessing their compliance with Article 18 (Assessment and Prevention of Risk) and Article 26 (Reporting to FIU) of the law. This seems to be somewhat conflicting with the provision in Paragraph 1 of Article 36 of the AML/CFT Law defining that, for the purpose of supervising compliance of the reporting subjects with the law and related rules and regulations, the CBK shall apply its prudential supervisory powers, presumably in respect of on-site inspections[74], with the exception of the competences for supervising compliance with Article 26 (Reporting to FIU) of the AML/CFT Law, for which the FIU has exclusive supervisory competence.

402. Overall, this shared responsibility for supervising the AML/CFT compliance of banks and other financial institutions appears to contradict the provisions of the Law on the CBK and other sectoral laws on the exclusive supervisory mandate of the CBK. In addition, more clarity is needed in terms of explicit legal language delineating supervisory mandates of the FIU and the CBK to control compliance with each and every requirement under the AML/CFT Law, including through on-site inspections and off-site surveillance.

Market entry

403. ***Criterion 26.2*** *(Met)* – Paragraph 1 of Article 23 of the Law on the CBK defines that the Central Bank shall be exclusively responsible for, *inter alia*, licensing and registration of banks and other financial institutions as further specified in the relevant laws. According to Paragraph 1 of Article 4 of the Law on Banks, MFI and NBFI, the CBK shall have sole responsibility for the issuance of licenses to all banks and registration of all microfinance institutions and non-bank financial institutions[75] (including providers of MVT and currency exchange services), as well as for the issuance of permits to foreign banks with respect to the establishment of representative offices in Kosovo. This is reinforced by the

[72] Defined as "a legal entity organised as either an NGO under the NGO Law or as a joint stock company under the Law on Business Organisations which provides as its primary business loans and a limited number of financial services to micro and small legal entities, low-income households and low-income persons".

[73] Defined as "a legal entity that is not a bank and not a microfinance institution that is licensed by the CBK under this Law to be engaged in one or more of the following activities: to extend credit, enter into loans and leases contracts financial-leasing, underwrite, trade in or distribute securities; act as an investment company, or as an investment advisor; or provide other financial services such as foreign exchange and money changing; credit cards; factoring; or guarantees; or provide other financial advisory, training or transactional services as determined by CBK".

[74] Title of Article 36 of the AML/CFT Law read "On-Site Compliance Inspection by CBK and Other Sectoral Supervisors".

[75] The CBK has also issued the Regulation on Licensing of Banks and Branches of Foreign Banks of November 9, 2012, and the Regulation on the Registration, Supervision and Activities of Non-Bank Financial Institutions of May 28, 2015.

provision of Paragraph 1.2 of Article 8 of the Law on the CBK defining, *inter alia*, the function of the CBK to license and register banks and other financial institutions. The CBK Manual for Registration of MFI and NBFI (July 2017) sets out further details of the procedures and requirements for the registration of these types of financial institutions.

404. The requirements and procedures for the licensing of banks (including preliminary approval contingent on, *inter alia*, "organisational structure of the proposed bank and its affiliates permitting the CBK to effectively exercise supervision on a consolidated basis" as set out in Paragraph 3.2 of Article 8 of the Law on Banks, MFI and NBFI), as well as for capital and liquidity, governance arrangements, financial activities, accounts and financial statements of banks as set forth in applicable legislation disable establishment, or continued operation, of shell banks as defined in the FATF Glossary[76].

405. ***Criterion 26.3*** *(Partly met)* – The necessary legal measures to prevent criminals from holding (or being the beneficial owner) a significant or controlling interest, or holding a management function, in banks are provided in the Law on Banks, MFI and NBFI.

406. Particularly, Paragraph 1 of Article 7 of the law defines that applications for a license to establish and operate a bank[77] shall be accompanied by, *inter alia*, a list of shareholders that hold or would hold 5% or more of the proposed bank shares and the ultimate beneficial owners of those shares, as well as, for each principal shareholder of the proposed bank, an official statement from the court disclosing any convictions for offences by a criminal court. According to Paragraph 3 of Article 8 of the law, the CBK shall preliminarily approve a license only if it is satisfied that the principal shareholders of the proposed bank are fit and proper.

407. Article 37 of the Law states that applications for the acquisition of or increases in holdings of equity interests in a bank shall include, for each applicant, an official statement from the court disclosing any convictions for offences by a criminal court. No person, acting directly or indirectly, alone or in concert with another person, shall become a principal shareholder or increase their ownership interest in a bank above 10, 20, 33, 50 or 75% of the equity without obtaining prior written authorisation from the CBK.

408. Paragraph 1.1 of Article 35 of the law defines that each director and senior manager of a bank must be fit and proper and of good repute, and meet the criteria established by the CBK regarding qualifications, experience and integrity. At the same time, no person shall be regarded as fit and proper if convicted by a criminal court for an offence punishable by imprisonment for a term of one year or more without the option of a fine. Article 59 provides the authorisation of the CBK to suspend the authorisation or require the dismissal of any senior manager or employee of a bank who has wilfully or repeatedly committed any violation of the applicable legislation.

409. Similar provisions on fit and proper requirements with regard to shareholders and managers are defined for insurers (reinsurers) and insurance intermediaries (Articles 10, 11, 24, 32-35, 118 and 126 of the Law on Insurances).

410. Hence, with regard to banks and insurance companies, the missing element vis-à-vis the requirements in criterion 26.3 is the lack of clear language to prevent associates of criminals from entering the financial market as holders (or beneficial owners) of a significant or controlling interest.

411. As for other financial institutions, Article 97 of the Law on Banks, MFI and NBFI defines that all members of the board of directors of MFI and NBFI (the latter including investment companies and investment advisers, as well as providers of MVT and currency exchange services) shall be fit and proper and of good repute, meeting the criteria established by the CBK regarding qualifications, experience and integrity of the members of the board of directors. With regard to NBFI, the CBK Regulation on the Registration, Supervision and Activities of Non-Bank Financial Institutions of May 28, 2015 further requires checking the criminal background of major shareholders, directors and senior managers (Paragraph 3.8 of Article 5), proof of professional qualification and experience of directors and senior managers (Paragraph 3.9 of Article 5). The said Regulation also makes good reputation, legal sources of capital funds of the founders and qualifications, experience, and

[76] See the analysis for criterion 13.3 for the definition of a shell bank in Kosovo legislation.

[77] Including branches of foreign banks.

reputation of members of the board of directors and executive chief (Paragraph 2.1 of Article 6) preconditions for approving registration of the NBFI.

412. Hence, with regard to non-bank financial institutions, the missing elements *vis-à-vis* the requirements in criterion 26.3 include the lack of: a) clear language to prevent persons with a criminal background[78] to hold (or be the beneficial owner of) a significant or controlling interest, or hold a management function, in a NBFI; and b) requirement to prevent associates of criminals to do the same.

413. Except for the above-mentioned general fit and proper requirement for the board of directors of micro-finance institutions set out in Article 97 of the Law on Banks, MFI and NBFI, there are no requirements to prevent persons with criminal background or their associates to hold (or be the beneficial owner of) a significant or controlling interest, or hold a management function, in a MFI.[79]

Risk-based approach to supervision and monitoring

414. ***Criterion 26.4*** *(Partly met)* – All core principle and other financial institutions are designated as reporting subjects in Paragraph 1 of Article 16 of the AML/CFT Law. Paragraph 4 of Article 34 of the AML/CFT Law establishes that the CBK shall conduct compliance supervision of the banks and other financial institutions according to the competencies vested in it by that law.[80] The Law on Banks, MFI and NBFI (Article 38) and the Law on Insurances (Article 11) refer to the CBK ability to exercise effective consolidated supervision, presumably also for AML/CFT purposes, but there are, however, no further provisions in law or other enforceable means providing mechanisms and tools for its practical implementation.

415. The most recent IMF Financial System Stability Assessment (FSAP) paper on Kosovo was completed in December 2012 and published in April 2013. According to the report, "the assessment of the Basel Core Principles found an uneven level of compliance with international standards, primarily due to resource constraints. Key areas that should be addressed include: upgrades to the legal framework; development of a risk-based forward looking supervisory program; consolidated supervision and closer coordination with foreign supervisors and a continuation of the capacity building in supervision". As to the International Association of Insurance Supervisors (IAIS) Insurance Core Principles, the report concludes that "when assessed against IAIS ICP principles, the existing regulatory framework is incomplete and inadequate". The report is silent about the compliance of Kosovo with the International Organisation of Securities Commissions (IOSCO) Objectives and Principles of Securities Regulations.

416. A Staff Report for the 2017 Article IV Consultation completed in December 2017 and published in January 2018 summarises, *inter alia*, the status of implementation of the 2012 FSAP recommendations (Annex V). According to that report, some of the recommendations regarding the Basel Core Principles relevant for AML/CFT (such as conduction of comprehensive review of the financial system legal and regulatory framework, revision of the AML legislation, introduction of risk-based supervision) have been fully implemented. However, effectiveness of implementation of these and other recommendations is to be tested yet. The assessment team has not been provided relevant information enabling a conclusion as to whether core principle financial institutions are regulated and supervised in line with the applicable principles set by the IOSCO and IAIS relevant for AML/CFT[81].

417. ***Criterion 26.5*** *(Partly met)* – Paragraph 6 of Article 34 of the AML/CFT Law states that the CBK and other sectoral supervisors shall take into account the risk of ML/TF in the sectors of activity of the respective reporting subjects. The authorities refer to several documents meant to provide for compliance with the requirements of criterion 26.5, particularly: a) the *Standard Operation Procedures for Supervision of Compliance of FIU* (issued in 2017), which sets forth the risk-based supervision framework built on general risk analysis, risk rating of supervised entities and subsequent selection of supervisory intervention targets and methods along with appropriate frequency and intensity of such

[78] As opposed to the requirement established for banks and insurance companies, which clearly states that a person with previous conviction for an offence stipulating imprisonment shall not be regarded as fit and proper for managerial positions. The general provision on checking "good reputation" of the shareholders and managers of NBFI does not appear to provide for compliance with the requirements in criterion 26.3.

[79] See the previous footnote.

[80] Such supervisory mandate is shared with the FIU for matters related to compliance with Article 18 (Assessment and Prevention of Risk) and Article 26 (Reporting to FIU) of the AML/CFT Law, as set out in the analysis for criterion 26.1.

[81] As prescribed in Footnote 59 of the FATF Methodology.

intervention; b) the Performance and Resources Plan of FIU 2015-2017 (issued in 2015); and c) the Action Plan of the National Strategy on Combating and Preventing the Informal Economy, Money Laundering, Terrorist Financing and Financial Crime 2014-2018 (issued in 2014), which provides for an action "2.2.1. Implement compliance supervision activities to assess AML/CFT reporting subjects' compliance with the Law on Prevention of Money Laundering and Terrorist Financing", with the implementation deadline set for December 31, 2018.

418. Overall, the information made available to the assessors does not enable a conclusion as to whether the frequency and intensity of on-site and off-site AML/CFT supervision of financial institutions or groups by the CBK (for matters other than compliance with Articles 18 and 26 of the AML/CFT Law) and by the FIU (for matters related to compliance with Articles 18 and 26 of the AML/CFT Law) is determined on the basis of: (a) the ML/TF risks and the policies, internal controls and procedures associated with the institution or group, as identified by the supervisors' assessment of the institution's or group's risk profile; (b) the ML/TF risks present in the country; and (c) the characteristics of the financial institutions or groups, in particular the diversity and number of financial institutions and the degree of discretion allowed to them under the risk-based approach.

419. ***Criterion 26.6*** *(Partly met)* – The authorities refer to the *Standard Operation Procedures for Supervision of Compliance of FIU* (issued in 2017), which states that the FIU management monitors the implementation of the Annual Supervision Plan and allocates its inspection resources based on risk assessment, which covers the key dimensions of the reporting subjects' risk profile.

420. Overall, the information made available to the assessors does not enable a conclusion as to whether the CBK and the FIU review the assessment of the ML/TF risk profile of financial institutions or groups (including the risks of non-compliance) periodically, and when there are major events or developments in the management and operations of the financial institution or group.

Weighting and conclusion

421. The following facts and circumstances have been considered to determine the rating for Recommendation 26:

- Shared responsibility for supervising AML/CFT compliance of banks and other financial institutions appears to contradict the provisions of the Law on the CBK and other sectoral laws on the exclusive supervisory mandate of the CBK; more clarity is needed in terms of explicit legal language delineating supervisory mandates of the FIU and the CBK to control compliance with requirements under the AML/CFT Law (c.26.1);
- With regard to: 1) banks and insurance companies, there is a lack of clear language to prevent associates of criminals from entering the financial market as holders (or beneficial owners) of a significant or controlling interest; 2) non-bank financial institutions, there is a lack of: a) clear language to prevent persons with criminal background to hold (or be the beneficial owner of) a significant or controlling interest, or hold a management function, in a NBFI; and b) requirement to prevent associates of criminals to do the same; 3) micro-finance institutions, there are no requirements to prevent persons with criminal background or their associates to hold (or be the beneficial owner of) a significant or controlling interest, or hold a management function, in a MFI (c.26.3);
- Regulation and supervision in line with the Core Principles is not demonstrated; legislation refers to the CBK ability to exercise effective consolidated supervision, presumably also for AML/CFT purposes, however without further provisions in law or other enforceable means to provide the mechanisms and tools for its practical implementation (c.26.4);
- Information made available to the assessors does not enable a conclusion as to whether the frequency and intensity of on-site and off-site AML/CFT supervision of financial institutions or groups is determined on the basis of: (a) the ML/TF risks and the policies, internal controls and procedures associated with the institution or group, as identified by the supervisors' assessment of the institution's or group's risk profile; (b) the ML/TF risks present in the country; and (c) the characteristics of the financial institutions or groups, in particular the diversity and number of financial institutions and the degree of discretion allowed to them under the risk-based approach (c.26.5); and
- Information made available to the assessors does not enable a conclusion as to whether the CBK and the FIU review the assessment of the ML/TF risk profile of financial institutions or groups (including the risks of non-compliance) periodically, and when there are major events or developments in the management and operations of the financial institution or group (c.26.6).

422. **Kosovo is partially compliant with Recommendation 26.**

Recommendation 27 – Powers of supervisors

423. In the 2014 AML/CFT Assessment Report, Kosovo was rated non-compliant with former FATF Recommendation 29. The assessment identified technical deficiencies related to: absence of a legal mandate for the CBK to apply prudential supervisory powers for the purposes of the AML/CFT Law; absence of a mandate for the FIU to undertake off-site examinations; legal ambiguity on the general powers of the FIU to undertake unconditioned on-site examinations; and, lack of adequate powers of enforcement and sanctions on directors and senior management of financial institutions.

424. ***Criterion 27.1*** *(Met)* – Paragraph 4 of Article 34 of the AML/CFT Law establishes that the CBK shall conduct compliance supervision of the banks and other financial institutions according to the competencies vested in it by that law. Paragraph 1 of Article 36 of the AML/CFT Law further defines that, for the purpose of supervising compliance of the reporting subjects with the law and related rules and regulations, the CBK shall apply its prudential supervisory powers, presumably in respect of on-site inspections[82], with the exception of the competences for supervising compliance with Article 26 (Reporting to FIU) of the AML/CFT Law, for which the FIU has exclusive supervisory competence[83]. The powers of the FIU in terms of supervision are defined in Paragraph 3 of Article 34 and further detailed in Article 35 (for on-site inspections) and Article 37 (for off-site surveillance).

425. ***Criterion 27.2*** *(Mostly met)* – According to Paragraph 2 of Article 34 of the AML/CFT Law, compliance supervision of the reporting subjects is carried out by means of on-site inspections and off-site surveillance. The CBK authority to conduct inspections of banks and other financial institution is set out in Paragraph 2 of Article 23 of the Law on the CBK. Similar provisions reinforcing the CBK authorisation for on-site inspections are provided in the Law on Banks, MFI and NBFI (Articles 57 and 114) and the Law on Insurances (Article 83). The FIU authority to conduct inspections of banks and other financial institution is set out in Article 35 of the AML/CFT Law. The issue of uncertainty in terms of explicit legal language delineating supervisory mandates of the FIU and the CBK, including that for on-site inspections, as set out in the analysis for criterion 26.1 is relevant for the purposes of criterion 27.2, as well.

426. ***Criterion 27.3*** *(Partly met)* – According to Article 37 of the AML/CFT Law, for the purpose of undertaking off-site surveillance and monitoring of the reporting subjects for compliance with the applicable AML/CFT requirements, the FIU and the CBK may, by notice in writing, require the reporting subject to produce, within the time and at the place as may be specified in the notice, any documents including those related to internal procedures of the reporting subject, and provisions of Paragraphs 3-5 of Article 35 shall be applied in accordance with the situation.

427. Paragraphs 3-5 of Article 35, in turn, while establishing that the inspected persons should provide the authorised officials all reasonable assistance to enable them carrying out their responsibilities, also stipulate that they may refuse access to premises or records/ documents if they assert that it is not relevant for determining whether AML/CFT obligations under the law have been complied with, or that it contains information subject to lawyer-client privilege. In such cases, production of the relevant information is compelled by the decision of a pre-trial judge of the competent court. This mechanism does not provide for compliance with criterion 27.3 requiring that the supervisor's power to compel production of or to obtain access to any information for supervisory purposes should not be predicated on the need to require a court order.

428. ***Criterion 27.4*** *(Mostly met)* – Paragraph 7 of Article 34 of the AML/CFT Law defines that, subsequent to compliance supervision, the FIU, the CBK and other sectoral supervisors as defined in the law may recommend improvement measures, impose administrative sanctions or proceed with criminal procedure. Disciplinary and financial sanctions for the failure to comply with AML/CFT requirements, including the power to withdraw – but not to restrict or suspend – the financial institution's license, are available as set out in the analysis for Recommendation 35.

[82] Title of Article 36 of the AML/CFT Law read "On-Site Compliance Inspection by CBK and Other Sectoral Supervisors".

[83] As shown in the analysis for criterion 26.1, this seems to be somewhat conflicting with the provision in Paragraph 1 of Article 36 of the AML/CFT Law defining that the CBK shall apply its prudential supervisory powers with the exception of the competences for supervising compliance with Article 26 (Reporting to FIU) of the AML/CFT Law, for which the FIU has exclusive supervisory competence.

Weighting and conclusion

429. The following facts and circumstances have been considered to determine the rating for Recommendation 27:

- The issue of uncertainty in terms of explicit legal language delineating supervisory mandates of the FIU and the CBK, including that for on-site inspections is relevant in terms of compliance with Recommendation 27, as well (c.27.2);
- The mechanism for implementing the supervisor's power to compel production of or to obtain access to any information relevant to monitoring compliance with the AML/CFT requirements appears to be predicated on the need to require a court order (c.27.3); and
- The supervisor has the power to withdraw – but not to restrict or suspend – the financial institution's license for the failure to comply with AML/CFT requirements (c.27.4).

430. **Kosovo is partially compliant with Recommendation 27.**

Recommendation 28 – Regulation and supervision of DNFBPs

431. In the 2014 AML/CFT Assessment Report, Kosovo was rated non-compliant with former FATF Recommendation 24. The assessment identified technical deficiencies related to: the lack of definition of what constitutes a "significant" shareholding; inconsistency of shareholding level for the identification of officers, directors and shareholders of private and quoted companies; absence of legal powers for the FIU to apply a risk based supervisory approach; lack of supervisory authority appointed for building construction companies as reporting subjects under the AML/CFT Law; absence of a range of sanctions to be applied proportionately to the severity of an offence; lack of adequate powers of enforcement and sanctions against directors or senior management of DNFBPs for failure to comply with the provisions of the AML/CFT Law; legal ambiguity on the general powers of the FIU to undertake unconditioned on-site examinations; and, absence of a mandate for the FIU to undertake off-site examinations.

Casinos

432. Article 3 of the Law on Games of Chance defines games of chance as "every game played physically by cards, dice, device or machine for money, property, cheques, loans or any other equivalent value", which includes lottery games, casino games, sports betting, slot machine games, and tombola bingo in closed premises. At the same time, it forbids "electronic games, online games through internet, hippodromes, and correspondence games established in geometric progression, with correspondence and with payments of specific sums, all the games called pyramidal" and all other games which are not games of chance as defined by the law.

433. ***Criterion 28.1*** *(Mostly met)* – Casinos, including internet casinos and licensed objects of the games of chance[84] are designated as reporting subjects in Paragraph 1.3 of Article 16 of the AML/CFT Law. Articles 34, 35 and 37 of the AML/CFT Law define the mandate of the FIU and the sectoral supervisors for AML/CFT supervision of this category of reporting subjects. Article 4 of the Law on Games of Chance designates the Tax Authority of Kosovo (TAK) as the regulative authority empowered for, *inter alia*, licensing of the games of chance.

434. *Licensing* – According to Article 25 of the Law on Games of Chance, the TAK issues licenses for casinos, manufacturers/distributors of slot machines for games of chance, slot machine operators, retail locations of slot machines for games of chance, sports betting facilities, and tombola bingo, in closed premises. Article 30 of the law states that it is illegal for a person, without first having the licenses and/or permits required in accordance with the law, to offer or perform any activity related to any kind of games of chance or any other similar games.

435. *Market entry* – According to Articles 32 and 33 of the Law on Games of Chance, applicants for a license must meet certain suitability criteria by proving that, *inter alia*, they have not been convicted of a criminal offence punishable by more than 6 (six) months in Kosovo or in any other country, have not performed any inappropriate or unlawful activity during the management of games of chance, have

[84] Paragraph 1.22 of Article 3 of the Law on Games of Chance defines games of chance as "every game played physically by cards, dice, device or machine for money, property, cheques, loans or any other equivalent value".

appropriate loyalty for business, competence and experience in games of chance, and would finance the proposed business from a legal and appropriate source. These criteria apply to all licensed persons, all officers, directors and shareholders with 5% interest in private companies or 10% interest in or control over public companies, all persons who provide finance or have a contract or any other financial agreement or business with the licensed person.

436. Article 10 of the Ministry of Finance Administrative Instruction No. 3/2013 further establishes that the TAK "may request information on the suitability of any person who provides funds, fixed assets, personal property, supplies or services to a licensed entity of gambling". This provision, while outlining the scope of persons who might exercise some type of control over – and thus act as beneficial owners of – games of chance, still misses the element stipulated in criterion 28.1(b) insofar as it does not provide clear language to prevent associates of criminals from entering the games of chance market as holders (or beneficial owners) of a significant or controlling interest.

437. *Compliance supervision* – According to Paragraph 3 of Article 34 of the AML/CFT Law, FIU, CBK and other sectoral supervisors shall supervise the compliance with the provisions of the Law during the exercise of their competencies pursuant to that law and other relevant laws. Paragraph 5 of the same article states that the FIU shall enter into specific written individual arrangements with other sectoral supervisors in order to establish a supervisory competence and responsibilities, procedures and relevant co-operation. The TAK provides for the supervision of casinos through its Department of Games of Chance.

DNFBPs other than casinos

438. ***Criterion 28.2*** *(Mostly met)* – FIU is the designated competent authority responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements. As described in the analysis for criteria 26.1 and 28.1, such responsibility is shared with other sectoral supervisors on the basis of specific written individual arrangements with them. To this end, the authorities refer to the Kosovo Metrology Agency (as defined in the Law on Precious Metals Works), the Chamber of Notaries (as defined in the Law on Notary), the Bar Association (as defined in the Law on the Bar) and the Kosovo Council for Financial Reporting (as defined in the Law on Accounting, Financial Reporting and Audit) for monitoring and ensuring AML/CFT compliance of, respectively, sellers of precious metals and precious stones, notaries, lawyers, auditors and accountants. However, the assessment team was not provided references to the provisions in applicable sectoral laws providing for the mandate of the respective agencies specifically in terms of AML/CFT compliance monitoring.

439. ***Criterion 28.3*** *(Partly met)* – The system for monitoring AML/CFT compliance of the other categories of DNFBPs is comprised of the FIU and the sectoral supervisors sharing supervisory responsibility with the FIU. Such system is not fully functional due to the lack of specific written agreements between the FIU and sectoral supervisors as described in the analysis for criterion 28.2.

440. ***Criterion 28.4*** *(Partly met)* – The following provisions provide for regulation and enforcement functions of the FIU and the sectoral supervisors:

441. *Supervisory powers* – Articles 34, 35 and 37 of the AML/CFT Law define the mandate of the FIU and the sectoral supervisors for AML/CFT supervision of DNFBPs. However, the assessment team was not provided references to the provisions in applicable sectoral laws providing for the powers of the respective agencies specifically in terms of monitoring AML/CFT compliance.

442. *Market entry* – The assessment team was not provided references to the provisions in applicable legislation providing for the authorisation of the competent authorities to take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in DNFBPs other than games of chance.

443. *Available sanctions* – Disciplinary and financial sanctions for the failure to comply with AML/CFT requirements are available as set out in the analysis for Recommendation 35.

444. ***Criterion 28.5*** *(Partly met)* – Paragraph 6 of Article 34 of the AML/CFT Law states that the sectoral supervisors shall take into account the risk of ML/TF in the sectors of activity of the respective reporting subjects. This provision does not require the FIU, in its capacity of the key agency responsible for AML/CFT compliance of DNFBPs, to employ the risk-based approach to supervision.

The authorities refer to the *Standard Operation Procedures for Supervision of Compliance of FIU* (issued in 2017) meant to provide for compliance with the requirements of criterion 28.5, particularly its: a) Chapters 2, 4, 7 and 9 defining the determination of risk, frequency and intensity of supervision for AML/CFT; b) Chapter 2 providing for risk analysis which consists of four steps, including: 1) collection of information for ML/TF risk identification; 2) identification and assessment of risk; 3) mitigating action based on ML/TF risk assessment; and 4) monitoring of the subsequent actions, ranking and selection based on risk, differential analysis, and rotation based supervision.

445. Overall, the information made available to the assessors does not enable a conclusion as to whether supervision of DNFBPs is performed by: a) determining its frequency and intensity on the basis of DNFBPs' understanding of the ML/TF risks, taking into consideration the characteristics of the DNFBPs, in particular their diversity and number; and b) taking into account the ML/TF risk profile of those DNFBPs, and the degree of discretion allowed to them under the risk-based approach, when assessing the adequacy of the AML/CFT internal controls, policies and procedures of DNFBPs.

Weighting and conclusion

446. The following facts and circumstances have been considered to determine the rating for Recommendation 28:

- There is a lack of clear language to prevent associates of criminals from entering the games of chance market as holders (or beneficial owners) of a significant or controlling interest (c.28.1 (b));
- In the absence of specific written agreements between the FIU and sectoral supervisors, applicable sectoral laws do not provide for the mandate of the respective supervisory agencies for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements (c.28.2);
- The system for monitoring compliance with AML/CFT requirements is not fully functional due to the lack of specific written agreements between the FIU and sectoral supervisors (c.28.3);
- In the absence of specific written agreements between the FIU and sectoral supervisors, applicable sectoral laws do not provide for the powers of the respective supervisory agencies to perform their functions in terms of monitoring and ensuring compliance with AML/CFT requirements (c.28.4 (a));
- There are no provisions in applicable legislation providing for the authorisation of the competent authorities to take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in DNFBPs other than games of chance (c.28.4 (b)); and
- Information made available to the assessors does not enable a conclusion as to whether supervision of DNFBPs is performed by: a) determining its frequency and intensity on the basis of DNFBPs' understanding of the ML/TF risks, taking into consideration the characteristics of the DNFBPs, in particular their diversity and number; and b) taking into account the ML/TF risk profile of those DNFBPs, and the degree of discretion allowed to them under the risk-based approach, when assessing the adequacy of the AML/CFT internal controls, policies and procedures of DNFBPs (c.28.5).

447. **Kosovo is partially compliant with Recommendation 28.**

Recommendation 29 – Financial Intelligence Units (FIU)

448. In the 2014 AML/CFT Assessment Report, Kosovo was rated PC with former Recommendation 26. A number of deficiencies, some of them related to effectiveness, were identified to substantiate the rating, relating to, *inter alia*: deficiencies in the scope and mode of FIU access to various databases; ambiguity in the powers of the FIU to request additional information from reporting entities; need to adopt the Egmont Group principles for international information exchange; lack of feedback from law enforcement on FIU disseminations; lack of statistics on the outcome of FIU disseminations; insufficient specific and strategic feedback and guidance to reporting entities; and additional information requests bringing an excessive burden on both the FIU and industry.

449. ***Criterion 29.1*** *(Met)* – Pursuant to the AML/CFT Law (Law No. 05/L-096 on the Prevention of Money Laundering and Combating Terrorist Financing) FIU, within the Ministry of Finance, is the national centre for receipt and analysis of suspicious transaction reports and other information relevant to money laundering, associated predicate offences and terrorist financing. Predicate offences (understood as all predicate, not just associated) are covered through the definition of suspicious act or transaction in Article 2, Paragraph 1.2 of the mentioned law. Dissemination of the results of analysis

for suspected money laundering, predicate offences and terrorism financing is provided for in Article 15, Paragraph 2 of the law.

450. ***Criterion 29.2*** *(Mostly met)* – FIU serves as the central agency for the receipt of disclosures filed by reporting entities. The reporting entities are required under Article 26 to report all suspicious activities or transactions within twenty four (24) hours from the time the activity or transaction was identified as suspicious, as well as all additional important information regarding the transaction(s) that is acquired by the reporting entities after the report, as well as other information as required by the FIU (based on request, based on monitoring requirement, etc.).

451. In addition, FIU is authorised to receive a wide range of further information, including information provided from FIUs of foreign countries, courts or competent authorities for the implementation of the AML/CFT Law (including intergovernmental and international organisations in Kosovo), public or governmental bodies, voluntarily provided information on ML/TF suspicion, single transactions of EUR 10,000 and above, real estate declarations and information on monetary instruments above the threshold carried across border either personally or by post.

452. The reporting of STRs is (potentially) limited by the factors noted under Recommendation 20.

453. As Article 16 includes only notaries and lawyers, it is not clear whether all independent legal professionals have been included in the scope of the AML/CFT Law and are therefore subject to the reporting requirements. The entities/persons involved in the trade in precious metals and stones are limited to sellers, and dealers are in general not included.

454. ***Criterion 29.3*** *(Mostly met)* – FIU is empowered under Article 14, Paragraph 1.4 to request and receive within the timeframe it specifies the required information to undertake its functions. In addition, FIU is entitled to receive additional important information related to previously reported suspicious transactions under Article 26, Paragraph 2. The latter however is limited, to an extent, by the lack of a precise timeline specified for the reporting entities for providing such information. Furthermore, FIU could obtain additional information as a result of triggering the monitoring procedure of accounts or business relationships under Paragraph 1.12 of Article 14. The provision of information cannot be limited for reasons of professional secrecy.

455. FIU is entitled, pursuant to Paragraph 1.5 of Article 14 of the AML/CFT Law, to request from the public or government bodies data, documents and information as well as have access to the databases maintained by those bodies. The FIU is also authorised to collect information from open sources and commercial databases. FIU has direct access to a number of databases including civil status of the population, vehicle registration database, family tree, export/import of goods and services, declaration of monetary means at border points and non-declaration of monetary means, business registration certificates, and information on owners, shareholders, initial capital, and the status of the business. Direct access is also available to DRLNGO database and additional information can be obtained through a request, although there are issues with the reliability of the data. Indirect access to information is available with the Kosovo Police (KP) and Tax Authority of Kosovo (TAK). The requirement specified for public and government bodies for provision of information "without delay" does not provide a clear obligation and could be subject to interpretation.

456. Public access is available to databases of a number of agencies, most importantly Privatisation Agency and Anti-corruption Agency.

457. ***Criterion 29.4*** *(Mostly met)* – FIU is entitled pursuant to Article 14 and 15 of the AML/CFT Law to conduct operational analysis by receiving and analysing reports and information related to the proceeds of crime and terrorist financing as well as collecting all relevant information that falls within the mandate of the FIU and disseminating information on the particular suspicious transactions and the result of analysis for suspected money laundering, predicate offences and terrorism financing.

458. FIU is authorised pursuant to Article 14 of the AML/CFT Law to carry out strategic analysis of the information it collects and receives, to prevent and combat money laundering, predicate offences, and terrorist financing. This is understood to include identifying money laundering and terrorist financing trends and patterns. Moreover, extensive exchange of information in order to fulfil the functions of supervision, analyse effectiveness through relevant statistics, etc. is due under the AML/CFT Law. At the same time, it is not clear whether all relevant information (not only statistical data) that may be obtained from competent authorities is included in the strategic analysis

considering that no specific provision on obtaining information from competent authorities (e.g. supervisory authorities or NPO supervisor) for the concrete purpose of identifying trends is included in the AML/CFT Law. Therefore, it is not clear whether any professional secrecy limitations could be invoked to prevent such cooperation as the derogation under Article 63 is referring in general to information disclosed pursuant to the AML/CFT Law. An example is the Law on Banks, which in Article 80 provides for the disclosure of information obtained by the CBK under secrecy conditions only pursuant to the Law on the CBK.

459. ***Criterion 29.5*** *(Met)* – FIU is authorised under Article 14, Paragraph 1.10 of the AML/CFT Law to disseminate information and the outcome of analyses to relevant authorities. At the same time, it is noted that the broad requirement of Article 15, Paragraph 1 for dissemination to all authorities or reporting entities, if it is deemed necessary or would assist the FIU for performing its functions (without further specificity), creates significant doubts whether the dissemination is limited to relevant competent authorities. Information dissemination is done using dedicated, secure and protected channels, including the goAML system and couriers.

460. ***Criterion 29.6*** *(Mostly met)*

461. ***Criterion 29.6 (a) and (c)*** – The AML/CFT Law in Article 14, Paragraph 2 introduces requirements for keeping the confidentiality of the information and using the information only for the purposes of the AML/CFT Law. Detailed IT policies are adopted. Rules for protection of classified information are applicable to the legally defined categories of classified information received, stored and disseminated pursuant to the Law No. 03/L-178 on Classification of Information and Security Clearances. The FIU applies the Regulation on the Distribution and Transfer of Classified Information, as well as on the Physical Security of the Information. The purpose of these Regulations is the introduction of a unique system for the distribution and transfer of classified information for all public institutions (included the FIU) of Kosovo as well as for persons granted respective security clearances for ensuring its physical security. The FIU has approved and implemented several administrative instructions including standard operating procedures for the goAML-based working process and the Standard Operating Procedure on FIU's Analysis and Intelligence Process - Strategic and Operational Analysis which defines the rules for handling of the information. The AML/CFT Law introduces guarantees for the security and confidentiality of information by providing for criminal sanctions in Paragraphs 5 and 6 of Article 59 in regard to the following acts committed by any official of the FIU:

- Wilfully reporting information or disclosing information pursuant to Paragraph 1 of Article 15 of this Law, or disclosing information to a Prosecutor or a court, knowing that such information to contain a material falsehood, a material omission or a material error;
- Destroying or removing any record which shall be collected by the FIU pursuant to this Law, other than as provided for in a document retention and destruction policy established by the FIU;
- Disclosing any information described in Paragraph 1 of Article 15 of this law other than as provided by Paragraph 2 of Article 15 of this law, unless authorised in writing by the Director of the FIU.

462. Nevertheless, no specific procedures were provided in regard to e.g. the document retention and destruction policy outside the scope of classified information.

463. ***Criterion 29.6 (b)*** – Based on the Law on Classification of Information and Security Clearances every employee has to qualify and go through the security check for the "confidential" level of security. All professional staff of FIU have the necessary security clearance. The staff of FIU have received the decision for "confidential" level of security during 02/2013 - 05/2013. Relevant training is provided to the FIU staff by KIA.

464. ***Criterion 29.6 (c)*** – Premises of the FIU are protected and secured. The Kosovo Police provides security 24/7, all visitors are identified when entering the FIU premises and they are escorted. Premises are protected by wire, an alarm system and CCTV (closed circuit television). Electronic access control is used to protect unauthorised persons from entering the premises of the FIU. In order to secure the premises and staff of FIU, in 2015 the FIU issued a regulation No. FIUAD 77/2015 on Duties and Responsibilities of Police Officers assigned to surveillance the offices (premises of FIU) and providing physical security to the FIU. Moreover in 2010, the FIU issued a document "Duties and Responsibilities

of the Police Guarding the Entrance of the FIC Building". No information is provided with regard to the necessary selection procedures for FIU.

465. With regard to the confidentiality requirements for the liaison officers, they would be governed by the internal documents for their assignment. It is not clear however whether these rules would provide the same level of confidentiality guarantees as those directly applicable to the FIU staff (including the same level of sanctioning powers for incompliance).

466. ***Criterion 29.7*** *(Met)* – The AML/CFT Law provides for adequate guarantees of the FIU's operational independence and autonomy through autonomous budget and independent decisions on its use (Article 4, Paragraph 2), proposing internal administrative organisation (Article 4, Paragraph 4), strict criteria and detailed requirements for the selection of the Director of FIU (Article 11 and 12) and strict criteria for dismissal and suspension (Article 13). The Oversight Board of the FIU is chaired by the Minister of Finance and comprises other high-level officials including the Minister of Internal Affairs, the Chief Prosecutor of Kosovo, the Director-General of the Kosovo Police, the Director of the Tax Administration of Kosovo, the Director-General of the Customs of Kosovo and the Governor of the CBK.

467. ***Criterion 29.8*** *(Met)* – The FIU meets criterion 29.8 by applying Egmont Group principles (please see also Recommendation 40) and by becoming a full-fledged member of the Egmont Group in 2017.

Weighting and conclusion

468. There are no specific requirements in law or sub-legal act on reporting additional information following an already filed STR. There are no strict deadlines in the law for receiving information from the reporting entities. Some issues exist in regard to staff selection and clearance and the application of classified information rules.

469. **Kosovo is largely compliant with Recommendation 29.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

470. In the 2014 AML/CFT Assessment Report, Kosovo was rated NC for Recommendation 27. The main deficiencies identified, which were principally of an effectiveness nature, included the following: the lack of unified statistics, increasing case-load of Special Prosecution Office of Kosovo (SPRK) with regard to ML cases, lack of resources within SPRK and low levels of effectiveness; the fact that the Kosovo Police (KP) has only recently started to provide feedback to FIU on cases; the absence of systemic feedback provided by prosecutors to KP and other law enforcement bodies on the outcome of prosecutions; a sharp drop in numbers of ML cases reported by the KP to SPRK in 2012 (indicating a decreasing effectiveness of the police in pursuing ML); insufficient awareness in the KP about the need to proactively pursue criminal proceeds when dealing with acquisitive crime; insufficient awareness in the SPRK about the need to prosecute for ML and the absence of any clear power to postpone or waive arrest for purposes of evidence-gathering or identification of other persons involved.

471. ***Criterion 30.1*** *(Met)* – The offence of money laundering is investigated by a number of authorities, with the majority of investigations being carried out by the KP. The KP has two separate structures, which are specialised in the investigation of ML: the Directorate against Economic Crime and Corruption Investigation (DECCI) and the Organised Crime Division (OCD). The OCD includes an Integrated Financial Investigation Sector (IFIS), which is responsible for launching parallel financial investigations into predicate offences, such as organised crime, trafficking in humans, drugs and arms, cybercrime, etc.

472. Article 3 of the Law on Prevention of Money Laundering and Combating Terrorist Financing provides that the money laundering and terrorist financing offences described fall within the exclusive competence of the Special Prosecution Office of Kosovo (SPRK), established by the Law on Special Prosecution Office of Kosovo. Other criminal offences fall within the competence of state prosecutors as described by the Law on the State Prosecutor and Criminal Procedure Code of Kosovo.

473. Under Article 3, Paragraph 3.5 of the Law on Special Prosecution Office, the SPRK is granted the authority and responsibility to perform the functions of their office, including the authority and

responsibility to conduct criminal investigations and prosecute crimes falling under the exclusive and subsidiary competence of the SPRK, throughout all the offices of the prosecutors and throughout all courts operating in Kosovo. The criminal investigations and crimes that can be prosecuted are listed in Article 5. These include, among other offences, the crimes of terrorism financing and money laundering.

474. Under Article 70 of the Criminal Procedure Code, the Kosovo Police are tasked with investigating whether a reasonable suspicion exists that a criminal offence prosecuted *ex officio* has been committed, after receiving information of a suspected criminal offence. This includes the criminal offence of money laundering and terrorist financing as well as predicate offences as outlined in Article 2 of the AML/CFT Law.

475. As stated under paragraph 471, within the KP there are two structures investigating ML and associated predicate offences. The Kosovo Police Directorate on Fighting Terrorism conducts investigations in the field of terrorism financing (see detailed description under IO 7 and IO 9 respectively). The KP units do not have specific operating procedures with regard to conducting financial investigations, however inter-agency standard operating procedures for the targeting of serious crime have been established.

476. ***Criterion 30.2*** *(Mostly met)* – The law does not preclude the carrying out of parallel financial investigations. Neither does it restrict it to cases where the predicate offence is carried out in Kosovo. The existence of specialised financial investigation units in the Kosovo Police, particularly IFIS, confirms that the structural framework for financial investigations is in place. However, no financial investigations procedures have been established.

477. ***Criterion 30.3*** *(Mostly met)* – Although no specific entity has been designated as the sole authority responsible for identification and tracing of property suspected of being proceeds of crime, the respective units of the KP regularly undertake this work, usually upon request from the respective departments undertaking investigation of the predicate offence.

478. ***Criterion 30.4*** *(Met)* – Kosovo Customs and the Tax Authority are also mandated to carry out financial investigations in Kosovo with regard to ML, in their respective areas of competence pertaining respectively to smuggling offences and tax offences.

479. ***Criterion 30.5*** (*Not applicable*) – The Anti-Corruption Agency's investigative powers do not extend to the investigation (or participation therein) of ML offences arising from corruption.

Weighting and conclusion

480. Kosovo authorities should establish specific procedures for conducting parallel financial investigations, as well as for the tracing of property.

481. **Kosovo is largely compliant with Recommendation 30.**

Recommendation 31 – Powers of law enforcement and investigative authorities

482. In the 2014 AML/CFT Assessment Report, Kosovo was rated LC under former Recommendation 28. Deficiencies were mainly of an effectiveness nature.

483. ***Criterion 31.1*** *(Met)* – Article 70, Paragraph 2 of the Criminal Procedure Code provides for the collection of all necessary information for use in criminal proceedings. The law states that the Kosovo Police are required to investigate criminal offences and shall take all steps necessary to locate the perpetrator, to prevent the perpetrator or his or her accomplice from hiding or fleeing, to detect and preserve traces and other evidence of the criminal offence and objects which might serve as evidence, and to collect all information that may be of use in criminal proceedings. The Criminal Procedures Code provides for extensive powers for the collection of information that might be necessary for investigating a possible criminal offence.

484. ***Criterion 31.1(a)*** – The Criminal Procedures Code grants powers to the Kosovo Police to require the production of documents.

485. ***Criterion 31.1(b)*** – The power to search persons and premises is met through Article 70 of the Criminal Procedures Code, Paragraphs 3.5 and 3.6.

486. ***Criterion 31.1(c)*** – The power to take witness statements is met through Article 70, Paragraph 3.10 and Article 73 of the Criminal Procedures Code.

487. ***Criterion 31.1(d)*** – The possibility to seize and obtain evidence is met through the provisions of Article 112 of the Criminal Procedures Code.

488. ***Criterion 31.2*** *(Met)* – Article 88 of the Criminal Procedures Code provides the possibility of utilising covert photographic or video surveillance and covert monitoring of conversations in public places. Interception of telephone calls may be ordered against a particular person or place. The definition of covert investigation or surveillance is provided under Article 87 of the Criminal Procedures Code. Criterion 31.2 is therefore met.

489. ***Criterion 31.3*** is rated as *mostly met* on the grounds explained in the paragraphs below.

490. ***Criterion 31.3(a)*** – Although Article 87, Paragraph 1.12 refers to 'disclosure of financial data' as a means of covert or technical surveillance or investigation, there is no detail as to how the Police are empowered to carry out such actions. The register of accounts held at the CBK is not accessible to any authorities, including the FIU.

491. ***Criterion 31.3(b)*** – Under Articles 87 and 88 of the Criminal Procedures Code, the law contemplates the ability to identify assets without prior notification to the owner as a covert investigative technique.

492. ***Criterion 31.4*** *(Met)* – Article 15 of the AML/CFT Law provides the possibility for the FIU to share information with competent authorities when conducting investigations, even though the information can only be utilised for intelligence purposes and cannot be utilised as evidence before a Court of law. Paragraph 1.3 of this Article refers to any data that FIU deems appropriate in order to prevent and combat ML, FT and predicate offences. Therefore, the criterion is met.

Weighting and conclusion

493. Kosovo law enforcement authorities have the necessary powers to undertake ML and TF investigations, however there are no mechanisms available to identify control of accounts.

494. **Kosovo is largely compliant with Recommendation31.**

Recommendation 32 – Cash couriers

495. In the 2014 AML/CFT Assessment Report, Kosovo was rated LC with Special Recommendation IX. Deficiencies were related to the lack of record-keeping rules in the Customs in regard to information on declarations/false declarations and suspicions of ML/TF and no structured feedback from prosecutors to the Customs.

496. ***Criterion 32.1*** *(Met)* – Kosovo has implemented a declaration system pursuant to Article 33 of the AML/CFT Law. The definition of Article 2, para. 1.17 for monetary instruments to be declared is wide enough to include all required instruments under the definition of the glossary to the FATF Recommendations. The declaration regime applies to every person entering or leaving Kosovo as well as to every person sending or receiving monetary instruments via post, cargo shipments or commercial courier. The threshold is set at EUR 10,000 or more. The necessary forms in relation to the implementation of Article 33 were approved by Internal Instruction No. 34/2016 of the Ministry of Finance of Kosovo. Certain discretion is allowed with regard to the possibility to fill in the required information in international freight documentation in the case of Paragraph 2 of Article 33 (transportation by post, cargo shipments or commercial courier).

497. ***Criterion 32.2*** *(Met)* – The aforementioned provisions of the AML/CFT Law require written declaration of monetary instruments and their verifiable source when the amount is EUR 10,000 or more or their foreign equivalent and the obligation is not considered to be fulfilled if the information is incorrect or incomplete.

498. ***Criterion 32.3*** – *(Not applicable)*.

499. ***Criterion 32.4*** *(Mostly met)* – Customs officers have the powers pursuant to Article 33, Paragraph 14 of the AML/CFT Law to question and search natural persons, their baggage and means of transport and may seize and retain monetary instruments in accordance with the provisions of the same article of the AML/CFT Law. This should be interpreted in conjunction with Article 33, Paragraphs 3, 13, 15

and 17 which require establishing the source of the funds as well as informing the relevant authorities (prosecution and FIU) where reasonable suspicion that such monetary instruments are the proceeds of crime or were used or intended to be used to commit or facilitate money laundering or the predicate criminal offence from which the proceeds of crime were derived or are related to terrorist financing. These requirements, although not explicitly mentioned, are understood as including *de jure* information also on monetary instruments carried on behalf of third persons and legal entities.

500. It is not clear whether information can be obtained pursuant to the mentioned provision of the AML/CFT Law from post, the cargo transporter or the commercial courier (related to Paragraph 2 of Article 33) and who will be obliged to provide information in this case if information is e.g. incomplete.

501. ***Criterion 32.5*** *(Mostly met)* – Persons who do not fulfil the obligation under Paragraphs 1 and 2 of Article 33 of the AML/CFT Law are subject to an administrative pecuniary sanction pursuant to Article 33, Paragraph 5 amounting to 25% of the total amount to be declared. This would also apply in case of an incomplete or incorrect declaration, thus also including the verifiable source of the monetary instruments. This sanction is without prejudice to criminal proceedings against the person committing the violation. The pecuniary sanction is immediately payable or otherwise monetary instruments can be subject to seizure. Seizure also applies in the case of suspicion, incorrect or incomplete declaration under Paragraph 15.2 of the same article where follow-up is related to prosecutorial decisions under Paragraph 19.

502. This sanction is without prejudice to criminal proceedings against the person committing the violation. No information was provided by Kosovo authorities on the applicability of any criminal sanctions (e.g. for smuggling) in regard to the undeclared money apart from the suspicion for ML/TF or proceeds of crime.

503. At the same time, the application of Paragraph 20 raises concern as to the dissuasiveness of the sanctions considering that all seized monetary instruments pursuant to Article 33, Paragraph 15 (which refers to seizure also for incomplete or incorrect declaration) have to be returned to the person in the hypothesis of Article 33, Paragraph 19.3 where the Prosecutor informs in writing the person concerned, Kosovo Customs and the FIU that no action will be taken in relation to the seized property and that the person concerned may apply for the return of the monetary instruments. This procedure creates legal uncertainty as to the applicability of the pecuniary sanction in each and every case of the infringement of Paragraphs 1 and 2 of Article 33.

504. ***Criterion 32.6*** *(Met)* – The Customs are obliged to submit to FIU, under Article 33, Paragraph 4, copies of all declarations filed pursuant to Paragraphs 1 and 2, and to notify FIU for all incorrect or incomplete declarations. Declaration information is provided electronically in real time and information on non-declared monetary instruments, including details of the offender's personal data, the amount of non-declared monetary instruments, seized amount, etc. through an online platform. In addition, Kosovo Customs are obliged to apply measures for the prevention of ML/TF including through filing STRs to FIU (Paragraph 13 of Article 33).

505. ***Criterion 32.7*** *(Mostly met)* – Kosovo has established an institutionalised mechanism for cooperation of all relevant authorities through the Law on Cooperation amongst Agencies No. 04/L-216. This legal act lays the foundations of the Integrated Border Management system that includes all authorities of direct competence for border management and provides for mechanisms for risk and threat analysis and joint intelligence, joint operations, joint investigations, technical and professional assistance and education and training.

506. This cooperation is also based on a memorandum of understanding signed in 2014 as well as on formalised standard operating procedures.

507. The AML/CFT Law also provides for a detailed and clear mechanism on cooperation in regard to achieving the specific goals of cash control in the framework of Recommendation 32.

508. No information was provided with regard to control over the potential movement of funds related to persons designated under UNSC Resolutions, especially in the absence of an adequate legal framework to implement sanctions.

509. ***Criterion 32.8*** *(Mostly met)* – Article 33, Paragraphs 15-23 stipulate the procedure related to, on the one hand, (Paragraph 15.1) detaining of monetary instruments subject to violation of the declaration requirements under Paragraphs 1 and 2, and, on the other hand, (Paragraph 15.2), seizure of monetary

instruments in case of suspicion or in case of incomplete or incorrect declaration and impossibility to verify the source of those funds. These procedures involve providing information to both the FIU and prosecutors, and also stipulate further action to be taken by prosecutors with regard to the seized funds. Funds can also be seized under Paragraph 7 if the pecuniary sanction of 25% for the violation of the declaration requirement is not paid immediately to the Customs.

510. It is not clear what the repercussions for detaining monetary instruments are and what procedure should be followed in this regard. Moreover, there is still no requirement in Article 33 for the prosecution to provide feedback to the Customs or FIU in regard to further measures imposed for restricting monetary instruments in the cases of Paragraph 19.1 and 19.2.

511. ***Criterion 32.9*** *(Partly met)* – No legal basis has been provided authorising the Customs to cooperate internationally and exchange information relevant for this criterion and in regard to declarations, non-declaring, incorrect or incomplete declarations and further facts established.

512. Nevertheless, it is noted that Kosovo Customs can cooperate based on cooperation agreements with Albania, Finland, Turkey, Slovenia, "the former Yugoslav Republic of Macedonia", Montenegro, France, Hungary, and Austria, and also using the ILECU channel. These agreements cannot be considered sufficient in view of the risks related to cash and cash couriers in Kosovo and the region as well as the risks related to terrorism and terrorist financing, including foreign terrorist fighters (FTFs). No information on the specific provision for exchange of information pursuant to these treaties was provided in the context of this recommendation. No statistics are provided in regard to actual exchanges being carried out.

513. It is however noted that FIU, as a member of Egmont Group and recipient of all relevant information under the cash control mechanism, would be able to provide the widest range of assistance to foreign authorities under this criterion.

514. The general principles of Kosovo legislation with regard to mutual legal assistance would apply in the absence of any further specific provisions in regard to cash control.

515. With regard to international cooperation and assistance within the scope of Recommendation 36 for the purpose of cash control, it is noted that the international exchange is limited by the inapplicability of the requirement of criterion 36.1 in the case of Kosovo. At the same time international cooperation could also be limited due to the deficiencies in the criminalisation of ML and TF pursuant to the requirements of the respective conventions (as noted under the relevant FATF recommendations). No information is available in regard to the implementation of any of the relevant requirements of the Merida Convention.

516. In regard to record-keeping, some deficiencies were noted in the previous assessment report and no further information on record-keeping has been provided by Kosovo authorities (retention periods, data protection issues and limitations, etc.). Moreover, there is still no requirement in Article 33 for the prosecution to provide feedback to the Customs or FIU in regard to further measures imposed for restricting monetary instruments in the cases of Paragraph 19.1 and 19.2 which could limit international cooperation to an extent.

517. ***Criterion 32.10*** *(Partly met)* – It is noted that personal data protection rules would apply pursuant to the Law on Protection of Personal Data. Detailed rules for the FIU are discussed under Recommendation 29.

518. No information on specific procedures applied by Customs for storing, protecting and processing the information was provided by Kosovo authorities.

519. ***Criterion 32.11*** *(Mostly met)* – The sanctions provided for under the respective criminal law provisions for ML/TF or predicate offences would apply in this case (see relevant sections of the report). The AML/CFT Law provides for relevant procedures with regard to submitting information for the purpose of pursuing investigations into potential ML/TF or related predicate crime as well as for measures which would enable confiscations. Deficiencies under Recommendation 4 would apply in this respect.

Weighting and conclusion

520. Some limitations are present with regard to obtaining information from the post, the cargo transporter or the commercial courier. An uncertainty remains with regard to the applicability of

pecuniary sanctions where the Prosecution decides that no action will be taken in relation to the seized property and that the person concerned may apply for the return of the monetary instruments. International cooperation would be affected by the limited number of cooperation agreements, some record-keeping deficiencies and the limited applicability of targeted sanctions for TF.

521. **Kosovo is largely compliant with Recommendation 32.**

Recommendation 33 – Statistics

522. In the 2014 AML/CFT Assessment Report, Kosovo was rated NC for former Recommendation 32. The deficiencies related to: the need for legal basis for the maintenance of adequate statistics by all relevant authorities and reporting entities; the need for meaningful statistics on seized and confiscated property, the lack of statistics on the outcome of FIU disseminations; the lack of unified statistics to judge about the effectiveness of ML investigations and prosecutions; the need for more meaningful statistics maintained by supervisory authorities; absence of comprehensive statistics on MLA requests relating to ML, predicate offences and TF; and, the absence of comprehensive statistics on ILECU requests relating to ML, predicate offences and TF.

523. ***Criterion 33.1*** – Article 39 (Statistical data and feedback) of the AML/CFT Law stipulates that FIU, CBK and other sectoral supervisors, other competent authorities with a responsibility for combating money laundering and financing of terrorism, reporting entities as well as persons or other entities with obligations or functions in accordance with this Law, shall maintain relevant comprehensive statistical data on their area of responsibility. Kosovo Customs point out that the automated case management system which began to be applied in January of 2017 is a database used by law enforcement officials, but it is not clear what statistical information could be generated and maintained of relevance for ML/TF apart from the required cash control mechanisms. The statistics maintained by the Department for International Legal Cooperation within the Ministry of Justice does not contain information on activities related to TF.

524. ***Criterion 33.1(a)*** *(Met)* – Adequate information is maintained by FIU in this regard as required by the AML/CFT Law as well as the Administrative Instruction No. 001/2013 on Compiling Statistics, Reports and Recommendations related to Money Laundering and Terrorist Financing.

525. ***Criterion 33.1 (b)*** *(Partly met)* – Apart from statistics kept by the authorities within their own competence, the integrated statistical information kept on a regular basis is deficient and would not allow meaningful assessment of the effectiveness of ML/TF investigations, prosecutions and convictions based on the performance of all stakeholders (FIU information and information from law enforcement authorities' own sources, different types of ML, persons involved, sanctions imposed, etc.)

526. ***Criterion 33.1(c)*** *(Partly met)* – The statistics kept by different authorities are not integrated and hence do not represent meaningful information on the functioning of the system as a whole. Furthermore, the statistics do not cover all types and different aspects necessary to evaluate the various types of property confiscated (e.g. object, instrumentalities used or intended to be used, equal value confiscation etc.).

527. ***Criterion 33.1(d)*** *(Partly met)* – Detailed statistics are kept pursuant to the AML/CFT Law and demonstrated e.g. in the annual reports of the FIU, with regards to international information exchange. Detailed statistics in regard to MLA requests are maintained although certain aspects important for the assessment of effectiveness are not readily available and no separate statistics are maintained for TF cases. Detailed statistics are maintained also in regard to the law enforcement cooperation through ILECU, although they do not allow comprehensive assessment of cooperation in ML and TF cases. No statistics are maintained by supervisors (apart from FIU) in regard to AML/CFT matters and by KC and TAK.

Weighting and conclusion

528. Integrated statistics are not maintained in a way to allow the assessment of the effectiveness of the AML/CFT system. Most of the statistics related to international cooperation, although detailed, do not allow monitoring and assessment of the relevant AML/CFT issues.

529. **Kosovo is partially compliant with Recommendation 33.**

Recommendation 34 – Guidance and feedback

530. In the 2014 AML/CFT Assessment Report, Kosovo was rated partially compliant with former FATF Recommendation 25. The assessment identified technical deficiencies related to: absence of comprehensive general guidance to reporting subjects in fulfilling their obligations under the AML/CFT Law; inconsistency in the AML/CFT Law requiring all reporting subjects to develop lists of indicators of suspicious transactions; inconsistency in the AML/CFT Law requiring the FIU to issue guidance to "covered professionals" and casinos only; absence of legal mandate or other arrangement for competent authorities other than the FIU to issue guidance and regulations; and, the absence of a legal mandate for the FIU to provide feedback.

531. ***Criterion 34.1*** *(Met)* – Paragraph 2 of Article 66 of the AML/CFT Law defines that the FIU, CBK and sectoral supervisors, on a periodic basis and in close cooperation and coordination, shall adopt, amend or repeal sub-legal acts with the aim of providing policy, instructions or guidance to reporting subjects for the implementation of obligations under the law, as well as for promoting and ensuring their compliance with the law.

532. In addition to the above broad authorisation of the competent authorities (including supervisors) to establish guidelines, certain provisions of the AML/CFT Law contain more specific language on the areas and issues that should or may be regulated by additional means.

533. Particularly, Paragraph 1.11 of Article 14 of the AML/CFT Law authorises the FIU to adopt sub-legal acts, issue directives and instructions on the matter related to ensuring or promoting compliance with the Law, including but not limited to: a) the use of standardised reporting forms; b) suspicious acts or transactions, including the nature of suspicious acts or transactions for the purposes of the Law, and compiling the lists of indicators of such acts and transactions; and c) the exemption of persons or entities or categories of persons or entities from reporting obligations under the Law, and the methods of reporting such exemptions.

534. Paragraph 5 of Article 21 of the AML/CFT Law entitles the FIU to issue sub-legal acts to define the fit and proper criteria for compliance officers, the requirements to be met by them, the powers and responsibilities of the compliance function and other issues related to the implementation of the obligations under the law.

535. Paragraph 5 of Article 23 of the AML/CFT Law defines that the FIU in cooperation with sectoral supervisors shall issue sub-legal acts to reporting subjects related to associated risk factors that are to be taken into consideration and/or action that is to be taken in situations where simplified due diligence is appropriate. Paragraph 6 of the same article sets out that the CBK shall issue a sub-legal act to identify the risk factors to be taken into consideration and/or action to be taken in situations where simplified due diligence is appropriate for banks and financial institutions, and Paragraph 8 of Article 24 of the AML/CFT Law empowers it to issue sub-legal acts regarding international and domestic transfers executed as batch transfers.

536. Paragraph 6 of Article 30 of the AML/CFT Law establishes that the FIU and the sectoral supervision authority may adopt, amend or repeal sub-legal acts in accordance with the policies, objectives and goals of the law, as applicable to casinos and other licensed games of chances. Furthermore, Paragraph 11 of Article 31 sets out that the FIU and the sectoral supervisor may adopt, amend or repeal sub-legal acts in accordance with the policies, objectives and goals of the law, as applicable to covered professionals. Finally, Paragraph 3 of Article 39 provides that the FIU, the CBK or a sectoral supervisory authority shall issue sub-legal acts on the maintenance of statistics to those sectors under their supervisory remit.

537. In the implementation of the above provisions, the FIU has issued a number of administrative instructions, directives and other guidance facilitating application of national AML/CFT measures and, in particular, detection and reporting of STRs (including the administrative directives providing indicators of ML/TF suspicious activity).

538. Among other competent authorities, the CBK has issued the Regulation on the Prevention of Money Laundering and Terrorist Financing, as well as the Instruction on Identifying Beneficiary Owners. Kosovo Customs has issued an internal guideline on the content and shape of standard forms/certificates set out in Article 33 of the AML/CFT Law (regarding declared cross-border movements of currency and other monetary instruments).

539. Paragraphs 5 and 6 of Article 39 of the AML/CFT Law stipulate that the FIU shall notify the reporting subjects with regard to: a) records of the number of STRs; b) results brought about by such reporting, where applicable; and c) information on ML/TF trends and techniques.

Weighting and conclusion

540. The criterion defining requirements regarding establishment of guidelines and provision of feedback is met.

541. **Kosovo is compliant with Recommendation 34.**

Recommendation 35 – Sanctions

542. In the 2014 AML/CFT Assessment Report, Kosovo was rated partially compliant with former Recommendation 17. The assessment identified technical deficiencies related to: concerns over the applicability of certain provisions of the AML/CFT Law for administrative sanctioning purposes; concerns over dual criminal offences in the AML/CFT Law and specific financial legislation carrying different penalties; non applicability of sanctions to reporting subjects that are not in the form of a legal person; legal ambiguity on the application of penalties for breaches of obligations that are not covered by the AML/CFT Law; legal uncertainty on the designation of a competent authority to impose administrative sanctions; legal uncertainty on the application of administrative and other penalties to directors and senior management of reporting subjects; absence of a range of disciplinary administrative sanctions; and, concerns over the applicability of prudential administrative and other sanctions under the specific financial legislation for the purposes of the AML/CFT Law.

Definition and classification

543. ***Criterion 35.1*** *(Partly met)* – According to Article 40 of the AML/CFT Law, the failure of the reporting subjects to comply with their AML/CFT obligations – unless constituting a criminal offence – shall constitute an administrative violation categorised into very serious, serious and minor violations.

544. Very serious violations include the failure to comply with the requirements to report to the FIU (Article 26), to provide the data, documents or information requested by the FIU (Paragraph 1.4 of Article 14), to implement instructions of the FIU to refrain from conducting transactions, or to ensure monitoring of accounts/business relationships (Paragraph 1.12 of Article 14), to take remedial actions recommended by the FIU, the CBK or other sectoral supervisors, and to freeze or block funds (Article 27). Serious violations include the failure to comply with a number of substantial requirements under the AML/CFT Law, and minor violations are defined to cover all violations other than those classified as very serious and serious ones.

545. There are certain technical deficiencies regarding the definition and substantial inconsistencies regarding the classification of the violations of AML/CFT requirements.

546. In terms of **technical deficiencies**, Paragraph 1.3 of Article 41 refers to the failure of the reporting subjects to comply with "the obligations of sub-paragraph 1.12 of Article 14 of this Law", whereas the referred provision in Article 14 defining the authorisation of the FIU to issue orders on non-execution of transactions or monitoring of accounts does not establish any obligation for the reporting subjects.

547. Then, Paragraph 1.6 of Article 41 refers to the failure of the reporting subjects to comply with "the obligation to freeze or block funds as defined in Article 27 of this Law", whereas Article 27 defining the obligation for temporary freezing of transactions does not require freezing of funds and does not use the term "block" in relation to either transactions or funds.

548. Further on, Paragraph 1.10 of Article 43 refers to the failure of the reporting subjects to comply with "the obligation of reporting to FIU, as defined under Paragraph 9 of Article 19 of this Law", whereas Paragraph 9 of Article 19 establishing that the reporting subjects are not anyhow restricted in the opportunity to file a STR pursuant to Article 26 of the Law (i.e. whenever they have ML/TF suspicions) does not define any obligation of reporting to the FIU.

549. Similarly, Paragraph 1.21 of Article 43 refers to the failure of the reporting subjects to comply with "the obligation to undertake remedial measures following written formal request as set out in sub-paragraph 7.1. of Article 34 of this Law", whereas the referred provision in Article 34 defining the authorisation of the FIU, the CBK and other sectoral supervisors to recommend improvement

measures does not establish any obligation for the reporting subjects. Moreover, the same conduct of the reporting subjects, i.e. the "failure to comply with the obligation to undertake remedial actions according to the official recommendation of FIU, CBK or other sectoral supervisors" is defined as a very serious violation under Paragraph 1.4 of Article 41.

550. Also, Paragraph 1.3 of Article 46 refers to the ability of FIU, CBK and other sectoral supervisors to impose "recommendations for remedial measures" as a sanction for minor violations, which is irrelevant insofar as requiring remediation of a violation, by definition, does not constitute a sanction.

551. In terms of **substantial inconsistencies**, the classification of violations does not appear to be based on and stem from due consideration of the following key criteria:

    a) Nature of violation – which is distinguished as per the specific categories of violated obligations related to, *inter alia*, ML/TF risk assessment, CDD and record keeping, internal controls, STR reporting, freezing measures;

    b) Severity of violation – which is distinguished as per recurrence[85] (e.g. multiple failures to report STRs vs. a single case of non-reporting), scope and coverage (e.g. numerous failures of BO identification vs. few cases of missing beneficiary address in wire transfers), characteristics of the subject matter (e.g. significant business relationship vs. small occasional transaction);

    c) Form of violation – which is distinguished as per the intentional[86] (e.g. failure of the compliance officer to classify his relatives as high risk) or negligent (e.g. failure of the customer service staff to retain the copy of the customer's ID document) conduct of the violator;

    d) Consequences of violation – which are distinguished as per the loss incurred (e.g. failure to identify a PEP having resulted in significant supervisory fines and reputational harm), the factual occurrence of ML/TF (e.g. failure to identify UN-designated persons having resulted in a committed terrorism financing case).

552. In relation to the above, it is not clear why, for example, the failure of the reporting subject to report to the FIU a single non-suspicious transaction at the value of EUR 10,000 or more (as required under Article 26) is classified as a very serious violation, whereas the failure to apply enhanced CDD (as required under Article 22) is classified as a serious violation without due appreciation of the nature and severity, as well as the form and consequences of the violation.

553. Likewise, it is not clear why the failure of the reporting subject to notify the FIU on the identity of the compliance officer (as required under Paragraph 8 of Article 21) is classified as a serious violation, whereas the failure to appoint a compliance officer (as required under Paragraph 1 of Article 21) is classified as a minor violation due to specificity of the language defining violations with reference to specific articles and paragraphs in the law. In relation to the latter, the failure to comply with the requirements of a number of articles (e.g. Articles 28-31) and certain paragraphs is classified as a minor violation with no apparent logic or underlying substantiation.

Applicable sanctions

554. For very serious violations, the FIU may impose administrative sanctions such as a written public warning and a fine ranging between EUR 50-350 thousand (for banks and other financial institutions – up to EUR 700 thousand), as well as request revocation of authorisation for operation (license). Except for the fine imposed on the reporting subject, a fine up to EUR 100,000 (and dismissal from duty with subsequent disqualification may be applied to natural persons responsible for a violation and holding administrative or managing posts in the reporting subject.

555. For serious violations, the FIU, as well as the CBK and other sectoral supervisors – where this competence is given under the written individual arrangements with the FIU pursuant to Paragraph 5 of Article 34 of the law – may impose administrative sanctions such as a private warning and a fine

[85] The provision in Paragraph 2 of Article 43 stipulating that "except if there are indicators or suspicions for money laundering or terrorist financing", serious violations related to CDD obligations under Article 19 and record keeping obligations under Article 20 may be classified as minor violations if they are considered to be "random or isolated violations depending on the percentage of the pattern incidents of compliance" does not give the sense that the regulator has followed a holistic and consistent approach taking into consideration all key criteria for classification of violations.

[86] Intentional violations may result in imposition of administrative or criminal sanctions (the latter depending on consequences and mercenary/other motivation).

ranging between EUR 20-30,000. Except for the fine imposed on the reporting subject, a private or public warning, a fine up to EUR 20,000 and temporary suspension from duty may be applied to natural persons responsible for a violation and holding administrative or managing posts in the reporting subject.

556. For minor violations, the FIU, as well as the CBK and other sectoral supervisors – where this competence is given under the written individual arrangements with the FIU pursuant to Paragraph 5 of Article 34 of the law – may impose administrative sanctions such as a private warning, a fine up to EUR 15,000, and recommendations for remedial measures.

557. Then, Article 47 defines that "in addition to the obligation corresponding with the reporting entity, persons holding administrative or management positions in the reporting entity, whether sole administrators or collegiate bodies, shall be liable for any violation which is attributed to the latter". In relation to this, it is not clear how this provision can be coherently (i.e. on interchangeable or mutually exclusive basis) applied along with those in Articles 42 and 44 defining sanctions with regard to natural persons responsible for violation and holding administrative or managing posts in the reporting subject.

558. Moreover, the significant difference in the amount of the fines that can be applied by the FIU on one hand and the CBK and other sectoral supervisors on the other hand appears to lack rationale in terms of addressing violations based on the criteria of nature, severity, form and consequences. The fact that the ability of the CBK and other sectoral supervisors to impose sanctions is contingent on the written individual arrangements with the FIU raises concerns about the applicability of the sanctioning framework as a whole.

559. Overall, given the technical deficiencies regarding the definition and substantial inconsistencies regarding the classification of the violations as described above, it does not appear that the AML/CFT Law provides a range of proportionate and dissuasive sanctions available to deal with natural or legal persons that fail to comply with the AML/CFT requirements.

560. As mentioned in the analysis under Recommendation 8, the Law on NGOs provides for sanctions of suspension or revocation of registration as well as revocation of the public beneficiary status of NGOs. With regard to the liability of managers and staff of NGOs, there are no corresponding provisions to ensure that such liability is realised in practice through any sanctions. It is also not clear how the provisions of Articles 13-16 of the Law on NGOs in regard to internal governance, financial operations, or conflicts of interests would be enforced/sanctioned in practice.

561. In the context of implementation of Recommendation 6, the Law No. 03/L-183 on Implementation of International Sanctions foresees liability for natural and legal persons, the detailed norms and procedures for administering this liability have however not been put in place.

562. ***Criterion 35.2*** *(Met)* – As shown in the analysis for criterion 35.1, sanctions are applicable not only to financial institutions and DNFBPs, but also to their directors and senior management.

Weighting and conclusion

563. The following facts and circumstances have been considered to determine the rating for Recommendation 35:

- There are certain technical deficiencies regarding the definition and substantial inconsistencies regarding the classification of the violations of AML/CFT requirements (c.35.1); and
- It does not appear that the AML/CFT Law provides a range of proportionate and dissuasive sanctions available to deal with natural or legal persons that fail to comply with the AML/CFT requirements (c.35.1).
- Sanctions mechanisms have not been put in place in order to ensure compliance with Recommendations 6 and 8.

564. **Kosovo is partially compliant with Recommendation 35.**

Recommendation 36 – International Instruments

565. The relevant recommendation in the 2014 AML/CFT Assessment Report was rated not applicable, which remains valid in regard to the current assessment.

566. It is noted, though, that the implementation of some of the requirements of the relevant conventions is reflected in the relevant Recommendations on criminalisation of ML and TF. No information is provided by Kosovo authorities on any other specific aspects of the implementation of required provisions. No information is available on the implementation of Articles 38, 40, 46, 48, 50-55 and 57-58 of the Merida Convention.

567. **Recommendation 36 is not applicable to Kosovo.**

Recommendation 37 – Mutual legal assistance

568. In the 2014 AML/CFT Assessment Report, Kosovo was rated PC with former Recommendation 36 on the grounds of lack of service standards on turnaround times of foreign requests which could impede effectiveness of the system, effectiveness and timeliness of processing requests and backlogs. Special Recommendation V was rated LC due to the potential impact of dual criminality combined with the deficiencies in criminalising TF.

569. ***Criterion 37.1*** *(Mostly met)* – The only change to the relevant legislation that has occurred since the previous assessment report is the new AML/CFT Law. The legal basis for providing mutual legal assistance is the Law No. 04/L-213 on International Legal Cooperation in Criminal Matters (MLA Law) as well as Article 62 of the AML/CFT Law. The latter, however, does not contain any detailed requirements and procedures in regard to its scope and thus does not contribute to the already detailed regime. A possible exception relates to the reference to any court proceedings which could extend the scope of application of international cooperation, e.g. for the purposes of postponement of operations under the AML/CFT Law.

570. International legal cooperation is carried out pursuant to Article 1 of the MLA Law based on international agreements or the principle of reciprocity where an international agreement is absent. The law allows the widest range of assistance referring to the procedures of the CPC as well as providing further procedures under Article 89 and 98.

571. MLA requests are to be channelled through the respective department in the Ministry of Justice (Department of International Legal Cooperation) although the law stipulates the use of diplomatic channels where necessary. At the same time, the AML/CFT Law requires the use of diplomatic channels. These complementary provisions could potentially impact timeliness of receiving and executing the request concerning ML/TF.

572. The direct cooperation with foreign counterparts is not allowed except for urgent cases under Article 4, Paragraph 2 of the MLA Law which allow for the provision of assistance even if the request is directly received (to be followed by confirmation in writing through the official channel).

573. The dual criminality could only impact the TF MLA cooperation (combined with the deficiencies in TF criminalisation) to a limited degree as it is explicitly required only in the case of coercive measures (search, seizure and confiscation, Article 90 of MLA Law). At the same time, it is not clear whether the new requirement of Article 62 of the AML/CFT Law would also cover TF as it explicitly refers to terrorism.

574. ***Criterion 37.2*** *(Mostly met)* – Mechanisms are established by the MLA Law (see above). There are no legal provisions specifying explicit deadlines for the execution of requests, although Article 80, Paragraph 4 of the MLA Law requires taking into account any procedural deadlines and any other terms indicated by the requesting state. The aforementioned possibility to execute a request directly under Article 4, Paragraph 2 in urgent cases is also considered of importance in regard to timeliness. The requirement to send the request to the respective Basic Prosecution Office despite the fact that the case might be of the competence of e.g. in ML cases of the SPRK adds an unnecessary element in the execution chain.

575. The respective MoJ Department is using an electronic system managing requests, although it is not clear whether it could fully serve the purpose of prioritisation and monitoring progress. No such system is used by the other authorities.

576. ***Criterion 37.3*** *(Met)* -Article 2 of the MLA Law requires application of the law to be subordinate to the protection of interests of sovereignty, security, public order, and other interests of Kosovo as defined by the Constitution. Article 85 provides for the specific reasons to refuse a request for MLA which are

limited and thus cannot be considered unreasonable or unduly restrictive. These include the cases when the request concerns a political offence; the execution of the request is likely to prejudice the sovereignty, security, *ordre public*, or other essential interests of Kosovo; the request is contrary to the legal system of Kosovo.

577. ***Criterion 37.4*** *(Met)* – Reasons for refusal are explicitly stipulated in Article 85 of the MLA Law and do not include either involvement of fiscal matters or grounds related to secrecy. Moreover, Article 63 of the AML/CFT Law stipulates that professional secrecy cannot be used as a reason for refusing to provide information that should be disclosed in accordance with this law or collected and kept in accordance with this law and required either by the FIU or the police regarding an investigation into money laundering and the financing of terrorism ordered or carried out under the supervision of the prosecutor or investigating judge. The only exception is the case of lawyer-client privilege.

578. ***Criterion 37.5*** *(Met)* – The matter is subject to the regulation of Article 5 of the MLA Law requiring the confidentiality of the request to be ensured as requested and the other party to be informed if the confidentiality cannot be ensured.

579. ***Criterion 37.6*** *(Met)* – Dual criminality only applies pursuant to Article 90 of the MLA Law in regard to search, seizure and confiscation.

580. ***Criterion 37.7*** *(Met)* – As noted above, dual criminality is required in the circumstances of Article 90 of the MLA Law and the mentioned provision does not explicitly require the offence to be placed in the same category or to use the same terminology. No further information is available to indicate any potential interpretation to the contrary.

581. ***Criterion 37.8*** *(Met)* – Pursuant to Article 1, Paragraph 4 of the MLA Law and Article 62, Paragraph 2 of the AML/CFT Law all procedures under the CPC would be applicable. The MLA Law broadens the available powers (e.g. in Article 89 and 98), namely the hearing through video conference and the option to use joint investigation teams).

Weighting and conclusion

582. Potential limited impact of dual criminality related to TF cooperation. No strict deadlines provided by legislation.

583. **Kosovo is largely compliant with Recommendation 37.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

584. In the 2014 AML/CFT Assessment Report, Kosovo was rated PC with regard to Recommendation 38 due to the lack of consideration for establishing an asset forfeiture fund, lack of arrangements for coordinating seizure or confiscating actions with other countries, as well as sharing of assets with other countries, effectiveness not proven.

585. ***Criterion 38.1*** *(Partly met)* – Both Article 62 of the AML/CFT Law and Article 90 of the MLA Law authorise taking action in response to foreign requests to identify, freeze, seize, or confiscate assets. At the same time, although no further information on this was provided by Kosovo authorities, the procedures under Chapter V of the MLA Law are still considered to be applicable for confiscation based on recognition and enforcement of foreign judgments (particularly Article 74) and subject to different conditions for recognition (Article 72). No timeframe is specified for the execution of the requests.

586. As far as the specific property that could be subject to confiscation, the technical deficiencies under the general confiscation regime would apply.

587. ***Criterion 38.2*** *(Not met)* – There are no legal provisions that would allow confiscation without prior conviction in the majority of cases. Non-conviction based confiscation would be only possible if there is an indictment and the defendant dies or flees the country pursuant to the Law on Extended Powers for Confiscation of Assets.

588. ***Criterion 38.3*** *(Not met)* – Kosovo authorities provided information that such arrangements constitute part of the bilateral agreements with a number of countries, including Germany, Italy, Hungary, "the former Yugoslav Republic of Macedonia", Croatia, Turkey, Albania.

589. At the same time, Article 15 of Law No. 05/L-049 on the Management of Sequestrated and Confiscated Assets authorises the Agency for the Management of Sequestrated and Confiscated Assets (AMSCA) to assume responsibility for assets, where a request is received in Kosovo from another country in respect of those assets, and the Courts in Kosovo have accepted the request. This, however, would apply only if those assets have been transferred to the Agency for management. This does not appear to be a mandatory procedure and would limit the applicability of this property management by the Agency.

590. ***Criterion 38.4*** *(Partly met)* – There are no restrictions in Kosovo legislation in regard to sharing confiscated property with other countries, but it appears that it should be based, pursuant to Art. 15 of the Law on the Management of Sequestrated and Confiscated Assets, on international agreement. Art. 75 of the MLA Law also refers to the possibility of such agreements. No further information is provided by the authorities to conclude on the actual application of this criterion.

Weighting and conclusion

591. The majority of the criteria under Recommendation 38 are not met.

592. **Kosovo is partially compliant with Recommendation 38.**

Recommendation 39 – Extradition

593. In the 2014 AML/CFT Assessment Report, Kosovo was rated PC on Recommendation 39 on the grounds that the introduction of administrative conflict procedure against the final decision of the Minister of Justice causes effectiveness issues and it is not possible to conclude extradition is carried out without delay.

594. ***Criterion 39.1*** *(Partly met)* – According to Article 10 of the Law on International Legal Cooperation in Criminal Matters (MLA Law), extradition for criminal proceedings is allowed for criminal offences punishable by imprisonment for a period of at least one year and for the purpose of enforcing a sentence - if it exceeds 4 months. Thus, ML is an extraditable offence. As noted in the previous assessment report there is lack of legal certainty in regard to the applicability of extradition to the TF offence given the restrictions to extradition in case of political offences (Article 14 of the MLA Law), which excludes terrorism but not explicitly terrorist financing.

595. Deadlines are provided for in the MLA Law with regard to the execution of different steps in the process of reaching a final decision on extradition starting from the receipt by the Ministry of Justice, forwarding to the Prosecution and subsequent judicial procedure (Articles 20-23 of the law). As noted in the previous assessment report, however, the appeal procedures provided for in Articles 28-30 could result in undue delay in the execution of extradition requests. This, together with the lack of case management system for the authorities apart from the Ministry of Justice (apart from the possibility of the MoJ to request information on the development of the case in each stage), is considered detrimental to the implementation of criterion 39.1.

596. Conditions for the execution of the extradition requests are provided for in Articles 9-17 of the MLA Law and include dual criminality requirement. The latter could have a detrimental effect on the execution related to the deficiencies in the TF criminalisation. Otherwise, refusal grounds do not seem unreasonable or unduly restrictive.

597. ***Criterion 39.2*** *(Mostly met)* – Pursuant to Article 6, Paragraph 2 of the MLA Law Kosovo citizens cannot be extradited against their will except in the case of international agreement. Similar agreement allowing extraditing Kosovo citizens is currently in force with Albania and also with the United States.

598. Article 31 of the MLA Law provides for the option for competent Prosecution Office to initiate criminal proceedings against the person in Kosovo, if the extradition has been refused. Despite this option there are no specific procedures provided for in the law to ensure proper implementation or implementation without delay.

599. ***Criterion 39.3*** *(Mostly met)* – As mentioned above conditions for the execution of the extradition requests are provided for in Articles 9-17 of the MLA Law and include dual criminality requirement. There are no legislative requirements to place the offence in the same category or use the same terminology for the offence. No further information (legislation, jurisprudence) is provided by Kosovo

authorities to ascertain that the dual criminality requirement would be fulfilled based on the underlying conduct and not on the same terminology or category of offence.

600. ***Criterion 39.4*** *(Met)* – Simplified mechanisms are in place pursuant to Article 24 of the MLA Law, namely a person is to be extradited through the simplified extradition procedure provided that the person consents to it and that the requesting state accepts extradition through the simplified procedure. Extradition based solely on arrest warrant (e.g. through the European Arrest Warrant system) is not possible despite the requirement to undertake provisional arrest in this case (Article 22, Paragraph 2 of MLA Law).

Weighting and conclusion

601. Significant concerns remain with regard to the ability of the authorities to execute extradition requests without undue delay.

602. **Kosovo is partially compliant with Recommendation 39.**

Recommendation 40 – Other forms of international co-operation

603. In the 2014 AML/CFT Assessment Report, Kosovo was rated LC of Recommendation 40 and Special Recommendation V with underlying deficiencies relating to: effectiveness with regard to international police cooperation was not demonstrated; no service standards on turnaround times of foreign requests which could impede effectiveness; lack of FIU power to request obliged entities for information based on a request of a foreign FIU; and, the lack of FIU power to suspend or postpone a transaction at the request of a foreign FIU.

604. ***Criterion 40.1*** *(Mostly met)* – Article 62 of the current AML/CFT Law provides for the widest range of international cooperation, stipulating that the competent authorities of Kosovo undertake the provision of the most extensive means of cooperation with the authorities of foreign states in order to exchange information, investigations and judicial proceedings concerning temporary measures for securing property and orders for confiscation related to money laundering means and property acquired through criminal offences and for the purpose of prosecuting perpetrators of money laundering and terrorist activity.

605. Article 92 of the MLA Law defines that without hindering the course of investigations or criminal proceedings, the local judicial authorities may, without prior request, forward to the competent authority of another state information obtained during their investigation, when they consider that disclosure of such information may assist the receiving State in initiating or conducting investigations or criminal proceedings or may lead to a request for mutual legal assistance from the receiving state.

606. One issue might be related to the term "terrorism" used under Article 62 and some legal uncertainty whether it would refer to TF as well (please see also relevant discussion under Recommendation 37). Another concern stems from the referral to the CPC for the procedures to be followed to provide the widest range of international cooperation. On the one hand this provides certainty that the range of tools used domestically would be applied but, on the other hand, the need for specific legal basis for the different authorities to exchange information outside the framework of investigations remain. Such domestic legal basis is available for FIU, CBK but not, e.g. for Kosovo Customs outside the specific international agreements.

607. The relevant article for the FIU exchange of information is Article 15, Paragraph 4 of the AML/CFT Law, which follows the requirements of information exchange in the Egmont Principles. Moreover the FIU can now use, spontaneously or upon request, all available or obtainable information under the AML/CFT Law for the purposes of international information exchange.

608. ***Criterion 40.2(a)*** *(Mostly met)* – The relevant authorities cooperate based on provisions in their respective legislation, the MLA Law or the general enabling provisions in the AML/CFT Law. It seems that Customs do not have any legal basis for cooperation outside the international agreements concluded (12 such agreements based on the Law on International Agreements, No. 04/L-052, Article 4 and Article 12), although the exchange through ILECU would be used for law enforcement purposes.

609. ***Criterion 40.2 (b)*** *(Mostly met)* – FIU is conducting exchange based on Egmont Principles and respective channels. No information is available on the means to cooperate of the supervisory

authorities (or for supervisory purposes). The procedures for ensuring prioritisation under the MLA cooperation are discussed under the relevant recommendation. ILECU is also relying on liaison officers of other countries accredited to Kosovo and indirect channels are available for exchange with Interpol and Europol. The customs authorities rely on international agreements and respective channels provided for in those agreements (currently 12 agreements are concluded) as well as ILECU.

610. ***Criterion 40.2 (c)*** *(Mostly met)* – Clear and secure gateways are available in regard to FIU exchange and in cooperation pursuant to the MLA Law, including the possibility for direct execution in urgent cases. A clear mechanism is also provided pursuant to Article 219 of the CPC. No specific information is available in regard to supervisory cooperation as well as on the exact procedure followed by ILECU.

611. ***Criterion 40.2 (d)*** *(Mostly met)* – Police exchange is carried out through ILECU and timeliness are guaranteed by the requirements of the MoU for coordination and support for ILECU of 2011.

612. The assessment team were not informed on any specific procedures for ensuring rapid exchange in regard to supervisory authorities.

613. ***Criterion 40.2(e)*** *(Mostly met)* – For the FIU, specific exchange procedures and protection under the Law on Classification of Information and Security Clearance would apply.

614. Article 5 of the MLA Law introduces a general requirement for MLA requests to be kept confidential respecting the requirements of the requesting state and informing the requesting state when it is not possible to observe those requirements.

615. Information on other safeguard provisions is not available to the assessment team.

616. ***Criterion 40.3*** *(Met)* – Kosovo authorities have undertaken significant effort to ensure bilateral agreements are in place where necessary for the exchange of information. Information on agreements in the remit of the supervisory authorities was not provided.

617. ***Criterion 40.4*** *(Met)* – No impediments are noted in regard to the possibility to provide feedback pursuant to the AML/CFT Law as well as the MLA Law. At the same time there are no specific procedures in this regard apart from the principles guiding the FIU exchange of information.

618. ***Criterion 40.5*** *(Mostly met)* – No legal requirements of the MLA cooperation were found under the respective analysis under Recommendations 37-39 to place unduly restrictive conditions for the exchange of information, including on the possibility to exchange information where fiscal matters are involved, professional secrecy (Article 63 of the AML/CFT Law), and the nature and status of the counterpart authority (within the specified purposes of the law). At the same time, Article 87 provides for postponed or partial execution if execution of a request for mutual legal assistance would prejudice investigations, prosecutions, or court proceedings in line with criterion 40.5.(c).

619. Article 92 of the MLA Law defines that without hindering the course of investigations or criminal proceedings, the local judicial authorities may, without prior request, forward to the competent authority of another state information obtained during their investigation, when they consider that disclosure of such information may assist the receiving State in initiating or conducting investigations or criminal proceedings or may lead to a request for mutual legal assistance from the receiving state.

620. The same conclusions can be reached in regard to FIU cooperation.

621. No information is available in regard to the fulfilment of these criteria in the framework of Customs cooperation and cooperation for supervisory purposes.

622. ***Criterion 40.6*** *(Mostly met)* – The confidentiality requirements pursuant to the AML/CFT Law and the MLA Law as discussed elsewhere are considered to provide sufficient safeguards.

623. Kosovo Customs would be required to abide by the requirements of the respective agreements for cooperation. It is not clear what procedures would apply in regard to supervisory cooperation.

624. ***Criterion 40.7*** *(Mostly met)* – The international cooperation would be subject to the requirements of the Law on Personal Data Protection (Article 51 on the conditions of personal data transfer, including effective protection by the receiving authority, Article 3 and 14) which would ensure compliance with the criterion for personal data.

625. It is not clear what specific provisions are applicable for the supervisory authorities (apart from FIU).

626. ***Criterion 40.8*** *(Mostly met)* – The MLA Law as well as Article 62 of the AML/CFT Law seem to fully allow the competent authorities to conduct enquiries using all the procedures applicable to them (of the CPC). FIU powers to under Article 14 and 15 provide sufficient legal basis as well.

627. It is not clear whether the CBK, acting as a supervisor, could conduct such enquiries.

628. The Kosovo Customs could conduct enquiries on behalf of foreign counterparts pursuant to the agreements concluded and based on their own powers.

629. ***Criterion 40.9*** *(Met)* – The respective powers of the FIU are provided for in Article 14 and 15 of the AML/CFT Law.

630. ***Criterion 40.10*** *(Met)* – FIU is a member of the Egmont Group and as such applies the Principles. No information is provided by the authorities on the specific procedures adopted internally as far as feedback is concerned, although there seem to be no legal obstacles to the possibility to provide feedback.

631. ***Criterion 40.11*** *(Met)* – The criterion is considered to be fully met in view of the wide definition of the information that could be provided by the FIU in its cooperation under the AML/CFT Law. Reciprocity is not explicitly required and MoUs are an additional tool to facilitate information exchange, though they are not required for the exchange to be carried out.

632. ***Criterion 40.12*** *(Met)* – Article 79 of the Law on Banks, MFI and NBFI, Paragraph 1 and Paragraph 2 defines that the CBK within its competence and tasks may exchange information on supervisory issues with financial supervisory authorities in Kosovo and in other countries. Article 80 regulates secrecy and it is applied together with Article 74 of the Law on CBK, Paragraph 2 to enable provision of information falling under the secrecy requirements to regulatory and supervisory authorities or to public international financial institutions. International agreements with other authorities do not seem to be a requirement for the information exchange although they are provided for under Paragraph 2 of Article 79 for the purpose of facilitation of the exchange.

633. ***Criterion 40.13*** *(Met)* – No provisions seem to restrict the application of this criterion.

634. ***Criterion 40.14*** *(Mostly met)* – The Law on Banks as well as the AML/CFT Law provide sufficient access to information required to be exchanged under this criterion including as part of supervision for the implementation of the AML/CFT Law. Access to transaction information would be limited in the circumstances of Article 26, Paragraph 4 of the AML/CFT Law in conjunction with Article 36, Paragraph 1 of the same law (suspicious transactions).

635. ***Criterion 40.15*** *(Not met)* – There are no specific provisions allowing the CBK to conduct enquiries or authorising foreign counterparts to conduct such enquiries themselves.

636. ***Criterion 40.16*** *(Mostly met)* -Article 80, Paragraph 2 of the Law on Banks would apply in regard to keeping the confidentiality of information together with Article 74 of the Law on CBK. These provide general requirements and it is not clear whether there is any requirement to inform counterparts of the respective legal obligations (in Article 74 of the Law on CBK) to disclose or report the information.

637. ***Criterion 40.17*** *(Mostly met)* -The memorandum on the establishment of ILECU, Art, 219 of the CPC, as well as the already discussed provisions of the MLA Law and the AML/CFT Law would apply. In these cases domestically available information obtainable under the AML/CFT Law and the criminal procedure code could be exchanged.

638. It remains unclear what the legal grounds are for exchanging information (intelligence) gathered using police powers and what information can actually be gathered (outside the scope of MLA cooperation).

639. The exchange in regard to Europol and Interpol would be indirect, through the mediation of international institutions in Kosovo.

640. Some concerns remain in regard to the possibility to exchange in all cases information on instrumentalities in view of deficiencies identified under Recommendation 4.

641. ***Criterion 40.18*** *(Partly met)* – There is no information provided in regard to the legal grounds for the use of powers of the Kosovo Police to conduct inquiries and obtain information including through the use of special investigative techniques (outside the remit of the MLA Act and Article 62 of the AML/CFT

Law). While the CPC would apply in the case of formal investigations it is not clear what would be the powers to gather intelligence based on foreign request.

642. Considering the indirect exchange with Interpol and Europol, it is not clear what rules are applicable to guarantee that restrictions on use imposed by the requested law enforcement authority are observed.

643. ***Criterion 40.19*** *(Met)* – Article 98 of the MLA Law stipulates that the competent authorities of Kosovo, by mutual agreement with one or more states, can form joint investigative units for a particular purpose and for a limited period of time, with the intent to conduct investigations in one or more states that have formed the unit. The time period may be extended by agreement between the parties.

644. ***Criterion 40.20*** *(Met)* – Indirect exchange of information is possible through the FIU pursuant to Article15, Paragraph 4 in conjunction with Article 14, Paragraph 1.5 of the AML/CFT Law.

Weighting and conclusion

645. There are no significant obstacles to international cooperation of Kosovo authorities and some issues are mainly related to the unclear powers of the supervisory authorities.

646. **Kosovo is largely compliant with Recommendation 40.**

Compliance with FATF Recommendations

Recommendation	Rating	Factors underlying the rating
1. Assessing risks and applying risk-based approach	**PC**	• Identification and assessments of risks have significant methodological shortcomings, including the confounding of threats vulnerabilities and consequences; hence ML/TF risks have not been properly and comprehensively identified. • Designated mechanism for risk coordination is limited in its coordination function. • There was no proper dissemination of the NRA Report to the private sector; • Resource reallocation based on NRA results have been put in place only for the FIU and CBK and not for other authorities • High risks identified by Kosovo authorities are not addressed at the level of reporting entities • Simplified due diligence is allowed with no link to a risk assessment by authorities.
2. National cooperation and coordination	**LC**	• Deficiencies in high-level policy and strategic coordination between AML/CFT and adjacent sectors; • No coordination mechanisms are in place to combat PF.
3. Money laundering offence	**LC**	• The texts prescribing liability of legal persons in the AML/CFT Law (Article 60) and the CC differ. • There is a lack of proportionality and dissuasiveness of penalties that apply both for natural and legal persons. • There is a failure to include market manipulation as a predicate offence.
4. Confiscation and provisional measures	**PC**	• There is uncertainty regarding the powers of the authorities to identify and trace assets and their ability to take steps to prevent or void actions that prejudice the freezing of assets or seizure or recovery of property subject to confiscation. • It is unclear to what extent it is possible to confiscate assets connected to the financing of terrorism without a specific link to a terrorist act. • There are a number of overlapping procedures for provisional measures, which create confusion in their practical application.
5. Terrorist financing offence	**PC**	• Deficiencies in the criminalisation of various terrorist offences prescribed in the nine treaties annexed to the TF Convention and the "generic" offence of a terrorist act not fully in line with the relevant standards • The possibility to prosecute the financing of travel of FTF is limited by the actual legislation.
6. Targeted financial sanctions related to terrorism and TF	**NC**	• There is no systemic mechanism for targeted financial sanctions related to terrorism or TF.
7. Targeted financial sanctions related to proliferation	**NC**	• There are no legislation or satisfactory measures and procedures to implement targeted financial sanctions to comply with UNSCR relating to the prevention,

Recommendation	Rating	Factors underlying the rating
		suppression and disruption of proliferation of weapons of mass destruction and its financing.
8. Non-profit organisations (NPOs)	**PC**	• There are significant deficiencies with regard to the registration, outreach and oversight of the sector for CFT purposes. • The lack of risk-based approach negatively impacts all other measures in place. • Religious organisations are excluded from the scope of the Law on Freedom of Association of NGOs: • Lack of fit or proper corresponding requirements in the Law. • There are considerable limitations to the powers of the authorities to request additional information • No requirements for beneficial ownership of NGOs are in place. • Existing legal requirements can easily be bypassed. • No cooperation agreement, nor clear cooperation and exchange of information between authorities.
9. Financial institution secrecy laws	**LC**	• The assessment team has not been provided references to legal provisions that enable sharing of information internationally by supervisors other than the FIU and the CBK for AML/CFT purposes. • It is not clear whether the laws of Kosovo inhibit sharing of information between financial institutions where this is required by Recommendation 17. • It does not seem to be the case that information necessary for AML/CFT strategic analysis conducted by the FIU can be provided by other authorities.
10. Customer due diligence (CDD)	**PC**	• Banks and other financial institutions are not required to undertake all applicable customer due diligence measures in case of: a) non-cash occasional transactions above the designated threshold of EUR 10,000; and, b) wire transfers conducted through financial institutions other than banks; • The requirement to use reliable and independent source documents, data or information is not clearly defined; • The requirement to verify the authorisation of any person purporting to act on behalf of the customer does not cover the situations whereby the reporting subjects: a) engage in relations with persons purporting to act on behalf of the customer beyond the scope of conducting transactions; and b) deal with legal entities other than business organisations, NGOs or political subjects, as well as with legal arrangements; • The provision on establishing beneficial ownership falls short of requiring the reporting subjects to: a) use relevant information or data from a reliable source when taking reasonable measures to verify the identity of the beneficial owner, and b) take such measures in situations other than those considered to be high risk; • Provisions on on-going due diligence do not require the reporting subjects to ensure that the documents, data or

Recommendation	Rating	Factors underlying the rating
		information collected under the CDD process is relevant, and that this is achieved by undertaking reviews of existing records; • Reporting subjects are not required to understand the ownership and control structure of the customers in situations other than those considered to be high risk; • There is no requirement to obtain information on the principal place of business of a legal entity or arrangement if different from the address of the registered office; • There is no requirement to establish the identity of the relevant natural person, who holds the position of senior managing official, in cases where no natural persons are identified pursuant to the definition of beneficial owner; • Beneficiaries of legal arrangements identified by certain characteristics are not designated as beneficial owners, and requirements for the identification of beneficial owners in case of legal arrangements are not appropriately defined; • Provisions on beneficiaries of life insurance policies do not require the reporting subjects: a) to take the relevant actions as soon as the beneficiary is identified or designated; and b) where the beneficiary is identified as a named legal arrangement, to record the name of the arrangement; • Reporting subjects are not required to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable; • In situations other than those considered to be high risk, the requirement to verify the identity of the beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers is not established; • Reporting subjects are not required to adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification; • There is no requirement to conduct due diligence on existing customers taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained; • The requirement to perform enhanced due diligence where the ML/TF risks are higher is not appropriately defined; • Elements and preconditions for allowing simplified CDD are not appropriately defined; • There are no explicit requirements with regard to the reporting subjects not to open the account, commence business relations or perform the transaction, or to terminate the business relationship, whenever they are unable to comply with all relevant CDD measures; and • Provisions to prevent tipping-off are not available.

Recommendation	Rating	Factors underlying the rating
11. Record-keeping	**LC**	• The requirement to keep all records obtained through CDD measures and results of analyses is not comprehensive.
12. Politically exposed persons (PEPs)	**PC**	• Reporting subjects are not required to put in place risk management systems to determine whether a customer or the BO is a PEP. • There is a legal ambiguity regarding the scope and coverage of the measures to be applied with regard to family members and close associates of PEPs. • There is no requirement that the determination of whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary are PEPs should occur, at the latest, at the time of the payout.
13. Correspondent banking	**LC**	• The relationships between FI other than banks are not covered. • The definition of a shell bank appears to overlook certain elements of the FATF definition.
14. Money or value transfer services	**C**	-
15. New technologies	**C**	-
16. Wire transfers	**PC**	• Provisions on wire transfers do not require that: a) the originator account number accompanying the wire transfer is specifically the number of the account used to process the transaction; b) in the absence of an originator account, the unique reference number: b.1) is that of the specific transaction; and b.2) is one that permits traceability of the transaction; and c) in the absence of a beneficiary account and where the originator account number is used to process the transaction, a unique transaction reference number permitting traceability of the transaction accompanies the wire transfer; • The same deficiencies are relevant regarding regulation of batch file transfers; • Originator information on domestic wire transfers is required to be made available to, interchangeably, the FIU or the CBK, but not to other appropriate authorities, and the deficiencies identified in the analysis for criterion 16.1 are relevant regarding domestic wire transfers; • Ordering financial institutions are not required to maintain beneficiary information collected, in accordance with Recommendation 11; and are not forbidden to execute the wire transfer if they do not comply with all relevant requirements specified in criteria 16.1 to 16.7; • The deficiencies identified in the analysis for criterion 16.1 are relevant regarding intermediary financial institutions in cross-border wire transfers; • Intermediary financial institutions are not required to take reasonable measures, which are consistent with straight-through processing, to identify cross-border wire transfers that lack required originator information or required beneficiary information; and to have risk-based policies and procedures for determining: a) when to

Recommendation	Rating	Factors underlying the rating
		execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and b) the appropriate follow-up action; • Beneficiary financial institutions are not required to take reasonable measures to identify cross-border wire transfers that lack required beneficiary information; • Verification of identity of the beneficiary is subject to the deficiencies set out in the analysis for criterion 10.2. Beneficiary financial institutions are not required to maintain verified information on the identity of the beneficiary, in accordance with Recommendation 11; and to have risk-based policies and procedures for determining: a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and b) the appropriate follow-up action; • Banks and other financial institutions controlling both the ordering and the beneficiary side of a wire transfer are not required: a) to take into account all the information from the beneficiary side; and b) to file an STR in any country affected by the suspicious wire transfer; and • Applicable legislation does not require banks and other financial institutions to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities in the context of wire transfers, as per obligations set out in the relevant UNSCRs relating to the prevention and suppression of terrorism and terrorist financing.
17. Reliance on third parties	**NC**	• None of the criteria under Recommendation 17 are met.
18. Internal controls and foreign branches and subsidiaries	**PC**	• Reporting subjects are not required to implement programs against ML/TF having regard to the ML/TF risks and the size of the business; except for banks, there is no provision requiring appointment of the compliance officer at the management level; employee screening procedures/criteria are not defined for all types of financial institutions; the availability of an independent audit function is not required for an unidentified scope and number of financial institutions "with limited staff number"; • Legislation does not specify that group-wide programs against ML/TF should be appropriate to all branches and majority-owned subsidiaries; and that they should include the measures set out in criterion 18.1; there is no requirement that, at group-level compliance, audit, and/or AML/CFT functions, branches and subsidiaries: 1) provide customer, account, and transaction information when necessary for AML/CFT purposes; and 2) receive such information when relevant and appropriate to risk management; legislation does not require that group-wide programs against ML/TF should include adequate safeguards on the confidentiality and use of information

Recommendation	Rating	Factors underlying the rating
		exchanged, including safeguards to prevent tipping-off; and • There are no provisions to require that: 1) where the minimum AML/CFT requirements of the host country are less strict than those in Kosovo, banks and other financial institutions should ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the requirements in Kosovo to the extent that host country laws and regulations permit; and 2) where the host country does not permit the proper implementation of AML/CFT measures consistent with the requirements in Kosovo, banks and other financial institutions apply appropriate, additional measures to manage the ML/TF risks, and inform the supervisors in Kosovo.
19. Higher-risk countries	**PC**	• Reporting subjects are not required to apply enhanced due diligence to business relationships and transactions with persons from countries for which this is called by the FATF; • There is no requirement to apply countermeasures proportionate to the risks when called upon to do so by the FATF; and • Measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries are not sufficient.
20. Reporting of suspicious transactions	**LC**	• The obligation to report is limited by the deficiencies in the criminalisation of money laundering and terrorism financing.
21. Tipping-off and confidentiality	**LC**	• The provisions prohibiting the disclosure of filing of STR or related information leaves room for the interpretation that they do not apply to the whole staff of reporting subjects and negate the requirement prohibiting disclosure of such information to third parties (besides the FIU to which the STR or related information is filed); and • No specific regulation is available to ensure that these provisions are not intended to inhibit information sharing under Recommendation 18.
22. DNFBPs: Customer due diligence	**PC**	• Legislation does not require casinos to apply all CDD measures (as opposed to customer identification and verification of identity) whenever the customers engage in financial transactions equal to or above the designated threshold; and to ensure that they are able to link CDD information for a particular customer to the transactions that the customer conducts in the casino; there is room for legal uncertainty as to whether traders/dealers in precious metals and precious stones are designated as reporting subjects when they act in the capacity of the buyer in relevant transactions; "other independent legal professionals" are not designated as reporting subjects under the law; and "performing the equivalent function for another form of legal arrangement" is not defined as a designated service under the law; and

Recommendation	Rating	Factors underlying the rating
		• Relevant requirements are mostly met regarding Recommendations 11 and 12 and not met regarding Recommendation 17.
23. DNFBPs: Other measures	**PC**	• Qualifications for lawyers, notaries, other independent legal professionals and accountants (tax advisors) to report suspicious transactions do not meet the FATF requirement insofar as they do not apply to all situations when these professionals engage in a transaction "on behalf of or for a client"; "other independent legal professionals" are not designated as reporting subjects under the law and, therefore, are not required to file STRs; buyers of precious metals and precious stones are not designated as reporting subjects under the law and, therefore, are not required to file STRs; "performing the equivalent function for another form of legal arrangement" is not defined as a designated service under the law and, therefore, is not covered by the requirement to file STRs; • In addition to the deficiencies identified in relation to compliance with the requirements of Recommendation 18, no by-laws to define the "fit and proper" criteria for compliance officers have been issued for DNFBPs, and no screening procedures are established for hiring staff with functions relevant for AML/CFT; there is no requirement for the availability of an independent audit function for an unidentified scope and number of DNFBPs "with limited staff numbers", while the requirement for audit test covers reporting and identification systems only, leaving aside other constituents of the AML/CFT system; and • Relevant requirements are partly met regarding Recommendations 18 and 19, and mostly met regarding Recommendation 21.
24. Transparency and beneficial ownership of legal persons	**PC**	• Kosovo has not undertaken an assessment of ML/TF risks associated with the different types of legal persons. • There are no mechanisms in place to identify and describe the process of identifying and recording BO information. • Basic ownership information on legal entities is not always made publicly available by the Registry. • Joint stock companies are not required to maintain all shareholder information. • The measures in place to ensure that the information in the Registry is accurate and up-to-date are not considered to be satisfactory. • There are no requirements in place in order to ensure availability of BO information, its updating or maintenance. • Domestic and international cooperation mechanisms for sharing BO information are not specifically in place. • Kosovo law doesn't regulate or prohibit bearer share warrants.

Recommendation	Rating	Factors underlying the rating
25. Transparency and beneficial ownership of legal arrangements	**LC**	• No specific requirement for a trustee to disclose his/her status to FIs and DNFBPs when forming a business relationship and the respective sanctions.
26. Regulation and supervision of financial institutions	**PC**	• Shared responsibility for supervising AML/CFT compliance of banks and other financial institutions appears to contradict the provisions of the Law on the CBK and other sectoral laws on the exclusive supervisory mandate of the CBK; more clarity is needed in terms of explicit legal language delineating supervisory mandates of the FIU and the CBK to control compliance with requirements under the AML/CFT Law; • With regard to: 1) banks and insurance companies, there is a lack of clear language to prevent associates of criminals from entering the financial market as holders (or beneficial owners) of a significant or controlling interest; 2) non-bank financial institutions, there is a lack of: a) clear language to prevent persons with criminal background to hold (or be the beneficial owner of) a significant or controlling interest, or hold a management function, in a NBFI; and b) requirement to prevent associates of criminals to do the same; 3) micro-finance institutions, there are no requirements to prevent persons with criminal background or their associates to hold (or be the beneficial owner of) a significant or controlling interest, or hold a management function, in a MFI; • Regulation and supervision in line with the Core Principles is not demonstrated; legislation refers to the CBK ability to exercise effective consolidated supervision, presumably also for AML/CFT purposes, however without further provisions in law or other enforceable means to provide the mechanisms and tools for its practical implementation; • Information made available to the assessors does not enable a conclusion as to whether the frequency and intensity of on-site and off-site AML/CFT supervision of financial institutions or groups is determined on the basis of: (a) the ML/TF risks and the policies, internal controls and procedures associated with the institution or group, as identified by the supervisors' assessment of the institution's or group's risk profile; (b) the ML/TF risks present in the country; and (c) the characteristics of the financial institutions or groups, in particular the diversity and number of financial institutions and the degree of discretion allowed to them under the risk-based approach; and • Information made available to the assessors does not enable a conclusion as to whether the CBK and the FIU review the assessment of the ML/TF risk profile of financial institutions or groups (including the risks of non-compliance) periodically, and when there are major events or developments in the management and operations of the financial institution or group.

Recommendation	Rating	Factors underlying the rating
Powers of supervisors	**PC**	The issue of uncertainty in terms of explicit legal language delineating supervisory mandates of the FIU and the CBK, including that for on-site inspections is relevant in terms of compliance with Recommendation 27, as well; The mechanism for implementing the supervisor's power to compel production of or to obtain access to any information relevant to monitoring compliance with the AML/CFT requirements appears to be predicated on the need to require a court order; and The supervisor has the power to withdraw – but not to restrict or suspend – the financial institution's license for the failure to comply with AML/CFT requirements.
Regulation and supervision of DNFBPs	**PC**	There is a lack of clear language to prevent associates of criminals from entering the games of chance market as holders (or beneficial owners) of a significant or controlling interest; In the absence of specific written agreements between the FIU and sectoral supervisors, applicable sectoral laws do not provide for the mandate of the respective supervisory agencies for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements; The system for monitoring compliance with AML/CFT requirements is not fully functional due to the lack of specific written agreements between the FIU and sectoral supervisors; In the absence of specific written agreements between the FIU and sectoral supervisors, applicable sectoral laws do not provide for the powers of the respective supervisory agencies to perform their functions in terms of monitoring and ensuring compliance with AML/CFT requirements; There are no provisions in applicable legislation providing for the authorisation of the competent authorities to take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in DNFBPs other than games of chance; and Information made available to the assessors does not enable a conclusion as to whether supervision of DNFBPs is performed by: a) determining its frequency and intensity on the basis of DNFBPs' understanding of the ML/TF risks, taking into consideration the characteristics of the DNFBPs, in particular their diversity and number; and b) taking into account the ML/TF risk profile of those DNFBPs, and the degree of discretion allowed to them under the risk-based approach, when assessing the adequacy of the AML/CFT internal controls, policies and procedures of DNFBPs.
Financial Intelligence Units (FIU)	**LC**	There are no specific legal requirements on reporting additional information following an already filed STR. There are no strict deadlines in the law for receiving some additional information from the reporting entities. Some issues exist in regard to the lack of document retention rules and staff selection policies and procedures.

Recommendation	Rating	Factors underlying the rating
Responsibilities of law enforcement and investigative authorities	**LC**	Specific procedures for conducting parallel financial investigations, as well as for the tracing of property have not been established.
Powers of law enforcement and investigative authorities	**LC**	There are no mechanisms available to identify control of accounts.
Cash couriers	**LC**	Some limitations are present with regard to obtaining information from the post, the cargo transporter or the commercial courier. An uncertainty remains with regard to the applicability of pecuniary sanctions where the Prosecution decides that no action will be taken in relation to the seized property and that the person concerned may apply for the return of the monetary instruments. International cooperation would be affected by the limited number of cooperation agreements, some record-keeping deficiencies and the limited applicability of targeted sanctions for TF.
Statistics	**PC**	There is a lack of statistics in some of the reported areas in a way to allow the assessment of the effectiveness of the AML/CFT system. Most of the statistics related to international cooperation do not allow monitoring and assessment of the relevant AML/CFT issues.
Guidance and feedback	**C**	-
Sanctions	**PC**	There are certain technical deficiencies regarding the definition and substantial inconsistencies regarding the classification of the violations of AML/CFT requirements. There are no proportionate and dissuasive sanctions available to deal with natural or legal persons that fail to comply with the AML/CFT requirements. The sanctions mechanisms have not been put in place in order to ensure compliance with Recommendations 6 and 8.
International Instruments	**N/A**	-
Mutual legal assistance	**LC**	There is a limited impact of dual criminality related to TF cooperation. There are no strict deadlines provided by law. There are no case management systems used by some competent authorities. The MLA is negatively affected by the complexity of some procedures.
Mutual legal assistance: freezing and confiscation	**PC**	The majority of the criteria under Recommendation 38 are not met.
Extradition	**PC**	Significant concerns remain with regard to the ability of the authorities to execute extradition requests without undue delay.
Other forms of international co-operation	**LC**	Technical deficiencies exist related to the unclear powers of the supervisory authorities to exchange information.

ANNEX: Key Findings on the compliance of Kosovo with the European Union's 4th AML Directive

Introduction and scope of application

1. This is a summary of the key findings with regard to the technical compliance of Kosovo legislation with the European Union's 4th AML Directive, Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018). The effectiveness of implementation of the relevant provisions by Kosovo authorities and the reporting entities under the AML/CFT Law is assessed on the basis of the information obtained and analysed under the PECK II assessment of the effectiveness of the application of AML/CFT measures in Kosovo in line with the FATF Methodology.

2. The applicable definitions of ML and TF for the purposes of the preventive system are stipulated by the AML/CFT Law, which also defines the ML and TF criminal offences.

3. The scope of financial institutions included under Article 16 of the AML/CFT Law is broadly in line with the definition of Article 3 (2) of Directive (EU) 2015/849 with several exceptions mainly related to DNFBPs.

4. Kosovo authorities have extended the scope of the Directive to NGOs, which are included in Article 16 of the AML/CFT legislation as obliged entities. However, Kosovo authorities have not clearly demonstrated in this case that the RBA underlined the decision to include this category of reporting entities. Neither the NRA, nor the sectoral assessments carried out by Kosovo authorities resulted in the identification of any other professions and categories to be included in the scope of the AML/CFT Law.

Risk assessment and risk-based approach

5. The deficiencies identified under FATF R. 1 would also apply in relation to the implementation of the relevant articles of the Directive requiring the identification of risks and taking appropriate measures commensurate with the risks, including: the lack of coordination between the various risk assessment mechanisms in place, failure to keep the assessments up to date, failure to disseminate the assessment to all reporting entities, lack of resource allocation corresponding to the identified risks and commensurate measures by the reporting entities. Simplified measures are not allowed except for simplified CDD.

6. Kosovo authorities have undertaken measures to implement the requirement to identify, assess, understand and mitigate the risks of money laundering and terrorist financing through the AML/CFT Law. There are, however, no requirements for the obliged entities to take the NRA into account when determining the risks they are exposed to through their own risk assessment. The effectiveness of the risk assessment is compromised by the limited coverage and incoherence among the various assessments. The impact of the NRA report of Kosovo of 2013 is limited by methodological as well as practical deficiencies and lack of sufficient updates. There is also no sufficient emphasis on the TF-related issues in either the NRA or the sectoral assessments. The data privacy issues have not been specifically taken into account in any of the assessments. There are no indications that Kosovo authorities considered the EU supra-national risk assessment as a valuable tool for the assessment of its own risks.

7. Kosovo legislation only partially ensures appropriate steps are taken for overall risk assessment by the obliged entities. There is no general requirement that the steps taken by the obliged entities should be proportionate to the nature and size of the entities (apart from the banks and financial institutions) and no requirement for documenting. The policies, controls and procedures to be applied by the reporting entities are similarly affected by a number of deficiencies (see also below).

Customer Due Diligence

8. The coverage of the situations when CDD is required pursuant to the Directive is impacted by shortcomings linked to certain missing aspects with regard to CDD for occasional transactions, no requirement for full CDD for wire transfers for financial institutions other than banks, no full CDD required with regard to the transaction above the threshold (EUR 2 000) for casinos. The requirements of Kosovo legislation for identification and verification of the customer's identity are broadly in line with the Directive, except for the use of electronic identification.

9. Significant deficiencies identified with regard to the definition and understanding of beneficial owner would be detrimental to the process of identifying the beneficial owner and taking reasonable measures to verify that person's identity. Verification of the beneficial owner would be required only in case of high-risk situations and there is no requirement for using reliable and independent source. As regards legal persons, trusts, companies, foundations and similar legal arrangements the requirement to take reasonable measures to understand the ownership and control structure of the customer is not met. No requirements are introduced in the AML/CFT Law with regard to beneficial ownership identification in the case of legal entities such as foundations, and legal arrangements similar to trusts. The requirements with regard to identifying and verifying the beneficiaries of trusts and other legal arrangements are not met except for the banks and financial institutions. Furthermore, there are deficiencies in the requirements to identify persons purporting to act on behalf of the customer.

10. The AML/CFT Law allows limited discretion of the obliged entities in the application of the preventive measures on the basis of the assessed risk due to the strictly defined situations requiring simplified or enhanced CDD and no further specificity with regard to the appropriate extent of application of the measures. There is no explicit requirement for reporting entities to take into account the variables/factors set out in the annexes to the Directive when assessing the risks of money laundering and terrorist financing. Simplified CDD is further limited by the requirement for FIU approval which is a significant risk-mitigating measure but results together with the other deficiencies of the risk-based approach in non-application of simplified measures in practice. The EDD situations identified by the Directive and the respective measures are only partially covered in Kosovo law, although in some cases certain deficiencies do not seem to have practical relevance (as in the requirements for corresponding relations only covering banks and not financial institutions, the limited definition of shell bank, etc.).

11. Similarly to the Directive the AML/CFT Law of Kosovo provides for equal enhanced CDD in relation to both foreign and domestic PEPs. The scope of the PEPs under the AML/CFT Law broadly complies with the Directive except for the lack of clarity with regard to the coverage of the related persons (family or close associates), as well as the lack of lists for the persons related to domestic PEPs. The requirement to obtain senior management approval in the AML/CFT Law goes beyond the Directive as it also includes occasional transactions which would, however, create significant difficulties in the efficient application by reporting entities (to the point of being inapplicable). With regard to the implementation of these measures in practice, there is over-reliance on the declaratory regime, lack of understanding among DNFBPs and lack of verification mechanisms.

12. It cannot be considered that there are adequate safeguards for the application of third-party reliance. The provisions prohibiting the use of anonymous accounts and safe-deposit boxes are broadly in line although the aforementioned general deficiencies with regard to the CDD would negatively impact the measures adopted for safe-deposit boxes. Bearer share warrants are not covered by the prohibition of bearer shares as required by the Directive. A significant deficiency is noted in view of the lack of specific requirements to mitigate the risks associated with electronic money.

13. There are no specific obligations in Kosovo law for legal persons and arrangements to obtain and hold information on the beneficial ownership and there are no centralised mechanisms (registers) for holding and making available such information.

14. There is a lack of effectiveness of the application of CDD measures due to the lack of understanding of the beneficial ownership concepts and requirements. Furthermore with regard to DNFBPs there are major deficiencies in CDD application regardless of the risk.

Reporting obligations

15. Kosovo has established an FIU, the Financial Intelligence Unit of Kosovo (FIU) that has implemented policies, procedures, cooperation mechanisms and disposes of resources to prevent, detect and combat money laundering and terrorist financing. The effectiveness assessed under Immediate Outcome 6 is considered to be moderate due mainly to issues related to access to information used to develop financial intelligence, insufficient use of the financial intelligence for ML investigations and prosecutions, inconsistency of the reports from obliged entities with the major risks.

16. The FIU is established pursuant to the AML/CFT Law as an operationally independent and autonomous unit. The FIU is receiving not only STRs but also other information of relevance for ML, associated predicate offences and TF, including transactions in cash over the threshold and additional information from reporting entities and public authorities. FIU is able to obtain additional information from reporting entities on all cases opened for analysis which is in line with the Directive requirement.

17. The analytical and dissemination function of the FIU seems to be well-established and in principle to be able to generate useful and quality information for the competent authorities with some limitations related to the potential insufficient use of some of the available sources of information due to possible resource constraints and expediency reasons related to certain priorities of the competent authorities. In practice the feedback provided to the FIU is of variable quality and timeliness.

18. The FIU has the necessary legal basis and effectively responds to requests for information by competent authorities as required by the Directive. There are nevertheless, no explicit provisions implementing the grounds for refusal stipulated in the Directive, although the same grounds would be in practice considered by the FIU.

19. FIU is fully authorised to suspend transactions based on information it receives domestically as well as based on a written and grounded request of any foreign counterpart that performs similar functions.

20. FIU is entitled to conduct operational analysis by receiving and analysing reports and information related to the proceeds of crime and terrorist financing as well as collecting all relevant information that falls within the mandate of the FIU and disseminating information on the particular suspicious transactions and the result of analysis for suspected money laundering, predicate offences and terrorism financing.

21. FIU is authorised pursuant to Article 14 of the AML/CFT Law to carry out strategic analysis of the information it collects and receives, to prevent and combat money laundering, predicate offences and terrorist financing. At the same time, it is not clear whether all relevant information that may be obtained from competent authorities is included in the strategic analysis due to professional secrecy limitations.

22. FIU is authorised to obtain and use (subject to the applicability of legal privilege limitations) any data, documents or information needed to undertake its functions. The availability of a prior report is not a precondition for requesting, obtaining and using such information.

23. No automated systems are available to the FIU with regard to information on payment or bank accounts, as well as safe deposit boxes, or mechanisms allowing the identification of holders of accounts, their beneficial owners or persons purporting to act on their behalf. Centralised mechanisms are in place for information on PEPs (within the anti-corruption measures and excluding related persons to PEPs), partially for real estate, NGOs (subject to a number of limitations), motor vehicles.

24. The obligation to report suspicious transactions is limited to the reasonable grounds to suspect proceeds of criminal activity thus omitting knowledge. The reporting obligation would be limited by the deficiencies in regard to the criminalisation of ML and TF. The reporting of STRs is (potentially) limited by some discrepancies in the law (especially for DNFBPs). There are some concerns expressed by the assessors with regard to the quality of the reports. The level of reporting is highly uneven, with most of the entities outside the banking sector rarely filing a report.

25. The tipping-off requirements are broadly met. However, it is not clear whether the prohibition under the AML/CFT Law would apply to all employees of the reporting entity filing the report. Limitations are in place to disclose reports to supervisors. The notification/disclosure to the court allowed under the law would not be in line with the requirement of the Directive in all cases. Derogations required by the Directive are mostly not implemented as intended in the Directive.

Data protection, record-retention and statistical data

26. Kosovo law defines in broad terms the information to be retained but the provision cannot be strictly interpreted as requiring sufficient supporting evidence, the original documents or copies admissible in judicial proceedings under the applicable national law, as required in letter (b) of Paragraph 1 of Article 40 of the Directive. For banks, the CBK regulation solves this issue, but not for other entities. Furthermore, it is not clear whether all information obtained through CDD measures would be subject to the record-keeping requirements. The periods for record-retention are not entirely in line with the Directive.

27. Kosovo legislation is compliant to a large extent with the requirements of the Directive for processing personal data with some minor deficiencies. The AML/CFT Law provides for the requirement for the obliged entities to ensure that the documentation and following information are ready and available to FIU and to other competent authorities, although not in all cases (specifically for DNFBPs) using secure channels and in a manner to ensure the confidentiality.

28. The AML/CFT Law requires maintenance of statistics by all competent authorities with the purpose to enable the FIU to review the effectiveness of the AML/CFT system. There are no legal obligations for the other institutions as to the categories of information needed and for the consolidation of this information as to ensure a meaningful review of the system.

Policies, procedures and supervision

29. The AML/CFT Law requires the implementation of programs within the financial group covering branches and majority-owned subsidiaries. Nevertheless, Kosovo has not implemented the Directive requirements in this regard to require the effective application of coherent and comprehensive systems to mitigate risks thereof.

30. There is no requirement for the policies, procedures and controls to be proportionate to the risks, nature and size of the reporting entity. A number of deficiencies are observed in relation to the effectiveness, including lack of sufficient feedback from the FIU with regard to the reported suspicions, the need to improve the structuring and comprehensiveness of the indicators for reporting, the superficial treatment of alerts by reporting entities, as well as the inappropriate institutional arrangements for controlling compliance with the STR requirements, the DNFBPs' lack of awareness. Training is generally sound for the banks and financial institutions but insufficient considering the lack of awareness of DNFBPs.

31. There is no registration requirement in Kosovo law for virtual currencies exchange services and custodian wallet providers as well as no licencing or registration requirement for trust and company service providers and therefore for fitness and propriety of persons holding management position or controlling those entities. Hence, effective supervision is not possible. There are significant deficiencies related currency exchange offices. There are no market entry requirements for real estate agents resulting in doubtful effectiveness of supervision.

32. A number of issues are noted as detrimental to the effectiveness of supervision, including shared responsibility of several supervisors over one and the same type of entity without clear division of the responsibilities, deficiencies related to market entry and operations without required licence or registration, measures to prevent participation of associates of criminals, application of sanctions and coordinated approach to DNFBPs. The powers of supervisors to conduct on-site and off-site supervision are available although the issues related to the clarification of the CBK and FIU mandate with regard to banks and financial institutions remain. The adequacy of supervision of the FIU could be compromised by the unclear mandate in some circumstances. Further attention to the risk factors and subsequent distribution and deployment of resources is necessary. FIU and CBK are subject to confidentiality requirements and specific requirements for their staff. Standards with regard to conflict of interests are in place for both supervisors. There are no clear requirements to consider the risk at a national level, as well as the institution and group risk profile. There is no clear requirement in the AML/CFT Law for the FIU to apply a risk-based approach to supervision although standard operating procedures (SOP) on the supervision by FIU were adopted in 2017 to serve this purpose. It seems that risk profiling of individual supervised entities is deficient. There is no indication that authorities have considered the ESAs guidelines in regard to risk-based supervision (RBS).

33. Kosovo has developed a relatively comprehensive system of coordination at the policy level with regard to AML/CFT issues. At the operational level Kosovo has elaborated and deployed a number of cooperation agreements between all relevant institutions in this context as a basis for their cooperation on top of the already broad provisions of the AML/CFT legislation. Minor deficiencies are observed, including the effectiveness repercussions as a result of the pure number of initiatives and fora and adequate coordination and ensuring coherence thereof.

34. The international exchange of information (within the context of the Directive) is not hampered by unreasonable or unduly restrictive conditions, including links to tax matters, secrecy or confidentiality, the mere opening of an investigation or proceeding, the nature and status of the counterpart authority. FIU is entitled to provide full assistance to counterparts regardless of the identification of the predicate crime, with some deficiencies mainly linked to the nature of access and quality of accessible databases. There is no requirement for systemic cross-border reporting. FIU demonstrated a generally high level of effectiveness with regard to the exchange while observing the necessary confidentiality requirements.

35. Respective confidentiality and professional secrecy requirements are broadly in place for the FIU and CBK staff. There are no obstacles to national cooperation between the competent authorities as the AML/CFT Law provides for detailed requirements. Nevertheless, it seems that exchange for the purposes of strategic analysis is negatively impacted. There seem to be no obstacles to international cooperation of the CBK and the FIU including the obligation to maintain professional secrecy. With regard to the effectiveness of cooperation, both the FIU and CBK seem to be cooperating closely and exchanging relevant information at the national level, although it is not clear whether the full potential of the cooperation requirements is exploited taking into consideration the deficiencies noted in relation to supervision of banks and financial institutions over the reporting requirements of the AML/CFT Law. CBK has not clearly demonstrated that the exchange of information internationally is taking place effectively for AML/CFT purposes.

36. A number of deficiencies are observed in relation to the language of some of the infringements provided for by the AML/CFT Law which would result in legal uncertainty as to their applicability (e.g. with regard to postponement of operations, some of the reporting requirements, etc.). There are issues impacting the proportionality and dissuasiveness of the sanctions. The effectiveness of the regime is undermined by the seeming duplication of effort and the lack of application of

proportionate and dissuasive sanctions stipulated by the AML/CFT Law. There seems to be an overlap between the administrative violation in the AML/CFT Law and some of the criminal offences as stipulated under the same law, detrimental to the effective application of sanctions. Adequate powers of the supervisors are broadly in place.

37. The AML/CFT Law provide for sanctions with regard to violations of the provisions regarding CDD, reporting, record-retention and internal controls. However, there are a number of deficiencies noted in relation to the implementation of the requirements of all mentioned provisions. The applicable administrative measures and sanctions are of more limited scope than those required by the Directive, especially for public statements and in all cases of minor infringements as defined in Kosovo AML/CFT law. The amounts of pecuniary sanctions are not in line with the Directive.

38. All final decisions related to administrative sanctions are required to be published by all supervisors. The scope of the information required to be published is in line with the Directive and minor deficiency is noted with regard to the delaying of publishing. There are no specific procedures provided for in the legislation to ensure the manner in which all relevant circumstances would be considered when determining the type and level of administrative sanctions or measures would be factored in the sanctioning decisions. Not all sanctionable persons are covered by Kosovo law as required in the Directive.

39. No mechanisms are in place to encourage the reporting to competent authorities of potential or actual breaches of the national provisions transposing the Directive.

Compliance Table with Directive (EU) 2015/849

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
CHAPTER I **GENERAL PROVISIONS** *SECTION 1* ***Subject-matter, scope and definitions*** **Article 1** 1. This Directive aims to prevent the use of the Union's financial system for the purposes of money laundering and terrorist financing.	N/A	N/A
2. Member States shall ensure that money laundering and terrorist financing are prohibited.	Please refer to the TC Annex, mainly R. 3 and 5 as well as the relevant elements of R. 29 and IO 6. Both ML and TF are criminalised in Kosovo. While the criminalisation of ML is largely compliant with the international standards with the remaining deficiencies related to the penalties and the lack of criminalisation of market manipulation as a predicate crime, the TF offence is affected by shortcomings, mainly in the criminalisation of the various TF offences of the treaties (due to the purposive element) and limitations with regard to the financing of travel. It is noted that the purposive element of the "generic" offence of terrorist act, while not in line with the FATF standard, complies with the requirements of the Union legislation, specifically Art. 3, Paragraph 2 of Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA. Kosovo has established an FIU which largely complies with the requirements of the Union legislation (see below the relevant provisions of Directive (EU) 2015/849) and has achieved a level of effectiveness despite some shortcomings.	Partial
3. For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:	Please refer to the TC Annex, R. 3. The scope of the ML offence in Kosovo is largely in line with the requirements of the international standard and Directive (EU) 2015/849.	Partial

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
(a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action; (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity or from an act of participation in such an activity; (c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such an activity; (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions referred to in points (a), (b) and (c).	Furthermore, as it is criminalised in Article 56 of the AML/CFT Law, it is applicable with regard to the preventive system as required. With regard to the requirement for the intentional committing of the conduct, the provision of Article 56 of the AML/CFT Law goes beyond as it provides for the prosecution of the various types of activity conducted by a person knowing or having cause to know that certain property is proceeds. Despite the all-crime approach, however, the deficiencies related to the predicate crimes, as mentioned above, would apply. The definition of property is potentially impacted by the disconnect between the two terms used in the AML/CFT law ("proceeds of crime" referring only to property and "funds or other assets"). The definition of proceeds of crime refers to property without further defining any link with the definition of assets and only the latter contains all the relevant elements of "property" as defined in the Directive.	
4. Money laundering shall be regarded as such even where the activities which generated the property to be laundered were carried out in the territory of another Member State or in that of a third country.	Please refer to TC Annex, R. 3. Kosovo legislation (Article 56, Paragraph 3.3 of the AML/CFT Law) is in line except for the potential impact of the dual criminality issue.	Partial
5. For the purposes of this Directive, 'terrorist financing' means the provision or collection of funds, by any means, directly or indirectly, with the intention that they be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA ([87]).	Please refer to TC Annex, R. 5. The reference to Council Framework Decision 2002/475/JHA in Directive (EU) 2015/849 is to be understood as reference to the Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA. Comparing the listed offences under Article 3 of Directive (EU) 2017/541 Kosovo legislation is largely in line, the only missing element related to Article 3, Paragraph 1 (i) (illegal system interference, as referred to in Article 4 of Directive 2013/40/EU of the European Parliament and of the Council in cases where Article 9(3) or point (b) or (c) of Article 9(4) of that Directive applies, and illegal data interference, as referred to in Article 5 of that Directive in cases where point (c) of Article 9(4) of that Directive applies). Please refer also to Article 1, Paragraph 2 of Directive (EU) 2015/849.	Partial
6. Knowledge, intent or purpose required as an element of the activities referred to in paragraphs 3 and 5 may be inferred from objective factual circumstances.	Please refer to TC Annex, R. 3.8 and 5.5. Article 22 of the Criminal Code would apply in this regard although there are no clear corresponding provisions in the AML/CFT Law (relevant with regard to ML).	Full

[87] European Council (2002) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3) available at http://eur-lex.europa.

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
Article 2 1. This Directive shall apply to the following obliged entities: (1) credit institutions; (2) financial institutions; (3) the following natural or legal persons acting in the exercise of their professional activities: ▼M1 (a) auditors, external accountants and tax advisors, and any other person that undertakes to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters as principal business or professional activity; ▼B (b) notaries and other independent legal professionals, where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning the: (i) buying and selling of real property or business entities; (ii) managing of client money, securities or other assets; (iii) opening or management of bank, savings or securities accounts; (iv) organisation of contributions necessary for the creation, operation or management of companies; (v) creation, operation or management of trusts, companies, foundations, or similar structures; (c) trust or company service providers not already covered under point (a) or (b);	Please refer to TC Annex, R. 26.1, as well as R. 22 and 23. The scope of financial institutions included under Article 16 of the AML/CFT Law is broadly in line with the definition of Article 3 (2) of Directive (EU) 2015/849. The designation of the games of chance in the AML/CFT Law is narrower than the requirement of the Directive as the online gambling services other than internet casinos seem to be excluded. It is not clear whether all "independent legal professionals" are covered by the AML/CFT legislation. It is not clear whether "other person that undertakes to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters as principal business or professional activity" is covered. The scope of the AML/CFT legislation is limited with regard to the dealers of precious metals and precious stones as it refers only to "sellers". The definition of trust and company service providers under the AML/CFT law is limited insofar as it does not encompass "similar legal arrangement" referred to under Article 3, Paragraph 7 (d) of Directive (EU 2015/849. As discussed under R. 22 and 23, the AML/CFT Law designates accountants without further specificity on the type of activity/ transaction. Moreover, as the definition of accountant refers to certification under the Law on Accounting there does not seem to be a clear distinction between auditors and accountants. Thus, it cannot be concluded that external accountants are properly covered by the law. There is no legal certainty with regard to the coverage of letting agents in the category of estate agents under the AML/CFT Law. While broader definition of the relevant category of reporting entity is possible, it is highly likely that the lack of specificity would result in the impossible enforcement. The inclusion of the other persons trading in goods seems limited by the lack of requirement for the implementation of the measures by persons performing transactions over the EUR 10,000 threshold through several operations which appear to be linked. The categories of letters (g) - (j) of Article 2, Paragraph 1 are not covered (exchange services for virtual currencies, custodian wallet providers, traders in works of arts).	Partial

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
▼M1 (d) estate agents including when acting as intermediaries in the letting of immovable property, but only in relation to transactions for which the monthly rent amounts to EUR 10 000 or more; ▼B (e) other persons trading in goods to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked; (f) providers of gambling services; ▼M1 (g) providers engaged in exchange services between virtual currencies and fiat currencies; (h) custodian wallet providers; (i) persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more; (j) persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports, where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more.		
▼B 2. With the exception of casinos, and following an appropriate risk assessment, Member States may decide to exempt, in full or in part, providers of certain gambling services from national provisions transposing this Directive on the basis of the proven low risk posed by the nature and, where appropriate, the scale of operations of such services.	Please refer to the discussion of obliged entities above. The exemption in regard to online gambling does not seem to be justified along the lines of the respective provision of Directive (EU) 2015/849.	Not compliant (the notification requirements are not applicable)

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
Among the factors considered in their risk assessments, Member States shall assess the degree of vulnerability of the applicable transactions, including with respect to the payment methods used. In their risk assessments, Member States shall indicate how they have taken into account any relevant findings in the reports issued by the Commission pursuant to Article 6. Any decision taken by a Member State pursuant to the first subparagraph shall be notified to the Commission, together with a justification based on the specific risk assessment. The Commission shall communicate that decision to the other Member States.		
3. Member States may decide that persons that engage in a financial activity on an occasional or very limited basis where there is little risk of money laundering or terrorist financing do not fall within the scope of this Directive, provided that all of the following criteria are met: (a) the financial activity is limited in absolute terms; (b) the financial activity is limited on a transaction basis; (c) the financial activity is not the main activity of such persons; (d) the financial activity is ancillary and directly related to the main activity of such persons; (e) the main activity of such persons is not an activity referred to in points (a) to (d) or point (f) of paragraph 1(3); (f) the financial activity is provided only to the customers of the main activity of such persons and is not generally offered to the public. The first subparagraph shall not apply to persons engaged in the activity of money remittance as defined in point (13) of Article 4 of Directive 2007/64/EC of the European Parliament and of the Council ([88]).	Please refer to TC Annex, R. 1.6. No similar exemption is permitted in Kosovo.	Not applicable

[88] European Parliament and the Council (2007) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1) available at http://eur-lex.europa.eu

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
4. For the purposes of point (a) of paragraph 3, Member States shall require that the total turnover of the financial activity does not exceed a threshold which must be sufficiently low. That threshold shall be established at national level, depending on the type of financial activity. 5. For the purposes of point (b) of paragraph 3, Member States shall apply a maximum threshold per customer and per single transaction, whether the transaction is carried out in a single operation or in several operations which appear to be linked. That maximum threshold shall be established at national level, depending on the type of financial activity. It shall be sufficiently low in order to ensure that the types of transactions in question are an impractical and inefficient method for money laundering or terrorist financing, and shall not exceed EUR 1 000 . 6. For the purposes of point (c) of paragraph 3, Member States shall require that the turnover of the financial activity does not exceed 5% of the total turnover of the natural or legal person concerned.	Please see above.	Not applicable
7. In assessing the risk of money laundering or terrorist financing for the purposes of this Article, Member States shall pay particular attention to any financial activity which is considered to be particularly likely, by its nature, to be used or abused for the purposes of money laundering or terrorist financing.	Please see above. As no exemptions falling under the scope of this Article have been applied, the provision is considered as not applicable.	Not applicable
8. Decisions taken by Member States pursuant to paragraph 3 shall state the reasons on which they are based. Member States may decide to withdraw such decisions where circumstances change. They shall notify such decisions to the Commission. The Commission shall communicate such decisions to the other Member States. 9. Member States shall establish risk-based monitoring activities or take other adequate measures to ensure that the exemption granted by decisions pursuant to this Article is not abused.	Please see above.	Not applicable
Article 3 For the purposes of this Directive, the following definitions apply:	Please see above, discussion under Article 2, Paragraph 1.	

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
(1) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council ([89]), including branches thereof, as defined in point (17) of Article 4(1) of that Regulation, located in the Union, whether its head office is situated within the Union or in a third country; (2) 'financial institution' means: (a) an undertaking other than a credit institution, which carries out one or more of the activities listed in points (2) to (12), (14) and (15) of Annex I to Directive 2013/36/EU of the European Parliament and of the Council ([90]), including the activities of currency exchange offices (bureaux de change); (b) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council ([91]), insofar as it carries out life assurance activities covered by that Directive; (c) an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council ([92]); (d) a collective investment undertaking marketing its units or shares; (e) an insurance intermediary as defined in point (5) of Article 2 of Directive 2002/92/EC of the European Parliament and of the Council ([93]) where it acts with respect to life insurance and other investment-related services, with the exception of a tied insurance intermediary as defined in point (7) of that Article;		

[89] European Parliament and the Council (2007) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1) available at https://eur-lex.europa.eu

[90] European Parliament and the Council (2013) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338) available at https://eur-lex.europa.eu

[91] European Parliament and the Council (2009), Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1) available at https://eur-lex.europa.eu

[92] European Parliament and the Council (2004), Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1) available at https://eur-lex.europa.eu

[93] European Parliament and the Council (2002), Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.1.2003, p. 3) available at https://eur-lex.europa.eu

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
(f) branches, when located in the Union, of financial institutions as referred to in points (a) to (e), whether their head office is situated in a Member State or in a third country		
(3) 'property' means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets;	Both "property" and "funds and other assets" are used in the AML/CFT Law in different circumstances. As noted above the term property is not defined pursuant to the standard and the directive and might leave a room for legal challenge. This could result in deficiencies in a number of other requirements by the directive and would be discussed under the relevant sections where appropriate.	Not compliant
(4) 'criminal activity' means any kind of criminal involvement in the commission of the following serious crimes: ▼M1 (a) terrorist offences, offences related to a terrorist group and offences related to terrorist activities as set out in Titles II and III of Directive (EU) 2017/541 ([94]); ▼B (b) any of the offences referred in Article 3(1)(a) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; ▼M1 (c) the activities of criminal organisations as defined in Article 1(1) of Council Framework Decision 2008/841/JHA ([95]); ▼B	Kosovo uses an all-crime approach which is only limited by the deficiencies noted above with regard to the criminalisation of the ML and TF offences. Article 337 of the CC of Kosovo would apply with regard to fraud affecting the Union's financial interests.	Partial

[94] European Parliament and the Council (2017), Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6) available at https://eur-lex.europa.eu

[95] European Parliament and the Council (2017), Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42) available at https://eur-lex.europa.eu

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
(d) fraud affecting the Union's financial interests, where it is at least serious, as defined in Article 1(1) and Article 2(1) of the Convention on the protection of the European Communities' financial interests ([96]); (e) corruption; (f) all offences, including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of the Member States, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;		
(5) 'self-regulatory body' means a body that represents members of a profession and has a role in regulating them, in performing certain supervisory or monitoring type functions and in ensuring the enforcement of the rules relating to them;	Further discussion where relevant.	
(6) 'beneficial owner' means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least: (a) in the case of corporate entities: (i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that	Please refer to TC Annex, R. 10.5, 10.10, 10.11, 24 and 25. **In reference to letter (a):** Article 1.36 of the AML/CFT Law defines the beneficial owner as the natural person who ultimately owns or controls a customer and/or a natural person on whose behalf a transaction or activity is being conducted, or the person who ultimately exercises effective control over a legal person or arrangement. Thus, the definition is in line with the requirement of the international standard and the general definition in the Directive (EU) 2015/849. In the case of legal persons the definition in the AML/CFT Law provides for guidance as to the establishment of direct/indirect ownership and includes a reference to 25% shareholding or ownership interest as an indication for such ownership. Nevertheless the definition explicitly provides for that a percentage of twenty five percent (25%) or more shares shall be deemed sufficient to meet this criterion. Moreover Article 19, Paragraph 1.2 of the AML/CFT Law provides for the option of identification of either the beneficial owner or natural person or persons who directly or indirectly control twenty five percent (25%) or more of a legal person. These provisions would	Not compliant

[96] Official Journal of the European Communities OJ C 316, 27.11.1995, p. 49, available at https://eur-lex.europa.eu/

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
a lower percentage may be an indication of ownership or control. Control through other means may be determined, *inter alia*, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council ([97]); (ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point; ▼M1 (b) in the case of trusts, all following persons: (i) the settlor(s); (ii) the trustee(s); (iii) the protector(s), if any; (iv) the beneficiaries or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates; (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means; ▼B (c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b);	compromise the required interpretation of the 25% threshold simply as an indication and would result in limiting the requirement to establish the ultimate control. The definition of the beneficial owner in the AML/CFT Law does not provide for the identification of the natural person holding senior management position if no other natural person(s) are identified following the application of all possible means and provided there are no grounds for suspicion. **In reference to letter (b):** The AML/CFT Law does not require the identification of the persons under (i) to (iii) and (v) and is deficient in the application of (iv) as it introduces a threshold (25%) for identification. No requirements are introduced in the AML/CFT Law with regard to beneficial ownership identification in the case of legal entities such as foundations, and legal arrangements similar to trusts (as **provided for in letter (c)** of the Directive). It is noted that other piece of legislation in Kosovo introduce additional requirements (CBK Regulation) but as noted under the relevant sections in the TC Annex this would only cover some of the reporting entities and could be subject to legal challenge.	

[97] European Parliament and the Council (2013) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19) available at https://eur-lex.europa.eu/

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
(7) 'trust or company service provider' means any person that, by way of its business, provides any of the following services to third parties: (a) the formation of companies or other legal persons; (b) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; (c) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement; (d) acting as, or arranging for another person to act as, a trustee of an express trust or a similar legal arrangement; (e) acting as, or arranging for another person to act as, a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in accordance with Union law or subject to equivalent international standards;	Please refer to the analysis under Article 2 of the Directive.	
(8) 'correspondent relationship' means: (a) the provision of banking services by one bank as the correspondent to another bank as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services; (b) the relationships between and among credit institutions and financial institutions including where similar services are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers;	Please refer to TC Annex, R. 13. The definition of correspondent relationship in Article 1.23 of the AML/CFT Law largely complies with the definition of the Directive. The AML/CFT Law limits the application of letter (b) only to relations between financial institutions (i.e. seemingly not where a bank and a financial institution are involved).	Partial
(9) 'politically exposed person' means a natural person who is or who has been entrusted with prominent public functions and includes the following: (a) heads of State, heads of government, ministers and deputy or assistant ministers; (b) members of parliament or of similar legislative bodies;	Please refer to TC Annex, R. 12. The definition fully meets the definition of the Directive (EU) 2015/849. The definition in the AML/CFT Law lists all categories under PEPs but does not seem to include (or at least not explicitly so) the related persons (family members and close associates) as politically exposed persons *per se*, which could result in a deficiency in the application of the EDD provided for in Article 22	Full

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(c) members of the governing bodies of political parties; (d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances; (e) members of courts of auditors or of the boards of central banks; (f) ambassadors, chargés d'affaires and high-ranking officers in the armed forces; (g) members of the administrative, management or supervisory bodies of State-owned enterprises; (h) directors, deputy directors and members of the board or equivalent function of an international organisation. No public function referred to in points (a) to (h) shall be understood as covering middle-ranking or more junior officials; (10) 'family members' includes the following: (a) the spouse, or a person considered to be equivalent to a spouse, of a politically exposed person; (b) the children and their spouses, or persons considered to be equivalent to a spouse, of a politically exposed person; (c) the parents of a politically exposed person; (11) 'persons known to be close associates' means: (a) natural persons who are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person; (b) natural persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person.	of the AML/CFT Law (see below under Articles 20-23 of the Directive).	

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(12) 'senior management' means an officer or employee with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure, and need not, in all cases, be a member of the board of directors;	Fully in line (Article 1.49 of the AML/CFT Law).	Full
(13) 'business relationship' means a business, professional or commercial relationship which is connected with the professional activities of an obliged entity and which is expected, at the time when the contact is established, to have an element of duration;	Fully in line (Article 1.22 of the AML/CFT Law).	Full
(14) 'gambling services' means a service which involves wagering a stake with monetary value in games of chance, including those with an element of skill such as lotteries, casino games, poker games and betting transactions that are provided at a physical location, or by any means at a distance, by electronic means or any other technology for facilitating communication, and at the individual request of a recipient of services;	No corresponding definition in Kosovo law. Please see below with regard to the relevant material obligations for casinos and games of chance.	N/A
(15) 'group' means a group of undertakings which consists of a parent undertaking, its subsidiaries, and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 22 of Directive 2013/34/EU;	No definition is provided by Kosovo legislation for groups. For the material law, see below under the relevant provisions.	N/A
▼M1 (16) 'electronic money' means electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC, but excluding monetary value as referred to in Article 1(4) and (5) of that Directive;	The definition in Article 2 of the Regulation on Electronic Payment Instruments applies and is in line with the definition of the Directive.	Full
▼B (17) 'shell bank' means a credit institution or financial institution, or an institution that carries out activities equivalent to those carried out by credit institutions and financial institutions, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group;	The shell bank is defined in the AML/CFT Law (Article 1.7) as a bank or institution engaged in equivalent activities, established in a country where it has no physical presence, which makes possible to exercise an actual direction and management without being affiliated with any regulated financial group. This is broadly in line with the Directive (although not fully in line with the FATF standard).	Full
▼M1 (18) 'virtual currencies' means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically;	The definitions are not applied in Kosovo legislation.	N/A

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(19) 'custodian wallet provider' means an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies.		
▼B **Article 4** 1. Member States shall, in accordance with the risk-based approach, ensure that the scope of this Directive is extended in whole or in part to professions and to categories of undertakings, other than the obliged entities referred to in Article 2(1), which engage in activities which are particularly likely to be used for the purposes of money laundering or terrorist financing. 2. Where a Member State extends the scope of this Directive to professions or to categories of undertaking other than those referred to in Article 2(1), it shall inform the Commission thereof.	Please refer to TC Annex, R. 1, R. 8 as well as IO 9 and 10. Kosovo authorities have extended the scope of the Directive to NGOs, which are included in Article 16 of the AML/CFT legislation as obliged entities. However, Kosovo authorities have not clearly demonstrated in this case that the RBA underlined the decision to include this category of reporting entities. Neither the NRA, nor the sectoral assessments carried out by Kosovo authorities resulted in the identification of any other professions and categories to be included in the scope of the AML/CFT Law despite significant risks associated e.g. with the construction sector. The deficiencies identified under R. 1 would also apply in relation to the implementation of this article of the Directive. Paragraph 2 of Article 4 of the Directive is not applicable.	Partial
Article 5 Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing, within the limits of Union law.	The application is noted where relevant under the material provisions of Kosovo legislation. One of the notable examples is the limited circumstances in which simplified CDD is allowed.	N/A
SECTION 2 ***Risk assessment*** **Article 6**	Not applicable in the case of Kosovo although it could be a relevant source for informing the Kosovo NRA and the RBA of the authorities and reporting entities. There is no indication that the supra-national risk assessment has been considered by Kosovo authorities up till now.	N/A
Article 7 1. Each Member State shall take appropriate steps to identify, assess, understand and mitigate the risks of money laundering and terrorist financing affecting it, as well as any data protection concerns in that regard. It shall keep that risk assessment up to date.	Please refer to the TC Annex, R. 1.1 - 1.9 as well as to IO 1. Kosovo authorities have undertaken measures to implement this provision of the Directive through the requirement of Article 18, Paragraph 1 of the AML/CFT Law. The mentioned provision stipulates the identification, assessment and evaluation of risks as well as the recommendations for mitigating measures. Further regulation of the issues related to the NRA is to be implemented through sub-legal acts of the Ministry of Finance. The methodological deficiencies, the delays in the implementation of risk assessment, including the sectoral risk assessments, as well as	Partial

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	the lack of explicit requirements in relation to adopting mitigating measures, resource allocation based on the risks identified as well as dissemination of the results of the risk assessment have been identified. Furthermore, there are no requirements for the obliged entities to take the NRA into account when determining the risks they are exposed to through their own assessment pursuant to Article 18 of the AML/CFT Law. As discussed under IO 1 Kosovo authorities have developed a number of tools and mechanisms to assess risks from the holistic as well as sectoral standpoint but they do not cover all aspects and are not used in a coherent integrated manner. The impact of the NRA report of Kosovo of 2013 is limited by methodological as well as practical deficiencies and lack of sufficient updates. There is also no sufficient emphasis on the TF-related issues in either the NRA or the sectoral assessments. The data privacy issues have not been specifically taken into account in any of the assessments. Kosovo authorities have implemented wide mechanisms to coordinate the mitigating measures but there still remain some issues with the development and implementation of sufficient strategies and action plans.	
2. Each Member State shall designate an authority or establish a mechanism by which to coordinate the national response to the risks referred to in paragraph 1. The identity of that authority or the description of the mechanism shall be notified to the Commission, the ESAs, and other Member States.	Please refer to the TC Annex, R. 1.1-1.9 as well as to IO 1. Article 18 of the AML/CFT Law provides for the coordinating role of the FIU but without further specifying the requirements for the national response to the risks (e.g. undertaking mitigating measures, dissemination of the information, etc.).	Partial
3. In carrying out the risk assessments referred to in paragraph 1 of this Article, Member States shall make use of the findings of the report referred to in Article 6(1).	Not applicable in the case of Kosovo although it could be a relevant source for informing the Kosovo NRA and the RBA of the authorities and reporting entities. There is no indication that the supra-national risk assessment has been considered by Kosovo authorities up till now.	Not compliant
4. As regards the risk assessment referred to in paragraph 1, each Member State shall:	Please refer to the TC Annex, R. 1.1-1.9 as well as to IO 1. Despite the lack of explicit requirements in Kosovo law and mechanisms for the implementation of these provisions, Kosovo authorities have used the NRA and various sectoral assessments as	Partial

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(a) use it to improve its AML/CFT regime, in particular by identifying any areas where obliged entities are to apply enhanced measures and, where appropriate, specifying the measures to be taken; (b) identify, where appropriate, sectors or areas of lower or greater risk of money laundering and terrorist financing; (c) use it to assist it in the allocation and prioritisation of resources to combat money laundering and terrorist financing; (d) use it to ensure that appropriate rules are drawn up for each sector or area, in accordance with the risks of money laundering and terrorist financing; (e) make appropriate information available promptly to obliged entities to facilitate the carrying out of their own money laundering and terrorist financing risk assessments; ▼M1 (f) report the institutional structure and broad procedures of their AML/CFT regime, including, *inter alia*, the FIU, tax authorities and prosecutors, as well as the allocated human and financial resources to the extent that this information is available; (g) report on national efforts and resources (labour forces and budget) allocated to combat money laundering and terrorist financing.	a basis for the development of strategy, change of policy, (limited) identification of certain sectors of higher risk, partial adjustment of resources. Nevertheless, the application of these provisions is limited by the lack of specific provisions for the reporting entities to take into account the results of the NRA, as well as the lack of any corresponding requirement for the authorities to fully take into account the risk assessments to implement relevant amendments to the application of the measures by the reporting entities.	
5. Member States shall make the results of their risk assessments, including their updates, available to the Commission, the ESAs and the other Member States. Other Member States may provide relevant additional information, where appropriate, to the Member State carrying out the risk assessment. A summary of the assessment shall be made publicly available. That summary shall not contain classified information.	There are no requirements in Kosovo law for making a summary of the NRA publicly available (although done in practice and on an *ad hoc* basis).	N/A and partial
▼B **Article 8**	Please refer to TC Annex, R. 1.10-1.12, as well as IO 1. The provision of the Directive is implemented in Kosovo by Article 18 of the AML/CFT Law. Paragraph 2 of this article requires the obliged entities to periodically determine the risk they are exposed to taking into account their services, products, geographic location and delivery mechanisms and channels. The	Partial

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1. Member States shall ensure that obliged entities take appropriate steps to identify and assess the risks of money laundering and terrorist financing, taking into account risk factors including those relating to their customers, countries or geographic areas, products, services, transactions or delivery channels. Those steps shall be proportionate to the nature and size of the obliged entities.	provision only partially could be considered to ensure appropriate steps are taken as there are no relevant requirements for overall risk assessment of the obliged entities, there are no periods specified for the risk assessment, specifically taking into account the overall risk determined, as well as no mechanisms are in place to ensure that the results of national and sectoral risk assessments are duly reflected in the assessment performed by the obliged entities. There is no requirement that the steps taken by the obliged entities should be proportionate to the nature and size of the entities.	
2. The risk assessments referred to in paragraph 1 shall be documented, kept up-to-date and made available to the relevant competent authorities and self-regulatory bodies concerned. Competent authorities may decide that individual documented risk assessments are not required where the specific risks inherent in the sector are clear and understood.	Please refer to TC Annex, R. 1.10-1.12, as well as IO 1. There is no explicit requirement for the risk assessments of the obliged entities to be documented. The regular update is required by Article 18 of the AML/CFT Law but there are no further requirements for updates, e.g. based on the overall level of risk or significant market developments. The risk assessments are to be made available only to the FIU and where relevant to the CBK, but not to the other supervisors or self-regulatory bodies (although the latter might be irrelevant considering the lack of any legally defined role for these bodies in the field of AML/CFT, please see R. 23.1 of the TC Annex). No explicit possibilities for exemptions for risk assessments in certain sectors have been provided for in the legislation.	Partial
3. Member States shall ensure that obliged entities have in place policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified at the level of the Union, the Member State and the obliged entity. Those policies, controls and procedures shall be proportionate to the nature and size of the obliged entities. 4. The policies, controls and procedures referred to in paragraph 3 shall include: (a) the development of internal policies, controls and procedures, including model risk management practices, customer due diligence, reporting, record-keeping, internal control, compliance management including, where appropriate with regard to the size and nature of	Please refer to TC Annex, R. 1.10-1.12, as well as IO 1. Policies, controls and procedures required by Article 17 of the AML/CFT Law provide for a number of internal policies and procedures as required by Paragraph 4 of Article 8 of the Directive, however they do not include explicitly the management of risks and employee screening. The CBK Regulation on AML/CFT introduces requirements for determining risk policies related to the money laundering and terrorist financing, including risk acceptance and management. Requirements for employee fitness and propriety are also introduced in the CBK Regulation on AML/CFT. Both additional requirements in the CBK Regulation are	Partial

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the business, the appointment of a compliance officer at management level, and employee screening; (b) where appropriate with regard to the size and nature of the business, an independent audit function to test the internal policies, controls and procedures referred to in point (a).	applicable to banks and financial institutions, but not for other categories of reporting entities. Article 21 stipulates the requirements for the compliance function, including compliance officer at senior management level (for banks). There are no specific requirements in law and clear mechanisms for the provision of NRA to the obliged entities, there are deficiencies in the risk analyses conducted at the national level (please see IO 1), as well as no legal obligation or mechanism for taking into account the supra-national risk assessment of the EU is in place. No general mechanism are in place to ensure internal policies, controls and procedures are tailored to the nature and size, although the requirements of Article 17 and 21 of the AML/CFT Law take into account to a limited extent the different characteristics of the categories of reporting entities (specifically banks and financial institutions on the one hand and other categories of obliged entities, on the other hand, number of staff, etc.). The CBK Regulation takes into account the nature and size of the obliged entities.	
5. Member States shall require obliged entities to obtain approval from their senior management for the policies, controls and procedures that they put in place and to monitor and enhance the measures taken, where appropriate.	Please refer to TC Annex, R. 1.10-1.12, as well as IO 1. There are no requirements in Kosovo legislation for approval from senior management for the policies, controls and procedures.	Not compliant
SECTION 3 ***Third-country policy*** **Article 9**	Not applicable.	N/A
CHAPTER II **CUSTOMER DUE DILIGENCE** *SECTION 1* ***General provisions*** **Article 10**	Please refer to TC Annex, R. 10.1, 10.2, 10.4 and 10.16. The anonymous accounts are prohibited by Article 24, Paragraph 1 of the AML/CFT Law. There are no explicit requirements for the safe-deposit boxes, although identification and verification of the identity and date of birth when granting safe-deposit facilities are required pursuant to Paragraph 2 of Article 19 and Paragraph 2 of Article 24 of the same law. The deficiencies with regard to the	Partial

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▼M1 1. Member States shall prohibit their credit institutions and financial institutions from keeping anonymous accounts, anonymous passbooks or anonymous safe-deposit boxes. Member States shall, in any event, require that the owners and beneficiaries of existing anonymous accounts, anonymous passbooks or anonymous safe-deposit boxes be subject to customer due diligence measures no later than 10 January 2019 and in any event before such accounts, passbooks or deposit boxes are used in any way.	identification and verification of persons purporting to act on behalf of the customer would also be detrimental to the identification and verification of the beneficiaries despite the general requirement of Paragraph 8 of Article 19 of the AML/CFT Law (which also does not refer to verification) (Please see R. 10.4 in the TC Annex, no explicit requirements to identify persons purporting to act on behalf of the customer).	
▼B 2. Member States shall take measures to prevent misuse of bearer shares and bearer share warrants.	Please refer to TC Annex, R. 24.11. Bearer shares seem to be prohibited but no measures are in place for bearer share warrants.	Partial
Article 11 Member States shall ensure that obliged entities apply customer due diligence measures in the following circumstances: (a) when establishing a business relationship; (b) when carrying out an occasional transaction that: (i) amounts to EUR 15 000 or more, whether that transaction is carried out in a single operation or in several operations which appear to be linked; or (ii) constitutes a transfer of funds, as defined in point (9) of Article 3 of Regulation (EU) 2015/847 of the European Parliament and of the Council ([98]), exceeding EUR 1 000 ; (c) in the case of persons trading in goods, when carrying out occasional transactions in cash amounting to EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;	Please refer to TC Annex, R. 10.2, 16.1, 22.1. Please see also IO 4 (Core Issue 4.2). The relevant provision of the AML/CFT Law for all institutions is Article 19, Paragraph 2. The AML/CFT Law is not in line with the Directive in regard to the CDD required for occasional transactions as there is no clarity on the definition of related transactions reaching the designated threshold and there appears to be no requirement for full CDD for all occasional transactions above the threshold (only for cash transactions). For wire transfers, the AML/CFT Law does not require full CDD to be performed. In the case of the banks and financial institutions CDD measures (limited) for wire transfers are required only with regard to banks (as opposed to banks and financial institutions). For casinos, including internet casinos and licensed objects of the games of chance (which is narrower than the scope of gambling services required by the Directive to be included as obliged entities, please refer to the discussion under Article 2, Paragraph 2 of the Directive) no full CDD is required with regard to the	Partial

[98] European Parliament and the Council (2015), Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (see page 1 of this Official Journal) available at https://eur-lex.europa.eu

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(d) for providers of gambling services, upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to EUR 2 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked; (e) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold; (f) when there are doubts about the veracity or adequacy of previously obtained customer identification data.	transaction above the threshold (EUR 2,000) (as opposed to identification and verification). It is not clear whether dealers in precious metals and stone would be obliged entities in all situations (i.e. the AML/CFT Law refers to sellers of precious metals and stones only leaving a room for interpretation and legal challenge). With regard to the legal professionals, accountants, trust and company service providers the limitations discussed under the definitions of Article 3 of the Directive would be applicable. The application of CDD measures in practice is negatively impacted mainly by the lack of understanding of the beneficial ownership and the lack of application of CDD measures in practice by almost all of the DNFBPs regardless of the risk.	
Article 12 1. By way of derogation from points (a), (b) and (c) of the first subparagraph of Article 13(1) and Article 14, and based on an appropriate risk assessment which demonstrates a low risk, a Member State may allow obliged entities not to apply certain customer due diligence measures with respect to electronic money, where all of the following risk-mitigating conditions are met: ▼M1 (a) the payment instrument is not reloadable, or has a maximum monthly payment transactions limit of EUR 150 which can be used only in that Member State; (b) the maximum amount stored electronically does not exceed EUR 150; ▼B (c) the payment instrument is used exclusively to purchase goods or services; (d) the payment instrument cannot be funded with anonymous electronic money;	Kosovo authorities have not provided for any regulation and derogations with regard to AML/CFT measures applicable to electronic money. Thus, general CDD requirements of the AML/CFT Law would be applicable, including the higher thresholds for occasional transactions. Likewise, the deficiencies e.g. related to the lack of requirement for CDD in respect of the wire transfers, would apply (including the deficiencies related to occasional transactions, lack of monitoring, etc.). No limitations are introduced with regard to the use of anonymous prepaid cards issued outside Kosovo (Paragraph 3 of Article 12 of the Directive). All this contributes to a significant risk. It is noted also that no derogation is provided for in the Directive in relation to the monitoring and source of funds, while the thresholds of the generic CDD requirements of Kosovo AML/CFT Law would not require such monitoring in practice.	Not compliant

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(e) the issuer carries out sufficient monitoring of the transactions or business relationship to enable the detection of unusual or suspicious transactions. ▼M1 —————— ▼M1 2. Member States shall ensure that the derogation provided for in paragraph 1 of this Article is not applicable in the case of redemption in cash or cash withdrawal of the monetary value of the electronic money where the amount redeemed exceeds EUR 50, or in the case of remote payment transactions as defined in point (6) of Article 4 of the Directive (EU) 2015/2366 of the European Parliament and of the Council ([99]) where the amount paid exceeds EUR 50 per transaction. ▼M1 3. Member States shall ensure that credit institutions and financial institutions acting as acquirers only accept payments carried out with anonymous prepaid cards issued in third countries where such cards meet requirements equivalent to those set out in paragraphs 1 and 2. Member States may decide not to accept on their territory payments carried out by using anonymous prepaid cards.		
▼B **Article 13** 1. Customer due diligence measures shall comprise: ▼M1	Please refer to TC Annex, R. 10.3 and 22.1. Please see also IO 4 (Core Issue 4.2). The requirements of Kosovo legislation for identification and verification of the customer's identity are in line with the Directive except for the possibility to rely on electronic identification means as provided for in letter (a). Article 22, Paragraph 3.3 of the AML/CFT Law provides for the use of electronic means generating digital signature as a mitigating measure with regard to the higher risks when establishing relationship without the physical presence	Partial

[99] European Parliament and the Council (2015), Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35) available at https://eur-lex.europa.eu

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(a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source, including, where available, electronic identification means, relevant trust services as set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council ([100]) or any other secure, remote or electronic identification process regulated, recognised, approved or accepted by the relevant national authorities;	of the customer and to ensure that the identification and CDD requirements are fulfilled. This method of identification cannot be considered to provide the same level of security as the electronic identification means referred to in the Directive without any further specificity on the measures to ensure proper safeguards for the risk related to the non-face-to-face nature of the on-boarding process. Furthermore, the provision of the Law refers not only to identification and verification but also to all other CDD requirements which is not stipulated in the relevant provision of the Directive. The application of CDD measures in general is negatively impacted mainly by the lack of understanding of the beneficial ownership and the lack of application of CDD measures in practice by almost all of the DNFBPs regardless of the risk.	
▼B (b) identifying the beneficial owner and taking reasonable measures to verify that person's identity so that the obliged entity is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts, companies, foundations and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer. ►M1 Where the beneficial owner identified is the senior managing official as referred to in Article 3(6)(a) (ii), obliged entities shall take the necessary reasonable measures to verify the identity of the natural person who holds the position of senior managing official and shall keep records of the actions taken as well as any difficulties encountered during the verification process; ◄	Please refer to TC Annex, R. 10.5, 10.10, 10.11 and 22.1. The deficiencies identified with regard to the definition of beneficial owner would apply (please see also above, under Article 3 of the Directive). Moreover verification would be required (pursuant to Article 19, Paragraph 1.2 of the AML/CFT Law) only in case of high-risk situations and there is no requirement for using reliable and independent source. As regards legal persons, trusts, companies, foundations and similar legal arrangements the requirement to take reasonable measures to understand the ownership and control structure of the customer is not met as the AML/CFT Law requires these measures to be applied again only in high-risk situations. There is no obligation to obtain information on the senior managing official in case no natural person is identified as beneficial owner, therefore no further requirements are in place in this regard.	Partial
(c) assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship;	Please refer to TC Annex, R. 10.6 and 22.1.	Full

[100] European Parliament and the Council (2014), Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73) available at https://eur-lex.europa.eu

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	The requirement of Article 19, Paragraph 1.3 requires obtaining the necessary information in all cases and is considered in line with the Directive.	
(d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the obliged entity's knowledge of the customer, the business and risk profile, including where necessary the source of funds and ensuring that the documents, data or information held are kept up-to-date.	Please refer to TC Annex, R. 10.7 and 22.1. The deficiencies noted under the aforementioned FATF Recommendations would not apply (specifically the "relevance" of the information and the "undertaking of review of existing records"). The same wording of documents, data or information kept up-to-date is used under Article 19 of the AML/CFT Law.	Full
When performing the measures referred to in points (a) and (b) of the first subparagraph, obliged entities shall also verify that any person purporting to act on behalf of the customer is so authorised and identify and verify the identity of that person.	Please refer to TC Annex, R. 10.4 and 22.1. There are deficiencies in the requirements to identify persons purporting to act on behalf of the customer, mainly linked to the required documents for identification of legal entities that would not include legal arrangements and entities other than business organisations, NGOs and political entities. Further to this, there is no explicit requirement to verify the identity of those persons.	Partial
2. Member States shall ensure that obliged entities apply each of the customer due diligence requirements laid down in paragraph 1. However, obliged entities may determine the extent of such measures on a risk-sensitive basis.	The first sentence of the paragraph is not met as there are a number of deficiencies which would impact the application of those measures, e.g. the application of the verification measures for beneficial ownership only in situations of high risk. Kosovo legislation does not allow in practice the application of CDD measures to a variable extent based on the determination by obliged entities following their own risk assessment due to the following reasons. On the one hand, there are strictly defined situations for enhanced CDD (and respective measures) and no further measures appropriately defined to be considered for this purpose when high-risk situations are determined. Moreover, the determination of high-risk is not related to overall risk but only to clients and other persons to whom financial and professional services are provided pursuant to Article 18, Paragraph 5 of the AML/CFT Law (compared to risk related to services, products, geographic location and delivery channels and mechanisms). On the other hand, simplified CDD is subject to situations approved by the FIU and no further details on the measures (hence also the extent of application of the measures) to be applied are provided	Not compliant

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	in law. There are also deficiencies on the identification and assessment of risk by the obliged entities (as discussed with regard to Article 8, Paragraph 1 of the Directive) that would apply also for this provision of the Directive. The AML/CFT Law allows limited discretion of the obliged entities as a result of the assessed risk by providing strict situations requiring simplified or enhanced CDD (although there is a level of discretion strictly as a result of the guidance provided by the FIU, see Article 23, paragraph 5 of the AML/CFT Law).	
3. Member States shall require that obliged entities take into account at least the variables set out in Annex I when assessing the risks of money laundering and terrorist financing.	No explicit requirement to take into account the variables listed under Annex I of the Directive is implemented.	Not compliant
4. Member States shall ensure that obliged entities are able to demonstrate to competent authorities or self-regulatory bodies that the measures are appropriate in view of the risks of money laundering and terrorist financing that have been identified.	There are requirements for assessing the risk in relation to a number of products, services, delivery channels, customers and geographic areas, providing this risk assessment to competent authorities, as well as the requirements for guidance of the FIU and supervisors in order to apply e.g. simplified measures. Nevertheless, it is highly unlikely that this requirement of the Directive could be fully addressed considering the lack of requirements in Kosovo to implement a risk management/mitigation internal systems and policies and procedures (with the exception of banks and financial institutions) and deficiencies related to the documenting requirements. Moreover, the onus of keeping measures at an appropriate level is seemingly put on the FIU in cooperation with supervisors e.g. in Paragraph 5 of Article 23 which requires the authorities to determine situations where simplified measures are appropriate.	Partial
5. For life or other investment-related insurance business, Member States shall ensure that, in addition to the customer due diligence measures required for the customer and the beneficial owner, credit institutions and financial institutions conduct the following customer due diligence measures on the beneficiaries of life insurance and other investment-related insurance policies, as soon as the beneficiaries are identified or designated: (a) in the case of beneficiaries that are identified as specifically named persons or legal arrangements, taking the name of the person;	Please refer to TC Annex, R. 10.12. The deficiencies identified with regard to the timing of the identification of beneficiaries and the beneficiaries that are legal arrangements are impacting the compliance with this provision of the Directive. The risk situation described under Paragraph 5 of this Article of the Directive has not been included in the Kosovo legislation.	Partial

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(b) in the case of beneficiaries that are designated by characteristics or by class or by other means, obtaining sufficient information concerning those beneficiaries to satisfy the credit institutions or financial institution that it will be able to establish the identity of the beneficiary at the time of the payout. With regard to points (a) and (b) of the first subparagraph, the verification of the identity of the beneficiaries shall take place at the time of the payout. In the case of assignment, in whole or in part, of the life or other investment-related insurance to a third party, credit institutions and financial institutions aware of the assignment shall identify the beneficial owner at the time of the assignment to the natural or legal person or legal arrangement receiving for its own benefit the value of the policy assigned.		
6. In the case of beneficiaries of trusts or of similar legal arrangements that are designated by particular characteristics or class, an obliged entity shall obtain sufficient information concerning the beneficiary to satisfy the obliged entity that it will be able to establish the identity of the beneficiary at the time of the payout or at the time of the exercise by the beneficiary of its vested rights.	Please refer to TC Annex, R. 10.11. Kosovo does not comply with this provision of the Directive except for the banks and financial institutions pursuant to Article 10, Paragraph 7 of the CBK Regulation on AML/CFT.	Partial
Article 14 1. Member States shall require that verification of the identity of the customer and the beneficial owner take place before the establishment of a business relationship or the carrying out of the transaction. ►M1 Whenever entering into a new business relationship with a corporate or other legal entity, or a trust or a legal arrangement having a structure or functions similar to trusts ('similar legal arrangement') which are subject to the registration of beneficial ownership information pursuant to Article 30 or 31, the obliged entities shall collect proof of registration or an excerpt of the register. ◄ 2. By way of derogation from paragraph 1, Member States may allow verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship if necessary so as not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing. In such situations, those procedures shall be completed as soon as practicable after initial contact.	Please refer to TC Annex, R. 10.14, as well as IO 4. The timing is considered to meet the standard (before or during), however no safeguards are included in the Kosovo legislation with regard to the verification carried out during the establishment of the relationship or the carrying out of the transaction to be sure it is done only in situations of low risk. The major deficiency here however is related to the lack of requirement for beneficial owner verification except in situations of higher risk as well as the lack of understanding of the beneficial ownership definition especially with regard to the different scenarios of control (please refer also to IO 4, Core Issue 4.2). There is no register in Kosovo pursuant to Articles 30 and 31, therefore the second sentence of Paragraph 1 is not met.	Not compliant
3. By way of derogation from paragraph 1, Member States may allow the opening of an account with a credit institution or financial institution, including accounts that permit transactions in transferable securities, provided that there are adequate safeguards in place to ensure that	No such derogation is allowed by the AML/CFT Law.	N/A

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transactions are not carried out by the customer or on its behalf until full compliance with the customer due diligence requirements laid down in points (a) and (b) of the first subparagraph of Article 13(1) is obtained.		
4. Member States shall require that, where an obliged entity is unable to comply with the customer due diligence requirements laid down in point (a), (b) or (c) of the first subparagraph of Article 13(1), it shall not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, and shall terminate the business relationship and consider making a suspicious transaction report to the FIU in relation to the customer in accordance with Article 33. Member States shall not apply the first subparagraph to notaries, other independent legal professionals, auditors, external accountants and tax advisors only to the strict extent that those persons ascertain the legal position of their client, or perform the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings.	Please refer to R. 10.19 of the TC Annex. The AML/CFT Law is not in full compliance mainly as there is no requirement in the relevant Article 19, Paragraph 9 to (actively) consider making a suspicious transaction report (there is no obstacle to do so where suspicion arises).	Partial
▼M1 5. Member States shall require that obliged entities apply the customer due diligence measures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, or when the relevant circumstances of a customer change, or when the obliged entity has any legal duty in the course of the relevant calendar year to contact the customer for the purpose of reviewing any relevant information relating to the beneficial owner(s), or if the obliged entity has had this duty under Council Directive 2011/16/EU ([101]).	Please refer to R. 10.16 in the TC Annex. The relevant provision in the AML/CFT Law is Article 68, Paragraph 1 which requires application of the measures to existing customers based on the materiality and risk. This could be considered to be in line with the first option allowed by the Directive. The other options are not included.	Full
▼B *SECTION 2* ***Simplified customer due diligence*** **Article 15** 1. Where a Member State or an obliged entity identifies areas of lower risk, that Member State may allow obliged entities to apply simplified customer due diligence measures.	Article 23, Paragraphs 1-3 of the AML/CFT Law ensure broad compliance with the requirements of the Directive, however there is limited discretion allowed for the reporting entities to adopt SDD based on their assessment of risk. This would limit the application of simplified CDD in practice as demonstrated during the on-site assessment (virtually not applied by any institution).	Partial (with regard to the lack of practical application of SDD)

[101] European Council (2011), Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1) available at https://eur-lex.europa.eu

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2. Before applying simplified customer due diligence measures, obliged entities shall ascertain that the business relationship or the transaction presents a lower degree of risk. 3. Member States shall ensure that obliged entities carry out sufficient monitoring of the transactions and business relationships to enable the detection of unusual or suspicious transactions.		
Article 16 When assessing the risks of money laundering and terrorist financing relating to types of customers, geographic areas, and particular products, services, transactions or delivery channels, Member States and obliged entities shall take into account at least the factors of potentially lower risk situations set out in Annex II.	The provision is not fully met as the competent Kosovo authorities have not determined and implemented the relevant factors and situations referred to in Article 23, Paragraph 4. Thus, the factors determined in the Directive (Annex II) have not been implemented.	Partial
Article 17 By 26 June 2017, the ESAs shall issue guidelines addressed to competent authorities and the credit institutions and financial institutions in accordance with Article 16 of Regulations (EU) No. 1093/2010, (EU) No. 1094/2010, and (EU) No. 1095/2010 on the risk factors to be taken into consideration and the measures to be taken in situations where simplified customer due diligence measures are appropriate. Specific account shall be taken of the nature and size of the business, and, where appropriate and proportionate, specific measures shall be laid down.	These do not seem to have been considered and implemented in Kosovo.	Not compliant
SECTION 3 ***Enhanced customer due diligence*** **Article 18** 1. ►M1 In the cases referred to in Articles 18a to 24, as well as in other cases of higher risk that are identified by Member States or obliged entities, Member States shall require obliged entities to apply enhanced customer due diligence measures to manage and mitigate those risks appropriately. ◄ Enhanced customer due diligence measures need not be invoked automatically with respect to branches or majority-owned subsidiaries of obliged entities established in the Union which are	Please refer to R. 1 of the TC Annex, relevant Recommendations as discussed below (under the specific situations) as well as IO 1 and IO 4. Article 22, Paragraph 1 of the AML/CFT Law requires EDD on the basis of the risks identified by the obliged entities. No requirement, however, is in place to ensure that the NRA is fully taken into account as a factor determining EDD. For the implementation of Articles 18a to 24 of the Directive, please see below. Kosovo legislation has not introduced the option for branches and subsidiaries as provided for under the second subparagraph of Paragraph 1 of Article 18 of the Directive.	Partial

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located in high-risk third countries, where those branches or majority-owned subsidiaries fully comply with the group-wide policies and procedures in accordance with Article 45. Member States shall ensure that those cases are handled by obliged entities by using a risk-based approach.	The NRA and sectoral risk analyses are not consistently taken into account by the reporting entities to determine the application of the preventive measures. There is in general a certain level of understanding and application of the measures by banks and financial institutions as discussed below, but lack of awareness in the DNFBP sector.	
▼M1 2. Member States shall require obliged entities to examine, as far as reasonably possible, the background and purpose of all transactions that fulfil at least one of the following conditions: (i) they are complex transactions; (ii) they are unusually large transactions; (iii) they are conducted in an unusual pattern; (iv) they do not have an apparent economic or lawful purpose. In particular, obliged entities shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear suspicious.	The relevant Article 25, Paragraphs 1 and 3 provide for the obligation to pay attention and examine the background and purpose of all complex, unusual large transactions and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. It is noted that the Directive requires measures for all transactions that could meet any one of these criteria, while the AML/CFT Law provides for cumulative application of these criteria. Furthermore, there is no explicit requirement to determine whether there is any suspicion. The application of the measures by the DNFBPs seems to be on a low level. At the same time for all reporting entities the related reporting of unusual transactions to the FIU seems to be introducing further confusion and not to be used effectively based on an underlying relevant monitoring pursuant to this provision of the Directive (please see IO 6, core issue 6.2).	Partial
▼B 3. When assessing the risks of money laundering and terrorist financing, Member States and obliged entities shall take into account at least the factors of potentially higher-risk situations set out in Annex III. 4. By 26 June 2017, the ESAs shall issue guidelines addressed to competent authorities and the credit institutions and financial institutions, in accordance with Article 16 of Regulations (EU) No. 1093/2010, (EU) No. 1094/2010, and (EU) No. 1095/2010 on the risk factors to be taken into consideration and the measures to be taken in situations where enhanced customer due diligence measures are appropriate. Specific account shall be taken of the nature and size of the business, and, where appropriate and proportionate, specific measures shall be laid down.	No requirements in Kosovo law appear to systematically take into account the mentioned risk factors, leaving these to the discretion of the reporting entities.	Not compliant

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▼M1 **Article 18a** 1. With respect to business relationships or transactions involving high-risk third countries identified pursuant to Article 9(2), Member States shall require obliged entities to apply the following enhanced customer due diligence measures: (a) obtaining additional information on the customer and on the beneficial owner(s); (b) obtaining additional information on the intended nature of the business relationship; (c) obtaining information on the source of funds and source of wealth of the customer and of the beneficial owner(s); (d) obtaining information on the reasons for the intended or performed transactions; (e) obtaining the approval of senior management for establishing or continuing the business relationship; (f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination. Member States may require obliged entities to ensure, where applicable, that the first payment be carried out through an account in the customer's name with a credit institution subject to customer due diligence standards that are not less robust than those laid down in this Directive.	Please refer to TC Annex, R. 19 The AML/CFT legislation provides for enhanced measures to be applied with regard to third countries which are subject to international measures and are included in instructions by the FIU (Article 18, Paragraph 6), as well as countries that do not or insufficiently apply the relevant international standards on AML/CFT (Article 25, Paragraph 2). Pursuant to Article 18, Paragraph 6 of the AML/CFT Law the FIU issued in 2018 guidelines in regard to the application of measures with regard to the high-risk countries identified by the FATF. The Directive (Article 9 and here) provides for more extensive measures that could go beyond the requirements of the FATF-identified high-risk countries and introduces specific measures to be applied which are missing in Kosovo AML/CFT Law (but in theory could be applied through the guidelines). Article 18, Paragraph 6 could be interpreted to allow covering high-risk countries identified also by the EU, however there is no obligation in the law to consider the EU lists (pursuant to Article 9 of the Directive). Hence, the requirements of the Directive in this respect are not fully met. The implementation in practice of the requirements in regard to high-risk countries identified by the FATF is uneven. While understanding and specific measures are broadly in place in banks and financial institutions, it is not the case in the DNFBPs as well as exchange bureaus (please refer to the enhanced measures core issue under IO 4). Moreover, even banks and financial institutions do not have specific monitoring mechanisms for transactions.	Partial
2. In addition to the measures provided in paragraph 1 and in compliance with the Union's international obligations, Member States shall require obliged entities to apply, where applicable, one or more additional mitigating measures to persons and legal entities carrying out transactions involving high-risk third countries identified pursuant to Article 9(2). Those measures shall consist of one or more of the following: (a) the application of additional elements of enhanced due diligence;	No such measures are stipulated in the AML/CFT Law of Kosovo and there are no such obligations. Kosovo legislation does not provide for such additional measures that could be optionally applied with regard to the risks.	Not compliant

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(b) the introduction of enhanced relevant reporting mechanisms or systematic reporting of financial transactions; (c) the limitation of business relationships or transactions with natural persons or legal entities from the third countries identified as high risk countries pursuant to Article 9(2).		
3. In addition to the measures provided in paragraph 1, Member States shall apply, where applicable, one or several of the following measures with regard to high-risk third countries identified pursuant to Article 9(2) in compliance with the Union's international obligations: (a) refusing the establishment of subsidiaries or branches or representative offices of obliged entities from the country concerned, or otherwise taking into account the fact that the relevant obliged entity is from a country that does not have adequate AML/CFT regimes; (b) prohibiting obliged entities from establishing branches or representative offices in the country concerned, or otherwise taking into account the fact that the relevant branch or representative office would be in a country that does not have adequate AML/CFT regimes; (c) requiring increased supervisory examination or increased external audit requirements for branches and subsidiaries of obliged entities located in the country concerned; (d) requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the country concerned; (e) requiring credit and financial institutions to review and amend, or if necessary terminate, correspondent relationships with respondent institutions in the country concerned.	Kosovo legislation does not provide for such additional measures that could be optionally applied with regard to the risks.	
4. When enacting or applying the measures set out in paragraphs 2 and 3, Member States shall take into account, as appropriate relevant evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing, in relation to the risks posed by individual third countries. 5. Member States shall notify the Commission before enacting or applying the measures set out in paragraphs 2 and 3.	No such requirements are introduced in Kosovo legislation. The notification requirement of Paragraph 5 is not applicable.	Not compliant
▼B	Please refer to TC Annex, R. 13.1 and 13.2, as well as IO 4.	Partial

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Article 19 ▼M1 With respect to cross-border correspondent relationships involving the execution of payments with a third-country respondent institution, Member States shall, in addition to the customer due diligence measures laid down in Article 13, require their credit institutions and financial institutions when entering into a business relationship to: ▼B (a) gather sufficient information about the respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision; (b) assess the respondent institution's AML/CFT controls; (c) obtain approval from senior management before establishing new correspondent relationships; (d) document the respective responsibilities of each institution; (e) with respect to payable-through accounts, be satisfied that the respondent institution has verified the identity of, and performed ongoing due diligence on, the customers having direct access to accounts of the correspondent institution, and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.	The requirements of the Directive are broadly met through Article 22, Paragraph 4 of the AML/CFT Law. However there is a lack of clarity especially in regard to the requirements related to the assessment of supervision and controls (internal policies and procedures vs. regulatory control), the requirements for payable-through accounts and the persons that would be required to apply these measures. The CBK regulation clarifies the issues but only in relation to banks. Banks generally seem to be aware of their obligations in regard to correspondent relations but it is not clear to what extent such equivalent relations have been identified and requirements implemented by financial institutions.	
Article 20 With respect to transactions or business relationships with politically exposed persons, Member States shall, in addition to the customer due diligence measures laid down in Article 13, require obliged entities to:	Please refer to the TC Annex, R. 12 as well as IO 4. Similarly to the Directive the AML/CFT Law of Kosovo provides for equal enhanced CDD in relation to both foreign and domestic PEPs (Article 22, Paragraph 5). As discussed in relation to the definitions of Article 3 of the Directive the scope of the PEPs under the AML/CFT Law broadly complies with the Directive except for the issue of coverage of the related persons (family or close associates). As noted under R. 12.1 of the TC annex, the	Partial

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(a) have in place appropriate risk management systems, including risk-based procedures, to determine whether the customer or the beneficial owner of the customer is a politically exposed person; (b) apply the following measures in cases of business relationships with politically exposed persons: (i) obtain senior management approval for establishing or continuing business relationships with such persons; (ii) take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or transactions with such persons; (iii) conduct enhanced, ongoing monitoring of those business relationships.	requirement for the implementation of risk-management systems is not met. In relation to the enhanced CDD measures to be applied where the customer or the beneficial owner is a PEP, the following is noted: The requirement to obtain senior management approval in the AML/CFT Law goes beyond the Directive as it also includes occasional transactions. There is a lack of clarity whether the requirement to identify the source of wealth also covers the beneficial owner of the customer being a PEP. With regard to the implementation of these measures in practice, there is over-reliance on the declaratory regime, lack of understanding among DNFBPs and lack of verification mechanisms. The understanding of the beneficial ownership requirements linked to the threshold of 25% is also detrimental to the application of the requirements to take measures to identify PEPs. There might also be additional difficulties for the reporting entities applying the requirement to identify the source of wealth in case of occasional transactions. There are difficulties in practice for all entities to identify the source of funds as discussed under IO 4.	
▼M1 **Article 20a** 1. Each Member State shall issue and keep up to date a list indicating the exact functions which, according to national laws, regulations and administrative provisions, qualify as prominent public functions for the purposes of point (9) of Article 3. Member States shall request each international organisation accredited on their territories to issue and keep up to date a list of prominent public functions at that international organisation for the purposes of point (9) of Article 3. Those lists shall be sent to the Commission and may be made public. 2. The Commission shall compile and keep up to date the list of the exact functions which qualify as prominent public functions at the level of Union institutions and bodies. That list shall also include any function which may be entrusted to representatives of third countries and of international bodies accredited at Union level.	Please refer to the TC Annex, R. 12 as well as IO 4. There are lists maintained by Kosovo authorities (Anti-Corruption Agency) in regard to persons holding prominent public functions. This would broadly bring the regime in Kosovo in line with this requirement of the Directive. Despite the positive effect of these lists on the application of the PEPs requirements, these lists would not however bring any benefit in regard to the identification of related persons to domestic PEPs (as well as the foreign PEPs). It is also not clear whether and to what extent representatives of international organisations are included in the lists.	Partial

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3. The Commission shall assemble, based on the lists provided for in paragraphs 1 and 2 of this Article, a single list of all prominent public functions for the purposes of point (9) of Article 3. That single list shall be made public. 4. Functions included in the list referred to in paragraph 3 of this Article shall be dealt with in accordance with the conditions laid down in Article 41(2).		
▼B **Article 21** Member States shall require obliged entities to take reasonable measures to determine whether the beneficiaries of a life or other investment-related insurance policy and/or, where required, the beneficial owner of the beneficiary are politically exposed persons. Those measures shall be taken no later than at the time of the payout or at the time of the assignment, in whole or in part, of the policy. Where there are higher risks identified, in addition to applying the customer due diligence measures laid down in Article 13, Member States shall require obliged entities to: (a) inform senior management before payout of policy proceeds; (b) conduct enhanced scrutiny of the entire business relationship with the policyholder.	Please refer also to R. 12.4 in the TC Annex. The requirement for taking reasonable measures to determine whether the beneficiaries and/or their beneficial owners are PEPs is met. The timing of this requirement, pursuant to Article 22, Paragraph 5 of the AML/CFT Law, is defined to be carried out at the time of the payout at the latest, thus omitting the requirement to take reasonable measures at the time of assignment of the policy which is not in line with the Directive. The measures to be taken in regard to a person identified as PEP are in line with the Directive.	Partial
Article 22 Where a politically exposed person is no longer entrusted with a prominent public function by a Member State or a third country, or with a prominent public function by an international organisation, obliged entities shall, for at least 12 months, be required to take into account the continuing risk posed by that person and to apply appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk specific to politically exposed persons.	No similar requirement is in place in Kosovo legislation and no requirements is implemented to determine the period of application of the enhanced CDD measures in this regard based on the assessment of the risk.	Not compliant
Article 23 The measures referred to in Articles 20 and 21 shall also apply to family members or persons known to be close associates of politically exposed persons.	Please see relevant section in the TC Annex, R. 12. Please refer above to the discussion on the definition of PEP. The application to family members or persons known to close	Not compliant

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	associates is not clear. The list maintained for anti-corruption purposes is also not beneficial in this regard.	
Article 24 Member States shall prohibit credit institutions and financial institutions from entering into, or continuing, a correspondent relationship with a shell bank. They shall require that those institutions take appropriate measures to ensure that they do not engage in or continue correspondent relationships with a credit institution or financial institution that is known to allow its accounts to be used by a shell bank.	Please see TC Annex, R. 13.3. The application of the relevant requirements is negatively impacted by the partially compliant definition of shell bank.	Partial
SECTION 4 ***Performance by third parties*** **Article 25** Member States may permit obliged entities to rely on third parties to meet the customer due diligence requirements laid down in points (a), (b) and (c) of the first subparagraph of Article 13(1). However, the ultimate responsibility for meeting those requirements shall remain with the obliged entity which relies on the third party. **Article 26** 1. For the purposes of this Section, 'third parties' means obliged entities listed in Article 2, the member organisations or federations of those obliged entities, or other institutions or persons situated in a Member State or third country that: (a) apply customer due diligence requirements and record-keeping requirements that are consistent with those laid down in this Directive; and (b) have their compliance with the requirements of this Directive supervised in a manner consistent with Section 2 of Chapter VI. 2. Member States shall prohibit obliged entities from relying on third parties established in high-risk third countries. Member States may exempt branches and majority-owned subsidiaries of obliged entities established in the Union from that prohibition where those branches and	Please refer to TC Annex, R. 17, as well as IO 4. Kosovo legislation does not provide for specific requirements for third-party reliance while not explicitly prohibiting such reliance. Therefore, it cannot be considered that (given the lack of prohibition) there are adequate safeguards for the application of this reliance. In practice no such reliance occurs as discussed under IO 4.	Not compliant

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majority-owned subsidiaries fully comply with the group-wide policies and procedures in accordance with Article 45. **Article 27** 1. Member States shall ensure that obliged entities obtain from the third party relied upon the necessary information concerning the customer due diligence requirements laid down in points (a), (b) and (c) of the first subparagraph of Article 13(1). ▼M1 2. Member States shall ensure that obliged entities to which the customer is referred take adequate steps to ensure that the third party provides immediately, upon request, relevant copies of identification and verification data, including, where available, data obtained through electronic identification means, relevant trust services as set out in Regulation (EU) No. 910/2014, or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities.		
▼B **Article 28** Member States shall ensure that the competent authority of the home Member State (for group-wide policies and procedures) and the competent authority of the host Member State (for branches and subsidiaries) may consider an obliged entity to comply with the provisions adopted pursuant to Articles 26 and 27 through its group programme, where all of the following conditions are met: (a) the obliged entity relies on information provided by a third party that is part of the same group; (b) that group applies customer due diligence measures, rules on record-keeping and programmes against money laundering and terrorist financing in accordance with this Directive or equivalent rules;	No provisions are in place to ensure reliance within the group (not explicitly prohibited) takes place in line with relevant safeguards.	Not compliant

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(c) the effective implementation of the requirements referred to in point (b) is supervised at group level by a competent authority of the home Member State or of the third country.		
Article 29 This Section shall not apply to outsourcing or agency relationships where, on the basis of a contractual arrangement, the outsourcing service provider or agent is to be regarded as part of the obliged entity.	Not applicable.	N/A
CHAPTER III **BENEFICIAL OWNERSHIP INFORMATION** **Article 30** 1. ►M1 Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held. Member States shall ensure that breaches of this Article are subject to effective, proportionate and dissuasive measures or sanctions. ◄ Member States shall ensure that those entities are required to provide, in addition to information about their legal owner, information on the beneficial owner to obliged entities when the obliged entities are taking customer due diligence measures in accordance with Chapter II. ▼M1 Member States shall require that the beneficial owners of corporate or other legal entities, including through shares, voting rights, ownership interest, bearer shareholdings or control via other means, provide those entities with all the information necessary for the corporate or other legal entity to comply with the requirements in the first subparagraph.	Please refer to TC Annex, R. 24, as well as IO 5. There are no specific obligations in Kosovo law for legal persons to obtain and hold information on the beneficial ownership. Moreover, owner as understood for the purposes of incorporation does not seem to cover also beneficial owners. There is no requirement for the legal entities to provide the information in the context of the CDD measures applied by the reporting entities. No requirement is in place also for the beneficial owners to submit this information.	Not compliant
▼B 2. Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.	No such mechanisms are in place.	Not compliant

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3. Member States shall ensure that the information referred to in paragraph 1 is held in a central register in each Member State, for example a commercial register, companies register as referred to in Article 3 of Directive 2009/101/EC of the European Parliament and of the Council ([102]), or a public register. Member States shall notify to the Commission the characteristics of those national mechanisms. The information on beneficial ownership contained in that database may be collected in accordance with national systems.	No such requirements are in place in Kosovo.	Not compliant
▼M1 4. Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current, and shall put in place mechanisms to this effect. Such mechanisms shall include requiring obliged entities and, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, competent authorities to report any discrepancies they find between the beneficial ownership information available in the central registers and the beneficial ownership information available to them. In the case of reported discrepancies, Member States shall ensure that appropriate actions be taken to resolve the discrepancies in a timely manner and, if appropriate, a specific mention be included in the central register in the meantime. 5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to: (a) competent authorities and FIUs, without any restriction; (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II; (c) any member of the general public. The persons referred to in point (c) shall be permitted to access at least the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held.	No such requirements are in place in Kosovo.	Not compliant

[102] European Parliament and the Council (2009) Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11) available at https://eur-lex.europa.eu

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Member States may, under conditions to be determined in national law, provide for access to additional information enabling the identification of the beneficial owner. That additional information shall include at least the date of birth or contact details in accordance with data protection rules. ▼M1 5a. Member States may choose to make the information held in their national registers referred to in paragraph 3 available on the condition of online registration and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register. ▼M1 6. Member States shall ensure that competent authorities and FIUs have timely and unrestricted access to all information held in the central register referred to in paragraph 3 without alerting the entity concerned. Member States shall also allow timely access by obliged entities when taking customer due diligence measures in accordance with Chapter II. Competent authorities granted access to the central register referred to in paragraph 3 shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, as well as tax authorities, supervisors of obliged entities and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing and seizing or freezing and confiscating criminal assets.		
7. Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 3 to the competent authorities and to the FIUs of other Member States in a timely manner and free of charge.	No corresponding requirements as no information on beneficial ownership is obligatorily held in a manner to allow efficient access along the lines of the respective Directive provisions.	Not compliant.
▼B 8. Member States shall require that obliged entities do not rely exclusively on the central register referred to in paragraph 3 to fulfil their customer due diligence requirements in accordance with Chapter II. Those requirements shall be fulfilled by using a risk-based approach.	Not applicable	Not applicable
▼M1	Not applicable.	Not applicable.

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
9. In exceptional circumstances to be laid down in national law, where the access referred to in points (b) and (c) of the first subparagraph of paragraph 5 would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor or otherwise legally incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. Member States shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. Rights to an administrative review of the exemption decision and to an effective judicial remedy shall be guaranteed. A Member State that has granted exemptions shall publish annual statistical data on the number of exemptions granted and reasons stated and report the data to the Commission. Exemptions granted pursuant to the first subparagraph of this paragraph shall not apply to credit institutions and financial institutions, or to the obliged entities referred to in point (3)(b) of Article 2(1) that are public officials. 10. Member States shall ensure that the central registers referred to in paragraph 3 of this Article are interconnected via the European Central Platform established by Article 22(1) of Directive (EU) 2017/1132 of the European Parliament and of the Council ([103]). The connection of the Member States' central registers to the platform shall be set up in accordance with the technical specifications and procedures established by implementing acts adopted by the Commission in accordance with Article 24 of Directive (EU) 2017/1132 and with Article 31a of this Directive. Member States shall ensure that the information referred to in paragraph 1 of this Article is available through the system of interconnection of registers established by Article 22(1) of Directive (EU) 2017/1132, in accordance with Member States' national laws implementing paragraphs 5, 5a and 6 of this Article. The information referred to in paragraph 1 shall be available through the national registers and through the system of interconnection of registers for at least five years and no more than 10 years after the corporate or other legal entity has been struck off from the register. Member		

[103] European Parliament and the Council (2017), Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46) available at https://eur-lex.europa.eu

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
States shall cooperate among themselves and with the Commission in order to implement the different types of access in accordance with this Article.		
▼B **Article 31** ▼M1 1. Member States shall ensure that this Article applies to trusts and other types of legal arrangements, such as, *inter alia*, fiducie, certain types of Treuhand or fideicomiso, where such arrangements have a structure or functions similar to trusts. Member States shall identify the characteristics to determine where legal arrangements have a structure or functions similar to trusts with regard to such legal arrangements governed under their law. Each Member State shall require that trustees of any express trust administered in that Member State obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of: (a) the settlor(s); (b) the trustee(s); (c) the protector(s) (if any); (d) the beneficiaries or class of beneficiaries; (e) any other natural person exercising effective control of the trust. Member States shall ensure that breaches of this Article are subject to effective, proportionate and dissuasive measures or sanctions. 2. Member States shall ensure that trustees or persons holding equivalent positions in similar legal arrangements as referred to in paragraph 1 of this Article, disclose their status and provide the information referred to in paragraph 1 of this Article to obliged entities in a timely manner,	No equivalent provisions are in place in Kosovo legislation. No requirement is in place to ensure disclosure of information to obliged entities. There is no information that analysis and designation of arrangements similar to trusts has been carried out.	Not compliant.

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
where, as a trustee or as person holding an equivalent position in a similar legal arrangement, they form a business relationship or carry out an occasional transaction above the thresholds set out in points (b), (c) and (d) of Article 11.		
▼B 3. Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs. ▼M1 3a. Member States shall require that the beneficial ownership information of express trusts and similar legal arrangements as referred to in paragraph 1 shall be held in a central beneficial ownership register set up by the Member State where the trustee of the trust or person holding an equivalent position in a similar legal arrangement is established or resides. Where the place of establishment or residence of the trustee of the trust or person holding an equivalent position in similar legal arrangement is outside the Union, the information referred to in paragraph 1 shall be held in a central register set up by the Member State where the trustee of the trust or person holding an equivalent position in a similar legal arrangement enters into a business relationship or acquires real estate in the name of the trust or similar legal arrangement. Where the trustees of a trust or persons holding equivalent positions in a similar legal arrangement are established or reside in different Member States, or where the trustee of the trust or person holding an equivalent position in a similar legal arrangement enters into multiple business relationships in the name of the trust or similar legal arrangement in different Member States, a certificate of proof of registration or an excerpt of the beneficial ownership information held in a register by one Member State may be considered as sufficient to consider the registration obligation fulfilled.	Trusts cannot be established under Kosovo legislation. Nevertheless, no provisions are in place to ensure the implementation of the requirements for information with regard to the trustees residing in Kosovo, entering into a business relationship in Kosovo or acquiring property to be entered into a central register.	Not compliant
▼M1 4. Member States shall ensure that the information on the beneficial ownership of a trust or a similar legal arrangement is accessible in all cases to: (a) competent authorities and FIUs, without any restriction;	No similar arrangements in Kosovo legislation are applicable.	Not compliant

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
(b) obliged entities, within the framework of customer due diligence in accordance with Chapter II; (c) any natural or legal person that can demonstrate a legitimate interest; (d) any natural or legal person that files a written request in relation to a trust or similar legal arrangement which holds or owns a controlling interest in any corporate or other legal entity other than those referred to in Article 30(1), through direct or indirect ownership, including through bearer shareholdings, or through control via other means. The information accessible to natural or legal persons referred to in points (c) and (d) of the first subparagraph shall consist of the name, the month and year of birth and the country of residence and nationality of the beneficial owner, as well as nature and extent of beneficial interest held. Member States may, under conditions to be determined in national law, provide for access of additional information enabling the identification of the beneficial owner That additional information shall include at least the date of birth or contact details, in accordance with data protection rules. Member States may allow for wider access to the information held in the register in accordance with their national law. Competent authorities granted access to the central register referred to in paragraph 3a shall be public authorities with designated responsibilities for combating money laundering or terrorist financing, as well as tax authorities, supervisors of obliged entities and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing, and seizing or freezing and confiscating criminal assets. ▼M1 4a. Member States may choose to make the information held in their national registers referred to in paragraph 3a available on the condition of online registration and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register.		

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
▼M1 5. Member States shall require that the information held in the central register referred to in paragraph 3a is adequate, accurate and current, and shall put in place mechanisms to this effect. Such mechanisms shall include requiring obliged entities and, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, competent authorities to report any discrepancies they find between the beneficial ownership information available in the central registers and the beneficial ownership information available to them. In the case of reported discrepancies Member States shall ensure that appropriate actions be taken to resolve the discrepancies in a timely manner and, if appropriate, a specific mention be included in the central register in the meantime. ▼B 6. Member States shall ensure that obliged entities do not rely exclusively on the central register referred to in paragraph 4 to fulfil their customer due diligence requirements as laid down in Chapter II. Those requirements shall be fulfilled by using a risk-based approach.		
▼M1 7. Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 3 to the competent authorities and to the FIUs of other Member States in a timely manner and free of charge.	No such information is available to ensure efficient exchange. Any information would be obtainable based on the CDD performed by the obliged entities only. Powers to exchange any available information are in place for the competent authorities with potential obstacles for the prudential supervisors (due to strict tipping off requirements for example).	Not compliant
▼M1 7a. In exceptional circumstances to be laid down in national law, where the access referred to in points (b), (c) and (d) of the first subparagraph of paragraph 4 would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor or otherwise legally incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. Member States shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. Rights to an administrative review of the exemption decision and to an effective judicial remedy shall be guaranteed. A Member State that has granted exemptions shall publish annual statistical	Not applicable.	N/A

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
data on the number of exemptions granted and reasons stated and report the data to the Commission. Exemptions granted pursuant to the first subparagraph shall not apply to the credit institutions and financial institutions, and to obliged entities referred to in point (3)(b) of Article 2(1) that are public officials. Where a Member State decides to establish an exemption in accordance with the first subparagraph, it shall not restrict access to information by competent authorities and FIUs.		
▼M1 9. Member States shall ensure that the central registers referred to in paragraph 3a of this Article are interconnected via the European Central Platform established by Article 22(1) of Directive (EU) 2017/1132. The connection of the Member States' central registers to the platform shall be set up in accordance with the technical specifications and procedures established by implementing acts adopted by the Commission in accordance with Article 24 of Directive (EU) 2017/1132 and with Article 31a of this Directive. Member States shall ensure that the information referred to in paragraph 1 of this Article is available through the system of interconnection of registers established by Article 22(2) of Directive (EU) 2017/1132, in accordance with Member States' national laws implementing paragraphs 4 and 5 of this Article. Member States shall take adequate measures to ensure that only the information referred to in paragraph 1 that is up to date and corresponds to the actual beneficial ownership is made available through their national registers and through the system of interconnection of registers, and the access to that information shall be in accordance with data protection rules. The information referred to in paragraph 1 shall be available through the national registers and through the system of interconnection of registers for at least five years and no more than 10 years after the grounds for registering the beneficial ownership information as referred to in paragraph 3a have ceased to exist. Member States shall cooperate with the Commission in order to implement the different types of access in accordance with paragraphs 4 and 4a. ▼M1	Not applicable due to the lack of central register.	N/A

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
10. Member States shall notify to the Commission the categories, description of the characteristics, names and, where applicable, legal basis of the trusts and similar legal arrangements referred to in paragraph 1 by 10 July 2019. The Commission shall publish the consolidated list of such trusts and similar legal arrangements in the Official Journal of the European Union by 10 September 2019. By 26 June 2020, the Commission shall submit a report to the European Parliament and to the Council assessing whether all trusts and similar legal arrangements as referred to in paragraph 1 governed under the law of Member States were duly identified and made subject to the obligations as set out in this Directive. Where appropriate, the Commission shall take the necessary steps to act upon the findings of that report.		
Article 31a **Implementing acts** Where necessary in addition to the implementing acts adopted by the Commission in accordance with Article 24 of Directive (EU) 2017/1132 and in accordance with the scope of Article 30 and 31 of this Directive, the Commission shall adopt by means of implementing acts technical specifications and procedures necessary to provide for the interconnection of Member States' central registers as referred to in Article 30(10) and Article 31(9), with regard to: (a) the technical specification defining the set of the technical data necessary for the platform to perform its functions as well as the method of storage, use and protection of such data; (b) the common criteria according to which beneficial ownership information is available through the system of interconnection of registers, depending on the level of access granted by Member States; (c) the technical details on how the information on beneficial owners is to be made available; (d) the technical conditions of availability of services provided by the system of interconnection of registers;	Not subject to transposition.	N/A

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(e) the technical modalities how to implement the different types of access to information on beneficial ownership based on Article 30(5) and Article 31(4); (f) the payment modalities where access to beneficial ownership information is subject to the payment of a fee according to Article 30(5a) and Article 31(4a) taking into account available payment facilities such as remote payment transactions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 64a (2). In its implementing acts, the Commission shall strive to reuse proven technology and existing practices. The Commission shall ensure that the systems to be developed shall not incur costs above what is absolutely necessary in order to implement this Directive. The Commission's implementing acts shall be characterised by transparency and the exchange of experiences and information between the Commission and the Member States.		
▼B CHAPTER IV **REPORTING OBLIGATIONS** *SECTION 1* ***General provisions*** **Article 32** 1. Each Member State shall establish an FIU in order to prevent, detect and effectively combat money laundering and terrorist financing. 2. Member States shall notify the Commission in writing of the name and address of their respective FIUs. 3. Each FIU shall be operationally independent and autonomous, which means that the FIU shall have the authority and capacity to carry out its functions freely, including the ability to take autonomous decisions to analyse, request and disseminate specific information. The FIU as the central national unit shall be responsible for receiving and analysing suspicious transaction	Please refer to TC Annex, R. 29, as well as IO 6. Kosovo has established an FIU that has implemented policies, procedures, cooperation mechanisms and disposes of resources to prevent, detect and combat money laundering and terrorist financing. The effectiveness assessed under IO 6 is considered to be moderate due mainly to some issues related to access to information used to develop financial intelligence, insufficient use of the financial intelligence for ML investigations and prosecutions, inconsistency of the reports from obliged entities with the major risks. The FIU is established pursuant to the AML/CFT Law as an operationally independent and autonomous unit. The FIU is receiving pursuant to Article 26 of the AML/CFT Law not only STRs but also other information of relevance for ML, associated predicate offences and TF, including transactions in cash over the threshold, additional information from reporting entities (e.g. for independent legal professionals, NGOs, etc.) and public authorities. FIU is responsible for analysing reports on cash carried across border, information from supervisory authorities and other competent public authorities. The dissemination function is	Partial

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
reports and other information relevant to money laundering, associated predicate offences or terrorist financing. The FIU shall be responsible for disseminating the results of its analyses and any additional relevant information to the competent authorities where there are grounds to suspect money laundering, associated predicate offences or terrorist financing. It shall be able to obtain additional information from obliged entities. Member States shall provide their FIUs with adequate financial, human and technical resources in order to fulfil their tasks. 4. Member States shall ensure that their FIUs have access, directly or indirectly, in a timely manner, to the financial, administrative and law enforcement information that they require to fulfil their tasks properly. FIUs shall be able to respond to requests for information by competent authorities in their respective Member States when such requests for information are motivated by concerns relating to money laundering, associated predicate offences or terrorist financing. The decision on conducting the analysis or dissemination of information shall remain with the FIU. 5. Where there are objective grounds for assuming that the provision of such information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purposes for which it has been requested, the FIU shall be under no obligation to comply with the request for information. 6. Member States shall require competent authorities to provide feedback to the FIU about the use made of the information provided in accordance with this Article and about the outcome of the investigations or inspections performed on the basis of that information. 7. Member States shall ensure that the FIU is empowered to take urgent action, directly or indirectly, where there is a suspicion that a transaction is related to money laundering or terrorist financing, to suspend or withhold consent to a transaction that is proceeding, in order to analyse the transaction, confirm the suspicion and disseminate the results of the analysis to the competent authorities. The FIU shall be empowered to take such action, directly or indirectly, at the request of an FIU from another Member State for the periods and under the conditions specified in the national law of the FIU receiving the request.	provided for in Article 15 of the AML/CFT Law. FIU is able to obtain additional information from reporting entities on all cases opened for analysis, which ensures compliance with this requirement of the Directive. The analytical and dissemination function of the FIU seems to be well-established and, in principle, generates useful and quality information for the competent authorities with some limitations related to the potential insufficient use of some of the available sources of information due to possible resource constraints and expediency reasons related to certain priorities of the competent authorities. FIU has access to a wide number of information sources but there are limitations to the quality and scope of the information available in some cases as well as to the timeliness to obtain some of the information and feedback as noted under R. 29.3 and IO 6. The FIU has the necessary legal basis and effectively responds to requests for information by competent authorities as required by the Directive. The provision of information is carried out pursuant to Article 15 of the AML/CFT Law and strictly within the respective competence of the FIU and the recipients where relevant for investigative purposes. There are nevertheless, no explicit provisions implementing the grounds for refusal stipulated in Paragraph 5 of the Directive. In practice these grounds for refusal would be considered by the FIU. With regard to Paragraph 6 of Article 32 of the Directive there are no provisions in law or in cooperation memoranda between the competent authorities to ensure feedback. In practice, the quality and timeliness of feedback provided to the FIU varies, the feedback from KP usually at a relatively lower level than the relevant information from tax authorities. With regard to Paragraph 7 FIU is fully authorised to suspend transactions pursuant to Articles 27 and 28 of the AML/CFT Law based on information it receives domestically as well as based on	

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
8. The FIU's analysis function shall consist of the following: (a) an operational analysis which focuses on individual cases and specific targets or on appropriate selected information, depending on the type and volume of the disclosures received and the expected use of the information after dissemination; and (b) a strategic analysis addressing money laundering and terrorist financing trends and patterns. ▼M1 9. Without prejudice to Article 34(2), in the context of its functions, each FIU shall be able to request, obtain and use information from any obliged entity for the purpose set in paragraph 1 of this Article, even if no prior report is filed pursuant to Article 33 (1) (a) or 34 (1).	a written and grounded request of any foreign counterpart that performs similar functions. Article 26 of the AML/CFT Law requires that the reporting entity notifies the FIU prior to taking any action in relation with any suspicious act or transaction which would result in the release or transfer of the property subject to the transaction from the control of the reporting entity. Upon admission of notification, in compliance with paragraph 5 of this Article, the FIU within a forty eight (48) hour time limit shall instruct the reporting entity to permit the execution of the transaction or carry out a temporary freezing pursuant to Article 27 of this law. FIU is entitled pursuant to Article 14 and 15 of the AML/CFT Law to conduct operational analysis by receiving and analysing reports and information related to the proceeds of crime and terrorist financing as well as collecting all relevant information that falls within the mandate of the FIU and disseminating information on the particular suspicious transactions and the result of analysis for suspected money laundering, predicate offences and terrorism financing. FIU is authorised pursuant to Article 14 of the AML/CFTCFT Law to carry out strategic analysis of the information it collects and receives, to prevent and combat money laundering, predicate offences and terrorist financing. At the same time, it is not clear whether all relevant information that may be obtained from competent authorities is included in the strategic analysis due to professional secrecy limitations. FIU is authorised to obtain and use (subject to the applicability of legal privilege limitations) any data, documents or information needed to undertake its functions under the AML/CFT Law pursuant to Article 14, Paragraph 1.4. In practice information can be requested whenever a case is opened which could be done on the basis of all information available to FIU. The availability of a prior report is not a precondition for requesting, obtaining and using such information.	

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
Article 32a 1. Member States shall put in place centralised automated mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling payment accounts and bank accounts identified by IBAN, as defined by Regulation (EU) No. 260/2012 of the European Parliament and of the Council ([104]), and safe-deposit boxes held by a credit institution within their territory. Member States shall notify the Commission of the characteristics of those national mechanisms. 2. Member States shall ensure that the information held in the centralised mechanisms referred to in paragraph 1 of this Article is directly accessible in an immediate and unfiltered manner to national FIUs. The information shall also be accessible to national competent authorities for fulfilling their obligations under this Directive. Member States shall ensure that any FIU is able to provide information held in the centralised mechanisms referred to in paragraph 1 of this Article to any other FIUs in a timely manner in accordance with Article 53. 3. The following information shall be accessible and searchable through the centralised mechanisms referred to in paragraph 1: - for the customer-account holder and any person purporting to act on behalf of the customer : the name, complemented by either the other identification data required under the national provisions transposing point (a) of Article 13(1) or a unique identification number; - for the beneficial owner of the customer-account holder : the name, complemented by either the other identification data required under the national provisions transposing point (b) of Article 13(1) or a unique identification number; - for the bank or payment account : the IBAN number and the date of account opening and closing;	No automated systems are available to the FIU with regard to information on payment or bank accounts, as well as safe deposit boxes, or mechanisms allowing the identification of holders of accounts, their beneficial owners or persons purporting to act on their behalf. Centralised mechanisms are in place for information on PEPs (within the anti-corruption measures and with certain limitations, please see above under enhanced CDD), partially for real estate, NGOs (with a number of limitations and deficiencies, please see R. 8 and IO 10), motor vehicles.	Not compliant (except partially for Paragraph 4)

[104] European Parliament and the Council (2012), Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22) available at https://eur-lex.europa.eu

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- for the safe-deposit box : name of the lessee complemented by either the other identification data required under the national provisions transposing Article 13(1) or a unique identification number and the duration of the lease period. 4. Member States may consider requiring other information deemed essential for FIUs and competent authorities for fulfilling their obligations under this Directive to be accessible and searchable through the centralised mechanisms. 5. By 26 June 2020, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring secure and efficient interconnection of the centralised automated mechanisms. Where appropriate, that report shall be accompanied by a legislative proposal.		
Article 32b 1. Member States shall provide FIUs and competent authorities with access to information which allows the identification in a timely manner of any natural or legal persons owning real estate, including through registers or electronic data retrieval systems where such registers or systems are available. 2. By 31 December 2020, the Commission shall submit a report to the European Parliament and to the Council assessing the necessity and proportionality of harmonising the information included in the registers and assessing the need for the interconnection of those registers. Where appropriate, that report shall be accompanied by a legislative proposal.	No such system has been fully implemented in Kosovo to allow access to all the relevant information. Please refer to IO 6 and R. 29.	Partial
▼B **Article 33** 1. Member States shall require obliged entities, and, where applicable, their directors and employees, to cooperate fully by promptly: (a) informing the FIU, including by filing a report, on their own initiative, where the obliged entity knows, suspects or has reasonable grounds to suspect that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing, and by promptly responding to requests by the FIU for additional information in such cases; and	Please refer to TC Annex, R. 20 as well as IOs 3, 4 and 6. The obligation to report suspicious transactions is based on reasonable grounds to suspect proceeds of criminal activity thus omitting knowledge. The reporting requirement is not linked to a threshold. An all-crime approach is applied in regard to the ML predicate. The reporting obligation would be limited by the deficiencies in regard to the criminalisation of ML and TF. There are no explicit provisions for any reporting by directors and employees. Pursuant to Article 14 of the AML/CFT Law FIU can request from reporting subjects any data, documents or information needed to	Partial

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
▼M1 (b) providing the FIU directly, at its request, with all necessary information. ▼B All suspicious transactions, including attempted transactions, shall be reported. 2. The person appointed in accordance with point (a) of Article 8(4) shall transmit the information referred to in paragraph 1 of this Article to the FIU of the Member State in whose territory the obliged entity transmitting the information is established.	undertake its functions under this Law. The data, documents or information shall be provided within the timeframe established by FIU. Attempted transactions are included in Article 26, Paragraph 1.1 of the AML/CFT Law. As noted under R. 29.2. the reporting of STRs is (potentially) limited by the discrepancy in one and the same piece of legislation (the AML/CFTCFT Law) between the definition of TF for the purposes of the preventive system and the criminal law system creating grounds for different interpretations; different requirements for reporting STRs by legal professionals in Article 26 and the additional requirements for the professionals (due to differences in the definition of the scope of activities of legal professionals falling under the different parts of the law); concerns in regard to some blank exemptions for reporting; no specific requirements are envisaged in the AML/CFT Law or in sub-legal act for providing additional information regarding already reported STRs (Article 26, paragraph 2). The entities/persons involved in trade in precious metals and stones are limited to sellers and dealers in general are not included. There are some concerns expressed by the assessors with regard to the quality of the reports, considering the decreasing disseminations by the FIU, as well as the compliance with the risk profile of Kosovo (please refer to IO 4 and IO 6). The level of reporting is highly uneven, with most of the entities outside the banking sector rarely filing a report and the supervision for the application of this requirement is uneven and impacted by issues of cooperation and legal powers of the supervisors (please see IO 3).	
Article 34 1. By way of derogation from Article 33(1), Member States may, in the case of obliged entities referred to in point (3)(a), (b) and (d) of Article 2(1), designate an appropriate self-regulatory	Kosovo authorities have not made use of the option for derogation under Article 34. The requirement of Paragraph 2 is partially implemented in Article 31, Paragraph 7 of the AML/CFT Law. The derogation for cases related to the ascertaining of the legal position of the legal	Partial (related to Paragraph 2)

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
body of the profession concerned as the authority to receive the information referred to in Article 33(1). Without prejudice to paragraph 2, the designated self-regulatory body shall, in cases referred to in the first subparagraph of this paragraph, forward the information to the FIU promptly and unfiltered. 2. Member States shall not apply the obligations laid down in Article 33(1) to notaries, other independent legal professionals, auditors, external accountants and tax advisors only to the strict extent that such exemption relates to information that they receive from, or obtain on, one of their clients, in the course of ascertaining the legal position of their client, or performing their task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings, whether such information is received or obtained before, during or after such proceedings. ▼M1 3. Self-regulatory bodies designated by Member States shall publish an annual report containing information about: (a) measures taken under Articles 58, 59 and 60; (b) number of reports of breaches received as referred to in Article 61, where applicable; (c) number of reports received by the self-regulatory body as referred to in paragraph 1 and the number of reports forwarded by the self-regulatory body to the FIU where applicable; (d) where applicable number and description of measures carried out under Article 47 and 48 to monitor compliance by obliged entities with their obligations under: (i) Articles 10 to 24 (customer due diligence); (ii) Articles 33, 34 and 35 (suspicious transaction reporting); (iii) Article 40 (record-keeping); and	professional's client is not included in the mentioned article of the law. The notaries and accountants are excluded due to the nature of their activities (not possible to represent a client in the mentioned circumstances). The mentioned article, however, introduces a requirement not to provide information to the FIU without first asking the client or through a court order. The first condition could negatively impact on the reporting requirement, i.e. notifying the client for sending an STR. This is corroborated by the reading of Paragraph 6, namely that "**In addition to the cases as provided in paragraph 7** (*author's emphasis*) of this Article, and in accordance with the provisions of sub-paragraph 1.1 of Article 26 of this Law, the covered professionals engaged in specified activities shall report any suspicious act or transaction...". Paragraph 3 of this article of the Directive is not applicable as there is no such legally defined role of the self-regulating bodies in Kosovo.	

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(iv) Articles 45 and 46 (internal controls).		
▼B **Article 35** 1. Member States shall require obliged entities to refrain from carrying out transactions which they know or suspect to be related to proceeds of criminal activity or to terrorist financing until they have completed the necessary action in accordance with point (a) of the first subparagraph of Article 33(1) and have complied with any further specific instructions from the FIU or the competent authorities in accordance with the law of the relevant Member State. 2. Where refraining from carrying out transactions referred to in paragraph 1 is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected operation, the obliged entities concerned shall inform the FIU immediately afterwards.	Article 26 of the AML/CFT Law requires that the reporting entity notifies the FIU prior to taking any action in relation with any suspicious act or transaction which would result in the release or transfer of the property subject to the transaction from the control of the reporting entity. Upon admission of notification, in compliance with paragraph 5 of this Article, the FIU within a forty eight (48) hour time limit shall instruct the reporting entity to permit the execution of the transaction or carry out a temporary freezing pursuant to Article 27 of this law. The requirement of the AML/CFT Law, unlike the provision of the Directive, formally omits the obligation to inform the FIU where there is knowledge of proceeds of criminal activity (e.g. there could be a general obligation to inform law enforcement authority but not the FIU). This would preclude the application of the FIU powers in this regard. Moreover the Directive refers to any transaction while the AML/CFT Law limits the obligation to transaction which would result in the release or transfer of the property subject to the transaction from the control of the reporting entity. This again could result in untimely action taken by the authorities (e.g. in the case of generating fictitious profits or turnover in one and the same reporting entity). There is no explicit provision implementing Paragraph 2 of Article 35 of the Directive.	Partial
Article 36 1. Member States shall ensure that if, in the course of checks carried out on the obliged entities by the competent authorities referred to in Article 48, or in any other way, those authorities discover facts that could be related to money laundering or to terrorist financing, they shall promptly inform the FIU. 2. Member States shall ensure that supervisory bodies empowered by law or regulation to oversee the stock, foreign exchange and financial derivatives markets inform the FIU if they discover facts that could be related to money laundering or terrorist financing.	Article 38, Paragraph 2 of the AML/CFT Law provides for that CBK and other sectoral supervisors, when during the exercise of the duties within their competences, suspect of or identify activities which are or which may be associated with money laundering and terrorist financing, shall immediately inform FIU in writing. It is noted that the wording activities is not entirely consistent with facts as required by the Directive. Moreover, there are issues, as noted under IO 4, which would limit the ability of the supervisors (apart from the FIU) to check the implementation of the reporting requirement for the obliged	Partial

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	entities in general and would therefore impact the ability to detect any further suspicious transactions. There are also concerns with regard to the powers and effectiveness of the DNFBP supervisors (please refer to IO 4).	
Article 37 Disclosure of information in good faith by an obliged entity or by an employee or director of such an obliged entity in accordance with Articles 33 and 34 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the obliged entity or its directors or employees in liability of any kind even in circumstances where they were not precisely aware of the underlying criminal activity and regardless of whether illegal activity actually occurred.	Please refer to TC Annex, R. 21.1. Kosovo legislation is broadly in line with the requirement of the Directive as Article 61 of the AML/CFT Law provides for the protection from civil and criminal liability. However, it is noted that there is no corresponding requirement that the action would not constitute a breach of contractual obligations or any legislative, regulatory or administrative provision (e.g. potentially subjecting an employee to a reputational damage).	Partial
▼M1 **Article 38** 1. Member States shall ensure that individuals, including employees and representatives of the obliged entity who report suspicions of money laundering or terrorist financing internally or to the FIU, are legally protected from being exposed to threats, retaliatory or hostile action, and in particular from adverse or discriminatory employment actions. 2. Member States shall ensure that individuals who are exposed to threats, retaliatory or hostile actions, or adverse or discriminatory employment actions for reporting suspicions of money laundering or terrorist financing internally or to the FIU are entitled to present a complaint in a safe manner to the respective competent authorities. Without prejudice to the confidentiality of information gathered by the FIU, Member States shall also ensure that such individuals have the right to an effective remedy to safeguard their rights under this paragraph.	No similar provisions are in place in Kosovo.	Not compliant
▼B *SECTION 2* ***Prohibition of disclosure*** **Article 39**	Please refer to TC Annex, R. 21.2. The requirement under Paragraph 1 is broadly met. However, it is not clear whether the prohibition of Article 26, Paragraph 4 of the AML/CFT Law would apply to any employee of the reporting entity filing the report (not just those employees preparing and sending the report). With regard to Paragraph 2 there is no such derogation in Kosovo legislation allowing reports to be sent to competent authorities	Partial

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1. Obliged entities and their directors and employees shall not disclose to the customer concerned or to other third persons the fact that information is being, will be or has been transmitted in accordance with Article 33 or 34 or that a money laundering or terrorist financing analysis is being, or may be, carried out. 2. The prohibition laid down in paragraph 1 shall not include disclosure to the competent authorities, including the self-regulatory bodies, or disclosure for law enforcement purposes. ▼M1 3. The prohibition laid down in paragraph 1 of this Article shall not prevent disclosure between the credit institutions and financial institutions from the Member States provided that they belong to the same group, or between those entities and their branches and majority owned subsidiaries established in third countries, provided that those branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures, including procedures for sharing information within the group, in accordance with Article 45, and that the group-wide policies and procedures comply with the requirements set out in this Directive. ▼B 4. The prohibition laid down in paragraph 1 shall not prevent disclosure between the obliged entities as referred to in point (3)(a) and (b) of Article 2(1), or entities from third countries which impose requirements equivalent to those laid down in this Directive, who perform their professional activities, whether as employees or not, within the same legal person or a larger structure to which the person belongs and which shares common ownership, management or compliance control. 5. For obliged entities referred to in points (1), (2), (3)(a) and (b) of Article 2(1) in cases relating to the same customer and the same transaction involving two or more obliged entities, the prohibition laid down in paragraph 1 of this Article shall not prevent disclosure between the relevant obliged entities provided that they are from a Member State, or entities in a third country which imposes requirements equivalent to those laid down in this Directive, and that they are from the same professional category and are subject to obligations as regards professional secrecy and personal data protection.	(specifically for supervisors) apart from sending to public prosecutor. In addition to this, the mentioned article of the AML/CFT Law allows notifying the court, which would not be in line with Paragraph 2 (or at least not in all cases, if we consider e.g. a civil case, which would go beyond law enforcement purposes as stipulated in this paragraph). The requirement of Article 24 of the AML/CFT Law for setting up group policies or any other provision of the law do not stipulate a derogation from the tipping off requirement for the purposes of establishing group-wide policies and procedures as required by Paragraph 3 of Article 39 of the Directive. The derogations of the other paragraphs of the Directive have also not been implemented in Kosovo law.	

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6. Where the obliged entities referred to in point (3)(a) and (b) of Article 2(1) seek to dissuade a client from engaging in illegal activity, that shall not constitute disclosure within the meaning of paragraph 1 of this Article.		
CHAPTER V **DATA PROTECTION, RECORD-RETENTION AND STATISTICAL DATA** **Article 40** 1. Member States shall require obliged entities to retain the following documents and information in accordance with national law for the purpose of preventing, detecting and investigating, by the FIU or by other competent authorities, possible money laundering or terrorist financing: ▼M1 (a) in the case of customer due diligence, a copy of the documents and information which are necessary to comply with the customer due diligence requirements laid down in Chapter II, including, where available, information obtained through electronic identification means, relevant trust services as set out in Regulation (EU) No 910/2014 or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities, for a period of five years after the end of the business relationship with their customer or after the date of an occasional transaction; ▼B (b) the supporting evidence and records of transactions, consisting of the original documents or copies admissible in judicial proceedings under the applicable national law, which are necessary to identify transactions, for a period of five years after the end of a business relationship with their customer or after the date of an occasional transaction. Upon expiry of the retention periods referred to in the first subparagraph, Member States shall ensure that obliged entities delete personal data, unless otherwise provided for by national law, which shall determine under which circumstances obliged entities may or shall further retain data. Member States may allow or require further retention after they have carried out a	Please refer to TC Annex, R. 11. With regard to the requirements of Paragraph 1, Kosovo law defines in broad terms the information to be retained ("all data on the information", Article 20, Paragraph 1) and includes information "to enable reconstruction of transactions, which are executed or tried to be executed". The provision, however, cannot be strictly interpreted as requiring sufficient supporting evidence, the original documents or copies admissible in judicial proceedings under the applicable national law, as required in letter (b) of Paragraph 1 of Article 40 of the Directive. For banks, the CBK regulation solves this issue, but not for other entities. Furthermore, it is not clear whether all information obtained through CDD measures would be subject to the record-keeping requirements (e.g. excluding results of analyses undertaken other than those specified in Article 25 of the law, records obtained through CDD measures and any analyses undertaken with regard to occasional transactions; please refer to R. 11). Sub-paragraphs 2 and 3 of Paragraph 1 have not been met. The period is not fixed at 5 years but stipulated as a minimum period to be observed. Article 20 of the AML/CFT Law refers to issuing sub-legal acts to further clarify the requirements for data retention but no such acts have been issued. Paragraph 2 is not applicable.	Partial

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thorough assessment of the necessity and proportionality of such further retention and consider it to be justified as necessary for the prevention, detection or investigation of money laundering or terrorist financing. That further retention period shall not exceed five additional years. ▼M1 The retention period referred to in this paragraph, including the further retention period that shall not exceed five additional years, shall also apply in respect of the data accessible through the centralised mechanisms referred to in Article 32a. ▼B 2. Where, on 25 June 2015, legal proceedings concerned with the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing are pending in a Member State, and an obliged entity holds information or documents relating to those pending proceedings, the obliged entity may retain that information or those documents, in accordance with national law, for a period of five years from 25 June 2015. Member States may, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the retention of such information or documents for a further period of five years where the necessity and proportionality of such further retention has been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing.		
Article 41 1. The processing of personal data under this Directive is subject to Directive 95/46/EC, as transposed into national law. Personal data that is processed pursuant to this Directive by the Commission or by the ESAs is subject to Regulation (EC) No. 45/2001. 2. Personal data shall be processed by obliged entities on the basis of this Directive only for the purposes of the prevention of money laundering and terrorist financing as referred to in Article 1 and shall not be further processed in a way that is incompatible with those purposes. The processing of personal data on the basis of this Directive for any other purposes, such as commercial purposes, shall be prohibited.	Kosovo legislation is compliant to a large extent with the requirement of this Article of the Directive. The AML/CFT Law largely fulfils through Article 64 (as well as the specific requirements for data collected within CDD) most of the necessary requirements pursuant to Directive 95/46/EC (e.g. Article 23 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC) as implemented in Kosovo by the Law on the Protection of Personal Data.	Partial

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3. Obliged entities shall provide new clients with the information required pursuant to Article 10 of Directive 95/46/EC before establishing a business relationship or carrying out an occasional transaction. That information shall, in particular, include a general notice concerning the legal obligations of obliged entities under this Directive to process personal data for the purposes of the prevention of money laundering and terrorist financing as referred to in Article 1 of this Directive. 4. In applying the prohibition of disclosure laid down in Article 39(1), Member States shall adopt legislative measures restricting, in whole or in part, the data subject's right of access to personal data relating to him or her to the extent that such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the person concerned to: (a) enable the obliged entity or competent national authority to fulfil its tasks properly for the purposes of this Directive; or (b) avoid obstructing official or legal inquiries, analyses, investigations or procedures for the purposes of this Directive and to ensure that the prevention, investigation and detection of money laundering and terrorist financing is not jeopardised.	Paragraph 2 is met by the provisions of Article 64, Paragraphs 2 and 3 of the AML/CFT Law. Paragraph 3 is not explicitly implemented in the Kosovo AML/CFT legislation and regulations Article 4 is met through the relevant provisions of the AML/CFT Law on the processing and the protection of the data although the manner in which the retention period for data is specified (record-keeping requirements) does not fully meet the requirements for personal data protection (please see above, under Article 40 of the Directive).	
Article 42 Member States shall require that their obliged entities have systems in place that enable them to respond fully and speedily to enquiries from their FIU or from other authorities, in accordance with their national law, as to whether they are maintaining or have maintained, during a five-year period prior to that enquiry a business relationship with specified persons, and on the nature of that relationship, through secure channels and in a manner that ensures full confidentiality of the enquiries.	Please refer to TC Annex, R. 11. Article 20, Paragraph 1 of the AML/CFT Law provides for the requirement for the obliged entities to ensure that the documentation and following information are ready and available to FIU and to other competent authorities, including information "to enable reconstruction of transactions, which are executed or tried to be executed". The definition of transaction under the AML/CFT Law would include business relationships and other transactions. Article 14, Paragraph 1.4 of the law requires that the information is provided by the reporting entities based on a request from the FIU, within the timeframe specified by the FIU. Article 17 on policies and procedures of the reporting entities requires that procedures for the reporting to the FIU should be implemented.	Partial

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	Article 16, paragraph 6 of the CBK Regulation on AML/CFT requires information to be provided to competent authorities, including FIU and CBK, in a form and manner that is complete, timely and comprehensible. In addition financial institutions are required to retain backup copies in electronic form and available in readable form for FIU, CBK and competent authorities according to the applicable legislation. The provisions of the CBK Regulation would apply only to banks and financial institutions. There are no further legal requirements in Kosovo law to meet the requirements of the Directive with regard to the use of secure channels and ensuring confidentiality of the requests. In practice in most of the cases of information exchange between the FIU and most of the reporting entities goAML is used, thus providing a secure channel that could ensure the confidentiality of the information. There are, however, no legal requirements for all reporting entities to use this system and not all of them use it in practice.	
▼M1 **Article 43** The processing of personal data on the basis of this Directive for the purposes of the prevention of money laundering and terrorist financing as referred to in Article 1 shall be considered to be a matter of public interest under Regulation (EU) 2016/679 of the European Parliament and of the Council ([105]).	Please see above, under Article 41.	
Article 44 1. Member States shall, for the purposes of contributing to the preparation of risk assessment pursuant to Article 7, ensure that they are able to review the effectiveness of their systems to	Please refer to TC Annex, R. 33 Article 39 of the AML/CFT Law requires maintenance of statistics by all competent authorities with the purpose to enable the FIU to review the effectiveness of the AML/CFT system.	Partial

[105] European Parliament and the Council (2016), Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1) available at https://eur-lex.europa.eu

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combat money laundering or terrorist financing by maintaining comprehensive statistics on matters relevant to the effectiveness of such systems. 2. The statistics referred to in paragraph 1 shall include: (a) data measuring the size and importance of the different sectors which fall within the scope of this Directive, including the number of natural persons and entities and the economic importance of each sector; (b) data measuring the reporting, investigation and judicial phases of the national AML/CFT regime, including the number of suspicious transaction reports made to the FIU, the follow-up given to those reports and, on an annual basis, the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences, the types of predicate offences, where such information is available, and the value in euro of property that has been frozen, seized or confiscated; (c) if available, data identifying the number and percentage of reports resulting in further investigation, together with the annual report to obliged entities detailing the usefulness and follow-up of the reports they presented; (d) data regarding the number of cross-border requests for information that were made, received, refused and partially or fully answered by the FIU, broken down by counterpart country; (e) human resources allocated to competent authorities responsible for AML/CFT supervision as well as human resources allocated to the FIU to fulfil the tasks specified in Article 32; (f) the number of on-site and off-site supervisory actions, the number of breaches identified on the basis of supervisory actions and sanctions/administrative measures applied by supervisory authorities. 3. Member States shall ensure that a consolidated review of their statistics is published on an annual basis.	The law, however, does not provide further instructions on the types of statistics that would be relevant for the review of the system. Administrative Instruction No. 001/2013 preparation of statistical reports and recommendations related to money laundering and financing of terrorism would provide for details on the statistics to be maintained by the FIU but there are no legal obligations for the other institutions as to the categories of information needed and for the consolidation of this information as to ensure a meaningful review of the system. Hence, Kosovo is not able to use for the review of its system most of the statistics under letters (a), (b) and (c) of Paragraph 2. There is no requirement for the publishing of consolidated review of statistics relevant for AML and CTF purposes and taking into account the requirements of the Directive.	

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4. Member States shall transmit annually to the Commission the statistics referred to in paragraph 2. The Commission shall publish an annual report summarising and explaining the statistics referred to in paragraph 2, which shall be made available on its website.		
▼B CHAPTER VI **POLICIES, PROCEDURES AND SUPERVISION** *SECTION 1* ***Internal procedures, training and feedback*** **Article 45** 1. Member States shall require obliged entities that are part of a group to implement group-wide policies and procedures, including data protection policies and policies and procedures for sharing information within the group for AML/CFT purposes. Those policies and procedures shall be implemented effectively at the level of branches and majority-owned subsidiaries in Member States and third countries. 2. Member States shall require that obliged entities that operate establishments in another Member State ensure that those establishments respect the national provisions of that other Member State transposing this Directive. 3. Member States shall ensure that where obliged entities have branches or majority-owned subsidiaries located in third countries where the minimum AML/CFT requirements are less strict than those of the Member State, their branches and majority-owned subsidiaries located in the third country implement the requirements of the Member State, including data protection, to the extent that the third country's law so allows.	Please refer to TC Annex, R. 18.2 and 18.3. Article 24, Paragraph 5 of the AML/CFT Law requires the implementation of programs within the group covering branches and majority-owned subsidiaries. There are no requirements for the programs to be effectively implemented in the branches and subsidiaries (they are required to be applicable only). There are requirements to include data protection policies and procedures for sharing of information as part of the group programs. Nevertheless, the AML/CFT Law does not provide for derogations of the tipping-off requirements or any other data sharing provisions that could be applied within the group which would limit the applicability of any procedures for data sharing in this context. Paragraph 2 is not applicable. Paragraph 3 is not met as there is no requirement to implement the requirements to the extent allowed by the other country's law.	Partial
▼M1 4. The Member States and the ESAs shall inform each other of instances in which the law of a third country does not permit the implementation of the policies and procedures required under paragraph 1. In such cases, coordinated actions may be taken to pursue a solution. In the assessing which third countries do not permit the implementation of the policies and procedures required under paragraph 1, Member States and the ESAs shall take into account	Not applicable.	N/A

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any legal constraints that may hinder proper implementation of those policies and procedures, including secrecy, data protection and other constraints limiting the exchange of information that may be relevant for that purpose.		
▼B 5. Member States shall require that, where a third country's law does not permit the implementation of the policies and procedures required under paragraph 1, obliged entities ensure that branches and majority-owned subsidiaries in that third country apply additional measures to effectively handle the risk of money laundering or terrorist financing, and inform the competent authorities of their home Member State. If the additional measures are not sufficient, the competent authorities of the home Member State shall exercise additional supervisory actions, including requiring that the group does not establish or that it terminates business relationships, and does not undertake transactions and, where necessary, requesting the group to close down its operations in the third country. 6. The ESAs shall develop draft regulatory technical standards specifying the type of additional measures referred to in paragraph 5 and the minimum action to be taken by credit institutions and financial institutions where a third country's law does not permit the implementation of the measures required under paragraphs 1 and 3. The ESAs shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 December 2016. 7. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 6 of this Article in accordance with Articles 10 to 14 of Regulations (EU) No. 1093/2010, (EU) No. 1094/2010 and (EU) No. 1095/2010.	Please refer to TC Annex, R. 18.3. No requirement for the application of such additional measures and informing the supervisor is provided for in Kosovo law.	Not compliant
8. Member States shall ensure that the sharing of information within the group is allowed. Information on suspicions that funds are the proceeds of criminal activity or are related to terrorist financing reported to the FIU shall be shared within the group, unless otherwise instructed by the FIU.	The criterion is not met. Please see the discussion under Paragraphs 1-3.	Not compliant
9. Member States may require electronic money issuers as defined in point (3) of Article 2 of Directive 2009/110/EC and payment service providers as defined in point (9) of Article 4 of Directive 2007/64/EC established on their territory in forms other than a branch, and whose head office is situated in another Member State, to appoint a central contact point in their territory to ensure, on behalf of the appointing institution, compliance with AML/CFT rules and	Not applicable.	N/A

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to facilitate supervision by competent authorities, including by providing competent authorities with documents and information on request. 10. The ESAs shall develop draft regulatory technical standards on the criteria for determining the circumstances in which the appointment of a central contact point pursuant to paragraph 9 is appropriate, and what the functions of the central contact points should be. The ESAs shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 26 June 2017. 11. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 10 of this Article in accordance with Articles 10 to 14 of Regulations (EU) No. 1093/2010, (EU) No. 1094/2010 and (EU) No. 1095/2010.		
Article 46 1. Member States shall require that obliged entities take measures proportionate to their risks, nature and size so that their employees are aware of the provisions adopted pursuant to this Directive, including relevant data protection requirements. Those measures shall include participation of their employees in special ongoing training programmes to help them recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases. Where a natural person falling within any of the categories listed in point (3) of Article 2(1) performs professional activities as an employee of a legal person, the obligations in this Section shall apply to that legal person rather than to the natural person. 2. Member States shall ensure that obliged entities have access to up-to-date information on the practices of money launderers and financers of terrorism and on indications leading to the recognition of suspicious transactions. 3. Member States shall ensure that, where practicable, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing is provided to obliged entities.	Please refer to TC Annex, R. 18.1, 34, as well as IOs 3 and 4. There is no requirement in the relevant Article 17 of the AML/CFT Law for the policies, procedures and controls to be proportionate to the risks, nature and size of the reporting entity, including the procedures for employee training. Training is required to be conducted pursuant to Article 17, Paragraph 2.5 and Article 21 of the AML/CFT Law as well as the CBK Regulation on AML/CFT. The training requirements pursuant to the AML/CFT Law should cover all the responsibilities under the AML/CFT law and therefore would include recognising and reporting ML/TF-related operations. There is no requirement in Kosovo law corresponding with the requirement of the Directive for persons listed in point (3) of Article 2(1). With regard to Paragraph 2, FIU is entitled pursuant to Article 14, Paragraph 1.11.2 to adopt sub-legal acts, issue directives and instructions on the matter related to ensuring or promoting compliance with this Law in relation to suspicious acts or transactions, including the nature of suspicious acts or transactions for the purposes of this Law, and compiling the lists	Partial

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4. Member States shall require that, where applicable, obliged entities identify the member of the management board who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with this Directive.	of indicators of such acts and transactions. This provision is considered in line with Paragraph 2. With regard to Paragraph 3, the requirement is mostly covered by the provision of Article 39, Paragraph 5 of the AML/CFT Law although there is no legal obligation to ensure timeliness of the feedback. A number of deficiencies are observed in relation to the effectiveness, including lack of sufficient feedback from the FIU with regard to the reported suspicions, the need to improve the structuring and comprehensiveness of the indicators for reporting, the superficial treatment of alerts by reporting entities, as well as the inappropriate institutional arrangements for controlling compliance with the STR requirements, the DNFBPs' lack of awareness. Training is generally sound for the banks and financial institutions but insufficient considering the lack of awareness of DNFBPs.	
SECTION 2 ***Supervision*** **Article 47** ▼M1 1. Member States shall ensure that providers of exchange services between virtual currencies and fiat currencies, and custodian wallet providers, are registered, that currency exchange and cheque cashing offices, and trust or company service providers are licensed or registered, and that providers of gambling services are regulated. ▼B 2. Member States shall require competent authorities to ensure that the persons who hold a management function in the entities referred to in paragraph 1, or are the beneficial owners of such entities, are fit and proper persons.	Please refer to TC Annex, R. 26.2 and 26.3, 28.1, 28.4 (b), as well as IO 3. There is no registration requirement in Kosovo law for virtual currencies exchange services and custodian wallet providers as well as no licensing or registration requirement for trust and company service providers and therefore for fitness and propriety of persons holding management position or controlling those entities. Hence, effective supervision is not possible. The CBK is responsible for the licensing of banks and the registration of currency exchange offices. The analysis under R. 26.3 points to a deficiency in the fit and proper criteria that is linked to the lack of clear language to prevent persons with criminal background to hold (or be the beneficial owner of) a significant or controlling interest, or hold a management function, in a currency exchange office. In addition, the effectiveness of supervision is not confirmed considering the large number of persons conducting currency exchange activities without licence or registration. The effectiveness is also	Partial

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3. With respect to the obliged entities referred to in point (3)(a), (b) and (d) of Article 2(1), Member States shall ensure that competent authorities take the necessary measures to prevent criminals convicted in relevant areas or their associates from holding a management function in or being the beneficial owners of those obliged entities.	compromised by the lack of measures to address the issues of associates of criminals holding management function or controlling entities (although not explicitly required by the Directive). There are no market entry requirements for real estate agents resulting in doubtful effectiveness of supervision considering the numbers and size of sector. No information is available on measures to ensure comprehensive fitness and propriety with regard to accountants, auditors, notaries and other legal professionals.	
Article 48 1. Member States shall require the competent authorities to monitor effectively, and to take the measures necessary to ensure, compliance with this Directive. ▼M1 1a. In order to facilitate and promote effective cooperation, and in particular the exchange of information, Member States shall communicate to the Commission the list of competent authorities of the obliged entities listed in Article 2(1), including their contact details. Member States shall ensure that the information provided to the Commission remains updated. The Commission shall publish a register of those authorities and their contact details on its website. The authorities in the register shall, within the scope of their powers, serve as a contact point for the counterpart competent authorities of the other Member States. Financial supervisory authorities of the Member States shall also serve as a contact point for the ESAs. In order to ensure the adequate enforcement of this Directive, Member States shall require that all obliged entities are subject to adequate supervision, including the powers to conduct on-site and off-site supervision, and shall take appropriate and proportionate administrative measures to remedy the situation in the case of breaches. ▼M1	Please refer to IO 3, as well as TC Annex, R. 26-28. With regard to Paragraph 1 and 1a a number of issues are noted as detrimental to the effectiveness of supervision, including shared responsibility of several supervisors over one and the same type of entity without clear division of the responsibilities, deficiencies related to market entry and operations without required licence or registration, measures to prevent participation of associates of criminals, application of sanctions and coordinated approach to DNFBPs. The powers of supervisors to conduct on-site and off-site supervision are available although the issues related to the clarification of the CBK and FIU-K mandate with regard to banks and financial institutions remain. The adequacy of supervision of the FIU-K could be compromised by the unclear mandate to obtain all relevant documents as Article 35 provides for the possibility of reporting entities to refuse based on their own discretion for the relevance of documents. In addition, there is an effectiveness issue also related to the powers of CBK to properly supervise in relation to the reporting requirements of the AML/CFT Law (please see R. 26 and 27 as well as IO 3). With regard to Paragraph 2, apart from the aforementioned observations on the powers of supervisors, the resource allocation mechanisms seem to be proper for the CBK and not adequate for the FIU requiring potentially further assessment of the procedures and institutional setup. Further attention to the risk factors and subsequent distribution and deployment of resources is	Partial, where applicable

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2. Member States shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is relevant to monitoring compliance and perform checks, and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of those authorities are of high integrity and appropriately skilled, and maintain high professional standards, including standards of confidentiality, data protection and standards addressing conflicts of interest. ▼B 3. In the case of credit institutions, financial institutions, and providers of gambling services, competent authorities shall have enhanced supervisory powers. ▼M1 4. Member States shall ensure that competent authorities of the Member State in which the obliged entity operates establishments supervise the respect by those establishments of the national provisions of that Member State transposing this Directive. In the case of credit and financial institutions that are part of a group, Member States shall ensure that, for the purposes laid down in the first subparagraph, the competent authorities of the Member State where a parent undertaking is established cooperate with the competent authorities of the Member States where the establishments that are part of group are established. In the case of the establishments referred to in Article 45(9), supervision as referred to in the first subparagraph of this paragraph may include the taking of appropriate and proportionate measures to address serious failings that require immediate remedies. Those measures shall be temporary and be terminated when the failings identified are addressed, including with the assistance of or in cooperation with the competent authorities of the home Member State of the obliged entity, in accordance with Article 45(2). ▼B 5. Member States shall ensure that the competent authorities of the Member State in which the obliged entity operates establishments shall cooperate with the competent authorities of the	necessary. FIU and CBK are subject to confidentiality requirements and specific requirements for their staff. Standards with regard to conflict of interests are in place for both supervisors. Enhanced supervisory powers are in place with regard to the requirement of Paragraph 3 of the Directive, subject to the limitations discussed above. Paragraphs 4 and 5 are not applicable. With regard to Paragraph 6 and 7, please refer to TC Annex, R. 26.5, 26.6 and 26.7, 28.5 and IO 3. Article 34, Paragraph 6 of the AML/CFT Law requires the supervisors to take risk into account for the supervision of the respective sectors but there are no clear requirements to consider the risk at a national level, as well as the institution and group risk profile, although access to relevant information is broadly ensured by legal provisions. The exception is the unclear situation with regard to the banks and financial institutions as proceeding from the CBK/FIU division of responsibilities related to suspicious transaction reporting. There is no clear requirement in the AML/CFT Law for the FIU to apply a risk-based approach to supervision although SOP on the supervision by FIU were adopted in 2017. Both CBK and FIU demonstrated proper understanding of risks and procedures to guide supervision based on risk assessment. Nevertheless, it seems that risk profiling of individual supervised entities (or based on adequate clustering) is deficient. There are no adequate efforts in this regard by other supervisors. It cannot be concluded that Paragraph 7 and 8 are met as there is no relevant information on such reviews and no proper consideration as discussed above of the risks at the level of individual entities. The option provided for in Paragraph 9 is not used by Kosovo authorities. There is no indication that authorities have considered the ESAs guidelines in regard to RBS.	

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Member State in which the obliged entity has its head office, to ensure effective supervision of the requirements of this Directive. ▼M1 In the case of credit and financial institutions that are part of a group, Member States shall ensure that the competent authorities of the Member State where a parent undertaking is established supervise the effective implementation of the group-wide policies and procedures referred to in Article 45(1). For that purpose, Member States shall ensure that the competent authorities of the Member State where credit and financial institutions that are part of the group are established cooperate with the competent authorities of the Member State where the parent undertaking is established. ▼B 6. Member States shall ensure that when applying a risk-based approach to supervision, the competent authorities: (a) have a clear understanding of the risks of money laundering and terrorist financing present in their Member State; (b) have on-site and off-site access to all relevant information on the specific domestic and international risks associated with customers, products and services of the obliged entities; and (c) base the frequency and intensity of on-site and off-site supervision on the risk profile of obliged entities, and on the risks of money laundering and terrorist financing in that Member State. 7. The assessment of the money laundering and terrorist financing risk profile of obliged entities, including the risks of non-compliance, shall be reviewed both periodically and when there are major events or developments in their management and operations. 8. Member States shall ensure that competent authorities take into account the degree of discretion allowed to the obliged entity, and appropriately review the risk assessments		

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underlying this discretion, and the adequacy and implementation of its internal policies, controls and procedures. 9. In the case of the obliged entities referred to in point (3)(a), (b) and (d) of Article 2(1), Member States may allow the functions referred to in paragraph 1 of this Article to be performed by self-regulatory bodies, provided that those self-regulatory bodies comply with paragraph 2 of this Article. 10. By 26 June 2017, the ESAs shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulations (EU) No. 1093/2010, (EU) No. 1094/2010 and (EU) No. 1095/2010 on the characteristics of a risk-based approach to supervision and the steps to be taken when conducting supervision on a risk-based basis. Specific account shall be taken of the nature and size of the business, and, where appropriate and proportionate, specific measures shall be laid down.		
SECTION 3 ***Cooperation*** Subsection I **National cooperation** ▼M1 **Article 49** Member States shall ensure that policy makers, the FIUs, supervisors and other competent authorities involved in AML/CFT, as well as tax authorities and law enforcement authorities when acting within the scope of this Directive, have effective mechanisms to enable them to cooperate and coordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing, including with a view to fulfilling their obligation under Article 7.	Please refer to IO 1 (Core Issues 1.4 and 1.5), IO 3 (Core Issues 3.2 and 3.3), IO 6 (Core Issue 6.4). Kosovo has developed a relatively comprehensive system of coordination at the policy level with regard to AML/CFT issues, mainly focused around the Government Working Group, led by the Ministry of Finance. This group's work is complemented by a number of high-level coordination initiatives focused on various aspects of the system, including border management, counterterrorism and economic crime. The latter initiatives require further addressing ML and TF issues *per se* despite their involvement in the counteraction of a number of related issues and risks. All competent authorities are involved in the cooperation at this level. At the operational level Kosovo has elaborated and deployed a number of cooperation agreements between all relevant institutions in this context as a basis for their cooperation on top of the already broad provisions of the AML/CFT legislation. The relevant mechanisms of the AML/CFT law include the Board of the FIU (Article 6), cooperation of the FIU (Article 14), cooperation between FIU and supervisors for determining risk factors, cooperation for the aggregation of statistics for reviewing the	Partial

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	system (Article 39). Certain deficiencies still impact the coordination, e.g. the lack of clear and detailed provisions for the coordination of national risk assessment (which should be subject to coordination by the FIU and determination of the conditions by the Ministry of Finance), and minor deficiencies in the implementation and detail of some of the cooperation agreements, feedback to the FIU, etc.	
▼B Subsection II **Cooperation with the ESAs** **Article 50** The competent authorities shall provide the ESAs with all the information necessary to allow them to carry out their duties under this Directive.	Not applicable.	N/A
▼M1 Subsection IIa **Cooperation between competent authorities of the Member States** **Article 50a** Member States shall not prohibit or place unreasonable or unduly restrictive conditions on the exchange of information or assistance between competent authorities for the purposes of this Directive. In particular Member States shall ensure that competent authorities do not refuse a request for assistance on the grounds that: (a) the request is also considered to involve tax matters; (b) national law requires obliged entities to maintain secrecy or confidentiality, except in those cases where the relevant information that is sought is protected by legal privilege or where legal professional secrecy applies, as described in Article 34(2);	Please refer to TC Annex, R. 29, 40.5, as well as IO 2. The international exchange of information (within the context of the Directive) is not hampered by unreasonable or unduly restrictive conditions, including links to tax matters, secrecy or confidentiality, the mere opening of an investigation or proceeding, the nature and status of the counterpart authority. For the FIU the relevant provision is Article 15. There do not seem to be any obstacles for supervisors in the sense of this article of the Directive.	Full

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(c) there is an inquiry, investigation or proceeding underway in the requested Member State, unless the assistance would impede that inquiry, investigation or proceeding; (d) the nature or status of the requesting counterpart competent authority is different from that of requested competent authority.		
▼B Subsection III **Cooperation between FIUs and with the Commission** **Article 51** The Commission may lend such assistance as may be needed to facilitate coordination, including the exchange of information between FIUs within the Union. It may regularly convene meetings of the EU FIUs' Platform composed of representatives from Member States' FIUs, in order to facilitate cooperation among FIUs, exchange views and provide advice on implementation issues relevant for FIUs and reporting entities as well as on cooperation-related issues such as effective FIU cooperation, the identification of suspicious transactions with a cross-border dimension, the standardisation of reporting formats through the FIU.net or its successor, the joint analysis of cross-border cases, and the identification of trends and factors relevant to assessing the risks of money laundering and terrorist financing at national and supranational level.	Not applicable.	N/A
Article 52 Member States shall ensure that FIUs cooperate with each other to the greatest extent possible, regardless of their organisational status.	FIU is entitled to provide full assistance to counterparts. Some deficiencies with regard to the access to the timeliness of access to information or comprehensiveness of databases, feedback received, etc. could be detrimental to this exchange of information.	Partial
Article 53 ▼M1 1. Member States shall ensure that FIUs exchange, spontaneously or upon request, any information that may be relevant for the processing or analysis of information by the FIU related to money laundering or terrorist financing and the natural or legal person involved, regardless	Please refer to TC Annex, R. 40, as well as IO 2. Paragraph 2 is fully met as FIU is entitled pursuant to Article 15 of the AML/CFT Law to exchange information regardless of the identification of the predicate crime at the time of exchange. The AML/CFT Law does not stipulate the conditions of Sub-paragraph 2 but the detailed SOP along the lines of the Egmont Group principles contain similar requirements.	Partial

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of the type of associated predicate offences and even if the type of associated predicate offences is not identified at the time of the exchange. ▼B A request shall contain the relevant facts, background information, reasons for the request and how the information sought will be used. Different exchange mechanisms may apply if so agreed between the FIUs, in particular as regards exchanges through the FIU.net or its successor. When an FIU receives a report pursuant to point (a) of the first subparagraph of Article 33(1) which concerns another Member State, it shall promptly forward it to the FIU of that Member State. 2. Member States shall ensure that the FIU to whom the request is made is required to use the whole range of its available powers which it would normally use domestically for receiving and analysing information when it replies to a request for information referred to in paragraph 1 from another FIU. The FIU to whom the request is made shall respond in a timely manner. When an FIU seeks to obtain additional information from an obliged entity established in another Member State which operates on its territory, the request shall be addressed to the FIU of the Member State in whose territory the obliged entity is established. ►M1 That FIU shall obtain information in accordance with Article 33(1) and transfer the answers promptly. ◄ 3. An FIU may refuse to exchange information only in exceptional circumstances where the exchange could be contrary to fundamental principles of its national law. Those exceptions shall be specified in a way which prevents misuse of, and undue limitations on, the free exchange of information for analytical purposes.	With regard to the third sub-paragraph there is no such obligation for FIU in law but there are no obstacles to provide reports as spontaneous information (which would still not be on a regular basis considering the resources required for implementing similar system without the assistance of an exchange network like FIU.Net). Sub-paragraph 1 of Paragraph 2 is fully met and the statistics provided by FIU show adequate timeliness of responses despite the ability to deploy all FIU powers available domestically. The second sub-paragraph would not be applicable without further international agreements.	
Article 54 Information and documents received pursuant to Articles 52 and 53 shall be used for the accomplishment of the FIU's tasks as laid down in this Directive. When exchanging information and documents pursuant to Articles 52 and 53, the transmitting FIU may impose restrictions and conditions for the use of that information. The receiving FIU shall comply with those restrictions and conditions.	The principle is fully observed by FIU. The second sub-paragraph is not applicable (points of contacts are designated based on the requirements of Egmont Group to whose principles the FIU adheres).	Full

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▼M1 Member States shall ensure that FIUs designate at least one contact person or point to be responsible for receiving requests for information from FIUs in other Member States.		
Article 55 1. Member States shall ensure that the information exchanged pursuant to Articles 52 and 53 is used only for the purpose for which it was sought or provided and that any dissemination of that information by the receiving FIU to any other authority, agency or department, or any use of this information for purposes beyond those originally approved, is made subject to the prior consent by the FIU providing the information. ▼M1 2. Member States shall ensure that the requested FIU's prior consent to disseminate the information to competent authorities is granted promptly and to the largest extent possible, regardless of the type of associated predicate offences. The requested FIU shall not refuse its consent to such dissemination unless this would fall beyond the scope of application of its AML/CFT provisions or could lead to impairment of an investigation, or would otherwise not be in accordance with fundamental principles of national law of that Member State. Any such refusal to grant consent shall be appropriately explained. Those exceptions shall be specified in a way which prevents misuse of, and undue limitations to, the dissemination of information to competent authorities.	The applicable provision is Article 15, Paragraph 4 of the AML/CFT Law. Kosovo legislation is fully in line with the requirement. The conditions of the AML/CFT Law for refusal (Paragraph 2) are less restrictive than the requirement of the Directive.	Full
▼B **Article 56** 1. Member States shall require their FIUs to use protected channels of communication between themselves and encourage the use of the FIU.net or its successor. 2. Member States shall ensure that, in order to fulfil their tasks as laid down in this Directive, their FIUs cooperate in the application of state-of-the-art technologies in accordance with their	The use of protected channel is implemented (Egmont Group secure web). FIU has not implemented any further mechanisms as provided by Paragraph 2 due to the inapplicability and unavailability of access to such channel. Otherwise, FIU implements similar mechanisms and uses such technologies domestically (i.e. it has the relevant infrastructure, please see IO 6).	Full

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national law. Those technologies shall allow FIUs to match their data with that of other FIUs in an anonymous way by ensuring full protection of personal data with the aim of detecting subjects of the FIU's interests in other Member States and identifying their proceeds and funds.		
Article 57 Differences between national law definitions of predicate offences as referred to in point 4 of Article 3 shall not impede the ability of FIUs to provide assistance to another FIU and shall not limit the exchange, dissemination and the use of information pursuant to Articles 53, 54 and 55.	The exchange is carried out regardless of the predicate even if it is not identified. Theoretically, the deficiencies in criminalisation of some of the predicates and the TF/terrorism-related crime might be detrimental to the international information exchange in very limited cases.	Partial
▼M1 Subsection IIIa **Cooperation between competent authorities supervising credit and financial institutions and other authorities bound by professional secrecy** **Article 57a** 1. Member States shall require that all persons working for or who have worked for competent authorities supervising credit and financial institutions for compliance with this Directive and auditors or experts acting on behalf of such competent authorities shall be bound by the obligation of professional secrecy. Without prejudice to cases covered by criminal law, confidential information which the persons referred to in the first subparagraph receive in the course of their duties under this Directive may be disclosed only in summary or aggregate form, in such a way that individual credit and financial institutions cannot be identified. 2. Paragraph 1 shall not prevent the exchange of information between: (a) competent authorities supervising credit and financial institutions within a Member State in accordance with this Directive or other legislative acts relating to the supervision of credit and financial institutions;	For the FIU-K, please refer to R. 29.6 and 40.15 of the TC Annex as well as IO 6 and IO 2. With regard to Paragraph 1, confidentiality requirements in relation to all information received by the staff of the FIU-K are introduced in Article 14, Paragraph 2 of the AML/CFT Law. This would also span over persons who have worked in the FIU-K (thus also covering the supervisory role of the FIU). The CBK (former) staff is subject to limitations to disclose non-public information pursuant to Article 74 of the Law of the CBK although there is no definition of the term and subsequently it is not clear what non-public information would cover and whether information obtained pursuant to other laws would be covered (i.e. information related to supervision pursuant to the AML/CFT Law). It seems that the implementation would be left to the Executive Board, which has to decide on the accessibility and classification of the information. Confidentiality rules do not seem to apply to external experts (e.g. external auditors of the CBK). With regard to Paragraph 2, there are no obstacles to national cooperation between the competent authorities as the AML/CFT Law provides for detailed requirements. Nevertheless, it is not clear whether professional secrecy limitations could be invoked to prevent cooperation as the derogation under Article 63 of the AML/CFT Law is referring in general to information disclosed pursuant to the AML/CFT Law which does not seem to cover information for strategic analysis purposes. At the same time	Partial

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(b) competent authorities supervising credit and financial institutions in different Member States in accordance with this Directive or other legislative acts relating to the supervision of credit and financial institutions, including the European Central Bank (ECB) acting in accordance with Council Regulation (EU) No. 1024/2013 ([106]). That exchange of information shall be subject to the conditions of professional secrecy indicated in paragraph 1. By 10 January 2019, the competent authorities supervising credit and financial institutions in accordance with this Directive and the ECB, acting pursuant to Article 27(2) of Regulation (EU) No. 1024/2013 and point (g) of the first subparagraph of Article 56 of Directive 2013/36/EU of the European Parliament and of the Council ([107]), shall conclude, with the support of the European Supervisory Authorities, an agreement on the practical modalities for exchange of information. 3. Competent authorities supervising credit and financial institutions receiving confidential information as referred to in paragraph 1, shall only use this information: (a) in the discharge of their duties under this Directive or under other legislative acts in the field of AML/CFT, of prudential regulation and of supervising credit and financial institutions, including sanctioning; (b) in an appeal against a decision of the competent authority supervising credit and financial institutions, including court proceedings; (c) in court proceedings initiated pursuant to special provisions provided for in Union law adopted in the field of this Directive or in the field of prudential regulation and supervision of credit and financial institutions. 4. Member States shall ensure that competent authorities supervising credit and financial institutions cooperate with each other for the purposes of this Directive to the greatest extent possible, regardless of their respective nature or status. Such cooperation also includes the ability to conduct, within the powers of the requested competent authority, inquiries on behalf	Article 80 of the Law on Banks provides for the disclosure of information obtained by the CBK under secrecy conditions only pursuant to the Law on the CBK. There seem to be no obstacles to international cooperation of the CBK including the obligation to maintain professional secrecy. The requirement of Article 15, Paragraph 4 of the AML/CFT Law for exchange with counterparts would allow indirect cooperation of FIU with foreign supervisory authorities. The interpretation of the FIU seems to be aligned with the Egmont Group principles of international cooperation including the diagonal cooperation which would generally mean providing information for supervisory purposes through the other jurisdiction's FIU and not directly to the requesting supervisory authority. With regard to Paragraph 3, the FIU and CBK are allowed information exchange subject to requirements in line with the Directive except for letter (c) (not applicable). Kosovo legislation does not seem to be in line with the requirement for the CBK to conduct inquiries on behalf of foreign counterparts. The FIU does not seem to be limited to carry out inquiries on behalf of foreign counterparts using its own powers and exchange information. With regard to Paragraph 5, the FIU is authorised to conclude MoUs with foreign counterparts which would follow Egmont Group principles and therefore allow for indirect exchange of information for supervisory purposes, including observing confidentiality principles in line with the Egmont Group requirements. With regard to the effectiveness of cooperation, both the FIU and CBK seem to be cooperating closely and exchanging relevant information at the national level, although it is not clear whether the full potential of the cooperation requirements is exploited	

[106] European Council (2013) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63) available at https://eur-lex.europa.eu/

[107] European Parliament and the Council (2013), Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338) available at https://eur-lex.europa.eu/

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of a requesting competent authority, and the subsequent exchange of the information obtained through such inquiries. 5. Member States may authorise their national competent authorities which supervise credit and financial institutions to conclude cooperation agreements providing for collaboration and exchanges of confidential information with the competent authorities of third countries that constitute counterparts of those national competent authorities. Such cooperation agreements shall be concluded on the basis of reciprocity and only if the information disclosed is subject to a guarantee of professional secrecy requirements at least equivalent to that referred to in paragraph 1. Confidential information exchanged according to those cooperation agreements shall be used for the purpose of performing the supervisory task of those authorities. Where the information exchanged originates in another Member State, it shall only be disclosed with the explicit consent of the competent authority which shared it and, where appropriate, solely for the purposes for which that authority gave its consent.	taking into consideration the deficiencies noted in relation to supervision of banks and financial institutions over the reporting requirements of the AML/CFT Law. The international cooperation of the FIU is active although it is not clear to what extent supervisory information has been exchanged. CBK has not clearly demonstrated that the exchange of information internationally is taking place effectively for AML/CFT purposes.	
Article 57b 1. Notwithstanding Article 57a(1) and (3) and without prejudice to Article 34(2), Member States may authorise the exchange of information between competent authorities in the same Member State or in different Member States, between the competent authorities and authorities entrusted with the supervision of financial sector entities and natural or legal persons acting in the exercise of their professional activities as referred to in point (3) of Article 2(1) and the authorities responsible by law for the supervision of financial markets in the discharge of their respective supervisory functions. The information received shall in any event be subject to professional secrecy requirements at least equivalent to those referred to in Article 57a (1). 2. Notwithstanding Article 57a(1) and (3), Member States may, by virtue of provisions laid down in national law, authorise the disclosure of certain information to other national authorities responsible by law for the supervision of the financial markets, or with designated responsibilities in the field of combating or investigation of money laundering, the associated predicate offences or terrorist financing.	The cooperation arrangements between authorities are provided for in Article 38 of the AML/CFT law (see also discussion under Article 57a of the Directive) in relation to supervisory cooperation. With regard to the cooperation with other supervisors the arrangements under Article 38 of the AML/CFT Law would apply. Professional organisations of the legal professionals, auditors and accountants do not have any legally defined role in relation to the supervision for AML/CFT purposes. With regard to Paragraph 2, the Law on CBK allows for disclosure pursuant to criminal Law, including to assist criminal Law enforcement or on the order of a court acting on criminal matter. It is not clear whether supervisory information in this case would be similarly subject to professional secrecy protection (especially where it is not exchanged as classified information). No safeguards as provided for by Paragraph 3 are in place in Kosovo.	Partial

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However, confidential information exchanged according to this paragraph shall only be used for the purpose of performing the legal tasks of the authorities concerned. Persons having access to such information shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 57a (1). 3. Member States may authorise the disclosure of certain information relating to the supervision of credit institutions for compliance with this Directive to Parliamentary inquiry committees, courts of auditors and other entities in charge of enquiries, in their Member State, under the following conditions: (a) the entities have a precise mandate under national law to investigate or scrutinise the actions of authorities responsible for the supervision of those credit institutions or for laws on such supervision; (b) the information is strictly necessary for fulfilling the mandate referred to in point (a); (c) the persons with access to the information are subject to professional secrecy requirements under national law at least equivalent to those referred to in Article 57a(1); (d) where the information originates in another Member State, it shall not be disclosed without the express consent of the competent authorities which have disclosed it and, solely for the purposes for which those authorities gave their consent.		
▼B *SECTION 4* ***Sanctions*** **Article 58** 1. Member States shall ensure that obliged entities can be held liable for breaches of national provisions transposing this Directive in accordance with this Article and Articles 59 to 61. Any resulting sanction or measure shall be effective, proportionate and dissuasive.	Please refer to TC Annex, R. 35, as well as IO 3. The TC Annex includes a number of deficiencies related to the language of some of the infringements provided for by the AML/CFT Law which would result in legal uncertainty as to their applicability (e.g. with regard to postponement of operations, some of the reporting requirements, etc.). There is also lack of clarity and substantiation noted in relation to the determination of the seriousness of violations (not taking into account, as a matter of principle, the nature, severity, form and consequences of violations). Some discrepancies between the sanctioning powers of different supervisors, the applicability of sanctions to directors and senior managements in a consistent manner, the lack of substantiation based on objective criteria of the sanctions that	Partial

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2. Without prejudice to the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative sanctions and measures and ensure that their competent authorities may impose such sanctions and measures with respect to breaches of the national provisions transposing this Directive, and shall ensure that they are applied. Member States may decide not to lay down rules for administrative sanctions or measures for breaches which are subject to criminal sanctions in their national law. In that case, Member States shall communicate to the Commission the relevant criminal law provisions. ▼M1 Member States shall further ensure that where their competent authorities identify breaches which are subject to criminal sanctions, they inform the law enforcement authorities in a timely manner. ▼B 3. Member States shall ensure that where obligations apply to legal persons in the event of a breach of national provisions transposing this Directive, sanctions and measures can be applied to the members of the management body and to other natural persons who under national law are responsible for the breach. 4. Member States shall ensure that the competent authorities have all the supervisory and investigatory powers that are necessary for the exercise of their functions. 5. Competent authorities shall exercise their powers to impose administrative sanctions and measures in accordance with this Directive, and with national law, in any of the following ways: (a) directly; (b) in collaboration with other authorities; (c) under their responsibility by delegation to such other authorities; (d) by application to the competent judicial authorities.	could be imposed, as well as the deficiencies with regard to NGO sanctioning impact the proportionality and dissuasiveness. The effectiveness of the regime is undermined by the seeming duplication of effort in the work done by the FIU and the CBK and the lack of application of proportionate and dissuasive sanctions stipulated by the AML/CFT Law. The rules on administrative sanctions provided for in Kosovo law would cover most of the requirements but are not entirely in line with the Directive where deficiencies are noted with regard to the implementation of the Directive requirements (e.g. beneficial ownership, lack of sufficient transparency of beneficial ownership, lack of some databases, etc.). There seems to be an overlap between the administrative violation in the AML/CFT Law and the criminal offences as stipulated under Article 59 of the same law. The latter article would include a number of infringements subject to criminal sanctions including the reporting requirements, record-keeping, confidentiality requirements for the FIU, etc. The overlap would be detrimental to the effective application of sanctions (e.g. deciding on the nature of the infringement and the applicable sanctions without any further criteria). There does not seem to be requirements for ensuring prompt reporting for criminal breaches as required by this article of the Directive (Paragraph 2). Adequate powers of the supervisors are broadly in place although the division of responsibilities between the CBK and FIU as discussed above (especially for supervising compliance with the reporting obligations) is negatively impacting the system. The powers of the competent authorities are exercised mainly directly and in some limited circumstances in collaboration with other authorities (e.g. for the obliged entities reporting requirements as noted above). Cross-border cases would be affected by the unclear effectiveness of the international cooperation conducted by the CBK (please see IO 2).	

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In the exercise of their powers to impose administrative sanctions and measures, competent authorities shall cooperate closely in order to ensure that those administrative sanctions or measures produce the desired results and coordinate their action when dealing with cross-border cases.		
Article 59 1. Member States shall ensure that this Article applies at least to breaches on the part of obliged entities that are serious, repeated, systematic, or a combination thereof, of the requirements laid down in: (a) Articles 10 to 24 (customer due diligence); (b) Articles 33, 34 and 35 (suspicious transaction reporting); (c) Article 40 (record-keeping); and (d) Articles 45 and 46 (internal controls). 2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative sanctions and measures that can be applied include at least the following: (a) a public statement which identifies the natural or legal person and the nature of the breach; (b) an order requiring the natural or legal person to cease the conduct and to desist from repetition of that conduct; (c) where an obliged entity is subject to an authorisation, withdrawal or suspension of the authorisation; (d) a temporary ban against any person discharging managerial responsibilities in an obliged entity, or any other natural person, held responsible for the breach, from exercising managerial functions in obliged entities;	The AML/CFT Law provide for sanctions with regard to violations of the provisions regarding CDD, reporting, record-retention and internal policies, procedures and controls. However, there are a number of deficiencies noted in relation to the implementation of the requirements of all mentioned provisions - Articles 10 to 24, 33 to 35, 40, 45 and 46 of the Directive. Hence, sanctions cannot be imposed with regard to the missing elements identified under those provisions. With regard to Paragraph 2, the following is noted: There is no obligation to identify the nature of the breach as part of the written public warning that could be imposed. The public warning is also not available for minor violations which would include elements of Articles 33 to 35 and 40 of the Directive (postponement of operations based on foreign request, the customer identification and verification for games of chance, legal professionals reporting and record-keeping requirements, etc.). The AML/CFT Law requires (Article 49) upon the receipt of the decision for imposing administrative sanction, the reporting entity to undertake actions to ensure compliance with this Law, which is to be done within the period set forth in the decision. Compliance of the reporting entity with the provisions of this Law shall be verified and if the reporting entity, to which an administrative sanction was imposed has not undertaken compliance actions a monetary daily fine could be imposed. This could be considered to be sufficient to meet the requirement of letter (b) of Paragraph 2 of Article 59 of the Directive except for those infringements under Paragraph 1 defined in Kosovo law as minor infringements (see above).	Partial

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(e) maximum administrative pecuniary sanctions of at least twice the amount of the benefit derived from the breach where that benefit can be determined, or at least EUR 1 000 000. 3. Member States shall ensure that, by way of derogation from paragraph 2(e), where the obliged entity concerned is a credit institution or financial institution, the following sanctions can also be applied: (a) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or 10% of the total annual turnover according to the latest available accounts approved by the management body; where the obliged entity is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Article 22 of Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting Directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking; (b) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 25 June 2015. 4. Member States may empower competent authorities to impose additional types of administrative sanctions in addition to those referred to in points (a) to (d) of paragraph 2 or to impose administrative pecuniary sanctions exceeding the amounts referred to in point (e) of paragraph 2 and in paragraph 3.	Letter (c) is met for all applicable requirements under except for those infringements under Paragraph 1 defined in Kosovo law as minor infringements (see above). Letter (d) is met except for those infringements under Paragraph 1 defined in Kosovo law as minor infringements (see above). The amounts of pecuniary sanctions are not in line with the Directive.	
Article 60 1. Member States shall ensure that a decision imposing an administrative sanction or measure for breach of the national provisions transposing this Directive against which there is no appeal shall be published by the competent authorities on their official website immediately after the person sanctioned is informed of that decision. The publication shall include at least information on the type and nature of the breach and the identity of the persons responsible. Member States shall not be obliged to apply this subparagraph to decisions imposing measures that are of an investigatory nature.	Article 55 of the AML/CFT Law requires publishing all final decisions related to administrative sanctions by all supervisors. The scope of the information required to be published is in line with the Directive. However, the possibility to delay is not provided subject to the condition of expiration of the reasons not to publish (the sanction imposed or the data of the person). Paragraph 2 is not applicable in the case of Kosovo. Paragraph 3 is met. With regard to Paragraph 4 of this Article of the Directive, Article 49, Paragraph 2 of the AML/CFT Law refers to most of the	Partial

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Where the publication of the identity of the persons responsible as referred to in the first subparagraph or the personal data of such persons is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an on-going investigation, competent authorities shall: (a) delay the publication of the decision to impose an administrative sanction or measure until the moment at which the reasons for not publishing it cease to exist; (b) publish the decision to impose an administrative sanction or measure on an anonymous basis in a manner in accordance with national law, if such anonymous publication ensures an effective protection of the personal data concerned; in the case of a decision to publish an administrative sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is foreseen that within that period the reasons for anonymous publication shall cease to exist; (c) not publish the decision to impose an administrative sanction or measure at all in the event that the options set out in points (a) and (b) are considered insufficient to ensure: (i) that the stability of financial markets would not be put in jeopardy; or (ii) the proportionality of the publication of the decision with regard to measures which are deemed to be of a minor nature. 2. Where Member States permit publication of decisions against which there is an appeal, competent authorities shall also publish, immediately, on their official website such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose an administrative sanction or a measure shall also be published. 3. Competent authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of five years after its publication. However, personal data contained in the publication shall only be kept on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.	conditions required for determining the sanction. However, the AML/CFT Law does not refer the "benefits" of the perpetrator as required by Paragraph 4, letter (d). More importantly, there are no procedures provided for in the legislation to ensure the manner in which these criteria would be factored in the sanctioning decisions. The economic volume of the transaction could be considered in determining the amount of the pecuniary sanction for very serious and serious violations but this could not be considered the same as taking into account the benefit derived from the breach. Kosovo legislation is not in line with Paragraph 5 as the persons acting (e.g. individually) under power to represent the legal person are omitted from Article 47 of the AML/CFT Law. Kosovo law does not provide for sanctioning of the legal persons based on the lack of supervision or control by a person referred to in paragraph 5 which has led to infringement of the requirements by a person under their authority.	

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
4. Member States shall ensure that when determining the type and level of administrative sanctions or measures, the competent authorities shall take into account all relevant circumstances, including where applicable: (a) the gravity and the duration of the breach; (b) the degree of responsibility of the natural or legal person held responsible; (c) the financial strength of the natural or legal person held responsible, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible; (d) the benefit derived from the breach by the natural or legal person held responsible, insofar as it can be determined; (e) the losses to third parties caused by the breach, insofar as they can be determined; (f) the level of cooperation of the natural or legal person held responsible with the competent authority; (g) previous breaches by the natural or legal person held responsible. 5. Member States shall ensure that legal persons can be held liable for the breaches referred to in Article 59(1) committed for their benefit by any person, acting individually or as part of an organ of that legal person, and having a leading position within the legal person based on any of the following: (a) power to represent the legal person; (b) authority to take decisions on behalf of the legal person; or (c) authority to exercise control within the legal person.		

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
6. Member States shall also ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 5 of this Article has made it possible to commit one of the breaches referred to in Article 59(1) for the benefit of that legal person by a person under its authority.		
Article 61 ▼M1 1. Member States shall ensure that competent authorities, as well as, where applicable, self-regulatory bodies, establish effective and reliable mechanisms to encourage the reporting to competent authorities, as well as, where applicable self-regulatory bodies, of potential or actual breaches of the national provisions transposing this Directive. For that purpose, they shall provide one or more secure communication channels for persons for the reporting referred to in the first subparagraph. Such channels shall ensure that the identity of persons providing information is known only to the competent authorities, as well as, where applicable, self-regulatory bodies. ▼B 2. The mechanisms referred to in paragraph 1 shall include at least: (a) specific procedures for the receipt of reports on breaches and their follow-up; (b) appropriate protection for employees or persons in a comparable position, of obliged entities who report breaches committed within the obliged entity; (c) appropriate protection for the accused person; (d) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in Directive 95/46/EC;	There is no obligation under Kosovo law that could meet the requirements of Paragraph 1 and 2 as well as the first sub-paragraph of Paragraph 3. Provisions are not in place to ensure the protection of individuals who are exposed to threats, hostile actions, or adverse or discriminatory employment actions for reporting suspicions of money laundering or terrorist financing.	Not compliant

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
(e) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the obliged entity, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings. 3. Member States shall require obliged entities to have in place appropriate procedures for their employees, or persons in a comparable position, to report breaches internally through a specific, independent and anonymous channel, proportionate to the nature and size of the obliged entity concerned. ▼M1 Member States shall ensure that individuals, including employees and representatives of the obliged entity who report suspicions of money laundering or terrorist financing internally or to the FIU, are legally protected from being exposed to threats, retaliatory or hostile action, and in particular from adverse or discriminatory employment actions. Member States shall ensure that individuals who are exposed to threats, hostile actions, or adverse or discriminatory employment actions for reporting suspicions of money laundering or terrorist financing internally or to the FIU are entitled to present a complaint in a safe manner to the respective competent authorities. Without prejudice to the confidentiality of information gathered by the FIU, Member States shall also ensure that such individuals have the right to effective remedy to safeguard their rights under this paragraph.		
▼B **Article 62** 1. Member States shall ensure that their competent authorities inform the ESAs of all administrative sanctions and measures imposed in accordance with Articles 58 and 59 on credit institutions and financial institutions, including of any appeal in relation thereto and the outcome thereof. 2. Member States shall ensure that their competent authorities, in accordance with their national law, check the existence of a relevant conviction in the criminal record of the person concerned. Any exchange of information for those purposes shall be carried out in accordance	Not applicable.	N/A

Directive (EU) 2015/849 Provisions	Description and Analysis of measures in Kosovo	Level of compliance
with Decision 2009/316/JHA and Framework Decision 2009/315/JHA as implemented in national law. 3. The ESAs shall maintain a website with links to each competent authority's publication of administrative sanctions and measures imposed in accordance with Article 60 on credit institutions and financial institutions, and shall show the time period for which each Member State publishes administrative sanctions and measures.		
Articles 63 to 69	Not applicable.	N/A

This report provides a comprehensive assessment of Kosovo's compliance with anti-money laundering and combating financing of terrorism (AML/CFT) international standards. It has been drafted using the 2013 Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems. The report contains an in depth analysis of AML/CFT measures taken by Kosovo authorities and provides specific recommendations for addressing identified shortcomings through legislative, institutional and policy reforms aimed at further strengthening the AML/CFT regime in line with European and international standards.

The report has been prepared within the framework of the Council of Europe and European Union Joint Project against Economic Crime in Kosovo (PECK II). The main objective of the Project is to strengthen institutional capacities to counter corruption, money laundering and the financing of terrorism in Kosovo in accordance with European and international standards, through comprehensive assessments and recommendations for improving and streamlining economic crime reform.

www.coe.int/peck2

The Economic Crime and Cooperation Division (ECCD) of the Council of Europe is responsible for designing and implementing technical assistance and co-operation programmes aimed at facilitating and supporting anti-corruption, good governance, anti-money laundering and combating the financing of terrorism reforms in the Council of Europe member states, and neighbouring jurisdictions.

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