



EUROPEAN REFORM AGENDA GOOD GOVERNANCE AND RULE OF LAW

Progress Report

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LIST OF ACRONYMS

AAK	Alliance for the Future of Kosovo
ACA	Anti-Corruption Agency
CEC	Central Election Committee
CPA	Central Procurement Agency
EC	European Commission
ERA	European Reform Agenda
ERP	Economic Reform Program
EU	European Union
GoK	Government of Kosovo
KJC	Kosovo Judicial Council
KPC	Kosovo Prosecutorial Council
LDK	Democratic League of Kosovo
LVV	Vetëvendosje (Self-determination Movement)
MEI	Ministry of European Integration
MF	Ministry of Finance
MoJ	Ministry of Justice
MPA	Ministry of Public Administration
NISMA	Initiative for Kosovo
NPISAA	National Program for Implementation of the Stabilization and Association Agreement
OPM	Office of Prime Minister
PAR	Public Administration Reform
PDK	Democratic Party of Kosovo
POE	Publicly Owned Enterprise
PTK	Post and Telecommunication of Kosovo
SAA	Stabilization and Association Agreement
SIGMA	Support for Improvement in Governance and Management
SPO	Special Prosecution Office

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ADOPTING LEGISLATION, MAKING MANDATORY THE SUSPENSION/ REMOVAL OF PUBLIC OFFICIALS RESPECTIVELY INDICTED OR CONVICTED FOR CORRUPTION.



AMENDING THE LAW ON CONFLICT OF INTEREST & RELATED REGULATIONS BRINGING THEM IN LINE WITH EUROPEAN STANDARDS. REGULATE ADDITIONAL EMPLOYMENT/ APPOINTMENTS.



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EXECUTIVE SUMMARY

European Reform Agenda (ERA) was introduced as an attempt to increase the attention of the Kosovo Government on pressing issues, related to the *Good Governance and Rule of Law; Competitiveness and Investment Climate; Employment and Education*. The government recognizes ERA as an important reform generator. Initiated by EU Commissioner for European Neighborhood Policy and Enlargement Negotiations (DG NEAR), Johannes Hahn, ERA is also a high-level dialogue between Kosovo and the EU. The document was designed to streamline priority reforms that would improve the performance of institutions and hopefully accelerate the Kosovo's slow-paced progress toward EU. Yet, almost a year after the launch little was achieved. The institutions were remarkably passive on implementing the priorities and actions. Deadlines in the agenda (action plan) are largely missed. Implementation has slipped for numerous reasons and the process reflects on the weakness of the institutions; lack of will and coordination are key. ERA needs a new momentum; the government should press on the full implementation with a priority, and adopt a new timetable.

The ERA action plan contains 22 priorities and around 130 concrete actions; it has also earned the support of the Assembly. Under Pillar One, *Good governance and Rule of Law* ERA has 9 priorities and 22 actions; Pillar Two, *Competitiveness and Investment Climate* contains 7 priorities and 75 actions; Pillar Three, *Employment and Education* contains 6 priorities. All three pillars are highly important to implement. Yet, performance of the institutions is about the good governance and rule of law. This priority is key and presents a list of valuable reforms.

The government has partially implemented two (2) priorities. Work on five (5) other areas faced serious delays, and other two (2) priorities are almost completed. The concept document on suspension/removal of public officials indicted or convicted for corruption was prepared; a review analyses of independent agencies and regulatory bodies was done. The draft law on prevention of conflict of interest was submitted to the parliament. Political parties have published partially their financial report; an independent auditor was selected. On the e-procurement, majority of actions are completed within the planned deadline, largely because the process commenced before ERA was launched.

Yet, important actions remain unimplemented. The law on the suspension of public officials is not drafted yet. Government's lack of will is especially reflected on Public Administration Reform; the adaption of the laws on civil service, salaries and organization of public administration is not completed. There is still much to do on ensuring merit-based and non-political selection process and hiring of the members for independent institutions, agencies and bodies. Review of the law on financing of the political parties remains a difficult task. Despite the legal improvements in support of the judicial and prosecutorial councils, results on the fight against corruption, particularly of the high-level are still missing.

Government leaders had no will and were obstructed by continuous crisis. Before and after the launch of ERA, Kosovo government continued to operate in an unstable and fragile environment. Domestic crisis and growing tensions in the northern Kosovo and with Serbia diverted attention from the governance-related priorities. ERA has the potential to improve the policy-making dynamic in institutions. It presents a set of reforms that should not be segregated; it has value only if it's implemented as a package. Balkans Group report on European Reform Agenda had envisaged that the ERA plan requires longer timeframe. As it appears, the new timeframe should include also the year 2018. The new government has shown more interest on implementation process of the ERA indicating willingness to implement the well-crafted priorities.

RECOMMENDATIONS

1. The new government should introduce a new commitment to the ERA, show full ownership, take the lead and allocate all resources needed for the implementation process. Authorized by the prime minister, EU integration minister should have the power to mobilize all line ministers and agencies, and develop a rigid reporting schedule.
2. Adopt a new timeframe for the implementation of the ERA; it should include the year 2018.
3. Include ERA priorities in the government plan, including the budgetary support.
4. Introduce new rules for appointment of board members and directors of independent agencies and regulatory bodies to ensure competitive process and free of political influence. Authorize the Anti-Corruption Agency (ACA) to provide clearance for candidates and involve civil society in the recruitment.
5. Implement the recommendations of the qualitative analysis review of all independent agencies and regulatory bodies. Prioritize measures on accountability, reporting and sanctions.
6. The government and relevant ministries responsible for the legislation should ensure completion of concept documents as required by ERA action plan and legislation in accordance with the requirements in the action plan.
7. Prioritize the reorganization of the public administration; consult all stakeholders and groups of interests in preparation of legislative package covering civil service, salaries and the organization of public administration. Consultations should include municipalities, agencies, civil servant associations, departments etc.
8. The government should engage the civil society to support ERA implementation. The civil society should play a role in monitoring, advising and advocating for impactful implementation.

INTRODUCTION

The European Reform Agenda (ERA) was launched on 11 November 2016, within the high level dialogue between Kosovo and the EU, consisting of precise priority reforms and detailed action plan the Government of Kosovo (GoK) committed to implement by the end of 2017.¹ These priorities emerge from the Stabilization and Association Agreement (SAA), the National Program for Implementation of the Stabilization and Association Agreement (NPISAA), Economic Reform Program (ERP) and National Development Strategy (NDS). This complex agenda required broader consensus; ERA was approved by the assembly on February 2017. In practice, it was largely neglected with little efforts put on the implementation. Segments of the government showed more interest, others less; some other ministers were reluctant to engage on ERA, at all.

ERA is likely to bring a number of advantages in terms of prioritising and accelerating key reforms. This Kosovo EU high-level dialogue does not assert the aim it wants to achieve. Against the hope of the Kosovo government, ERA does not offer the prospects for application for the status of the candidate country for EU membership.

European Reform Agenda has three pillars:

Good Governance and Rule of Law is the most significant pillar of ERA. It contains 9 priorities and 22 actions. Priorities include amending legislation on conflicts of interest, ensuring transparent funding for political parties, reviewing and making more accountable the independent bodies, passing legislation regulating civil service, ensuring merit-based and non-political appointments, procurement, etc. Particular attention is given to the reform of the public administration and laws on civil service, salaries and the Law on Organisation of Public Administration.

Competitiveness and Investment Climate is the largest component in terms of scope covered by the SAA, NPISAA and Economic Reform Program (ERP). It contains 7 priorities and 75 actions. Reforms aim to improve business and investment climate, help develop small and medium-sized enterprises (SMEs), develop statistics, infrastructure, energy sector, and improve the fight against the informal economy. The last includes risk assessment, capacity building of, and cooperation between institutions, improving policy planning, increasing tax compliance and fighting against money laundering. In the areas of energy and infrastructure, improving interconnectivity infrastructure with other regional countries is a priority. On statistics, actions are planned to strengthen capacities, as well as improve production of systematic statistics in the sectors of energy, GDP and national accounts, industry and labor.

¹ Balkans Group report, *European Reform Agenda: Challenges to the Good Plan*: November 2016. On 17 May 2016, Prime Minister Mustafa and Commissioner Hahn had agreed to develop a European Reform Agenda “to maximize the economic and political benefits of SAA”

Employment and Education with 6 priorities and 31 actions aims to improve employment and social policy, by addressing youth unemployment and participation of women in the job market. On the education the action plan envisages policy forums, reform of the curricula, improving the quality of the higher education, and fostering links between the education and the job market. Prioritizing education marks a shift in the EU policy, which has invested limited resources in this area so far.

Pillar One, Good Governance and Rule of Law is key to improve the performance of the institutions. Changes in the policy making, planning, fight against the conflict of interest, and limiting the informal influence of the political parties will reduce corruption, increase the performance of the officials and offer better government services. Better performing institutions will enable an environment for economic development, investments, competitive business making, employment and reforms on education. Good governance and rule of law present the core of reforms needed in Kosovo. Thus, this report will focus on the Pillar One.

Progress on other reform programs and agendas has stalled throughout 2017, and ERA makes no exception. The government has only partially implemented Stabilization Association Agreement (SAA). Continued crisis, snap elections and delays on the formation of the government have hindered enacting of other EU programs; the assembly approved the IPA 2016 only recently.²

REFORMS UNDER CONSTANT POLITICAL CRISIS

The protracted political crisis whose origins can be tracked back to June 2014 has inflicted substantial damage on the functioning of the state institutions. The conflict between the ruling parties and the opposition resulted in an almost complete paralysis of the government and the parliament during 2015 and 2016. The crisis threatened the viability of institutions and had the potential to derail Kosovo's state building and democratic consolidation. Instability undermined all major processes, including implementation of the VISA liberalization requirements.

Following the launch of ERA, tensions between Kosovo and Serbia grew. In mid-January of 2016, a train was sent from Serbia to northern Kosovo, painted with Serbian orthodox saints and covered with provocative slogan "Kosovo is Serbia" in twenty world languages. Kosovo Government deployed police special units to bar the train from entering into Kosovo. This incident occurred in the middle of tensions over an erected wall in the bridge in North Mitrovica, in December 2017. Albanians reacted furiously, blaming Belgrade for aiming to draw a line of division. They also blamed EU for failing to prevent "Serbia's provocations". Like no other issue, the wall was likely to provoke serious incidents should have not been immediately addressed.

² On 4 October 2017, the Assembly of the Republic of Kosovo approved the Financial Agreement for IPA 2016. The IPA 2016 agreement grants Kosovo € 71.15 million. Under the IPA program different sectors will be supported: Democracy and Governance, Rule of Law and Fundamental Human Rights, Energy, Competitiveness and Innovation, Agriculture and Rural Development.

EU and other key embassies had to react to prevent the worst.³ Growing tensions raised concerns among the international community, including the EU. Brussels became too much concerned about the security and dropped ERA from the priority list.⁴

To some extent, events that took place in the first quarter of 2017 shifted the overall political agenda of Kosovo institutions, both the government and the assembly. In March, President Thaçi presented a draft law to the Kosovo Assembly, to transform country's armed security forces into a national army. This step fueled major reactions from international community, local actors and governing partner of PDK.

In the midst of strong and deep political disagreements in May 2017, opposition parties initiated a motion against the government of Prime Minister Isa Mustafa. The vote of no confidence was also supported by PDK, the LDK governing partner. The fall of the government led to snap elections. Announced to be held on 11 June, early elections diverted the interest from reforms and bureaucrats failed to advance implementation. ERA is more of a political process between Kosovo and EU, not a reform program, said a senior civil servant.⁵ On 9 September 2017, three months after the elections, the new government was formed.

The cabinet of Ramush Haradinaj inherited a large and challenging agenda.⁶ List of tasks is immense; high-level coordination, commitment and mobility is required to make progress on the implementation of the SAA and ERA. Other important priorities will keep the government busy.⁷ Tensed relations between the government and the opposition may again hinder the pace of reform implementation and passing of the legislation. The government should ensure it closely cooperate with the opposition to prevent crises of the past. The assembly has approved the SAA and ERA and the institutions can advance reforms only by working together.

This progress report presents an assessment of the government's work on the implementation of the European Reform Agenda, from November 2016 to October 2017. The report is based on systematic monitoring of the government institutions, interviews with government officials, bureaucrats, European officials and civil society representatives.

³ In February 2017, the government with support of EUSR /Head of EU Office Natalya Apostolova and the U.S. Ambassador Greg Delawie successfully managed to agree on a new plan for the opening of the bridge, which included the removal of the wall

⁴ Balkans Group interview, EU official, Prishtina, March 2017.

⁵ Balkans Group interview, Prishtina, July 2017

⁶ Balkans Group Policy Article, *Another High Stake for Kosovo: Haradinaj's government challenging agenda*, September 2017

⁷ Ibid

ERA IMPLEMENTATION – PILLAR ONE (GOOD GOVERNANCE AND RULE OF LAW)

1.1 Reviewing and adopting legislation making mandatory the suspension/removal of public officials indicted and convicted for corruption

This priority was set by the European Commission as a result of a number of cases, where high public officials continue to lead the institutions or hold office, despite being under indictment for corruption offenses. There are several cases when public officials accused or even convicted of criminal charges, continue to exercise their public duties.⁸ There is no legal

1. Concept document on amendment of the applicable legislation to ensure mandatory suspension and/or removal of public officials respectively indicted and convicted for corruption.

Completed

2. Adoption of the legislation to ensure mandatory suspension and/or removal of public officials respectively indicted and convicted for corruption.

Not commenced

framework or a consolidated policy that sanctions or suspends public officials who face charges, indictment or conviction for corruption. Within the existing legal framework there are three laws that regulate the suspension of civil servants, but the law does not regulate properly the status of public officials subject to the misuse of official duty.⁹

Ministry of Justice (MoJ), with the support of foreign experts prepared the concept document on the legislation for suspension of public officials indicted for corruption.¹⁰ The document suggests two options on how to regulate this issue: drafting a new law on the suspension of public officials or regulate it as a provision in the Criminal Code and the Criminal Procedure Code.¹¹ Legal changes to ensure suspension, prevents misuse of authority and influence over the evidences, which is key to allow successful investigation and prosecution.¹²

Adoption of the legislation could take a year, once the concept document is published, civil society and other relevant actors will be invited to suggest additional improvements.¹³ Ministry

⁸ For instance; former Mayor of Municipality of Prizren, Mayor of Klina, Mayor of Mitrovica, Mayor of Shtërpçe/Strpçe, Mayor of Municipality of Partesh. Deputy Prime Minister Fatmir Limaj and Naser Osmani, member of the parliament.

⁹ The law on civil service foresees a "preventive suspension" for civil servants in the case of indictment, but public officials, (elected officials, mayors and members of the parliament) do not fall in this category. The Criminal Code has a specific chapter, dedicated to official corruption and offenses against official duty. However, the sanctioning of public officials incriminated on criminal offenses is reflected only after final court decision. Investigations are frequently and often orchestrated, prolonged and public officials charged with criminal offenses continue to carry out their public functions/office.

¹⁰ The working group consisted of officials from: Ministry of Justice and Office of Prime Minister.

¹¹ Balkans Group interview, Ministry of Justice official, Prishtina, July 2017.

¹² Balkans Group interview, ACA official, Prishtina, June 2017. In Belgium for instance, in case of investigation the prosecutor will inform the proper management hierarchy of the public service that a judge/prosecutor is investigating one of their officials. Their superior can initiate a disciplinary procedure and take temporary action (the person may be suspended). In Czech Republic, suspension of public officials is foreseen in case of commencement of criminal prosecution.

¹³ Balkans Group interview, Ministry of Justice official, Prishtina, June 2017.

of Justice will eventually begin consultations on legal changes, to include new provisions in the criminal codes or pass a new law. This widespread criminal offence should be carefully addressed in both documents, to rigidly sanction misuse of the office and duties by the elected and appointed officials.

1.2 Amending the law on conflict of interest and related regulations bringing them in line with European standards and indicating the exact circumstances in which public officials may take on additional employment and appointments.

Locals and international community are continuously demanding better performance from public institutions and the government itself. There is lack of political will and effective enforcement of the legal framework to fight corruption.

1. The Law on Prevention of Conflict of Interest in Discharge of Public Functions, to be amended, in line with EU recommendations.

In progress

Amending the law on prevention of conflict of interest will increase the accountability of officials and enhance the performance of the public institutions. It is important to consider prevention of conflict of interest as an extensive policy to combat corruption. The purpose of this law is to strengthen the integrity and depoliticisation of the institutions, increase transparency. In action, it aims to regulate the conflict of interests for all high-ranking officials, elected, appointed and other officials designated by the Criminal Code in force. Recently, discussions evolve around application of sanctions on conflict of interest for all public servants.¹⁴ This provision may include appointment of anti-corruption officials in each governing institution and agency.¹⁵

All indicators under the action plan are included in the draft law on prevention of conflict of interest.¹⁶ The draft law, however, envisages only limited sanctions in case of conflict of interests; those are largely financial penalties.¹⁷ Other sanctions include prohibition of exercise of public function up to two years, upon court ruling.

¹⁴ The draft-law on conflict of interest defines senior official and official person as follows: senior public officials defined by the respective law for declaration, control and origin of property and all public officials appointed by the President of the Republic of Kosovo, the Prime minister as well as ministers; Official person – means every other person elected or appointed in a governmental body as well as official persons designated by the Criminal Code of the Republic of Kosovo who exercise public duties.

¹⁵ Balkans Group interview, government and ACA officials, Prishtina, September 2017. Anti-corruption officials may sit in the legal offices of individual institutions to report, monitor and supervise implementation of the policies against conflict of interest of public officials.

¹⁶ Priority 1.2, action plan include five indicators: a. The categories of public officials need to be clearly defined; b. There should be a clear indication as to which activities officials are permitted and not permitted to do while in office; c. There should be a clear indication as to which activities officials are banned from performing after they have left the office; d. There should be clear indication as to the obligations of officials and their superiors in the situation of the conflict of interest; e. There should be clear indication of the procedures that should be set in motion once the conflict of interest arises.

¹⁷ Article 24 does not exclude material and criminal liability of officials.

On 6 October 2016, the new government approved the draft law on prevention of conflict of interest, which is now expected to proceed on with parliamentary procedures. Implementation of the law will be complex and will require extensive preparations and planning. The authority of the ACA will expand in supporting, training and monitoring the work of officials throughout the government institutions and the implementation of the law.

1.3 Ensuring the transparency and accountability of funding of political parties

Civil Society and EU representatives have long demanded accountability and transparency of political parties' finances. Under pressure, parliamentary parties have published reports early this year, though incomplete.¹⁸ The information about the donors are largely missing.¹⁹ Financial reports present only public funds received from the assembly, which are largely used for dinners and fuel, while the same should be used for parties' internal democratization.²⁰ Political parties do respect the time frame regarding the submission of their finances to Central Election Commission (CEC), where they remain unpublished until the auditing process is completed. Finances of political parties were not audited since 2013.

¹⁸ Vetevendosje was the only political party which has consistently published its reports on their website. LDK published all their financial report on 27 January 2017, no donors names were published. PDK sent to media 7 pages of financial report in 26 January 2017, only for year 2015. No donor names are included; years 2013-14 are missing, as are campaign disclosure reports for the 2013 municipal elections and 2014 parliamentary elections. AAK has supposedly published their reports on website, but after a hacking attack they remain non-functional. On 3 February 2017, NISMA published all annual financial reports since its establishment in 2014 on their Facebook page, including names of donors. Campaign disclosure report for the 2014 parliamentary election is absent.

¹⁹ EU has been very vocal on this; head of the EU office, Nataliya Apostolova had stated, "The Kosovo Assembly should ensure independent audits of these financial reports [...] I am therefore pleased to note that, upon my suggestion, the speaker of the assembly has convened a meeting to start discussion how this issue can be take forward in a timely manner to ensure that citizens and voters of Kosovo can finally have the information they need to make a democratic choice."

²⁰ Balkans Group interview, CEC official, Prishtina, 30 March 2017. The law on financing of political parties' article 7 states "Public financial resources, from the budget of the Republic of Kosovo, are used for financing of election and electoral activities, funding and work of the parliamentary groups and financing of regular activities of political parties. The assembly allocates funds with the proposal of the government, no more than 0.05% of Kosovo's budget."

The EU repeatedly pressed on CEC to publish unaudited reports, but the Election Commission claims the law prohibits them to do so. Law on financing of political parties specifically states “the CEC must publish all annual financial reports together with the audit declaration of the political party on its official website”.²¹ CEC suggests to be acting in accordance with the law; insisting they cannot publish unaudited reports until the law is amended.

Assembly Oversight Committee on Public Finance is responsible for selecting auditing companies through an open call.²² Tender for auditing

process had failed several times since 2013 for multiple reasons, on the grounds of the political stalemate, lack of will, low budget, high criteria applied and for technical issues. In practice there was no will to audit finances of political parties. On May 2017, an auditing company was selected.²³ Although the auditing may start soon, there are still considerable concerns about the quality of the reports the political parties will provide.²⁴

1.4 Carrying out an independent review of the accountability mechanisms of all independent institutions, agencies and regulatory bodies, following up on its recommendations, and adopting legislative measures that clearly define the roles, responsibilities and lines of accountability of these institutions.

Kosovo governing structures remain fragmented with no clear lines of responsibilities and accountability. There are no basic framework and rules for the establishment, organization, supervision, reformation or termination of independent agencies and regulatory bodies and their

1. Publish financial reports of political parties and take effective enforcement action against those that do not.	Partially Completed
2. Provide adequate funding for procuring auditing services for political party financial reports.	In progress
3. Select independent auditors through an open call.	Completed
4. Amend the Law on Financing of Political Parties to ensure transparency, accountability and effective enforcement and sanctions, on the basis of wide public consultations.	Not commenced

²¹ Article 15 on the law on political party financing.

²² Article 40 on the law on public procurement.

²³ Balkans Group interview, senior member of Central Procurement Agency, Prishtina, 13 June 2017. Audit&Conto Company was selected to audit political party's finances. Worth noting that the same company was chosen to audit party finances in 2010. See at: http://kgz-ks.org/Uploads/Documents/Raporti%20vjetor-%202010_momkdejudt.pdf

²⁴ On 19 October 2017, auditors were chosen to start auditing.

mandates.²⁵ Consequently, all these institutions have been established on a case-by-case basis, resulting into an extensive number of independent agencies.²⁶

In December 2016, Ministry of Public Administration conducted an evaluation report of all agencies, independent and regulatory bodies functioning within the assembly and central government structures. This review shows lack of laws and regulations that clearly define the rules for establishing, governing, overseeing and extinguishing agencies. Rapid and swift formation of the agencies led to dozens of fragmented central government organizations and reduced efficiency in implementing public policies. The report findings are concerning, poor regulation of agency leadership, weak capacities of the boards to oversee the management, lack of adequate performance evaluation and monitoring and incompetent management.

1. Conduct a qualitative analysis review of independent agencies and independent regulatory agencies (analysis on regulation of employment relationship, salaries, establishment and organization of agencies).

Completed

2. Commit to implementing the recommendations of that qualitative analysis.

Not commenced

3. Develop a concept document for the draft-law on the organization of public administration; civil service and salaries.

In progress

4. Adoption of the legislative package on: civil service, salaries and organization of public administration.

Not commenced

Poor practice of human resource management with significant wage differentials, favoring agencies compared to ministries is also of similar concern. Finalizing the draft law on the organization of public administration and other laws (civil service law and the law on salaries), to limit the number and types of agencies is crucial.

The Kosovo Assembly has established 32 independent agencies and the government 46 of them. The Constitution gives broad competences to the assembly to establish regulatory and executive agencies, which is not in line with practices of the EU and OECD countries.²⁷ There is no advance or cost-benefit analysis, before an institution or agency is established. No evaluation, monitoring or analyses for the established agencies is made: nobody knows if such institution should continue, reform or terminate.²⁸ The legal framework for accountability and reporting of

²⁵ Ministry of Public Administration "Review of institutions and Independent Agencies of the Assembly and Central Government Bodies", December 2016.

²⁶ See at: <https://map.rks-gov.net/getattachment/1d5a601b-3d46-4028-a5ad-b7ba07d9b109/Review-of-institutions-and-agencies-of-the-assembly.aspx>

²⁷ Ministry of Public Administration "Review of Institutions and independent agencies of the Assembly and the Central Government Bodies", December 2016, p. 6

²⁸ Assessing the reporting responsibilities, assembly-created institutions and agencies are divided into 4 groups; 1. Institutions/agencies that do not have clear reporting lines to the assembly; 2. Institutions/agencies that neither have defined

regulatory bodies and independent institutions/agencies is fragmented, incomplete and inconsistent.²⁹

Three out of four actions in this priority have been completed. The fourth action, which includes the adoption of the three laws remains in the process. The concept document on the law on public administration and civil service is in the process of consultations.³⁰ Attempts to separate the three laws covering public administration were made.³¹

The completion of this legal framework and other regulatory acts will be very challenging as a result of major inter-institutional disagreements on the civil servants, employees of the agencies, and the boards of independent institutions and agencies. Political parties consider civil administration as hub for vote and will remain reluctant to streamline the merit-based recruitment. Appointed by the high ranking party structures, powerful independent boards and agencies refuse to cooperate with the government and the ministry of public administration; the new laws will limit their powers and benefits. Regulatory boards and agencies also serve as an important source of funding for party structures through tendering and contracts. Government officials warn that the laws regulating civil administration may not advance, it will work only if there is a broad political consensus.³² A growing view within the government suggest that these priorities on public administration reform need to be removed from the ERA package, due to its complex nature.³³

lines of reporting nor report to the assembly; 3. Institutions/agencies that submit the report only for notification and those institutions agencies those have defined reporting to the assembly but do not report. For example, Radio Television of Kosovo, Privatization Agency of Kosovo etc. that have not approved the financial reports and continue to operate. Meanwhile, out of the 46 Kosovo government agencies in Kosovo 13 of them have no clearly defined line of reporting and is unknown whether they report in practice or not.

²⁹ Ministry of Public Administration "Review of Institutions and independent agencies of the Assembly and the Central Government Bodies", December 2016, p. 12

³⁰ Balkans Group interview, government official, Prishtina, May 2017. Ministry of European Integration (MEI) has given positive review on both the concept documents covering civil service and the law on organization of public administration and has requested approval of the three laws as a package, including law on salaries.

³¹ The law on salaries was put forward for approval in violation with the procedure; no prior concept-document was prepared and no public consultations with groups of interests and civil society were held. EU has criticised former government for using the law on salary in an attempt to buy assembly support for other agendas. Requested by the EU, the government revoked draft laws for review. Balkans Group interview, Prishtina, May 2017.

³² Balkans Group interview, senior MPA official, Prishtina, June 2017

³³ Balkans Group interview, government officials, Prishtina, July-August 2017

1.5 Ensure that the planned legislative package covering civil service, salaries and organization of state administration is prepared in a coordinated way in an inclusive and evidence based process on the basis of concept notes agreed at the government level

Reforming Public Administration is another important objective. This significant reform for Kosovo's consolidation is largely driven by EU integration agenda and criteria. Lately, the European Commission Report on Kosovo, stated "The first monitoring reports on the implementation of the public administration reform package indicates considerable delays. There are also serious concerns about the financial sustainability of the reforms. Given Kosovo's ambitious reform agenda, continued strong political commitment is essential to ensure its implementation."³⁴

1. Develop concept documents for the draft-laws on: civil service, salaries and the organization of public administration;

In progress-
with delays

2. Adoption of the legislative package on: civil service; salaries and organization of public administration.

Not
commenced

The government and the assembly agreed to pass the law on salaries altogether with the laws on civil service and on the organization of public administration. However, the decision of the former government to put forward the draft law on salaries to the Assembly seriously undermined the process for enacting the three laws. EU is negotiating a sector budgetary support in the amount of 25 million, to be delivered in tranches, based on the progress.³⁵ These reforms will need political momentum, will and entail difficult decisions.

Concerning the law on salaries, the catalog of positions needs to be approved. It aims to regulate the classification of job, positions and titles, and balance the salaries throughout the public sector. For instance, the director of a certain board should not be paid more than the state president, a proper balance must be created and this requires time.³⁶ The reform on public administration is delayed often for political reasons, lack of coordination and will. Ideally, this priority will be fulfilled next year.³⁷ However, these issues should be debated and consulted not only with NGOs but also with relevant political parties and ministries.³⁸

The action plan foresees the laws on public administration to pass before the end of 2017; it is very unlikely though. This complex legislation would need inclusive process.³⁹ Yet, none of the requirements of consultations is implemented in due time.

³⁴ Progress Report for Kosovo, Brussels, November 2016, p.10 see at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_kosovo.pdf

³⁵ Balkans Group interview, EU official, Prishtina, May 2017

³⁶ Balkans Group interview, MPA official, Prishtina, July 2017

³⁷ Balkans Group interview, MPA official, Prishtina, July 2017

³⁸ Balkans Group interview, senior government official, Prishtina, February 2017

³⁹ Balkans Group interview, senior MPA official, Prishtina, July 2017

1.6 Ensuring transparent, merit-based and non-political selection process in line with the law for all independent institutions, agencies and regulatory bodies as well as in public companies, full implementation of the recommendations by the Kosovo Anti-Corruption Agenda.

The government and the assembly appointed board members and officials to agencies and regulatory bodies in violation with law provisions.⁴⁰ Many of these illegal appointments derived from the agreement between coalition partners, PDK and LDK, deemed that all positions should be equally divided, though the law states that all appointed board members and directors should be neutral to political affiliations.⁴¹ Encouraged by the civil society, Anti-Corruption Agency (ACA) issued an opinion on 22 appointments; it found their selection in severe violation of the law.⁴²

Requirements in the open call were always in accordance with the law and selected candidates signed the *statement under oath*, prepared by the Prime Minister's Office.⁴³ The statement equally violated the law and the government refused to consider ACA view on the statement, including a revised version offered.⁴⁴ On 29 September 2017, the government dismissed ten directors and board members of independent agencies and public companies.⁴⁵ Yet, the decision is partial and confusing.⁴⁶ The early government, however, was reluctant to act at all. Some of the names of the ACA list not only were politically appointed but also actively engaged in the campaign for the June elections.⁴⁷ A review on the functioning of these agencies is

⁴⁰ ACA opinion, http://www.akk-ks.org/repository/docs/01-681-16-dlk-Opinion_ZKM_66368.pdf

⁴¹ No. 03/L-087 law on amending and supplementing the law on publicly owned enterprises

⁴² ACA opinion, http://www.akk-ks.org/repository/docs/01-681-16-dlk-Opinion_ZKM_66368.pdf

⁴³ No. 03/L-087 law on public enterprises, article 17, paragraph 5 states that; the Board of Directors shall meet the qualification requirements under section 17.1, (ii) meet the independence criteria in accordance with section 17.2 points (d), (f), (j), (k) and (l) (iii) are not, or at any time during the thirty-six (36) months prior to the date of application were not Directors of the Company's Board of Directors; (iv) have the necessary professional experience and education required for the position. See at: <https://www.kuvendikosoves.org/common/docs/ligjet/Ligji%20per%20ndrysh%20e%20ligjit%20per%20ndermarriet%20publike.pdf>

⁴⁴ Balkans Group interviews, officials of Ministry of EU integration and ACA, Prishtina, May-July 2017. For more information, please read ACA opinion, AKK-DLK-3113/15, 15 February 2016. Under oath, the candidates would state that they have not been involved politically, or affiliated with political activities last 36 months before being selected for public office. This statement otherwise is known as "The Sworn Affidavit Form/Declaration".

⁴⁵ ACA opinion, http://www.akk-ks.org/repository/docs/01-681-16-dlk-Opinion_ZKM_66368.pdf

⁴⁶ Civil society expressed concerns for this decision stating; this decision represents a selective application of the law and the opinion of the Anti-Corruption Agency; part of this decision are members of a body that is no longer under the responsibility of the Government, but of the Assembly of Kosovo and it is only the Assembly that can dismiss their appointees. See at: http://indep.info/wp-content/uploads/2017/10/Leter-Kryeministrit_indep_glps_gap-1.pdf

⁴⁷ Naser Canolli was appointed board member of Gjakova Airport and at the same time is Executive director the Public Company Termokos; he is on the list of PDK board member council. Mr. Canolli actively campaigned for the June and October election; In the Gjakova Airport board of director, Zenun Shala was appointed and also engaged in the local elections of 2013. He was a candidate for Mayor of Junik from LDK; there are also two appointees in the board of Kosovo Railways Company (INFRAKOS) in violation with the law no. 03 / L-087 on publicly owned enterprises. Mr. Milos Dimic had run and elected in the 2013 elections in the municipality of Gracanica. Similar to him, Mr. Nexhat Dedia from PDK received about 400 votes to become an assembly member in South of Mitrovica. These two figures are entirely political and contradict the provisions of law No. 03 / L-087 respectively Article 17.2 (k)

mandatory. Boards are nothing more than money thirsty cans that use their posts to influence agencies in hiring, earn funds and influence tendering.⁴⁸

Out of the nine (9) actions envisaged in this priority, proper implementation has found the Memorandum of Understanding signed between the Assembly and the Government in one side and the British Embassy on the other side, for monitoring the selection and appointments of the board members of independent institutions and agencies. Another indicator requires the involvement of the civil society in the recruitment process; in March 2017, GoK invited CiviKos to monitor the selection process of candidates for the Directors to Kosovo Energy Corporation.⁴⁹

a. Amendment of the applicable legislation for the selection of independent institutions in order to ensure robust and transparent and merit-based candidate selection procedure.

Partially Completed

b. Government commits to act on the recommendations issued by ACA of 15.02.2016 (AKK -DLK - 3113/15) concerning appointments to 9 boards of POEs.

Partially completed

The new government renewed the agreement with the UK government to monitor and advise on the recruitment of the senior management positions. It aims to ensure transparent, a merit-based, free of political influence and a recruitment on the bases of professional background. The project includes recruitment of 22 officials, directors and board members of public companies, independent agencies and bodies.⁵⁰ The scope of this memorandum to cover appointment of officials in other independent institutions should expand.

⁴⁸ Balkans Group interview, members of TERMOKOS, KOSTT, Prishtina, July 2017

⁴⁹ Balkans Group interview, CIVIKOS member, Prishtina, April 2017. By the end of March 2017, GoK invited civil society representative in reviewing candidates CVs for board members of the Post and Telecom of Kosova (PTK)

⁵⁰ Memorandum of Understanding between the Government of Republic of Kosovo and the Government of United Kingdom of Great Britain and Northern Ireland, represented by the embassy in Prishtina, 11 October 2017.

1.7 Implementing the Government decision of March 2016 on introducing mandatory electronic procurement, along with the indicated timelines

Public e-procurement ensures transparent process for procuring public goods and services, while improving the outdated overloaded paper work practice. The priority on e-procurement includes a set of actions and indicators needed to make the platform fully operational.

1. Implementing the Government decision of March 2016, on introducing mandatory electronic procurement, along with the indicated timelines.

Completed

In March 2016, the government decided to make electronic procurement mandatory at both, local and central level.⁵¹ ERA actions and indicators are fulfilled, including training, certification and testing of public servants at both local and central level on the e-procurement platform.⁵²

In contrast to other areas, the actions related to e-procurement have been implemented within the planned deadlines. From September 2016, e-procurement became also mandatory for the Central Procurement Agency (CPA). For other public procurement purchases, the economic operators can submit offers either electronically or in hard copy until December 2017. Bids for contracts that exceed the amount of 10,000 EUR are mandatory to be submitted electronically.⁵³

E-procurement began to implement months before ERA was launched. The second phase of the project on e-procurement foresaw implementation of changes in the procurement law in the electronic platform, training and certification of public officials at local and central level and test on the procurement modules.⁵⁴ Yet, there are technical issues such as deadlocks and crashes with the system, which affects the quality of service in real time.⁵⁵ The system is also disadvantaged by its initial limited budget of only EUR 600,000.⁵⁶ Still, the platform is not fully used by economic operators, largely because of the ongoing technical problems and limited knowledge of the operators themselves.

⁵¹ Balkans Group interview, Central Procurement Agency official, Prishtina, March 2017

⁵² Balkans Group interview, Central Procurement Agency official, Prishtina, March 2017.

⁵³ Balkans Group interview, official CPA, Prishtina, July 2017; since the launch of e-procurement around 922 calls and documents are submitted electronically by local and central authorities.

⁵⁴ For instance in Ukraine e-procurement was introduced by the civil society. By March 2016, dozens of NGOs from all over Ukraine had joint the e-procurement pilot project. It's worth noting that the e-procurement was introduced by the civil society and was hosted by the Transparency International Ukraine throughout the development and pilot phases to avoid bureaucratic procedures and delays. See at: <https://ptfund.org/project/e-procurement-in-ukraine/>

⁵⁵ Balkans Group interview, official CPA, March 2017.

⁵⁶ Balkans Group interview, IT official, Central Procurement Agency (CPA), Prishtina, April 2017.

1.8 Reinforce the capacity of the economic department and fiscal division in the administrative department of the first instance court in Prishtina, in the areas of tax and customs, with a view to reduce the backlog of cases

Kosovo Judicial Council (KJC) had to invite donors and external experts to implement this priority. USAID is undertaking a study to update case weight for the Kosovo Judiciary.⁵⁷ The study is not complete at this point. When published, it will serve as a guideline for the KJC on further actions to fill capacity needs of the courts. KJC

1. The KJC will carry out a needs assessment for the increase of the number of judges in the Economic Basic Courts. The assessment will determine what are the budget costs as well as human capacities needed for reducing the backlog of cases in the economic basic courts.

In progress

early assessments indicate that the Administrative Division of the Prishtina Basic Court should have additional judicial positions in order to address the caseload.

KJC had an open call for recruitment of 61 judges; 54 were decreed in July 2017.⁵⁸ Judges are spending an unacceptable proportion of their time dealing with administrative tasks and perfunctory case management such as scheduling, screening of files to ensure that parties have complied with evidence requirements.⁵⁹ Efficiency would increase if professional legal staff were available to perform these tasks. Paradoxically, KJC finds difficult to assess the optimal level of professional assistance needed to support judges. The Prishtina Basic Court, Economic and Administrative departments are short of sufficient capacity to handle administrative cases. Ministry of Public Administration has approved only five (5) new positions of professional associates for those two departments. It is inappropriate for the government to decide on the needs of the judiciary.

Improvements on the judiciary are foreseen in other important documents. Kosovo's Economic Reform Program (ERP) presents new concrete measures.⁶⁰ It requires recruitment of new other 50 professional associates to deal with backlog of civil and criminal cases at the Prishtina basic court.⁶¹ ERP pass on the ERA requirement on the need for assessment for the increase of the number of the judges on the Economic and Administrative (fiscal division) department.⁶²

⁵⁷ Balkans Group interview, senior KJC official, July 2017.

⁵⁸ Ibid.

⁵⁹ Balkans Group interview, KJC official, Prishtina, April 2017

⁶⁰ The Kosovo Economic Reform Program 2017-2019 was initially approved in January 2017. ERP contains mid-term macroeconomic projections, budget plans for the next three years and structural reforms that have to be undertaken by institutions. The New government adopted ERP on 4 October 2017.

⁶¹ Economic Reform Program 2017-2019, launched on 4 October 2017. See page 131.

⁶² Ibid

1.9 Continue to strengthen the track record on the fight against corruption and organized crime, including through reinforcing the capacity of the special prosecution office investigating high-level cases

Measuring the results on efforts against corruption is often difficult. Increasing the number of prosecutors may not be enough. The government will have to adopt an approach that embraces additional measures. Along the legal changes, increase the number of the prosecutors and judges, the government should work hard to change the mindset and raise awareness at all levels of government institutions.

Kosovo Prosecution Council (KPC) requested from MoJ to amend the law on state prosecutor, with the aim to lower the criteria of working experience required for new recruitments.⁶³ Increase of the number of prosecutors in the Special Prosecution Office was not possible; few if no candidate met the criteria.⁶⁴ The action plan of the agenda also foresees training of prosecutors in the Special Prosecution Office (SPO) on financial investigation. KPC claims to have provided trainings

on financial crimes, some of them were held throughout the first months of 2017.⁶⁵ The Anti-Corruption Agency (ACA) has expressed concerns over the rejection of corruption cases submitted to the prosecution.⁶⁶ Notably, when cases involve high-level officials rulings are missing. In over 60 per cent of corruption cases involving high-level officials, indictments fail in courts by not being properly investigated or by prolonging the case.⁶⁷

1. Amendment of the Law on State Prosecutor in order to enable the increase of the number of prosecutors in the Special Prosecution Office investigating and prosecuting high-level corruption and organized crime cases.

In progress

2. Provide training to strengthen the capacity of the Special Prosecution Office to conduct financial investigation and confiscate assets.

Completed

⁶³ Balkans Group interview, Ministry of Justice official, Prishtina, June 2017. According to the MoJ the work experience criteria for Special prosecution Office positions was lowered.

⁶⁴ Balkans Group Interview, Kosovo Prosecution Council official, Prishtina, May 2017.

⁶⁵ Balkans Group interview, KPC official, Prishtina, May 2017.

⁶⁶ There are serious contradicting views between ACA and prosecutors. Prosecutors are often reluctant to act on the cases provided by the ACA. Kosovo Prosecution Council (KPC) claims that ACA cases are incomplete and often fail to provide evidence. Prosecutors request from ACA to include evidences, materials and other relevant legal procedures, before submitting a case. Prosecution cannot act on weak evidence, and on un-complete charges. Balkans Group interview, KPC and ACA officials, Prishtina, May 2017.

⁶⁷ Kosovo Law Institute, Corruption "Sea" in Kosovo, March 2017, p.5.

CONCLUSION

The European Reform Agenda does not secure the status of candidate country for EU membership for Kosovo. EU is not in the position to offer that; it cannot even discuss about Kosovo's application. Yet, EU and Kosovo government hope that successful implementation of ERA, will advance implementation of the SAA, and will ease discussions in Brussels about the Kosovo' accession to the European Union. Some Kosovo's EU friends hope to launch a strategic discussion in house about Kosovo, soon. Disappointed by the inability of EU to offer the status of the candidate country within the ERA framework, many in Prishtina see this document only as a tool to fill the agenda of the DG NEAR Commission with Kosovo issue.

Recognizing that, ERA still has the potential to be a concrete plan of actions that would bring about change in the institutions. The plan is ambitious and achievable only if there is sufficient will. If implemented, reforms in the areas of good governance, rule of law, limiting the ability of the public officials to engage in conflict of interest and corruption, despoliation of public administration and independent agencies will raise the performance of the institutions and public trust. Changes will require drastic steps: ensuring merit-based appointment of officials, limiting the role of political parties in the selection and functioning of the state administration. Regulating the status of the political parties, their finances, reporting on the funding sources, auditing and monitoring should remain an uncompromising priority.

The new government, has shown more interest on the implementation of ERA, but may have other issues. With a coalition of four strong Albanian parties, the government will face difficulties to coordinate.

European Reform Agenda will implement only if there is strong leadership over the agenda.

ANNEX

Figure 1. ERA Implementation – Pillar I (Good Governance and Rule of Law)

1.1 Reviewing and adopting legislation making mandatory the suspension/removal of public officials indicted and convicted for corruption	
1. Concept document on amendment of the applicable legislation to ensure mandatory suspension and/or removal of public officials respectively indicted and convicted for corruption.	Completed
2. Adoption of the legislation to ensure mandatory suspension and/or removal of public officials respectively indicted and convicted for corruption.	Not commenced
1.2 Amending the law on conflict of interest and related regulations bringing them in line with European standards and indicating the exact circumstances in which public officials may take on additional employment and appointments	
The Law on Prevention of Conflict of Interest in Discharge of Public Functions, to be amended, in line with EU recommendations: <ol style="list-style-type: none"> The categories of public officials need to be clearly defined. There should be a clear indication as to which activities officials are permitted and not permitted to do while in office. There should be a clear indication as to which activities officials are banned from performing after they have left the office. There should be clear indication as to the obligations of officials and their superiors in the situation of the conflict of interest. There should be clear indication of the procedures that should be set in motion once the conflict of interest arises. 	In progress
1.3 Ensuring the transparency and accountability of funding for political parties: <ol style="list-style-type: none"> Carry out independent audits of political parties finances for 2013-2015 Ensure the publication of financial reports of political parties as foreseen in the law 	
1. Publish financial reports of political parties and take effective enforcement action against those that do not.	Partially Completed
2. Provide adequate funding for procuring auditing services for political party financial reports.	In progress

3. Select independent auditors through an open call.	Completed
4. Amend the Law on Financing of Political Parties to ensure transparency, accountability and effective enforcement and sanctions, on the basis of wide public consultations.	Not commenced

1.4 Carrying out an independent review of the accountability mechanisms of all independent institutions, agencies and regulatory bodies, following up on its recommendations, and adopting legislative measures that clearly define the roles, responsibilities and lines of accountability of these institutions.

1. Conduct a qualitative analysis review of independent agencies and independent regulatory agencies (analysis on regulation of employment relationship, salaries, establishment and organization of agencies).	Completed
2. Commit to implementing the recommendations of that qualitative analysis.	Not commenced
3. Develop a concept document for the draft-law on the organization of public administration; civil service and salaries.	In progress
4. Adoption of the legislative package on: civil service, salaries and organization of public administration.	Not commenced

1.5 Ensure that the planned legislative package covering civil service, salaries and organization of state administration is prepared in a coordinated way in an inclusive and evidence based process on the basis of concept notes agreed at the government level.

1. Develop concept documents for the draft-laws on: civil service, salaries and the organization of public administration.	In progress - with delays
2. Adoption of the legislative package on: civil service; salaries and organization of public administration.	Not commenced

1.6 Ensuring transparent, merit-based and nonpolitical selection processes in line with the law for all independent institutions, agencies and regulatory bodies as well as in public companies, full implementation the recommendations by the Kosovo Anti-Corruption Agency (AKK-DLK-3113/15).

a. Amendment of the applicable legislation for the selection of independent institutions in order to ensure robust and transparent and merit-based candidate selection procedure.

- Publication of CVs of short-listed candidates;
- Inclusion of civil society in the selection committees, on the basis of a transparent and open selection of civil society representatives;
- Strengthening and clarifying minimum requirements for candidates, by including criteria analogous to Art.17 paragraph 2 of the Law on POEs, for instance, in the amendments to the Law on Conflict of Interest, thereby making them applicable to all independent agencies and regulatory bodies.

**Partially
completed**

b. Government commits to act on the recommendations issued by ACA of 15.02.2016 (AKK -DLK -3113/15) concerning appointments to 9 boards of POEs:

- The sworn affidavit form/declaration to be amended to reflect the law for all future appointments;
- OPM to take action under Art 17.5 of the law (i.e. 17.5 Each person holding or applying for a director position shall execute a sworn affidavit truthfully attesting that he meets the eligibility, independence and professional suitability requirements of paragraphs 1 -3 of this Article. Any material misrepresentation - whether intentional or the result of negligence - or any material change in the information set forth in such affidavit shall result in the immediate disqualification and, if applicable, termination of such person);
- OPM to take actions against officials which drafted this form/declaration which is not in accordance with the law;
- Ensure the implementation of the MoU signed between the Assembly the Government on the one hand and the UK Embassy in Prishtina on the other, for the appointments of board members of independent institutions and agencies.

**Partially
completed**

1.7 Implementing the government decision of March 2016 on introducing mandatory electronic procurement, along with the indicated timelines Agency (AKK-DLK-3113/15).

1. The beginning of the second phase of the pilot project of e-procurement.
2. Implementation of changes amended Procurement Law in the electronic platform.
3. Training of public officials at local level.
4. Certification of public officers at Central level.
5. Certification of public officers at Local level.
6. Test on electronic procurement modules.
7. Development of operational guidelines on e-procurement. The Government should provide standard machine readable data in real time of procurement contracts to the public.

Completed

1.8 Reinforce the capacity of the Economic Department and Fiscal Division in the Administrative Department of the First Instance Court in Pristina including in the areas of tax and customs, with a view to reduce the backlog of cases.

1. The KJC will carry out a needs assessment for the increase of the number of judges in the Economic Basic Courts. The assessment will determine what are the budget costs as well as human capacities needed for reducing the backlog of cases in the economic basic courts.

In progress

1.9 Continue to strengthen the track record on the fight against corruption and organised crime, including through reinforcing the capacity of the Special Prosecution Office investigating and prosecuting high-level cases.

1. Amendment of the Law on State Prosecutor in order to enable the increase of the number of prosecutors in the Special Prosecution Office investigating and prosecuting high-level corruption and organised crime cases.

In progress

2. Provide training to strengthen the capacity of the Special Prosecution Office to conduct financial investigation and confiscate assets.

Completed

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