



**Organization for Security and Co-operation in Europe
MISSION IN KOSOVO**

**Department of Human Rights and Rule of Law
Rule of Law Section**

**Implementation of Kosovo Assembly Laws
Report III**

Review Period: Laws promulgated in 2005

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ABBREVIATIONS

AEIP.....	Agency of European Integration Process (within the OPM)
AI.....	Administrative Instruction
EAR.....	European Agency for Reconstruction
ECHR.....	European Convention for the Protection of Human Rights and Fundamental Freedoms
ERO.....	Energy Regulatory Office
EU.....	European Union
GTZ.....	Gesellschaft für Technische Zusammenarbeit
HRRoL.....	OSCE Department of Human Rights and Rule of Law
IMC.....	Independent Media Commission
KCA.....	Kosovo Cadastral Agency
KCC.....	Kosovo Competition Commission
KChC.....	Kosovo Chamber of Commerce
KEK.....	Kosovo Energy Corporation
KIPA.....	Kosovo Institute for Public Administration
KMA.....	Kosovo Medicines Agency
KSA.....	Kosovo Standardisation Agency
LAOD.....	Law on Access to Official Documents
MAFRD.....	Ministry of Agriculture, Forests and Rural Development
MCYS.....	Ministry of Culture, Youth and Sports
MEM.....	Ministry of Energy and Mining
MESP.....	Ministry of Environment and Spatial Planning
MEST.....	Ministry of Education, Science and Technology
MFE.....	Ministry of Finance and Economy
MH.....	Ministry of Health
MLSW.....	Ministry of Labour and Social Welfare
MPS.....	Ministry of Public Services
MTI.....	Ministry of Trade and Industry
MTT.....	Ministry of Transport and Telecommunications
NGO.....	Non-Governmental Organisation
OLSS.....	Office of Legal Support Service (within the OPM)
OMAOG.....	Office for Management and Administration of the Official Gazette of the PISG
OPM.....	Office of the Prime Minister
OSCE.....	Organization for Security and Co-operation in Europe
PISG.....	Provisional Institutions of Self-Government
PPA.....	Public Procurement Agency
PPRC.....	Public Procurement Regulatory Committee
RoLS.....	Rule of Law Section
SAK.....	Standardization Agency of Kosovo
SRSG.....	Special Representative of the Secretary-General
TAK.....	Tax Administration of Kosovo
UNMIK.....	United Nations Interim Administration Mission in Kosovo
UN SCR.....	United Nations Security Council Resolution

EXECUTIVE SUMMARY

The main challenges for Kosovo have been the creation of democratic institutions and the establishment of a multiethnic society governed by the rule of law. The United Nations Interim Administration Mission in Kosovo (UNMIK) and the Provisional Institutions of Self-Government (PISG) have achieved substantial results in creating the necessary legal framework for the achievement of this goal by the enactment of numerous regulations and laws.

This report is the third and final overview of the implementation of Kosovo Assembly laws by the executive branch of the PISG conducted by the Organization for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (HRRoL), through its Rule of Law Section (RoLS). Its primary aim is to analyse the extent to which laws passed by the Assembly of Kosovo (AoK) are being implemented through subsidiary legislation. The main scope encompasses AoK laws promulgated in 2005, but also includes a follow-up from the two previous OSCE reports, covering 2002-2003 and 2004 respectively. The report does not include implementation of UNMIK Regulations passed under its reserved powers and implementation of laws at the municipal level.

Section I presents relevant background information followed in Section II by an overview of Kosovo Assembly laws and an assessment of their implementation, with special notes on the issues of anti-corruption and access to official documents. Section III examines some normative and technical aspects of law implementation, and it analyses some of the operational challenges that many ministries face. The report concludes with a list of recommendations.

The general assessment regarding the laws promulgated in 2005 concludes that most of the ministries in Kosovo have made considerable progress. Most ministries have also increased their implementation rate and improved their management of the implementation of laws throughout the years. However, concerning the responsibilities of the Office of the Prime Minister (OPM) a substantial backlog in their implementation obligations has been noted. The data shows that too little has been accomplished towards implementation. This situation should be immediately addressed, as non-implementation means disregarding the will of the legislator. To address this, the OSCE recommends that the OPM appoints an individual solely responsible to co-ordinate implementation who also could form the administrative link to the AoK secretariat. Likewise, the AoK must consider more closely its role in overseeing the implementation by the government.

The report also analyses the requirements for preparing normative and sub-normative acts. In this regard, the Rules of Procedure of the Government provide a decent framework. However, they should be merged with the more recent and rather confusing Administrative Instruction (AI) on Procedures for Drafting, Reviewing and Approving Draft Acts. The current uncertainty regarding the interrelation of those two documents could be solved with one document comprehensively covering the respective issues. Moreover, the report addresses some of the shortcomings of the PISG with regard to publishing laws and making them available, since meaningfulness of laws depends on their publication. Other findings put forward

include those relating to the hierarchy of laws, as well as operational matters such as staffing and training.

SECTION I: BACKGROUND

A. The Mandate of the Rule of Law Section

Respect for and protection of human rights and the rule of law is fundamental for any democratic society. The OSCE Mission in Kosovo provides significant support in developing a system in which human rights are protected and where the rule of law prevails. The mandate of the Department of Human Rights and Rule of Law is to promote the development of institutions that ensure that human rights and rule of law principles are respected. The Rule of Law Section takes part in implementing this mandate in a variety of ways – one of these is to monitor, analyse and report on the rule of law situation in general and, in particular, the work of the various institutions of the PISG. Through monitoring, the RoLS identifies problems indicative of systemic weaknesses and works on the development of concrete strategies and recommendations to address these problems. As the RoLS is being discontinued in 2007, this will be the final report on the present subject.

B. The Aim and Scope of this report

The legislative activity in Kosovo in the past seven years has resulted in the enactment of numerous UNMIK Regulations and Kosovo Assembly laws, which regulate a wide range of social relationships. The need for drafting new laws has been constantly emphasised by representatives of the international administration and the Kosovo public in order to overcome the existing gaps between the inherited Yugoslav legal system and the new social, economic and political realities. A large amount of resources of the international administration and the PISG has been devoted to fulfil this goal and the results of these activities could be viewed as notable achievements. At the same time, the concepts of rule of law and good governance are characterised not only by the enactment of the necessary legal regulations but also by the proper implementation of these regulations. The still ongoing process of transfer of powers from UNMIK towards the PISG continuously sets as a prerogative for the international community to demand greater accountability from the PISG. One form of accountability now, but also for the future, should be the implementation by the PISG of the legislation within their competences.

This is the third in a series of yearly reports on the implementation of Kosovo Assembly laws. As in the last two reports, the primary aim of this report is to establish to what extent laws passed by the Kosovo Assembly are being properly implemented. In this context implementation is understood to comprise the drafting of secondary legislation as well as the establishment of specific bodies by the law. The application of the law in concrete cases is not covered by the scope of the report.

While the primary focus is laws promulgated in 2005, it also contains a follow-up on the implementation of the laws promulgated between 2002 and 2004 – laws which were assessed more completely in the two previous reports. The present report also expands on issues concerning the drafting, organisation and co-ordination of subsidiary legislation. It aims at verifying some general questions on legal drafting as well as the related organisational structures for the preparation of legal acts. The report addresses issues such as whether the PISG is developing a uniform approach when implementing laws; the hierarchy of subsidiary acts envisaged by the Kosovo

Assembly laws and adopted by the PISG; whether subsidiary acts are accessible to the public in the official languages; and how central institutions cope with the authorisations to draft and issue subsidiary legislation given by the Assembly of Kosovo. The report does not address the issue of implementation of Kosovo Assembly laws at the municipal level.

The scope of the report encompasses the implementation of the Kosovo Assembly laws promulgated in 2005 and thus assesses the drafting activities from the last report to November 2006, subject to the information received from various institutions. UNMIK Regulations and Administrative Directions do not fall within the scope of this report. The report is orientated towards the general public, the PISG, UNMIK, the donor community, as well as international and non-governmental organisations, and it is intended to serve as a tool in order to promote further development of implementation of laws in Kosovo by the PISG.

In the following paragraphs the report gives a general outline on subsidiary legislation, a short introduction to the executive branch of the PISG, as well as the categories of subsidiary acts issued by the executive branch. After that, Section II of the report contains an overview of the Kosovo Assembly laws promulgated in 2005. Each law is followed by a presentation of the respective obligations of the PISG and by an assessment of the implementation of these obligations. The section ends with an update of the assessment made in two previous reports, followed by two separate notes highlighting two issues of current public interest. Finally, Section III summarises the main findings and puts forward a set of recommendations.

C. Methodology

The findings presented in this report are the result of a two-stage approach conducted by the RoLS: an initial research phase followed by a monitoring phase. Following the scope of the report, 24 Kosovo Assembly laws promulgated in 2005 were identified. The research was concentrated on determining which subsidiary acts need to be drafted to implement the laws, who is responsible for adoption of these acts and what organisational units need to be set up in order to have functioning institutions. The initial findings were summarised in a matrix. The matrix was organised chronologically and for each law a separate table was created.

The second phase of the project consisted mainly of conducting interviews with various actors responsible for drafting subsidiary legislation – usually the Heads of Legal Offices in ministries. During this phase, between July and October 2006, RoLS conducted approximately 20 interviews with officials from ministries, specialised agencies and other actors involved. In the vast majority of cases interlocutors were available at short notice. For each PISG institution a separate matrix was created reflecting only the legal provisions falling within the responsibility of that institution. This matrix was then translated and delivered in advance to the respective interlocutor. During meetings the matrix served as a tool for verifying which provisions of the law had been implemented by which subsidiary acts. The second part of meetings was dedicated to the issue of drafting subsidiary legislation. For that purpose, RoLS created an informal set of questions in order to streamline interviews and to cover various areas of interest: such as staffing, coordination of drafting, publication, training, oversight, access to official documents and others. Meetings also

served as a capacity building function, as they gave the interviewees a chance to reflect on the work they do as government officials and public servants.

D. Subsidiary legislation

Over the last hundred years the amount of legislation that is enacted by parliaments in Europe has grown substantially. Increasingly, parliaments themselves do not have the time or the expertise to consider detailed legislative rules on the administration of various matters and have thus delegated their authority for making rules and other instruments on such matters to ministers. However, the principle of division of powers requires an authorisation to create subsidiary legislation specifically conferred to the respective actor by a law of parliament.

In practice, a law usually distinctly reflects the political decisions taken and sets out the skeleton of its subject. At the very least, it provides a broad framework. The finer detail of its operation is often set out in various instruments of a rather technical nature that become legislation of a secondary rank to the framework of the decision taken by parliament. Implementing in its original sense means “filling up”, so with an Administrative Instruction gaps left by the Assembly to the authorised executive body are filled up with secondary legislation. Through secondary legislation, the law becomes a workable and applicable instrument.

Subsidiary legislation takes effect and has authority as if it were part of the enabling (parent) act, i.e., it has statutory force. It is a means by which experts in the subject covered by a law can improve the authoritative set of measures to enable practical application of the parent act. The parliament cannot foresee every eventuality and does not have the specific expertise that can be provided by the ministries and agencies. Provided that the authority conferred by the parent act is sufficient and legal, subsidiary legislation can deal with practical implementation problems, technical details or the necessity for updated information as and when they arise, by addressing them in hierarchically defined categories of subsidiary acts. Generally speaking, it is possible to issue subsidiary legislation more quickly than to enact primary legislation as the scope and principle of the law has already been agreed. Subsidiary legislation itself may be withdrawn or amended if it proves impracticable or circumstances change. From time to time, the original legislation may be redrafted together with any amendments to be produced, as a piece of replacement legislation.

The terms “subsidiary legislation” or “subordinate legislation”, or “delegated legislation”, or “secondary legislation” are used interchangeably in many legal textbooks and commentaries. For the purpose of this report, the terms “subsidiary legislation” and “subsidiary act” will primarily be used.

E. The executive branch of the PISG

The Government together with the Assembly, the President, the Courts, and a few other institutions constitute the Provisional Institutions for Self-Government in Kosovo.¹ Historically, the first stage of establishing provisional self-governance in Kosovo started with the adoption of UNMIK Regulation 2000/1 on the Kosovo Joint

¹ See Section 1.5 of UNMIK Regulation 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo, 15 May 2001.

Interim Administrative Structure.² The main principles governing this structure were that Kosovo political forces and UNMIK shared the administrative management, that all administrative decisions were in conformity with the applicable law in Kosovo, and that all communities were fairly represented.

The next stage was marked by the promulgation of UNMIK Regulation 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo. With Section 9.3 a rather comprehensive set of rules was established for the creation of a Government that is exercising the executive authority and is responsible for the implementation of the laws. Besides covering the election and composition of Government with a prime minister and ministries, including representation of members from minority communities, it also includes some principle provisions on procedures within the Government.

Finally, UNMIK Regulation 2001/19, as amended,³ on the Executive Branch of the PISG, sets out the legal framework for the Government. It defines, among others, the functions of the Prime Minister and the ministers and creates the organisational structure of the ministries. The annexes to the Regulation entail descriptions of the specific duties within the scope of the ministries' activities.⁴ The major development in the executive branch since the publication of the last OSCE report on the implementation of laws has been the establishment of the Ministry of Justice (MoJ) and the Ministry of Internal Affairs (MoIA).⁵

F. Subsidiary acts issued by the executive branch of the PISG

The Constitutional Framework specifies that the Government consists of a prime minister and ministers, but does not provide any specific details on what kind of acts the Government and ministers may issue. Section 9.3.15 of the Constitutional Framework foresees only that each minister shall be responsible for implementing the policy of the Government within his or her area of responsibility.

A reference to the acts that could be issued by the ministers is found in Section 1.3 (d) of UNMIK Regulation 2001/19 on the Executive Branch of the PISG: "Each minister shall, in accordance with policies set by the Government, issue *decisions* and *administrative instructions* in order to regulate the activities of the ministry in general or its particular fields of activity" (emphasis added). It must be noted that there is no legal act in force in Kosovo which contains a definition of the types of acts to be issued by the Government. Furthermore, none of the above-mentioned legal provisions specifies

² Promulgated on 14 January 2000.

³ UNMIK Regulation 2001/19 has been most recently amended by UNMIK Regulation 2006/34.

⁴ Further detail related to the legal framework of the executive branch of the PISG can be found in the following documents: UNMIK Regulation 2001/36 on the Kosovo Civil Service; UNMIK Regulation 2002/5 amending UNMIK Regulation 2001/19 on the Executive Branch of the PISG in Kosovo, establishing the Ministry of Health (Annex I) and the Ministry of Environment and Spatial Planning (Annex II). A considerable amount of functions and responsibilities were transferred to the executive branch by UNMIK Regulation 2005/15 amending UNMIK Regulation 2001/19. See also UNMIK Administrative Direction 2002/10 implementing UNMIK Regulation 2001/19 on the Executive Branch of the PISG in Kosovo; and UNMIK Administrative Direction 2002/11 implementing UNMIK Regulation 2001/19 on the Executive Branch of the PISG in Kosovo.

⁵ UNMIK Regulation 2005/53, 20 December 2005, and UNMIK Regulation 2006/26, 27 April 2006, both amending UNMIK Regulation 2001/19.

what the relationship is in terms of hierarchy between administrative instructions and decisions issued by the ministers, or which groups of social relations should be regulated by these two types of subsidiary acts.

The OSCE believes that a clear legislative typology including the respective definitions is of fundamental importance for Kosovo. Due to its importance this issue needs to be addressed on the highest normative level.⁶

SECTION II: IMPLEMENTATION OF KOSOVO ASSEMBLY LAWS

This Section contains four parts. Part A presents a review of findings related to the implementation of the Kosovo Assembly laws promulgated within the year 2005.⁷ Part B consists of a note on the issue of corruption. Part C provides a summary following-up the implementation of laws from 2002-2004 since the release of the last report in December 2005, and part D provides a follow-up note on the topic of access to official documents.

A. Implementation of Kosovo Assembly Laws 2005

Each law is introduced with a short description about the purposes for its adoption and a list of obligations for the implementing institution followed by the accomplished result. Laws appear in a chronological order based on the time of their promulgation.

Law No. 2004/50 on Private Practices in Health

The Law on Private Practices in Health⁸ defines criteria for practicing health care activities in Kosovo's private sector. It prescribes rights and obligations of private health care workers, as well as licensing and other obligations of the private health care institutions.

The vast number of provisions within the Law require implementation by the Ministry of Health (MH). The MH should issue subsidiary legislation in order to define the types of institutions where private healthcare practices are provided, determine required standards for health care, and determine additional standards to be fulfilled by the respective institution. The MH shall also compile the development policy and strategy of the private health sector and practice external professional and administrative monitoring of institutions. The MH authorises the Licensing Board of Private Health Care Institutions, appoints its chairperson, monitors its activity and defines fees for licences. Financing of the Board is regulated by a subsidiary act issued by the MH and the Ministry of Finance and Economy (MFE). In addition, the MH shall establish joint committees with the municipal health authorities and the Association of Private Doctors of Kosovo to ensure fulfilment of criteria for licensing of the private

⁶ See also on page 36.

⁷ According to Sections 9.1.44/45 of UNMIK Regulation 2001/9, each law passed by the Assembly of Kosovo must be promulgated by the SRSG in order to become effective. Promulgation thus means to put a law into force or effect. This act of promulgation allows the SRSG to make a final check on the respective law's consistence with UN Security Council Resolution 1244, the Constitutional Framework and international standards.

⁸ Promulgated by UNMIK Regulation 2005/1 on 13 January 2005.

health care institutions. Furthermore, the MH defines the duties and responsibilities of supervisory bodies.

In adherence to Article 1 of the Law, the MH has established the Licensing Board of Private Health Care Institutions by MH Decision No. VII-09-2005.⁹ Furthermore, the MH has issued: AI No. 2006/01 on Payment of an Administrative Fee for Licensing of Private Health Institutions; AI No. 2006/02 on Establishment of the Joint Committee for Evaluation of the Fulfilment of Technical and Professional Conditions for Licensing of the Private Institutions; and AI No. 2006/03 on Minimal Conditions regarding the Space, Staff and Medical equipment. Although the Ministry has fulfilled some important obligations under the present Law, certain areas remain to be defined, such as the required standards for institutions, the official stamp for private healthcare workers, the determination of financing of the Board, the method of reimbursement of the Committee members, and the duties and responsibilities of the supervisory bodies.

Law No. 2004/35 on Games of Chance

The Law on Games of Chance¹⁰ defines the games of chance and their types, and regulates the entities that organise and practice games of chance in Kosovo. The practice of games of chance in Kosovo is realised through the Lottery of Kosovo and other licensed legal entities. The Law foresees basic principles and rules for the systematisation of incomes from games of chance, as well as the establishment, legal position and management of the Lottery of Kosovo. It also governs matters of compensation, supervision and administrative sanctions.

The Ministry of Finance and Economy (MFE) is responsible for supervising the implementation of the Law and grants permission to organise the games of chance. It supervises the drawing of earnings from classic games of chance and allows the registration of economic entities for special games of chance. The MFE was given a deadline of 60 days – until 3 April 2005 – to approve the “Administrative Directive” by which the procedures for the implementation of the Law are defined. The Law also foresees the creation of the Kosovo Lottery Board, the members of which are appointed by the Assembly upon recommendation of the Government.

In the process of implementation of the Law, the MFE has issued AI No. 2006/02 on Issuing and Extending the License to Organise Games of Chance, Working Regulations of Casinos and Permission for Rewarding Games.¹¹ This AI implements several parts of the Law. Nevertheless, a few articles of the Law require joint activity of the Government and the Ministry for implementation and, based on the information provided to the OSCE, it appears that these obligations are not fulfilled. For instance, Article 14.2 stipulates that the Government approves the Statute of the Kosovo Lottery with the consent of the MFE, while Article 57 states that the Government defines the level of the payment to the Consolidated Budget for certain categories of funds. Neither of these obligations has been fulfilled. Moreover, the Kosovo Lottery Board has still not been established.

⁹ The Decision has been issued on 19 September 2005.

¹⁰ Promulgated by UNMIK Regulation 2005/5 on 3 February 2005.

¹¹ The Preamble of the Administrative Instruction refers to Section 61 of the Law which in a general way states that the MFE shall issue “Administrative Directives” for implementation of this Law.

Law No. 2004/16 on Hotel and Tourist Activities

The Law on Hotel and Tourist Activities¹² governs the manner and conditions for conducting tourist and hotel activities, as well as the supervision and inspection of such activities. In addition, the Law prescribes administrative sanctions for the violations of its provisions. The Ministry of Trade and Industry (MTI), referred to by the Law as “the Ministry in charge of tourism affairs”, is in charge of its implementation. The Law imposes a six-month deadline for issuance of all subsidiary legislation required for its implementation.¹³

This Law contains more than 30 provisions, covering various areas of tourism, which need to be implemented by the MTI. Towards this end, the MTI has issued five Administrative Instructions: AI No. 30/2005 on Licensing, Classification and Categorization of Hotel Facilities; AI No. 2006/04 on Licensing Tourist Travel Agencies; AI No. 2006/06 on Minimal Technical Requirements and the Method of Services Provision by the Tourist Travel Agencies; AI No. 2006/10 on the Hotel and Tourism Activities; and AI No. 2006/11 on the Travel Agencies Register Format, Content and Maintenance Manner. With these subsidiary acts, the MTI has implemented a major part of the Law.

However, bearing in mind that the Law sets forth broad general grounds while leaving large parts of it to be supplemented through subsidiary legislation, significant areas still remain unimplemented. For instance, the Ministry still needs to create an Examination Committee for the examination of the managers of travel agencies, and the Ministry must still prepare an examination programme (curriculum) to examine tourist agency managers and professional tourist guides. Other provisions also remain to be implemented, such as those covering rural tourism, vacation houses, hostels, books of guests, books of complaint, and rental car services.

Law No. 2004/42 on Scientific Research Activity

The Law on Scientific Research Activity¹⁴ regulates the establishment, activities, organisation, governance and termination of public and private legal entities in the field of scientific research. Specifically, the Law determines: the establishment of scientific-research institutions, the rights and liabilities of scientific workers and researchers, the establishment of the Kosovo Council of Science and scientific councils in specific fields, the development of the Kosovo Scientific-Research Programme and the manner of financing scientific-research activities in Kosovo. The Ministry of Education, Science and Technology (MEST) is given the timeframe of three months to issue corresponding provisions for the implementation of this law; i.e., until 23 May 2005. Moreover, the Government should present a report on the implementation of the Kosovo Scientific-Research Programme and a report about the general condition of scientific research activities in Kosovo to the Assembly every second year.

For implementation of the Law, the MEST has issued AI No. 19/2006 on the Central Council of Science, as required by Article 53 of the Law. This AI regulates the

¹² Promulgated by UNMIK Regulation 2005/6 on 3 February 2005.

¹³ According to the Article 115 of this Law, the Ministry in charge of tourism affairs shall issue all required subsidiary legislation within six months from the date the Law entered into force, i.e. not later than 3 August 2005.

¹⁴ Promulgated by UNMIK Regulation 2005/8 on 23 February 2005.

procedure on the establishment, mandate, organisation and activity of the Central Council of Science (the Council). The MEST has issued a decision on the commencement of the procedure for the establishment of the Council and a request calling on the Academy of Science and Arts, the Albanological Institute and the Institute of History to submit their proposals for members of the Council. The timeframe for the establishment of the Council – three months, from the entrance into force of the Law – has not been met.¹⁵ The same timeframe was also set for the MEST to appoint members to the Ministry Scientific Council and to councils of specific scientific fields as well as to issue other corresponding provisions for implementation of the Law. On the other hand, the MEST has issued AI No. 20/2006 on Determination of Standards in Science. The aim of this AI is to determine standards for evaluation of scientific research activity in the scientific research institutions of Kosovo, based on scientific projects, drafted according to the recognised international standards.¹⁶ It can be concluded that MEST has made some progress in implementing the Law, though it started with considerable delay.

Law No. 2004/48 on Tax Administration and Procedures

The Law on Tax Administration and Procedures¹⁷ establishes a set of rules and procedures for the administration of taxes and contributions imposed by legislation in Kosovo. The Law envisages the establishment of the Tax Administration of Kosovo (TAK), as a separate and independent authority within the Ministry of Finance and Economy (MFE). The TAK is the responsible authority for applying the provisions of the Law and all applicable legislation dealing with tax administration. The MFE is responsible for the implementation of the Law, as it should issue administrative instructions to carry out its provisions.

The Law on Tax Administration and Procedures envisages the creation of two primary structures for the implementation the Law: the Independent Review Board and the TAK. These two structures had already been established prior to the promulgation of the Law, while the Law specifies that these bodies shall continue to exist on the basis of earlier issued sub-legal acts.¹⁸ Another structure envisaged by the Law is an Appeals Division, which shall be established by the Director¹⁹ of the TAK.²⁰ Furthermore, the MFE has issued AI No. 05/2005²¹ filling in most of the gaps left

¹⁵ The Legal Office of the MEST informed the OSCE that even though the necessary legal framework exists, the Central Council of Science has not yet been established. It will be comprised of 15 members and chaired by the President of the Kosovo Academy of Science and Arts. The members will be nominated by the Assembly of Kosovo for a mandate of 4 years, upon proposal of the Government of Kosovo.

¹⁶ Article 1 of AI No. 20/2006.

¹⁷ Promulgated by UNMIK Regulation 2005/17 on 9 April 2005.

¹⁸ Article 57 of the Law states: “The Independent Review Board established by UNMIK Administrative Direction No. 2000/7 shall continue as the Independent Review Board under this law”. Article 2.1 states: “[...] The Tax Administration of Kosovo (TAK) that was established under Tax Administrative Instruction No. 1/2000 shall continue as TAK”.

¹⁹ Article 3.1 of the Law states that the SRSB takes the final decision on the appointment of the TAK Director.

²⁰ OSCE could not confirm directly with the MFE whether the Appeal Division is established, nor could it find any act on the establishment of this body. The only evidence of the existence of the Appeal Division is the online document called *The way to appeal*, which can be viewed at <http://www.mfe-ks.org>.

²¹ The Preamble of AI No. 05/2005 refers to Article 60 of the primary Law which gives no authorisation for issuance of subsidiary legislation but instead determines the issue of judicial review.

from the primary law, such as: the status and work of the TAK, the procedure of appointment of the TAK Director, credits and refunds, and appeals to the TAK. Hence, it can be concluded that the MFE has implemented a significant portion of the Law.

Law No. 2004/46 on Civil Status Registers

The Law on Civil Status Registers²² creates conditions and procedures for the registration of facts on the civil status of Kosovo habitual residents.²³ The Law regulates and determines: the civil status registers and their types, maintenance and safeguarding; the procedures and facts to be registered; and procedures for renewal, cooperation and supervision of the management of registers. Article 7 of the Law prescribes that the Ministry in charge of the services of civil status registration shall ensure the supervision, control, manner of maintenance, electronic recording and distribution of civil status registers, as well as the transfer of accompanying registers and certificates, distribution of seals and the designation of officials with signing authority. Moreover, the Ministry should give instructions on civil status registers in electronic form.

In the course of implementation of the Law, the Ministry of Public Services (MPS) has issued the following Administrative Instructions: AI No. MPS 2006/02 on Certificate of Capacity to Contract a Marriage; AI No. MPS 2006/05 on Residence Registration; AI No. MPS 2006/06 on Procedure for Verification and Stamping with Verification Legalization Stamp of Civil Status Documents; and AI No. MPS 2006/07 on Renewing the Civil Status Registers. Furthermore, in accordance with Article 3.5 of the Law, the MPS has begun the installation of the unique, region-wide programme of electronic Civil Status Registers. The final assessment is that the MPS has fulfilled most of its obligations in creating the necessary legal infrastructure for the implementation of this Law.

Law No. 2004/5 on Trade of Petroleum and Petroleum Products

The purpose of the Law on Trade of Petroleum and Petroleum Products²⁴ is to encourage free and fair competition in the petroleum sector in Kosovo, as well as to ensure payment of full tax liabilities and fiscal duties on petroleum and petroleum products. Moreover, the Law aims to eliminate unlawful conduct in the petroleum sector, and to ensure the quality, safety, and security of petroleum and petroleum products in Kosovo. The Ministry of Trade and Industry (MTI) is obliged to issue directions and guidelines for the implementation of the Law and for the supervision of its administrative enforcement. In addition, the Law envisages the establishment of a Council within the MTI, as the body responsible for regulating and monitoring the petroleum sector in Kosovo. Subsidiary acts are also required to regulate procedures for the issuance of licences for transport, storage and sale of petroleum and petroleum products for commercial purposes.

In implementing Article 3 of the Law, the MTI has issued AI No. 2005/16 on Establishment of the Council for Arrangement and Observation of the Oil Sector in Kosovo. In addition to the creation of this structure, the MTI has issued five other Administrative Instructions: AI No. 2005/17 on Determinations of Conditions for Li-

²² Promulgated by UNMIK Regulation 2005/21 on 7 May 2005.

²³ The term habitual resident was introduced by UNMIK Regulation 2000/13 on the Central Civil Registry on 17 March 2000.

²⁴ Promulgated by UNMIK Regulation 2005/22 on 7 May 2005.

censing Business Subjects for Trade with Oil and its Derivates; AI No. 2005/20 on Technical Requirements Fulfilment for Depots of the General Importers and Subjects who deal with Fuel Wholesale and Retail Trade; AI No. 2005/22 on Carriage Charge During the Import of the Petroleum Products in Territory of Kosovo; AI No. 2006/03 on Emergency and Petroleum Reserves and its Products; and AI No. 2006/08 on Licensing Business Entities for Trading Petroleum Liquid Gas and Other Gases. Due to the highly technical nature of this field, the subsidiary legislation issued for the implementation of this Law goes beyond what is evidently required by the Law. Overall, it can be concluded that the necessary legal framework for the implementation of this Law has been established by the Ministry.

Law No. 2004/1 on Road Transport

The Law on Road Transport²⁵ regulates the transport of passengers and goods on public roads in Kosovo, as well as road transport of passengers and goods wholly or partly outside Kosovo, by operators established in Kosovo. The policy and development strategy of road transport and regulation of the transport sector is defined by the Ministry of Transport and Telecommunications (MTT). The MTT should issue several sub-legal acts to implement the provisions of the Law, such as rules for the regulation of bus services, and special legal acts defining the criteria, rules and documentation for the issuance of licences and permits for transport operators. The MTT, in co-operation with the Ministry of Finance and Economy (MFE), determines tariffs for licences and permits and prescribes rules on evidence of tickets. The MTT may also issue a special act to establish a regulatory body responsible for bus transport. Furthermore, the MTT determines the manner and criteria for special entering permits for external operators in Kosovo.

The MTT, in the course of implementation of the Law, has so far issued eight administrative instructions, covering various areas: AI No. 2005/11 on Licensing the Road Transport Operators of Goods, determining conditions and procedures for the issuance, suspension and revocation of licenses for road transport operators of goods and transport of goods for personal needs²⁶; AI No. 2006/6 on the Licensing of Bus Stations, defining criteria and procedures for the issuance, suspension and revocation of licenses, categorisation and tariffs for bus entries into stations as well as the development of the safety of passengers; AI No. 2006/7 on Licensing Public Road Transport Operators of Passengers by Bus, which sets out criteria and procedures for the issuance, suspension and revocation of the license for transport operators exercising interurban passenger transport by bus; AI No. 2006/8 governs permit issuance for passenger road transport outside Kosovo, as well as access to and transit through territory of Kosovo; AI No. 2006/12 on Special, Transit and Bilateral Permissions in Road Transport of Goods, regulates conditions and procedures for entrance into Kosovo territory and for transit pass through Kosovo by foreign road transport operators of goods; AI No. 2006/14 governs the network of lines and order of travel of the inter-urban transport of passengers by bus; and, AI No. 2006/15 on Training and Passing the Examination for Managers of Public Road Transport Operators and Bus Drivers, which determines the curricula of training on professional education for managers and bus drivers.

²⁵ Promulgated by UNMIK Regulation 2005/23 on 9 May 2005.

²⁶ AI No. 2005/11 has been amended and supplemented by AI No. 2006/13 for licensing of road transport operators of goods.

Overall, the MTT has fulfilled the majority of its obligations to implement the Law, as laid out above. However, in the process of further implementation of the Law, the MTT and MFE should prescribe rules on evidence of tickets as it is foreseen in Article 29.3 of the Law. Moreover, regular urban transport of passengers by bus should be regulated individually by municipalities as foreseen in Article 22.2.²⁷

Law No. 2/L-10 on Animal Welfare

The purpose of the Law on Animal Welfare²⁸ is to establish a legal basis for animal welfare in order to ensure the physiological and social needs of animals. The Law regulates the maintenance, caring, housing, breeding and transportation of animals, as well as other issues of animal welfare. The Ministry of Agriculture, Forestry and Rural Development (MAFRD) is responsible to issue subsidiary acts for the implementation of the Law. Such ministerial acts should include the regulation of conditions of maintenance and caring for animals, interventions into the lives of animals, the use of animals, the preservation of animal welfare in markets, as well as the duties and authorisations of animal welfare officers.

According to the MAFRD Legal Office, no sub-legal act has been issued to implement the Law.

Law No. 2004/47 on the Official Gazette

The Law²⁹ establishes the Official Gazette as an official publication of the PISG in which official documents of the PISG shall be published. Article 2 of the Law envisages the publication of the following documents: the final official text of the laws adopted by the Assembly of Kosovo (AoK) as promulgated by the SRSG; resolutions adopted by the AoK; secondary and other legislation issued by the Government and Ministries; and agreements of international character. These documents shall be made available to the public in hard copy as well as in electronic form.³⁰ The law foresees that the Official Gazette shall be published in Albanian, Serbian, English, Turkish and Bosnian language at least once a month and special editions as and when necessary.

Moreover, the Government is obliged to create the Office for Management and Administration of the Official Gazette of the PISG (OMAOG). The OMAOG is responsible for drafting a long term strategic plan of its work and activities, as well as for gathering the publishing material. It controls technically the final versions of the model compilations and oversees the progress of the work. Furthermore, in co-operation with the Government, it co-ordinates the work of the office with other stakeholders and donors, and reports to the Government about its work and activities. In addition, the OMAOG should propose to the Government the price of the Official Gazette for sale on the market, beneficiary entities and the number of copies to be distributed free of charge.

²⁷ The present report does not assess the implementation of laws at the municipal level.

²⁸ Promulgated by UNMIK Regulation 2005/24 on 9 May 2005.

²⁹ Promulgated by UNMIK Regulation 2005/25 on 12 May 2005.

³⁰ Article 2.3 of the Law points out that the electronic version should be available one month after publication in the Official Gazette; however, in view of the technical possibilities, the electronic version could already be made available immediately after the signature or promulgation of the final text. See also the note on *vacatio legis*, on page 41.

In the course of implementation of the Law, on 26 April 2006, the Government of Kosovo has established the OMAOG by issuing Decision No. 08/196. The Decision foresees that the OMAOG will function temporarily within the OPM until it is deemed possible to transfer it to the MoJ. The office is currently staffed by an acting director and three additional employees. In addition, the Government based on Decision No. 05/204 of 28 June 2006 has established the selling price of a volume of the Official Gazette at 2 €. The electronic version of the Official Gazette is also accessible free of charge on the OMAOG web page.³¹

It can be assessed that although the implementation of the Law started with delay, considerable progress has been noted recently. However, a lot of work remains to be done. Most importantly, the OMAOG needs to draft a long term strategic plan of the work and activities of the office and the Government of Kosovo should issue an AI on the terms and adequate measures related to complaints about the Official Gazette, upon proposal by the OMAOG.³² For a more detailed assessment of the current state of affairs, see below under Part III. C.

Law No. 2004/34 on the Suppression of Corruption

The Law on Suppression of Corruption³³ establishes measures within the scope of the anti-corruption strategy and, in particular in the field of administrative investigations, to eliminate the causes of corruption. The Law also foresees rules aimed to avoid conflicts of interest for official persons and regulates the acceptance of gifts as well as supervision of assets for senior officials. The Law envisages the creation of the Kosovo Anti-Corruption Agency, directly supervised by the Agency Council. The Anti-Corruption Agency is responsible to approve the anti-corruption strategy within twelve months after becoming functional. Upon proposal of the Agency, the Council shall adopt rules of procedure which define in detail the Anti-Corruption Agency and its methods of functioning.

In the course of the implementation of the Law, the Kosovo Anti-Corruption Agency has been established by the AoK. Its Director has been appointed for a five year term of office by an Assembly Decision dated 17 July 2006, and the Agency Council has been established to exercise direct supervision over the Agency. The latter is composed of nine members: three members are appointed by the Assembly and one is appointed by each of the following – the President’s Office, the Government, the Supreme Court, the Public Prosecutor’s Office, local authorities and civil society.³⁴ It can be concluded that sound progress has been made for the Law’s implementation, even though the Director was appointed with considerable delay.³⁵ The Anti-Corruption Agency and its Council must still each adopt their own Rules of Procedure as foreseen by the Law.³⁶

³¹ The hardcopy version is published as a PDF-document. However, a database with good search functions will follow for professional use.

³² These obligations are set out in Articles 5.3 a), 8.2 and 9.2 of the Law.

³³ Promulgated by UNMIK Regulation 2005/26 on 12 May 2005.

³⁴ The Agency Council is established in compliance with Article 19 of the Law.

³⁵ Article 51.1 of the Law foresees that the Assembly of Kosovo shall appoint Director of the Agency within 60 days after the promulgation of this Law (promulgated on 12 May 2005). However, the Director was appointed only on 17 July 2006.

³⁶ See also the Note on Corruption, below p. 27.

Law No. 02/L-16 on Amendment to Law No. 2003/2 and 2003/21 on Public Financial Management and Accountability

This Law³⁷ amends the Kosovo Assembly Law on Public Financial Management and Accountability³⁸, as amended by Kosovo Assembly Law No. 2003/21³⁹ by repealing its Article 21 and replacing it with a new article regulating the issue of appropriation in the absence of an appropriations law.

The present amendment to the Law does not require subsidiary legislation for its implementation.

Law No. 02/L-14 on Construction Products

The Law on Construction Products⁴⁰ determines terms and conditions for usage and placing construction products on the market, acceptance of technical approvals for such products, evaluation and conformity verification regarding the elementary requirements, fulfilment of market supervision, and application of special procedures in order to recognise their conformity. Several provisions of the Law impose an obligation on the Ministry of Trade and Industry (MTI) to issue subsidiary legislation establishing the necessary legal framework for the implementation of the Law.⁴¹ Such subsidiary acts are required to determine conformity verification for construction products, determine conformity evaluation bodies and their duties, and define technical rules. In addition, the MTI should publish the technical specifications for construction products as well as a special edition of the Guide Book on European Technical Approval, as compiled by the European Organization for Technical Approvals⁴².

For the implementation of the Law the MTI has issued AI No. 2006/01 on Evaluation of Conformity, Conformity Documents and Making Construction Product, and AI No. 2005/04 on Determination of the Conditions and Special Technical Rules on Licensing of Construction Enterprises, Enterprises for Production of Construction Material, Projecting Enterprises and Laboratories for the Control of Construction Material. The MTI is also obliged by Article 3.3 of the Law to publish interpreting documents⁴³ into the Kosovo official languages within 24 months⁴⁴ from the date of entrance into force of the Law. These translations have not yet been prepared. However, having in mind the deadline, the Ministry still has time to accomplish this particular obligation. Overall, it can be assessed that the MTI has so far established the necessary legal framework for the implementation of this Law.

³⁷ Promulgated by UNMIK Regulation 2005/27 on 17 May 2005.

³⁸ Promulgated by UNMIK Regulation 2003/17 on 12 May 2003.

³⁹ Promulgated by UNMIK Regulation 2003/38 on 17 December 2003.

⁴⁰ Promulgated by UNMIK Regulation 2005/28 on 17 May 2005.

⁴¹ According to Article 34 of the Law on Construction Products, the MTI is obliged to issue subsidiary acts as foreseen in Articles 23, 25 and 33 of the Law.

⁴² See <http://www.eota.be>.

⁴³ The definition section in Article 4.24 of the Law states: "Interpreting documents means interpretation of necessary characteristics of suitable products for usage in accordance with elementary requests".

⁴⁴ Article 34.2 of the Law.

Law No. 02/L-1 on Market Inspection

The Market Inspection Law⁴⁵ establishes a market supervisory mechanism by determining the functions, operations and authorisations for market inspectors. The Law envisages the establishment of the Market Inspectorate by the Ministry of Trade and Industry (MTI) and provides for obligations, authorisations and tasks of the market inspectors. Furthermore, the Law sets out the obligation of the MTI to issue subsidiary acts to ensure its implementation. For example, such an act is required to determine the method of issuance and the form of identification cards for market inspectors. One of the peculiar characteristics of this Law is that Article 2 provides a definition of “Normative Act” as “any law, by-law, decree, regulation, administrative order, and any other act of the same nature, which is entitled with a normative power by a public authority and international agreement, which considers this law as mandatory for Kosovo”.

To implement the Law, the MTI has issued AI No. 2006/13 on Providing the Special Identification Card and its Use by the Inspector. Furthermore, in accordance with Article 7.1, the Ministry has established the Market Inspectorate through Decision No. 09.03.2006 issued by the Permanent Secretary of the MTI. Hence, it can be assessed that with issuance of the above-mentioned AI and the establishment of the Market Inspectorate, the MTI has accomplished its obligations under this Law.

Law No. 2004/7 on Kosovo Chamber of Commerce

The Law⁴⁶ aims to co-ordinate and accomplish common goals and interests in advancing business activities of the members, by regulating the establishment, membership, role and scope of activity of the Kosovo Chamber of Commerce (KChC), defining at the same time its organisational structure and working means. The KChC is a professional, voluntary, non-profit organisation comprising legal persons and individuals that carry out economic activities in Kosovo. Its Charter regulates in detail related issues, such as its rights, duties and responsibilities, bodies of the KChC and their competences, as well as the creation and competences of the KChC Permanent Arbitrage and the Honour Council. The Law foresees the obligation of the KChC to hold elections for the composition of its different bodies as well as to harmonise and organise its activity, and to draft its Charter and general acts no later than three months after the Law became effective; that is, no later than 2 September 2005.

The Assembly of the KChC, which is comprised of 95 members, held its general elections on 18 November 2005, in compliance with the requirements of Article 31 of the Law. The Assembly has elected new organs, including the Steering Council, President, Deputy President, Secretary and the Oversight Board. In addition, the KChC Assembly has adopted a new statute which has been harmonised with the Law. It can be concluded that the KChC has created the necessary legal framework to exercise its functions.

Law No. 02/L-12 on Theatre

The Law on Theatre⁴⁷ regulates the functioning of theatre activities, the establishment, management and financing of theatres and theatre troupes, as well as other issues related to theatrical activities, and guarantees the right to free artistic ex-

⁴⁵ Promulgated by UNMIK Regulation 2005/29 on 31 May 2005.

⁴⁶ Promulgated by UNMIK Regulation 2005/30 on 2 June 2005.

⁴⁷ Promulgated by UNMIK Regulation 2005/31 on 8 June 2005.

pression. The Theatre of Kosovo, professional city theatres and other city theatres are defined as public property and created and financially supported in compliance with the Law. The Ministry of Culture, Youth and Sport (MCYS) supervises the legality of the work of the Theatre of Kosovo, whereas professional city theatres are supervised by the MCYS and municipal departments of culture. The supervision of the Theatre of Kosovo is done through its Managing Board, which is appointed by and accountable to the MCYS.

The MCYS is in the process of drafting a theatres' development policy, however, based on information provided by the Legal Office of the MCYS, no further progress has been made for the implementation of the Law.

Law No. 02/L-15 on the Independent Media Commission and Broadcasting

The Law on the Independent Media Commission and Broadcasting⁴⁸ envisages establishment of the Independent Media Commission (IMC) as the only authority in the territory of Kosovo responsible for managing, regulating, and assigning resources of the Broadcast Frequency Spectrum, as well as for the issuance of licences and collection of duties for usage of broadcasting frequencies. The IMC shall issue subsidiary legislation needed to carry out its functions.⁴⁹ The IMC is composed of three separate bodies: the Council, the Office of the Chief Executive and the Media Appeals Board. The Council establishes the broadcasting policy which is further administrated by the Office of the Chief Executive. In addition, the Council is responsible to prepare and present the annual report to the Kosovo Assembly, issue a Code of Ethics, and establish a licence fee schedule. The Media Appeals Board is established as an appellative body for matters related to broadcasting licences, sanctions and any other matters as provided by administrative directions or regulations.⁵⁰

The IMC has been established pursuant to Article 2.1 of the Law. In the process of implementation of the Law, on 28 August 2006 the IMC established the Council of the Independent Media Commission.⁵¹ The Council is an integral part of the IMC, responsible for implementation as well as for preparation of Annual Reports to the Assembly of Kosovo. In accordance with Article 7.7, the Council has issued Rules of Procedure, while in accordance with Article 3.13 the Council has issued a Code of Ethics and IMC Council Rules in Public Rulemaking. The Council has also issued a Broadcasting Policy and the Guidelines for Applying Sanctions to Licences. The latest developments with regard to the Law's implementation are the appointment of a Chief Executive and the issuance of a Decision on the Licence Fee Schedule. Issues which still need to be determined by the IMC Council through sub-legal acts include licensing of cable broadcasters, the protection of children from television programmes which can harm their development, and regulations on advertising. Furthermore, the IMC has just recently announced a call for nomination of the members of this board.⁵² Overall, it can be assessed that the IMC is well on its way towards full implementation of this Law.

⁴⁸ Promulgated by UNMIK Regulation 2005/34 on 8 July 2005.

⁴⁹ Article 2 of the Law.

⁵⁰ Article 21 of the Law.

⁵¹ IMC Press Release on establishment of the Council of IMC can be viewed at <http://www.imc-ko.org>.

⁵² The Call for Nomination can be viewed at <http://www.imc-ko.org>.

Law No. 02/L-20 on Technical Demands for Products and Valuation of Conformation

The Law on Technical Demands for Products and Valuation of Conformation⁵³ regulates technical demands for products, as well as evaluation proceedings of products' conformity with determined demands. The Law defines technical rules as "sub-legal enactments with technical character" through which the relevant ministries define characteristics of products, including the administrative measures provided for their violations.⁵⁴ Technical rules are issued by relevant ministries to define technical demands for products. Technical demands define obligations of physical and legal entities that place products in trade and/or in use, with the aim of ensuring product, human, animal, consumer and environmental protection. The Kosovo Government, following the proposal of the Ministry of Trade and Industry (MTI), shall issue the Implementation Programme.⁵⁵ In addition, the Government develop the ways of informing authorities outside Kosovo of any measures taken to ban or limit the placement of a product in the market, or to withdraw certain products, if such measures influence the free circulation of goods in international trade.⁵⁶ The Law determines a one-year time limit upon its entrance into effect for the Government to issue required subsidiary legislation and the Implementation Programme.⁵⁷

In the process of implementation of the Law, the MTI has issued AI No. 2005/28 on Technical Regulations for Electrical Equipment Designed for Use within Certain Voltage Limits, and AI No. 2005/29 on Conformity Marking and its Graphical Presentation. These two instructions implement significant parts of the Law. However, what remains to be done is the issuance of the Implementation Programme by the Government.⁵⁸ The Law provides that, based on this Implementation Programme, relevant ministries shall issue rules where technical demands for products and valuation of conformation proceedings are defined. To the knowledge of the OSCE, the Government has not yet issued the Implementation Programme. The Law further provides that the register of standards in Kosovo shall be published by the Standardisation Agency of Kosovo (SAK) in the Official Gazette. It is thus unclear to the OSCE why the SAK is publishing registers of standards in certain local daily newspapers and not in the Official Gazette of the PISG of Kosovo.⁵⁹ It can be assessed that the MTI has made initial progress in implementing this Law, while the Government still has obligations to fulfil.

Law No. 2004/44 on Crafts

The Law on Crafts⁶⁰ regulates the terms and conditions for the performance of craft activities. It covers craft registration, the exercising of joint craft activities, business suspension, professional qualifications, education, craft business organisations, preservation of old craft activities, and craftsmanship supervision. The Ministry of Trade and Industry (MTI) is responsible for the registration and licensing of craft activities and determines the terms and standards for craft activity books, while the Ministry of

⁵³ Promulgated by UNMIK Regulation 2005/36 on 21 July 2005.

⁵⁴ Article 3 (xi) of the Law.

⁵⁵ Article 5.2 of the Law.

⁵⁶ Article 15 of the Law.

⁵⁷ The Law is promulgated to be effective as of the date of signature; i.e., 21 July 2005.

⁵⁸ Article 17 of the Law.

⁵⁹ The SAK is also preparing to publish the material on the MTI official web page: <http://www.mti-ks.org>.

⁶⁰ Promulgated by UNMIK Regulation 2005/37 on 22 July 2005.

Education, Science and Technology (MEST) prepares the programme for examination tests upon the proposal of the Kosovo Craft Association. The Kosovo Craft Association as well as regional and municipal craft associations determine their rules, competencies and structures according to statutes. An “Honourable Court” operates within the framework of the Kosovo Craft Association. The Law imposes a six-month deadline for the competent ministries, local administrative authorities and other relevant institutions to issue normative acts regulating craft activities.⁶¹

In accordance with Article 10.1 of the Law, the MTI is registering craftsman persons through the Business Registration Office, while the licensing is done by the relevant local municipal authority where the craft workshop is to be located. In the course of the implementation process the MTI, in co-operation with municipal authorities, has prepared a draft AI on determination of the working hours for craftsman workshops. At this stage, the draft AI is being reviewed. To the best knowledge of the OSCE the Honourable Court and the Kosovo Craft Association have still not been established and no AI implementing the Law has been issued by the Ministry. Thus, it can be assessed that, although the MTI has started implementation of the Law, the majority of the Law remains unimplemented.

Law No. 02/L-24 on Adult Education and Training

The Law on Adult Education and Training⁶² aims to promote life long learning for all individuals, as an integral part of Kosovo’s educational system. The Law sets out the framework for adult learning and regulates all public and private learning and training offered for adults that is not already regulated by applicable laws. The Ministry of Education, Science and Technology (MEST) is responsible for supporting and controlling the implementation of the Law. The MEST shall create necessary conditions for adult learning and, in co-operation with other ministries, coordinate the implementation of adult education and training. The MEST shall issue administrative instructions defining the registration, licensing and annual working plan of the education and training institutions for adult learners and adopt programmes of public training for adults, in co-operation with other ministries. The MEST shall also determine participation for education and optional training, criteria, procedures of selection, enrolment, recognition and equivalence of diplomas, as well as the conditions and criteria for financing of public adult education and training institutions. The Law imposes a timeline of six months⁶³ upon its entrance into force for the MEST to issue the required administrative instructions.

The MEST, in the process of implementation of the Law, has issued AI No. 40/2006 dated 16 October 2006 on the Organisation, Plan and Program of the Work, Criteria and Procedures of Participant’s Selection, Licensing of Institutions for Education and Training, Equivalence and Recognition of Diplomas and Certificates, Registration, keeping of Data of the Participants in the Education and Training of Adults. This AI covers almost all obligations set out in the Law.⁶⁴

⁶¹ Articles 56 and 4 of the Law.

⁶² Promulgated by UNMIK Regulation 2005/43 on 7 September 2005.

⁶³ According to the Article 38 of the Law, this timeline is set for 7 March 2006, as the Law entered into the force on 6 September 2005.

⁶⁴ The MEST should implement Article 27.2 which foresees an AI regulating the minimum conditions and criteria that adult education and training institutions financed by public funds have to meet.

Law No. 02/L-5 on Support to Small and Medium Enterprises

The Law on Support to Small and Medium Enterprises⁶⁵ regulates governmental policies and measures for classifying small and medium enterprises including their establishment and development, as well as providing support through creation of an institutional, regulatory and financial framework.

The Law envisages the creation of the Small and Medium Enterprises Support Agency which should prepare annual business plans and bi-annually report to the Ministry of Trade and Industry (MTI) and the Government. The Agency has not yet been created; however, based on information provided by the MTI Legal Office, the role of this agency is being performed by the MTI Department for Policy Development in the Private Sector.⁶⁶ Otherwise, the Law provides that the Government shall be responsible for developing, approving and issuing all sub-legal acts under the Law.⁶⁷ Based on the material provided by the Government Office for Legal Support Service and online research, no subsidiary acts have been adopted for the implementation of this Law, thus the Government has not fulfilled its obligations under the Law.

Law No. 02/L-17 on Social and Family Services

The Law on Social and Family Services⁶⁸ sets out and regulates the provision of social and family services to persons and families who are in need in Kosovo. These services include the provision of direct social care, counselling, and, in exceptional circumstances, material assistance, for the benefit of people in need. The Ministry of Labour and Social Welfare (MLSW) has overall responsibility in this area and should issue required subsidiary legislation for the implementation of the Law.⁶⁹ The MLSW should develop policies and strategic plans for the provision of social and family services in Kosovo, while municipalities and other governmental and non-governmental organisations provide these services adhering to the regulations, directives and procedures as laid down by the MLSW. The municipalities deliver social and family services through Centres for Social Work and the authorities within them.⁷⁰ The Department of Social Welfare within the MLSW is responsible for management and oversight of all operational functions as prescribed by the Law, and prepares needed regulations, directives and guidance.⁷¹ The Institute for Social Policy, which has the status of a Department within the MLSW, is responsible for professional advancement of social and family services, prepares an annual operating plan and provides an annual report to the MLSW, which is then published.⁷² The Law envisages the establishment of a General Social and Family Services Council, which is responsible for the maintenance of professional standards and discipline, and serves as the licensing and registration authority.

⁶⁵ Promulgated by UNMIK Regulation 2005/44 on 8 September 2005.

⁶⁶ The Department for Policy Development in the Private Sector is composed of two divisions: a policy making division and a division for support of enterprises and support to regional development.

⁶⁷ Article 9.2 of the Law.

⁶⁸ Promulgated by UNMIK Regulation 2005/46 on 14 October 2005.

⁶⁹ Articles 2 and 15.11 of the Law.

⁷⁰ Articles 6 and 7 of the Law.

⁷¹ Article 3.3 of the Law.

⁷² Article 4.5 of the Law.

The MLSW has issued AI No. 01/2006 on Establishment of General Council for Social and Family Services and its Work. The AI aims to regulate the provision of social and family services and control the quality of these services. The MLSW based on the Article 11 of the Law has issued AI No. 05/2006 on the Establishment of the Panel for Placing Children without Parental Care in Foster Care and Adoption. Further, the MLSW in implementing Article 15 of the Law has issued AI No. 04/2006 on the Establishment of the Complaint Commission, which is responsible to review and decide on the second instance of appeals related to social and family services.

It can be concluded that the MLSW has sufficiently fulfilled its obligations according to the Law.

Law No. 02/L-8 on Wine

The aim of this Law⁷³ is to regulate the production and distribution of grapes used for wine production, as well as the production and distribution of wine and other products from the processing of grapes and wine. The Ministry of Agriculture, Forestry and Rural Development (MAFRD) shall provide for subsidiary legal instruments in order to implement the Law. The MAFRD shall: maintain the registers of vineyards, grape and wine growers; prescribe authorised varieties of vines and vine roots; determine the time of harvest; limit the maximum yield per hectare; as well as evaluate and designate wine and other products. Moreover, the MAFRD should issue subsidiary legislation to divide the viticulture territory of Kosovo into areas and regions.

In the course of implementation of this Law, the MAFRD has issued AI No. 05/2006 for the Designation of the Authorised Institution for Conducting Analyses and Evaluation of Wines of Kosovo. The MAFRD by this AI has authorised the Kosovo Agriculture Institute in Pejë/Peć to conduct an analyses of wine, cider and other products from the processing of grapes in Kosovo.⁷⁴ In addition, the MAFRD has issued AI No. 06/2006 for the Registration and Licensing of Grape Cultivators, Producers and Processors of Wine. It can be concluded that the MAFRD has made initial progress in fulfilling its obligation derived by the Law, although there still remains a considerable number of provision that requires further implementation.⁷⁵

Law No. 02/L-9 for the Irrigation of Agricultural Lands

The purpose of the Law for the Irrigation of Agricultural Lands⁷⁶ is to create optimal conditions for the irrigation of agricultural land in Kosovo and its protection against excessive waters, aiming at increased yields of agricultural products. The Law regulates a series of issues related to irrigation and drainage such as the organisation and administration of irrigation and drainage of agricultural land, competences and responsibilities of irrigation and drainage entities, and the registration and organisation of irrigation companies, federations and water irrigation fees.

The Ministry of Agriculture, Forestry and Rural Development (MAFRD) is responsible for the administration of irrigation, including determining the irrigation and drainage policies and fees. The MAFRD nominates the members of supervisory boards of

⁷³ Promulgated by UNMIK Regulation 2005/47 on 14 October 2005.

⁷⁴ See Article 1 of the AI.

⁷⁵ The MAFRD is obliged to issue subsidiary legislation in order to regulate issues provided in Article 3.4, 13.4, 14.1, 15.4, 16.4, 21.3, 22.3, 30.3, 33.3, 34.2, 40.5, 43.8 and 45.1.

⁷⁶ Promulgated by UNMIK Regulation 2005/49 on 25 November 2005.

the irrigation companies in accordance with criteria set by subsidiary legislation and monitors selection of bodies of the water users associations. In addition, the MAFRD shall set the rules for the establishment of the Water Users Federation, while an administrative instruction and the statute of the Federation shall regulate issues related to the work of the Federation.

The MAFRD, in implementing this Law, has issued AI No. 09/2006 on the Procedures for the Establishment and Registration of Irrigation Associations, fulfilling the requirements of Article 11. There has been progress in the implementation, however, leaving room for further improvement.⁷⁷

B. Note on corruption

The idea of rule of law as a means to restrict the exercise of political power by subjecting it to certain principles of civic order is contrary to the concept of corruption. The latter involves compromising one's morals to achieve certain ends, mostly for the benefit of an individual or group.⁷⁸ Corruption is not about equal application of a rule but individual exceptions or favours in exchange for an advantage. Thus, promoting the concept that the law should rule and not men entails continuous support to the fight against corruption.

The political debate but also the active involvement of the PISG in the fight against corruption started in 2003 with an inter-ministerial working group. Since then, considerable steps have been undertaken in order to establish a legal and institutional infrastructure to combat corruption.⁷⁹ In 2006, the OSCE organised two workshops on the Anti-Corruption Action Plan (ACAP), in which all actors involved in its implementation convened for the first time. Debates emphasised the need for a comprehensive strategy for the years to come and highlighted that fight against corruption is not just a matter of rule of law, but an essential prerequisite of social and economic progress.

One of the important steps for the implementation of the Law on Suppression of Corruption⁸⁰ was the establishment of the Kosovo Anti-Corruption Agency which is expected to be operational by the beginning of 2007. It has faced some administrative difficulties in its beginning, such as budget allocation. The Agency is currently located in the premises of the Assembly which is only an interim solution since it is an independent institution which needs premises able to host individuals in a neutral environment in order for them to submit information on possible corruption offences in secrecy.

Success in combating corruption depends to a large extent upon political will, administrative co-operation and institutional mechanisms built for this purpose. Thus, a collective effort is needed to support the Kosovo Anti-Corruption Agency in its ef-

⁷⁷ The MAFRD should still implement the following provisions of the Law: 16.2, 23.3 and 29.

⁷⁸ See also the joint OSCE and OPM publication, *The Anti-Corruption Action Plan: Social and Economic Necessity for Kosovo*, October 2006.

⁷⁹ In March 2004 the Anti-Corruption Strategy was approved, in May 2005 UNMIK Regulation 2005/26 promulgated the Law on Suppression of Corruption (No. 2004/34), and the Anti-Corruption Plan was approved at the beginning of 2006.

⁸⁰ Law No. 2004/34 promulgated by UNMIK Regulation 2005/26. See also above, p. 19.

forts to combat corruption. At the same time, the Agency needs to fulfil its obligations to implement what is foreseen in the Law on the Suppression of Corruption.

C. Follow-up on the implementation of Kosovo Assembly Laws 2002-2004

This part of the report aims at presenting the progress that has been made in the implementation of the laws assessed in the two previous OSCE reports.⁸¹ The first report covered the laws promulgated in 2002 and 2003, while the second covered laws promulgated in 2004.

1. Follow up on implementation of Kosovo Assembly Laws 2004

A very positive development has been noticed regarding some of the laws that were promulgated in 2004 and in the last report were assessed to be only partially implemented. The OSCE estimates that the laws on Gender Equality⁸², on Energy⁸³, on the Energy Regulator⁸⁴, and on Electricity⁸⁵ have now been fully implemented by the responsible institutions.

With respect to the vast majority of the laws assessed in the last report, considerable progress has been made in 2006, though implementation is still not complete. Since the last report, the MESP has made sound progress in the process of implementing the Law on Construction⁸⁶ by issuing six AIs.⁸⁷ However, according to the Construction

⁸¹ For further details see OSCE Report on Implementation of Kosovo Assembly Laws by the Executive Branch of the Provisional Institutions of Self-Government, Review Period: Laws promulgated in 2002-2003, January 2005 and OSCE Implementation of Kosovo Assembly Laws Report II, Review Period: Laws promulgated in 2004, December 2005.

⁸² Kosovo Assembly Law No. 2004/2 on Gender Equality in Kosovo, promulgated by UNMIK Regulation 2004/18 on 7 June 2004. The Ministry of Local Government Administration has issued AI No. 2005/8 on Determination of Responsibilities and Working Tasks of the Officials for Gender Equality within Municipalities, which fulfills the remaining obligation in the process of implementation of the Law since last assessment.

⁸³ Kosovo Assembly Law No. 2004/8 on Energy, promulgated by UNMIK Regulation 2004/21 on 30 June 2004. In the process of further implementation, the Ministry of Energy and Mining (MEM) has issued AI No. 2005/7 on Security Zones, even though in the last report it was assessed that the MEM had established the necessary legal framework for the implementation of the Law on Energy. For more detailed information, see OSCE Implementation of Kosovo Assembly Laws Report II, page 15. Also, according to the information on the Kosovo Assembly web page http://www.assembly-kosova.org/common/docs/ligjet/matrix_al.pdf, the Law is in the process of amendment.

⁸⁴ Kosovo Assembly Law No. 2004/8 on Energy, promulgated by UNMIK Regulation 2004/20 on 30 June 2004. Since 2005, the Energy Regulatory Office (ERO) has adopted its Statute and Code of Ethics and Conduct and the following Rules: on Pricing and Tariff Methodology; on Dispute Settlement Procedure in the Energy Sector; on Licensing of Energy Activities in Kosovo; on Disconnection and Reconnection of Customers in Energy Sector in Kosovo; on General Conditions of Energy Supply; on Administrative Measures and Fines; and on Tariff Methodology for the Electricity Sector. They have also prepared draft Rule on Confidentiality of Information. Also, according to the information published on the Kosovo Assembly web page http://www.assembly-kosova.org/common/docs/ligjet/matrix_al.pdf, the Law is in the process of amendment.

⁸⁵ Kosovo Assembly Law No. 2004/10 on Electricity, promulgated by UNMIK Regulation 2004/22 on 30 June 2004. The necessary legal framework for implementation of the Law is created by the Rules cited above, and a Temporary Decision on Approval of a Bill of the KEK issued by the ERO, as well as AI No. 001/2006 on the Conditions for Determining Eligible Customers for the year 2006 issued by the MEM.

⁸⁶ Kosovo Assembly Law No. 2004/15 on Construction, promulgated by UNMIK Regulation 2004/37 on 14 October 2004.

Division of the MESP, the full implementation of the Law requires 17 AIs.⁸⁸ For the implementation of the Law on Kosovo Water⁸⁹, progress has been made through the issuance of an AI on Water Payment Structure, while another two draft AIs have been prepared on behalf of the Government but are awaiting signature.⁹⁰

Concerning the implementation of the Law on Health⁹¹, MH has issued six Administrative Instructions⁹²: on Organization and Administration of the Professional Mental Health Service of Kosovo; on Establishment, Duties and the Composition of the Supervisory Councils of the Health Institutions; on Establishment and Organization of the Pharmaceutical Department; on Organization of the National Institute for Kosovo Public Health; on Minimal Medical Technical Conditions, for Space and Personnel in Accordance with the type of the Health Institutions; and on Establishment of the Office of Health Authorities of the Ministry of Health. Regarding the Law on Rights and Responsibilities of Kosovo Residents in the Health Care System,⁹³ no progress has been made since the last report. According to this Law, the Government is responsible to implement Article 4.14 by determining the conditions for healthcare outside Kosovo. However, it still applies AI No. 7/2003 on Implementation for the Overseas Medical Treatment Programme.⁹⁴ Considerable progress has been made by the MH and the Kosovo Medicines Agency in the process of implementation of the Law on Medical Products and Medicinal Devices⁹⁵ by issuing five Administrative Instructions: on the Establishment of the Kosovo Committee for Evaluation of Medicinal Products and Medical Devices; on Marketing Authorization for Medical Products; on Pharmacies; on Medical Products for Human Use; and, on Licensing of Pharmaceutical Laboratories and Pharmaceutical Products in Kosovo.⁹⁶

⁸⁷ AI No. 25/05 on the Approval of Projects; AI No.26/05 on Technical Inspection of Building Construction; AI No. 27/05 on Conditions and Measures of Giving the Authorisation for Controlling of Projects; AI No. 01/06 on Other Specific Administrative Violations and Appropriate Fines; AI No. 02/06 on Project Control; and AI No. 03/06 on the List of Buildings for which Construction Licence is not Needed.

⁸⁸ See: http://www.ks-gov.net/mmph/shqip/depart/dbn_4.htm. When the last report was published, the MESP had issued six AIs, and the MTI one AI, implementing the Law. See the OSCE Implementation of Kosovo Assembly Laws Report II, Review Period: Laws promulgated in 2004, December 2005, page 17 and 18 for more detailed information.

⁸⁹ Kosovo Assembly Law No. 2004/24 on Kosovo Water, promulgated by UNMIK Regulation 2004/41 on 14 October 2004.

⁹⁰ Draft AI on Limit Values of Effluents Discharged into Water Bodies and Public Sewage Systems; and draft AI on Protection from Flooding. The deadline of 24 months, according to which all subsidiary acts had to be issued – i.e., by 14 October 2006 – has not been met.

⁹¹ Kosovo Assembly Law No. 2004/4 on Kosovo Health, promulgated by UNMIK Regulation 2004/31 on 20 August 2004.

⁹² For full reference see: <http://www.mshgov-ks.org/>. However, regarding the obligations of the Government under this Law, according to the material provided by the OLSS, none of the AIs issued in 2005 and 2006 refers to this Law.

⁹³ Kosovo Assembly Law No. 2004/38 on Rights and Responsibilities of Kosovo Residents in the Health Care System, promulgated by UNMIK Regulation 2004/47 on 19 November 2004.

⁹⁴ According to the Head of Legal Office of the MH, their Ministry together with the MFE have prepared two draft AIs regulating this issue, but they have so far not been signed.

⁹⁵ Kosovo Assembly Law No. 2003/26 on Medicinal Products and Medical Devices, promulgated by UNMIK Regulation 2004/23 on 7 July 2004.

⁹⁶ It is difficult to assess to what extent these AIs implement the Law since the preambles do not refer to concrete provisions of the Law, authorising the MH to issue them. Regarding the obligation of the Government under Article 34.7 on the issue of the declaration of conformity for medical devices, this was regulated by the Law No. 02/L-20 on Technical Demands for Products and

Concerning the obligation of the MTI on the implementation of the laws falling in its area of responsibility, progress has been made on the laws on Standardisation⁹⁷, on Precious Metal Products⁹⁸ and on Consumer Protection⁹⁹ whereas the Law on Measurement Units¹⁰⁰ and the Law on Internal Trade¹⁰¹ lack progress since the last report.

The Public Procurement Agency (PPA) has adopted a Working Regulation and Administrative Guide No. 2006/1 further implementing the Law on Public Procurement.¹⁰² It includes amendments in the tender dossier for supply, work and services. In view of public procurement, the PPA has also introduced eight manuals explaining a wide spectrum of issues such as: the preparation of tender dossiers, procurement procedures, contract notices, determination of the procurement procedure, procurement planning, evaluation of needs and availability of means. It has also produced a brochure for procurement officials and a guide on reading the Law on Public Procurement.¹⁰³

The MCYS has made initial progress in the process of implementing the Law on Cinematography¹⁰⁴ by preparing a draft Regulation for the Cinematographic Centre as

Valuation of Conformation (UNMIK Regulation 2005/36). This information is also confirmed by the Director of the Legal Office of the Kosovo Medical Agency.

⁹⁷ Kosovo Assembly Law No. 2004/12, promulgated by UNMIK Regulation 2004/15 on 28 May 2004. Since the last report, the Law has been supplemented with two AIs: AI No. 2006/05 on Criteria and Competences in the field of Standardization and Accreditation; and AI No. 2006/15 on Organisation and Functioning of the Accreditation Unit. In addition, the Law is amended by UNMIK Regulation 2006/43 on the promulgation of the Kosovo Assembly Law No. 02/L-83 on an amendment and additions to Law No. 2004/12 on Standardisation.

⁹⁸ Kosovo Assembly Law No. 2004/28, promulgated by UNMIK Regulation 2004/33 on 24 August 2004. The MTI has issued AI No. 2004/1 on the Regulation, Organization and Functioning of Kosovo Meteorological System and two draft AIs: on identification sign; and on official stamps for precious metals.

⁹⁹ Kosovo Assembly law No. 2004/17, promulgated by UNMIK Regulation 2004/42 on 19 October 2004. The MH has issued AI No. 12/2005 on Labelling Feeding Products, though its preamble does not refer to any specific provision. Also, the MTI has informed the OSCE that a working group is preparing a draft AI on declaration of goods with the aim of implementing the Law. In addition, a council is working on drafting the Kosovo Programme on Consumer Protection which shall be endorsed by the Government and presented to the Assembly for approval. This obligation was supposed to be fulfilled by 19 April 2005 and then the Kosovo Assembly had to adopt the Kosovo Programme on Consumer Protection within 90 days after receipt. This obligation has not been met.

¹⁰⁰ Kosovo Assembly Law No. 2004/11, promulgated by UNMIK Regulation 2004/14 on 28 May 2004. According to the information provided by the MTI, the situation has not changed since the last report. According to the last OSCE report it was assessed that the MTI has made considerable progress in the implementation of the Law. However, because Article 3 gives a very general authorisation to the executive, it is difficult to assess whether the obligations established by the Assembly have been completely fulfilled.

¹⁰¹ Kosovo Assembly Law No. 2004/18, promulgated by UNMIK Regulation 2004/43 on 20 October 2004. Apparently, the MTI is currently working on a draft AI on determination of the working hours in the field of internal trade and on determination of activities and organization of internal trade.

¹⁰² Kosovo Assembly Law No. 2003/17, promulgated by UNMIK Regulation 2004/3 on 9 February 2004. The Law on Public Procurement is in process of amendment; see http://www.assembly-kosova.org/common/docs/ligjet/matrix_al.pdf.

¹⁰³ See <http://www.ks-gov.net/prokurimi/>.

¹⁰⁴ Kosovo Assembly Law No. 2004/22, promulgated by UNMIK Regulation 2004/38 on 14 October 2004.

well as by electing its Director. As for the Law on Sports,¹⁰⁵ a draft AI on Subvention of Trade Associations which provide benefits to sports clubs through sponsorship is prepared but still not signed.¹⁰⁶

The process of implementation of the Law on Kosovo Population and Housing Census¹⁰⁷ is followed by the second test census of population and housing in three municipalities: Pejë/Peć, Kamenicë/Kamenica and Shtërpçë/Štrpce.¹⁰⁸ The MPS has continued to implement the Law on Cadastre¹⁰⁹ by issuing an AI on the level of fees for products and services provided by the Kosovo Cadastral Agency. It has also prepared a draft AI on licensing of geodesy companies.¹¹⁰ The MTT has made substantial progress in the implementation of the Law on Transport of Dangerous Goods.¹¹¹ To the OSCE's understanding, the MAFRD has completed the implementation of mandatory provisions required by the Law on Veterinary¹¹² and the Law on Livestock¹¹³ through the issuance of further Administrative Instructions. Despite the assessment in the last report that the MAFRD has fulfilled most of its obligations for the implementation of the Law on Planting Material¹¹⁴, no progress has been noted on the remaining aspects since then.¹¹⁵

¹⁰⁵ Kosovo Assembly Law No. 2003/24, promulgated by UNMIK Regulation 2004/26 on 28 July 2004.

¹⁰⁶ This AI should completely implement the Law on Sports. However, according to the Head of the Legal Office of the MCYS, this issue might have to be regulated by a separate law due to its potential implications in relation to the Kosovo Consolidated Budget.

¹⁰⁷ Kosovo Assembly Law No. 2003/16, promulgated by UNMIK Regulation 2004/53 on 9 December 2004.

¹⁰⁸ According to the information provided by the Director of the Department for Census of Population of the Statistical Office of Kosovo and the Head of Legal Office of the MPS, the Law is in the process of amendment.

¹⁰⁹ Kosovo Assembly Law No. 2003/25, promulgated by UNMIK Regulation 2004/4 on 18 February 2004.

¹¹⁰ According to the information provided by the Head of the Legal Office of the MPS, the Law on Cadastre is in the process of amendment by the Assembly of Kosovo.

¹¹¹ Kosovo Assembly Law No. 2004/6, promulgated by UNMIK Regulation 2004/17 on 5 June 2004. In the process of implementing the Law, the MTT has issued AI No. 2005/7 on Criteria and Issuance Procedure, Suspension and Licence Revoking for the Road Transportation of Dangerous Goods; AI No. 2006/5 on Certification of Vehicle Transportation of Dangerous Goods and the Manner of Road Transportation of Dangerous Goods; and AI No. 2006/11 amending AI No. 2005/3 on Training and Examination of Conductors of Dangerous Goods.

¹¹² Kosovo Assembly Law No. 2004/21, promulgated by UNMIK Regulation 2004/28 on 30 July 2004. In addition to 13 AIs issued in 2005, the MAFRD has in 2006 issued two more Administrative Instructions: AI No. 26/2005 on the Measures for Monitoring of Certain Substances and their Residues in Live Animals and Products of Animal Origin, implementing Article 28 of the Law; and AI No. 01/2006 on Certification of Slaughterhouses, Meat Processing Plants and their Inspection, implementing Article 42.1 and 42.2 of the Law.

¹¹³ Kosovo Assembly Law No. 2004/33, promulgated by UNMIK Regulation 2004/39 on 14 October 2004. The MAFRD has made sound progress in the process of implementation by issuing three AIs: AI No. 28/2005 on Compound Feeding Stuff for Animals; AI No. 02/2006 on Raw Material of the Animal's Compound Feed (both of which implement Article 12.1 and 12.2 of the Law); and AI No. 07/2006 on the Establishment of Permanent Commission for the Breeding Animals, implementing Article 9 of the Law.

¹¹⁴ Kosovo Assembly Law No. 2004/13, promulgated by UNMIK Regulation 2004/16 on 28 May 2004.

¹¹⁵ See OSCE Implementation of Kosovo Assembly Laws Report II, Review Period: Laws promulgated in 2004, December 2005, page 17.

The OSCE has observed that in the case of some laws, there has been a serious lack of implementation. For example, there is no visible progress on the Law on Air Protection.¹¹⁶ The same is the case for the Law on Competition¹¹⁷, the implementation of which depends on the establishment of the Kosovo Competition Commission (KCC), which is still not established.¹¹⁸ According to the Law, the KCC is authorised to develop, adopt and publish detailed sub normative acts for the implementation of the Law. In addition, the same situation exists regarding the implementation of the Law on Patent.¹¹⁹ The Law foresees establishment of a Patent Office¹²⁰ as an independent agency within the Government entrusted with all functions specified in the Law.¹²¹

2. Follow-up on implementation of Kosovo Assembly Laws 2002-2003

The Kosovo Assembly laws promulgated in 2002 and 2003 were assessed in a detailed manner in the first OSCE report on the subject.¹²² In addition to that, in the second report on law implementation,¹²³ a follow-up was conducted to reflect the progress that has been done throughout 2005 on fulfilment of the remaining obligations. During 2006, additional developments have been noted with respect to the implementation of some of the laws, while others still lack progress.

The MAFRD has made further progress on implementing the Law on Forests¹²⁴ by issuing an AI on Selection, Stamping, Marking of Wood Assortment, Wood Freight Permits and Forests Collection, and an AI on the Authorisation and Competencies of Forest Inspections and Procedures for Issuing Decisions.¹²⁵ Also, the MAFRD has issued an AI on implementation of the Law on Artificial Fertilizers.¹²⁶

¹¹⁶ Kosovo Assembly Law No. 2004/30, promulgated by UNMIK Regulation 2004/48 on 25 November 2004. According to the information provided by the MESP, four draft AIs were drafted at the ministerial level. However, Article 29 of the Law clearly defines the actions that should be taken by the Government and the Ministry. It foresees that upon the entry of this Law into force, the Government of Kosovo shall be responsible for the approval of Rules and Standards for the purpose of implementing Articles 3, 4, 5, 6, 7, 10, 13, 14 and 16. Also, Article 29.2 foresees that: once this law enters into force the respective Ministries shall be responsible for the issuance of Rules and Standards, for the purpose of implementing of Articles 5, 7, 9, 12, 13, 15, and 16.

¹¹⁷ Kosovo Assembly Law No. 2004/36, promulgated by UNMIK Regulation 2004/44 on 29 October 2004.

¹¹⁸ According to the information provided by the MTI on 19 October, the Government has established a recruitment panel to interview the candidates that afterwards will be nominated as members of the KCC.

¹¹⁹ Kosovo Assembly Law No. 2004/49, promulgated by UNMIK Regulation 2004/56 on 21 December 2004.

¹²⁰ Article 13.1 of the Law.

¹²¹ The MTI has informed the OSCE that the Patent Law is in the process of amendment, and that the Assembly of Kosovo has approved the amendment in principle. After the promulgation of the amendment of the Law, the latter seems to be implemented by also including the establishment of the Patent Office.

¹²² See OSCE Report on Implementation of Kosovo Assembly Laws by the Executive Branch of the Provisional Institutions of Self-Government, Review Period: Laws promulgated in 2002-2003, January 2005, pages 8–20.

¹²³ See OSCE Implementation of Kosovo Assembly Laws Report II, Review Period: Laws promulgated in 2004, December 2005, pages 23–25.

¹²⁴ Kosovo Assembly Law No. 2003/3, promulgated by UNMIK Regulation 2003/6 on 20 March 2003.

¹²⁵ See AI No. 29/2005 and AI No. 03/2006.

¹²⁶ Kosovo Assembly Law No. 2003/10, promulgated by UNMIK Regulation 2003/22 on 23 June 2003. AI No. 04/2006 for the Amendment and Change of AI No. 13/05 on the License of Subjects for Repacking of Artificial Fertilizer.

Concerning the Law on Environmental Protection¹²⁷, an Administrative Instruction on the Issuance of Ecological Licenses has been issued.¹²⁸ Regarding the Law on Spatial Planning, out of 17 sub-legal acts drafted for implementation, the MESP has approved 13,¹²⁹ whereas the Kosovo Spatial Plan has not been approved yet¹³⁰.

In further process of implementation of the Law on the Sanitary Inspectorate of Kosovo¹³¹, the MH has issued AI No. 07/2005 on Duties and Competencies of Kosovo Sanitary Inspectorate, and AI No. 08/2005 on Technical Standards that should be fulfilled by Food Production Facilities. Also, the MTT has continued implementation of the Law on Postal Services¹³² with two additional AIs: AI No. 2005/4 on Determination of the Universal Postal Services, and AI No. 2005/8 on Licensing of the Operators of Postal Services.¹³³ The MCYS has made progress regarding the implementation of the Law on Libraries¹³⁴ by issuing a “Regulation” on Public Libraries. The Law on Archive Material and Archives¹³⁵ has been amended¹³⁶, therefore no further implementation has taken place.

The obligation of the MEST under Article 17.1 of the Law on Higher Education¹³⁷ to issue an AI for the methodology to be used for the allocation of funds for teaching and research in the public interest has not been fulfilled. According to the MEST, a new draft Law on Financing Higher Education and Science will address this issue.¹³⁸

In the last report, an AI implementing two provisions of the Law on External Trade Activity¹³⁹ was noted, but since then no progress has been made. The Law contains 21 provisions that task the Government of Kosovo to prepare subsidiary acts. Similarly incomplete is the status of the implementation of the Law on Liquidation and Reorganisation of Legal Persons in Bankruptcy.¹⁴⁰ To the knowledge of the OSCE, no subsidiary act has been issued until now to implement the Law.

¹²⁷ Kosovo Assembly Law No. 2003/14, promulgated by UNMIK Regulation 2003/30 on 10 September 2003.

¹²⁸ According to information from the MESP a working group is in the process of drafting a new Law on Environment Protection.

¹²⁹ The matrix of progress of issuance of sub-legal acts implementing the Law can be viewed at: <http://www.ks-gov.net/mmph>, last visited 18.10.2006.

¹³⁰ The latest information posted on the MESP official web-page is that on 11.07.2006, the 60 day public debate period on the draft spatial plan has ended and the draft will now undergo the procedure of approval by the Government and the Assembly of Kosovo. The obligation in Article 10.1 of the Law on Spatial Planning to adopt spatial plans for special areas is dependent on the finalisation of the Kosovo Spatial Plan.

¹³¹ Kosovo Assembly Law No. 2003/22, promulgated by UNMIK Regulation 2003/39 on 17 December 2003.

¹³² Kosovo Assembly Law No. 2003/18, promulgated by UNMIK Regulation 2003/37 on 17 December 2003.

¹³³ See <http://www.mtpt.org/mtt>.

¹³⁴ Kosovo Assembly Law No. 2003/6, promulgated by UNMIK Regulation 2003/19 on 23 June 2003.

¹³⁵ Kosovo Assembly Law No. 2003/7, promulgated by UNMIK Regulation 2003/20 on 23 June 2003.

¹³⁶ Kosovo Assembly Law No. 02/L-80 on Amendments and Additions to Law on Archive Material and Archives, promulgated by UNMIK Regulation 2006/40.

¹³⁷ Kosovo Assembly Law No. 2002/3, promulgated by UNMIK Regulation 2003/14 on 12 May 2003.

¹³⁸ Information was provided on 19 October 2006 by the Legal Office of the MEST.

¹³⁹ Kosovo Assembly Law No. 2002/6, promulgated by UNMIK Regulation 2003/15 on 12 May 2003.

¹⁴⁰ Kosovo Assembly Law No. 2003/4, promulgated by UNMIK Regulation 2003/7 on 14 April 2003.

D. Follow-up note on access to official documents

Since the publication of the last OSCE report on implementation¹⁴¹, significant progress has been made regarding the process of implementing the Law on Access to Official Documents (LAOD),¹⁴² notwithstanding the fact that the LAOD already was adopted and promulgated in 2003. While the implementation – the drafting and passing of secondary legislation – has substantially progressed, the application of the law still remains with considerable room for improvement.

On 14 April 2006, the Government issued AI No. 2006/03 on the Implementation of the Law on Access to Official Documents. This AI addresses fundamental issues regarding the access to official documents as, for example, creating the Inter-Institutional Committee which is responsible to evaluate administrative practices in this specific field. The AI seeks to establish an archive office in every institution as well as to determine the respective duties. Moreover, the AI addresses the issue of a uniform classification of certain documents as well as the procedure to request and receive access to official documents.

The Terms of Reference of the Inter-Institutional Committee have been issued in the form of an Administrative Instruction by the Government and its members have been appointed. The Ministry of Public Services (MPS) has, with AI No. 2006/03, drafted a plan determining the timeframe for action regarding the implementation of the LAOD. In addition, the MPS has issued two Annexes to the AI that determine the forms to be filled for request of documents.¹⁴³

Furthermore, the MPS has issued the Manual on Access to Official Documents for the purpose of raising public awareness about the rights provided by the Law and how to realise them. The Manual is directed to citizens, journalists and institutions as a quick reference providing general information regarding the access to official documents.¹⁴⁴ In addition, the MPS has provided trainings to various institutional staff on general knowledge of the Law on Access to Official Documents which were organised by the Kosovo Institute for Public Administration (KIPA).

Notwithstanding all the progress made by the MPS regarding the creation of the legal framework for the implementation of the LAOD, the concrete application of the normative acts on the ground needs to be improved considerably and continuously. The Law was tested in several occasions by the members of NGOs and journalists and the results are not very promising.¹⁴⁵ (Though, during meetings with representatives from various ministries, most have stated that they had received few requests regarding access to official documents, to which they apparently replied in due time and according to the procedures set up by the LAOD). Finally, it should be noted that

¹⁴¹ See OSCE Implementation of Kosovo Assembly Laws Report II, Review Period: Laws promulgated in 2004, December 2005, p. 25.

¹⁴² Kosovo Assembly Law No. 2003/12, promulgated by UNMIK Regulation 2003/32 on 6 November 2003.

¹⁴³ AI No. 2006/01. The AI as well as forms can be viewed at: <http://www.ks-gov.net/mshp>.

¹⁴⁴ The MPS has printed 100,000 manuals which have been distributed to newspapers, ministries, the Government, municipalities and various international organisations.

¹⁴⁵ In January 2006 members of the local NGO Youth Initiative for Human Rights have submitted 300 requests for access to official documents to various institutions as a part of their testing exercise. The outcome was: 15 response letters out of the over all number of 300 requests submitted.

the Government has still not issued any general annual report on the implementation of the Law, as required by Article 16.2 of the LAOD.

Access to Official Documents is vital in the process of establishing a transparent civil service and the considerable progress made needs to be taken into account. However, the application of the law still offers substantive room for improvement, and continuous effort should be made from all stakeholders involved.

SECTION III: FINDINGS AND RECOMMENDATIONS

A. General assessment

Section II above contains the OSCE's specific assessment of the implementation of the various Kosovo Assembly laws from 2005, as well as a follow-up assessment from previous OSCE reports. While it is impossible to truly summarise all of this detailed information in a few paragraphs, it could be said that regarding the implementation of laws promulgated in 2005, most of the ministries in Kosovo have made considerable progress. Most ministries have also improved their rate of implementation and their management of implementation throughout the years. For instance, the Ministry of Health and the Ministry of Education, Science and Technology serve as an example of ministries that have improved in the fulfilment of their obligations to implement laws for which they are responsible.

There is obviously room for improvement, and this has been elaborated quite thoroughly above. One must also bear in mind that there are significant differences in the responsibility that each ministry has for drafting secondary legislation or establishing institutions and bodies. Some ministries, such as the Ministry of Trade and Industry, have had many laws to implement, while others have had less implementing obligations.

Concerning the responsibilities of the OPM, the OSCE has noticed a substantial backlog in their implementation obligations. These deficiencies are noticed with respect to laws such as the Law on Support to Small and Medium Enterprises and the Law on Games of Chance. There is still an apparent imbalance between drafting primary legislation and implementing these laws by drafting secondary legislation. Also in view of OPM's special responsibility for co-ordinating the drafting process, as required by the Government Rules, the need for improvement is obvious and urgent. Therefore, OSCE strongly recommends that OPM dedicates one individual to the task of ensuring that the respective laws are implemented in due time by the Government itself.

A few laws have gone completely unimplemented for a couple of years. In view of this, it must be highlighted that priorities are set by the legislator and not by the respective Ministry or the Government that are merely implementing bodies. Therefore, non-implementation means ignoring the will of the legislator.

Compared to the first two reports, the OSCE is pleased to note that a significant number of Institutions are now publishing their administrative instructions on the internet. This enhances the accessibility to secondary legislation especially for the

professional community. The efforts of individual institutions to publish their normative acts remain important for a medium term until the Official Gazette of the PISG of Kosovo has developed and implemented a long term strategic plan to publish all normative acts in a structured and accessible manner, including acts from the previous years.

The remainder of this report will assess various substantial aspects of the rule of law that are connected to primary and secondary legislation, and which have arisen during the research phase of this report. The first three chapters address the issues of the relationship between the types of normative acts, their publication as well as the point of time when the acts enter into force. After that, the written framework guiding the drafting process is assessed and the areas of staffing and training elaborated upon. Finally, the discussion is focused on legislative oversight responsibilities regarding the implementation of primary legislation.

B. Hierarchy of norms

Understanding the hierarchy of norms and its proper place in legislative practice as well as the implementation and application of the law are of immense importance from a rule of law point of view. The hierarchy of norms is not, however, simply a question of straightforward logical precedence or subordination. Hierarchy relates to the general issue of legitimate authority and it also includes the imperative that a legal provision may only be issued by an authorised body within the limits of the parent act and its own legislative jurisdiction.

Sometimes the hierarchy of norms is described in view of a classification of the “legal force” that a normative act can establish. Legal force refers to the fact that one provision is subordinate to another (i.e. to a provision with greater legal force) or it is derived from a provision having greater legal force. In a situation involving legal provisions with different legal force the weaker provision may not contradict the stronger one, whereas the stronger provision may override the weaker one.¹⁴⁶

In the system of legal provisions, where a given act has precedence, all the other legal provisions must derive from the parent act, be compatible with it and not contradict it. This means that, in practice, in a situation where a legal provision lower down the hierarchy contradicts a higher-ranking provision, it is the higher-ranking one that must be acted upon. Contrary, the lower act can only regulate an area of application that is already specifically covered by the higher act, and has a legal basis in primary legislation.

Besides the relevant required legal basis, two aspects of the form and substance of the authorisation are of special concern: limitation and definition. The legislative branch is limited in the extent to which it can delegate legislative competence by the principle of division of powers as enshrined in the Chapter 2 of the Constitutional Framework. An excessive authorisation would reduce this principle to naught.¹⁴⁷ A rule of thumb

¹⁴⁶ Furthermore, in a case where there are two contradictory provisions of the same force, the more recent one supersedes the older.

¹⁴⁷ See *Hasan and Chaush v. Bulgaria*, [GC], No. 30985/96, § 84 ECtHR, 2000-XI: “In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a

in a democratic society should be that important political decisions are taken in parliament.

But what kind of categories of secondary legislation do legally exist in Kosovo?

Pursuant to UNMIK Regulation 2001/19 on the Executive Branch of the PISG there are only two categories of legal acts which regulate the activities of ministries: decisions and administrative instructions.¹⁴⁸ Interestingly, the same norm was used by the Government as a legal basis to issue the so-called Government Rules that *inter alia* introduce a wide range of acts the Government can issue if it decides so: from policies and strategies to replies and viewpoints, but also including instructions and decisions.¹⁴⁹ The legislative practice of the Government shows a high level of creativity.¹⁵⁰

The situation became even more complicated when the Government issued AI 2006/02¹⁵¹, the legal basis of which is not entirely clear.¹⁵² Article 7 of this AI creates a typology and divides the draft normative acts into those having external effect and others being only internally applicable. However, the AI only touches upon this issue and does not take into account the issues that are already regulated by primary legislation. The thought of normative acts having internal or external effect is very interesting, especially in view of a hierarchy of norms, and should be further considered and built upon.¹⁵³ As it stands, AI 2006/02 is insufficient and in OSCE's view unworkable.

The issue of the hierarchy of norms is one of constitutional nature and clarifying measures are urgently needed. These should include some kind of typology that provides a broad definition of the various tools that are offered for the drafting of legislation. For example, it could be done by incorporating clear types and definitions of normative acts in an amendment or a new version of the law regulating the executive branch but could also be included in a constitutional framework. Such an enumerative set of tools would enhance clarity in this field and is thus strongly recommended.

democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power.”

¹⁴⁸ See Section 1.3 (d) UNMIK Regulation 2001/19.

¹⁴⁹ Government Regulation 1/2005 on the Rules of Procedures of the Government, signed on 18 July 2005.

¹⁵⁰ For the various forms of secondary acts used, see OSCE Implementation of Kosovo Assembly Laws Report II, Review Period: Laws promulgated in 2004, December 2005, p. 27.

¹⁵¹ AI 2006/02 on Procedures for Drafting, Reviewing and Approving the Draft-Acts, signed on 16 March 2006.

¹⁵² Article 9.3.2 UNMIK Regulation 2001/9 does not entail an authorisation to issue an AI. More so, this AI cannot be based on another piece of *secondary* legislation, the so-called Government Rules from 2005.

¹⁵³ In the current applicable law a vast number of Administrative Instructions have been issued by authorised actors of the executive branch regulating a variety of relations. It is doubtful whether all those instructions in their entirety were intended to establish external effect – the ability to be a basis for a legal claim – since some of them do include internal administrative procedures.

C. Publication of the applicable law

Ignorance of the law is not a defence for not following the law. This is one of the basic principles of the rule of law resulting in the fact that the law is binding to everyone including those who are not familiar with it. Complementary to this notion is the obligation of the legislative authorities to provide information about their normative acts to all those concerned.

Accessibility as a precondition for the rule of law has also been stated quite clearly by the European Court of Human Rights, which pointed out that the “rule of law, one of the fundamental principles of a democratic society, is inherent in all articles of the convention”.¹⁵⁴ The principle of lawfulness being at the core of the principle of rule of law “presupposes that the applicable provisions of domestic law be sufficiently accessible, precise and foreseeable.”¹⁵⁵ Thus, it is very clear that publication of the respective norms is one of the indispensable preconditions for requiring their compliance.¹⁵⁶

1. The applicable law

From a rule of law perspective, it is a central prerequisite that the sole authentic version of the law is published in order for every one to be sure what law should be applied. But what is the sole authentic version of the law?

In Kosovo, each primary law passed by the Assembly needs to be promulgated by the SRSG in order to become effective.¹⁵⁷ Promulgation thus means to put a law into force or effect. This act of promulgation allows the SRSG to make a final check on the respective law’s consistence with UN Security Council Resolution 1244, the Constitutional Framework and international standards. This results regularly in changes of the law itself, which are presented in the promulgating UNMIK Regulation.¹⁵⁸ Without promulgation no primary legislation can turn into applicable law. Consequently, the authentic versions of the primary law in Kosovo consist of: 1. UNMIK Regulations and 2. Laws passed by the Assembly of Kosovo *as promulgated*, with the changes made by the promulgating act.

In view of this, it is not helpful if the Assembly of Kosovo is publishing the Assembly laws on its homepage¹⁵⁹ without incorporation of changes made in the promulgating act. A link to the promulgating act has not even been properly installed on the website. This is true cause for concern since many public institutions download, print

¹⁵⁴ Hasan and Chaush v. Bulgaria [GC], No. 30985/96, § 87 ECtHR, 2000-XI.

¹⁵⁵ Beyeler v. Italy, No. 33202/96, § 109 ECtHR, 2000-I.

¹⁵⁶ For a more detailed and comparative analysis on the issue of publication of laws, see OSCE Mission in Kosovo, Thematic Reports on Rule of Law Issues, Implementation of the Law on the Official Gazette, June 2006.

¹⁵⁷ Sections 9.1.44 and 9.1.45, UNMIK Regulation 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo, 15 May 2001.

¹⁵⁸ These changes range from the replacement of individual wording (e.g. UNMIK Regulation 2004/56; 2005/34), deletion of a paragraph of a section (e.g. UNMIK Regulation 2004/32; 2004/28) to the introduction of completely new paragraphs and sections (e.g. UNMIK Regulation 2004/44; 2004/30; 2004/26). Moreover, sometimes even renumbering is ordered by the promulgating act so that the numbering in the law is not reflecting the actual number of a paragraph in force (e.g. UNMIK Regulation 2004/18).

¹⁵⁹ <http://www.assembly-kosova.org/>

and, consequently, use the primary law from the homepage of the Assembly of Kosovo and thus regularly not the sole authentic version of the law.

2. Publication

The competences in Kosovo are shared between UNMIK and the PISG since both issue normative acts. UNMIK has the obligation to publish its regulations in a manner that ensures their wide dissemination by public announcement and publication.¹⁶⁰ In order to fulfil this obligation UNMIK passed an Administrative Direction that establishes the UNMIK Official Gazette¹⁶¹ (UNMIK OG) and publishes UNMIK legal acts.

In the electronic version¹⁶², UNMIK publishes, besides the promulgating UNMIK Regulation, the text of the respective Assembly law. By that, the UNMIK OG is the major comprehensive database that contains all the applicable primary legislation that was enacted after 1999. The separate publication of the law and the promulgating act has been a rather unfortunate solution, since it allows more situations of doubt on the applicable law in Kosovo than necessary. However, at least it publishes both documents in the same place.

a. The Official Gazette of the PISG of Kosovo

To address the issue of uniform and consistent publication of official documents of the PISG the Law on the Official Gazette was passed and promulgated¹⁶³ and in April 2006 the Government established the Office for Management and Administration of the Official Gazette of the PISG (OMAOG).

In the promulgating UNMIK Regulation of the law, the SRSG clearly pointed out that the “final official text of the laws adopted by the Assembly of Kosovo *as promulgated* by the Special Representative of the Secretary-General” shall be published. The OSCE believes that this leaves little room for interpretation on the content to be published in the Gazette. The changes from the promulgating act must be incorporated before the act gets published.

On 1 June 2006, the OMAOG published the first edition of the Official Gazette of the PISG of Kosovo in five languages in a hard copy version and since then one edition is published every month. Initially, the OMAOG avoided the issue of incorporation of the changes of the promulgating act by only publishing laws that were promulgated without changes. However, the OSCE learned that the Head of the OMAOG recently gained the right and the obligation to change the laws accordingly for publication.¹⁶⁴ It is the office’s responsibility that the sole authentic version of the respective normative act gets published.

¹⁶⁰ Article 5.2 of UNMIK Regulation 1999/1, as amended by Regulations 1999/25 and 2000/54.

¹⁶¹ Administrative Direction 2000/16 implementing UNMIK Regulation 1999/1, as amended by Regulations 1999/25 and 2000/54, on the Authority of the Interim Administration in Kosovo.

¹⁶² <http://www.unmikonline.org/regulations/unmikgazette/index.htm>.

¹⁶³ UNMIK Regulation 2005/25 on the Law on the Official Gazette (Law No. 2004/47).

¹⁶⁴ This information was provided by the Head of the Office of Legal Support Services in the Office of the Prime Minister. Before it was mostly argued that the ownership of the document (Assembly of Kosovo or a Ministry) would forbid the OMAOG to incorporate changes.

Closely connected to the sole authentic version is also the date of entry into force, which is decided in the promulgating act. If there is no other provision, then the date of the promulgating act is the date of entry into force. The Official Gazette of the PISG of Kosovo until now consequently ignores the date of promulgation and prints the date when the law passed the Assembly of Kosovo. This is not only wrong but also misleading. The OMAOG needs to change this practice and follow the relevant applicable provisions.

The Official Gazette of the PISG of Kosovo was not established to only publish primary legislation. According to Article 2 of the Law on the Official Gazette, the following documents are envisaged to be published as well: the final official text of laws adopted by the AoK as promulgated by the SRSG; resolutions adopted by the AoK; secondary and other legislation issued by the Government and Ministries; and agreements of international character. According to the information available to the OSCE, only few ministries have provided copies of their Administrative Instructions to the OMAOG for publication in the Official Gazette. However, in the Fifth Volume of the Gazette, two Administrative Instructions issued by the MEST were published.

The largest problem regarding the Official Gazette of the PISG of Kosovo is the lack of a long term strategic plan as required by Article 5.3 (a) of the Law. It seems that the OMAOG is rather arbitrarily publishing normative acts every month without following a coherent system. How will the vast number of normative acts already passed be published in a consistent manner so that professionals are able to make proper reference to the original acts? How will future acts be published in a systematic way?

The OSCE is concerned about the lack of a strategy. The obligation to publish normative acts is not fulfilled when acts are simply put on paper, even with a wrong date of entry into force. An Official Gazette should be the highest reliable source of the applicable law. It needs to be a consistent and systematic tool.

b. Official Website

The Law on the Official Gazette establishes in Article 2.3 an obligation to publish all the normative acts in electronic version one month after the publication in hardcopy. The OMAOG established a website comprising a one-to-one copy of the printed version of the Official Gazette in five languages as a PDF-file on the web.¹⁶⁵ It could be argued that the PISG is thus formally fulfilling the obligation determined by the law.

However, the lack of a coherent strategy to publish all normative acts in a way that would make the text of the law more accessible is even more obvious in the electronic version. How would anybody be able to find a specific law if various volumes of the Official Gazette contain an arbitrary set of laws from various years? This problem can probably only be solved by a comprehensive index covering all years that needs to be updated regularly. Further, a proper search function enabling to find individual laws by name or by number would have a remarkable advantage for professional staff working in the legal field, especially in view of access to secondary legislation that is often difficult to obtain although formally applicable.

¹⁶⁵ See <http://www.ks-gov.net/gazetazyrtare>.

In this regard, the OMAOG could seek advice from some of the ministries, a considerable number of which already publish their administrative instructions on their respective websites. However, although all of the ministries have now established a general presence on the internet, the quality of their websites is quite different. Some of them ensure easy access in three languages to all the necessary information as well as to secondary legislation, which is often difficult to find otherwise.¹⁶⁶ Many websites, however, contain too little or no information and do not provide copies of administrative instructions, some only publish versions in Albanian language.¹⁶⁷

It is unclear why differences between ministries is so extensive since apparently enough expertise to establish and maintain websites does exist in the civil service of Kosovo. A better co-operation between the various ministries would be recommended and could be achieved by way of a Government initiative also including the Official Gazette of the PISG of Kosovo.

D. Note on *vacatio legis*

The situation noted in the publication section above reflects a related problem that exists in Kosovo – namely, a lack of *vacatio legis* in published legal acts. The principle of *vacatio legis* requires there to be a certain delay between the enactment of a law and its entrance into force. This delay gives the public and those institutions applying the law the chance to receive a copy of the law and adjust as well as prepare for the new legal situation. Today, in Kosovo, neither the Assembly of Kosovo nor UNMIK require *vacatio legis* when legal acts are passed and promulgated.

The current situation began in 1999, with the enactment of the first UNMIK Regulation, 1999/1.¹⁶⁸ In this regulation it is stated that UNMIK regulations shall be approved and signed by the Special Representative of the Secretary General and they shall enter into force upon the date specified therein.¹⁶⁹ This Regulation does not create a specific requirement of publication. Later, in 2000, Administrative Direction 2000/16¹⁷⁰ was promulgated, establishing the UNMIK Official Gazette. This legal act also did not require publication prior to entry into force. Section 4.1 explicitly stated “the validity of UNMIK regulations, administrative directions or other official UNMIK information or documents is not affected by their inclusion in, or omission from, the official gazette.”

The current Law on the Official Gazette of the PISG of Kosovo requires that certain legal acts must be published and defines responsibilities over such publication. Again, this law does not set publication of legal acts as a pre-condition for entering into force. Here, however, it must be noted that, with respect to Assembly laws, it is only the SRSG who can dictate that a law enters into force after publication, since the

¹⁶⁶ MEM, MPS, MTC and MAFRD. They could be used as a role model for the Official Gazette.

¹⁶⁷ One website even requires registration which rather seems incomprehensible since the access should be as easy as possible for everyone. Others contain arbitrary sets of administrative instructions in different languages.

¹⁶⁸ On the Authority of the Interim Administration in Kosovo, as amended, promulgated on 25 July 1999.

¹⁶⁹ See Section 5.1.

¹⁷⁰ Implementing UNMIK Regulation 1999/1, as amended, on the Authority of the Interim Administration in Kosovo.

SRSB must promulgate the laws. The matter cannot yet be solved independently by the PISB.

One of the reasons for the lack of *vacatio legis* in 1999 could have been the emergency situation, and the fact that it might have been physically difficult to publish and distribute legal acts. However, the emergency situation is now long gone, and the applicable laws in Kosovo still do not require *vacatio legis*.

This is not the first time that this issue has been raised to the public's attention. For example, the Parliamentary Assembly of the Council of Europe has recognised the importance of this principle and recommended UNMIK to allow for an appropriate *vacatio legis* following the promulgation of all legal instruments in its Resolution 1417¹⁷¹. The Ombudsman Institution in Kosovo (OIK) has also stressed this issue in several yearly reports. In 2006, the OIK has again noted that the failure of laws to provide *vacatio legis* slows down the implementation of new laws since appropriate preparations cannot be made beforehand: "[...] The effects of this can be seen in the majority of all laws or regulations passed, which are regularly implemented months or even years after entering into force."¹⁷²

The OSCE would recommend that Kosovo be brought up to European Union standards with respect to the *vacatio legis* principle. The matter can only be resolved through introduction of this principle by law. The handover of the UNMIK Official Gazette to local ownership next year and the merging of the two gazettes would be the appropriate time to address this situation once and for all.

E. Drafting requirements: procedural, formal and substantive

Most of the formal and substantial requirements for drafting primary and secondary legislation are contained in the Rules of Procedure of the Government of Kosovo¹⁷³ from 2005, and the Administrative Instruction on Procedures for Drafting, Reviewing and Approving Draft Acts¹⁷⁴ from 2006. Recently, a working group has been established to prepare a new amended version of the Rules of Procedure, but this has yet to be finalised.

The applicable Rules of Procedure regulate certain conduct of the Government, such as the process of drafting and approving legal acts, and the form that such acts must take. The Rules not only lay down specific parameters and conditions in order to streamline the drafting process, but also introduce a central system to co-ordinate the various drafting inputs. According to interviews conducted by the OSCE, it is clear that ministries' officials are well aware of the Government's Rules and they appear to be working to internalise them.

The Rules set forth elaborate *procedural* requirements for the preparation of documents, including draft legal acts. For example, the Rules specify the types of docu-

¹⁷¹ Council of Europe Parliamentary Assembly Resolution 1417, Protection of Human Rights in Kosovo, adopted on 25 January 2005.

¹⁷² Ombudsman Institution in Kosovo, 6th Annual Report 2005–2006 (addressed to the Assembly of Kosovo), p. 14.

¹⁷³ Government Regulation 1/2005, 18 July 2005.

¹⁷⁴ Government Administrative Instruction 02/2006, 16 March 2006.

ments the government may review and approve, how working groups are established, and the procedure according to which documents must be prepared. The Rules charge the Office of Legal Support Service (OLSS) within the OPM with responsibility of co-ordinating the process. They also establish rigid timelines for consideration and approval of documents. The OSCE has not been able to determine conclusively how well such timelines are followed.

A specific sub-chapter of the Rules governs the *form and substance* of draft laws and other draft normative and sub-normative acts.¹⁷⁵ Here is set forth a list of technical and substantive criteria. For example, the draft must comply with applicable international standards and the existing legal framework; it must be brought into conformity with the relevant mandatory provisions of the *acquis communautaire*¹⁷⁶; it must avoid the use of overly general, vague or ambiguous provisions; and, it must be available in the three official languages. The Rules require that when a draft is presented to the Government, certain certificates and statements must be attached to ensure that they have been prepared in compliance with such substantive and procedural rules.

Interestingly, the Rules limit the use of foreign model legislation to (a) legislation of an EU member country, preferably Germany, Austria or Slovenia, and (b) widely used model legislation prepared by an international organisation such as the UN Commission on International Trade Law (UNCITRAL). Limiting model legislation as such is a rather unique way to address what some have identified as a lack of harmony in the law applicable in Kosovo since the 1999 conflict. Namely, since 1999, an array of different legislative drafting styles can be seen in UNMIK regulations and administrative directions, as well as in some PISG legislation. Such legal acts often reflect the legal background of international drafters. While foreign model laws are helpful tools for the drafter, the reliance on diverse models over the course of several years has put a strain on legal clarity and consistency. To address this, the Rules actually require that external experts and consultants submit their *curriculum vitae* to the Head of the OLSS along with a written statement agreeing to conform to the Rules. While this is an interesting approach, the OSCE questions the extent to which such requirements are really enforced.

In 2006, a new Administrative Instruction was issued by the Government to further define the rules and procedures for the preparation, review and approval of draft acts. For instance, this instruction determines who is eligible to initiate draft acts, what documents must accompany draft acts, how working groups should function, and how certain offices such as the Agency for European Integration Process (AEIP)¹⁷⁷ fit in to the procedure. The Instruction, though well intended, seems to add another layer of complexity onto an already demanding set of Government Rules.

In addition to the new Instruction, the OLSS is currently preparing a legislative drafting manual with the assistance of external donors such as the European Agency of

¹⁷⁵ Id. IV.2.

¹⁷⁶ The term *acquis communautaire* is used to refer to the total body of European Union law accumulated so far and which is binding on the EU Member States. It includes *inter alia* primary and secondary legislation, judgments of the European Court of Justice and the Court of First Instance, decisions taken by EU organs as well as joint actions and common positions adopted by the Council of Ministers.

¹⁷⁷ Former Office for European Integration Process.

Reconstruction (EAR) and the United Nations Development Programme (UNDP). According to the Director of the OLSS, the manual will consist of two parts: a more conceptual first part and a rather technical second part. In the OSCE's view, such a manual could serve as a useful tool, as long as it clearly fits into the overall picture presented by the Government Rules and Administrative Instruction and does not further complicate matters. One suggestion would be to prepare the manual as a series of checklists to be attached as an Annex to the Government Rules.

The OSCE would encourage the Government to harmonise the above-referenced Government Rules and Administrative Instruction. At the present stage, the OSCE is concerned that the Administrative Instruction does not serve as a clear supplement to the Rules of Procedure. In certain places it repeats the Rules, in other places it complicates or even contradicts the Rules. It could be the case that the Rules of Procedure should be understood to apply only to acts considered by the Government, while the Administrative Instruction applies primarily to the work of ministries. But if this is the case, it is not properly articulated. Overall, in most cases, it is difficult to determine what value the AI adds to the Rules.

As an example, Article 18 of the Administrative Instruction defines the responsibilities of the OLSS in reviewing draft acts for Governmental approval. It states that the OLSS co-ordinates and is responsible for reviewing all draft acts that the executive branch submits to the Assembly. It then lists other responsibilities of the OLSS, such as instructing initiators of draft acts concerning drafting standards, co-ordinating and monitoring the process as well as the quality of the legislation.

At the same time, the Rules of Procedure also define the responsibilities of the OLSS in the approval process, though expressed differently. For example, Article 26 states that the OLSS should be informed of all activity involving the drafting of normative or sub-normative acts.¹⁷⁸ Its co-ordinating role is established in the same article: "the Head of OLSS shall have the authority and responsibility for coordinating all such drafting activity." Article 29 gives a more authoritarian role to the OLSS than the AI by stating that "before submitting a draft law or legal act to the OLSS, the proposer shall first take diligent efforts to ensure that it complies with the [drafting] requirements", and that the OLSS "shall not accept and shall return to the proposer any draft law or legal act that [...] has obvious deficiencies."

Without elaborating on such discrepancies, it follows from this example that the Administrative Instruction should be better harmonised with the Rules of Procedure.

Moreover, as it stands, the Rules of Procedure do not draw adequate distinctions between normative and sub-normative acts. It is unclear whether these rules only apply to those draft acts where the Government must make a decision (including draft laws and some AIs), or whether they also apply to Administrative Instructions signed by line ministers. On the other hand, while it is clear that the Administrative Instruction does clearly govern draft acts initiated by *either* the ministries or the Government, the issue of how this should work in relation to the Rules needs further clarification.

¹⁷⁸ Section (1) states: "Everyone engaged in the drafting of [...] a draft law or other normative or sub-normative legal act shall regularly (at least twice per month) provide head of the OLSS with a written notice fully description all such activity..."

Since the Rules of Procedure are currently under review, the OSCE would encourage the working group to take this opportunity to closely examine the relationship between the Rules and the Administrative Instruction. This group should then decide whether to merge the documents, or whether the AI needs to be reworked.

The working group could also consider including additional provisions regarding the form of the administrative instructions. While the Rules of Procedure only set out some basic provisions on technical criteria for legal acts, they do not provide detailed instructions. It is noted, for example, that the naming and numbering of Administrative Instructions vary from ministry to ministry. Some of them include the acronym of the ministry in the title, while others omit this information. This can create confusion when legal acts from different ministries need to be cited in one document. The fact that all secondary legislation also needs to be published in the Official Gazette of the PISG of Kosovo could be used to introduce uniform naming and numbering applying to every Ministry and the Government.

F. Staffing, training and international support

In both previous reports, the lack of sufficient staffing was pointed out as a concern by several ministry officials. In 2006, somewhat surprisingly, there have been considerably fewer complaints about staffing of the Legal Offices.¹⁷⁹ Except in one or two cases, those interviewed appeared generally satisfied with the number of staff and their competence. This general change in perception, depending on the ministry, could reflect either an increase in the capacity of the staff, a higher number of staff (less turnover), better management within legal offices or ministries, or a combination of such factors. While some heads of legal offices have acknowledged better support from other offices and divisions within their respective ministry, other heads have noted that their legal officers are simply getting better through experience.

Staffing levels should be of special focus in the very near future in the AEIP and the Ministry of Justice. In the case of the AEIP, as Kosovo enters the European integration process, highly qualified experts in the field of EU law and approximation of legislation will be needed. It may be that the majority of these experts will be sponsored by the international donor community. As for the Ministry of Justice, this ministry will likely get more drafting responsibilities once new government rules enter into force transferring certain competence from the OLSS. Staffing levels should reflect this change in competences.

Besides the need to maintain staffing levels, the two previous reports also pointed out the obvious need for properly trained staff. The KIPA is the primary body responsible for training and continuous education of all civil servants, including legal officers. Last year it was noted that, while the KIPA did have a substantial training programme underway, there still had been no significant training either on the implementation or drafting of legislation. In its last report the OSCE recommended that the KIPA offer continuous and effective courses on drafting primary and secondary legislation and regulatory management. Ideally, this would be combined with in-service training on drafting legal acts to ensure that real progress is made.

¹⁷⁹ The newest Ministries of Justice and Interior have not been interviewed, since they do not have any implementation obligations from 2005.

In 2006 some improvements have been identified. The KIPA has prepared a training plan based on a needs assessment carried out in co-operation with ministry officials. This assessment revealed that legal officers were indeed in need of training in law drafting skills and regulatory management. Such training is normally not offered at the university level. This year, in addition to training on various substantive areas, there were some courses organised on the topics of law drafting, implementation and legal terminology.

According to the KIPA's 2006 training matrix, a ten-day training on techniques of law drafting was scheduled for February. This training included aspects of the legislative process, steps in the process of legislative drafting and techniques of legal interpretation. A six-day training was scheduled for April on implementation of legislation, including principles of good administration, and instruments of implementation. Additionally, a four-day training on legal terminology was scheduled for September, including standardisation of legal/judicial terminology, clarity of content and simplicity. Overall, this was a commendable plan by KIPA. However, in reality, only part of it was realised.

As indicated by its Team Leader, the KIPA has been facing difficulties in engaging adequate trainers to conduct the training programmes it envisions. While it is not very difficult to locate and hire experts on the various classical legal subjects on which the KIPA is offering training, there are very few (possibly no) local trainers in Kosovo who are experts in the fields of legal drafting, implementation or terminology. In these latter areas, the KIPA would prefer to locate and hire foreign experts as trainers. This is obviously costly in comparison to the KIPA's modest budget. Recently, KIPA was able to locate one trainer from Albania who was able to provide some training on legislative drafting on a voluntary basis. In this crucial phase of Kosovo's history – where so many new legal acts are being drafted – training in legislative drafting and law implementation should be made a cornerstone in strengthening the public administration.

In addition to regular training offered by or through the KIPA, there have been some study programmes in the area of legislative drafting for selected legal officers. For example, the German Gesellschaft fuer Technische Zusammenarbeit (GTZ) has sponsored certain training courses in legislation. SOFRECO¹⁸⁰, implementing an EU-funded project, has also addressed legal drafting aspects when it sponsored a training on approximation of Kosovo laws with the *acquis communautaire*.

The OSCE would encourage the sponsoring of unique training courses in Kosovo and abroad by the international donor community. This is especially the case in the field of law approximation. Such positive activities however should not distract anyone from the need for programmatic courses to be offered through the KIPA. Training courses offered outside of the KIPA structure should be seen as supplementary in nature – while they help a selected number of officials in a certain sector, they are not institutionalised for Kosovo. While donors will, and should, continue to follow their own programmes and address aims that they identify, they should, at the same time, work in conjunction with the KIPA. Without co-ordination there is a risk that various agencies will be working at cross-purposes.

¹⁸⁰ SOFRECO is a private engineering and consulting company based in France.

Besides support in the area of training, some donors provide direct support to legislative drafting within the executive branch. USAID and EAR support a variety of legal drafting projects. The relationship between ministry officials and foreign experts as well as co-operation styles are quite different. Some experts will encourage local lawyers to do the majority of the drafting and then provide comments, while other experts will insist on doing all the work themselves. (The best scenario is probably somewhere in-between.) In any event, the goal of such support should be as much on capacity building as on producing a good coherent draft. Moreover, the OSCE would remind the donor community that laws need to be harmonised with the applicable law in Kosovo, both in style and content. The urge of certain foreign experts to cut and paste laws from other countries into the Kosovo legal framework should be for the most part resisted.

G. Legislative oversight

The principle of division of powers is based on the idea that the legislative, executive and judicial powers should be independent, preventing any one person or group from gaining too much power. As one of the key elements of rule of law, this principle is enshrined in Chapter 2 of the Constitutional Framework.¹⁸¹ It allocates specific areas of government to the respective branches.

The legislative branch is primarily responsible for making the law as well as the alteration or repeal of existing law. This responsibility for lawmaking does not necessarily mean that all of the work should be conducted by the legislature, but it does have to maintain an effective oversight of the process. This responsibility for the implementation and application of the law should remain the core of the parliamentary oversight function.

The legislative branch can delegate certain legislative powers to other actors, as the executive branch or a specialised agency.¹⁸² It needs to authorise the respective body to issue a subsidiary act on a certain issue, and the respective body may only draft secondary legislation to the extent specified in the law. At the same time it always needs to be clear that delegation of legislative powers to the executive branch is an exception from the rule of division of powers.

In Kosovo, the parliamentary oversight of the work of government has been heavily on the agenda during 2006.¹⁸³ On the one hand, considerable improvement can be noted since 50 minutes of each parliamentary day are dedicated to the supervision of the government and a time dedicated to questions is part of the standard agenda of the Assembly of Kosovo.¹⁸⁴ On the other hand, there is still lack of a comprehensive oversight of the implementation of primary legislation.

Rule 53 of the Rules of Procedure of the Assembly of Kosovo addresses the issue of monitoring the implementation of laws and confers authority to the respective line

¹⁸¹ UNMIK Regulation 2001/9, promulgated on 15 May 2001.

¹⁸² It cannot delegate legislative powers to the judiciary, as this would conflict with the latter's task to interpret and apply the law.

¹⁸³ See the Assembly Support Initiative (ASI) Newsletter No. 19, October 2005 and No. 24, September 2006.

¹⁸⁴ See ASI Newsletter No. 24, September 2006, p. 9.

committees. Although the first paragraph of Rule 53 seems to establish this oversight function as a *right* of the committee, paragraph 3 confers quite detailed *obligations* on the respective committee. This includes, *inter alia*, research and control of competences as well as distinct reporting obligations. These mechanisms provide good options for a rather technical and comprehensive parliamentary oversight over the executive branch's activities regarding secondary legislation, but they are not being used to the extent possible and necessary. However, an honest research on this issue also creates the question whether the Assembly of Kosovo has the resources to apply Rule 53 in its entirety at all. Is it realistic that committees with nearly no support staff are compiling a comprehensive review on the status of implementation of each law?

The OSCE with the present report for the third time tries to present a consistent overview on the implementation activities of those actors that have been authorised by the Assembly of Kosovo to do so, as well as a follow-up on the activities assessed in the two previous reports. A considerable amount of resources have been put into this project and it can hopefully be used as a tool for all stakeholders involved in the implementation process. The OSCE has itself followed Rule 53 to a large extent, but this report will be the last one of the OSCE on Implementation of Assembly of Kosovo Laws. The Kosovo Assembly needs urgently to review Rule 53 as well as their own resources and set priorities in the area of parliamentary oversight.

H. Recommendations

- The Government of Kosovo needs to take serious steps to oversee the implementation of laws in a comprehensive manner. As a starting point, it is recommended to appoint an individual or create a unit that is solely responsible to co-ordinate the implementation of laws and could form a formalised administrative link to the AoK secretariat.
- The Assembly of Kosovo needs to review its resources in the light of Rule 53 of its Rules of Procedure, and set priorities regarding parliamentary oversight of the Government.
- The Assembly, through its Committees, should review those laws which have been passed but have remained completely unimplemented for more than one year. For the sake of legal clarity, such laws should be immediately implemented via a task force, or else be repealed.
- Officials preparing draft laws should be precise when giving authorisations for the preparation of secondary legislation. Whenever a draft law envisages that specific issues be regulated with implementing acts, the proposed law must also contain a clear authorisation for the drafting and issuance of such acts and a clear indication of the basic starting points.
- The Official Gazette of the PISG of Kosovo needs to draft a long-term strategic plan as required by the Law on the Official Gazette and to publish normative acts in line with a coherent system.

- The principle of *vacatio legis* – a certain delay between the enactment of a law and its entrance into force – should be introduced into Kosovo by law, in order to reach European standards.
- The Rules of Procedure of the Government and the Administrative Instruction on Procedures for Drafting, Reviewing and Approving Draft Acts should be merged or reworked. There is a need for a single document regulating the management of drafting as well as the technical requirements of legal acts in order to guarantee that one set of normative acts covers diverse issues in a standardised way.
- The donor community should coordinate their capacity building efforts with KIPA and be encouraged to sponsor training courses for civil servants especially in the area of legal drafting, regulatory management and the *acquis communautaire*, since KIPA often lacks sufficient resources to engage appropriate trainers.
- The donor community should continue to support the PISG in preparing draft laws, as necessary. Such assistance should not, however, stop once a law is approved by the Assembly, but should continue through the implementation stage.