



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

**Department of Human Rights, Decentralization and Communities  
Local Good Governance Section**

**Report on Legislative Activities in Kosovo  
Municipalities**

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## **Abbreviations**

AD.....	Administrative Direction
AI .....	Administrative Instruction
AKM.....	Association of Kosovo Municipalities
BoD.....	Board of Directors
CC.....	Communities Committee
CEO.....	Chief Executive Officer
HRDC .....	The Department of Human Rights, Decentralization and Communities
KIPA.....	Kosovo Institute for Public Administration
LAOD .....	Law on Access to Official Documents
LGGS .....	Local Good Governance Section
MA .....	Municipal Assembly
MC .....	Mediation Committee
MLGA.....	Ministry of Local Government Administration
MT.....	Municipal Team
NGO.....	Non-Governmental Organisation
OSCE.....	Organization for Security and Co-operation in Europe Mission in Kosovo
PFC .....	Policy and Finance Committee
PISG.....	Provisional Institutions of Self-Government
PMU.....	Pilot Municipal Unit
SRSG.....	Special Representative of the Secretary-General
UN SCR .....	United Nations Security Council Resolution
UNMIK.....	United Nations Interim Administration Mission in Kosovo

## **Executive summary**

The protection and strengthening of local government structures is recognised by all democratic states in Europe as an important aim. Good local governance is not just about providing public services, but also about preserving the liberties of local residents, creating a space for democratic participation and adhering to the principles of the rule of law. In this regard, municipalities must be diligent in preparing legislation that is human rights compliant, well drafted, and consistent with democratic standards. In addition, such legislation must also be made accessible to the public.

This report provides an overview of legislative activities carried out by Kosovo municipalities and pilot municipal units (PMU) since the arrival of the United Nations Interim Administrative Mission in Kosovo (UNMIK) in 1999. It is the result of a recent survey undertaken by the Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE), Department of Human Rights, Decentralization and Communities (HRDC), through its Local Good Governance Section (LGGGS).

Following the introduction in Section A, the report's Section B presents the applicable legal framework and gives an overview of the legislative cycle from initiating via drafting, involvement of committees and the public to the adoption of new legislation. It also addresses the question of how compliance with central level laws is ensured as well as the issue of supervision of municipal legislative activities by the central level. The subsequent Section C examines some rather technical aspects of legislative activities such as translation, publication, dissemination as well as the existence of tools for easy accessibility such as a legislative index and a database. Section D analyses the municipalities' strategies for legislative activities. The report concludes with a list of recommendations.

The data has been collected by the OSCE Municipal Teams (MTs) throughout Kosovo. It shows that all municipalities generally act within the competences granted to them and comply with central level laws when issuing legislation. The general assessment of the legislative cycle indicates that most municipalities have a clear understanding of what steps need to be undertaken to pass legislation. Many clearly distinguish between and make appropriate use of the two different types of municipal legal acts: the regulation, to regulate in an abstract and general way a multitude of cases; and the decision, to address an individual and concrete case.

However, it is unfortunate that some municipalities excessively use the instrument of a decision to regulate a multitude of matters. By that they bypass – intentionally or accidentally – the otherwise mandatory consultation of committees and the public. To address this issue, the OSCE recommends that the Provisional Institutions of Self-Government (PISG) ensure that the future law on local self-government makes a clear and explicit distinction between the two forms of municipal acts. In the interim, clear guidance should be given to the municipalities. The data furthermore reveals shortcomings in several municipalities as regards the functioning of the Communities Committee (CC). Municipalities should ensure that their mandatory committees are established and fully functioning.

The report also analyses the requirements for publication of municipal legislation and making it available to the public. In this regard the assessment concludes that accessibility to municipal legislation is often guaranteed, though in differing ways. However, access is often limited to a single language version only, since translation into all official languages is regularly lacking. The report also addresses some of the shortcomings of the municipalities with regard to publishing and dissemination. Serious efforts should be undertaken to ensure that municipal legislation reaches its audience. The OSCE advocates *inter alia* for the regular publishing of a newsletter with newly adopted legislation. Other findings address the need for having an up-to-date legislative index and a functioning legislative database as well as a strategy for legislative activities.

## **A. Introduction**

The OSCE Mission in Kosovo (OSCE) carries out activities to further support and promote the principles of good governance in the municipalities across Kosovo. Within the OSCE, the Local Good Governance Section (LGGS) is responsible to proactively monitor the municipalities for compliance with the applicable legal framework in Kosovo in light of the European Charter of Local Self-Government,<sup>1</sup> and to issue reports with recommendations, as appropriate. At the same time, the LGGS seeks to ensure that the overall legal framework supporting local good governance in Kosovo is in place and compliant with relevant norms and standards.

The aim of the present report is to explore the present situation with a view to identifying possible deficiencies and areas for improvement, in order to help create better, more effective and more accountable governance at the local level. The report examines such issues as: the existence and types of municipally prepared normative acts; practical procedures surrounding the issuance of municipal legislation; actors involved in legislative drafting (including participation of the public); co-operation with other municipalities and the central level; as well as issues related to the training and responsibilities of drafters. The report looks at the existence and functioning of legislation databases, publication of municipal acts, access to official documents, and translation of municipal legislation. The report also assesses strategies of the municipalities to issue additional legislation in the near future.

The basis for this report is the data collected and information provided by the OSCE Municipal Teams (MTs). They assessed the situation in all 30 Kosovo municipalities and the three pilot municipal units (Mamuše/Mamushë/Mamuša, Junik and Hani i Elezit/Đeneral Janković). They have shared their experience from their day-to-day work and conducted interviews with municipal officials and other stakeholders as necessary in order to complete a questionnaire provided. The LGGS analysed closely the results from the field in order to understand aspects of the legislative process in the municipalities but also to identify structural problems in local governance. The findings have been compiled in the present report.

The report is oriented towards the general public, the PISG, UNMIK, the donor community, as well as international and non-governmental organisations. It is intended to serve as a tool in order to assist all actors engaged in local governance and local governance reform.

## **B. Municipal legislative competences and activities**

### *1. Legal framework*

#### *a) Competence*

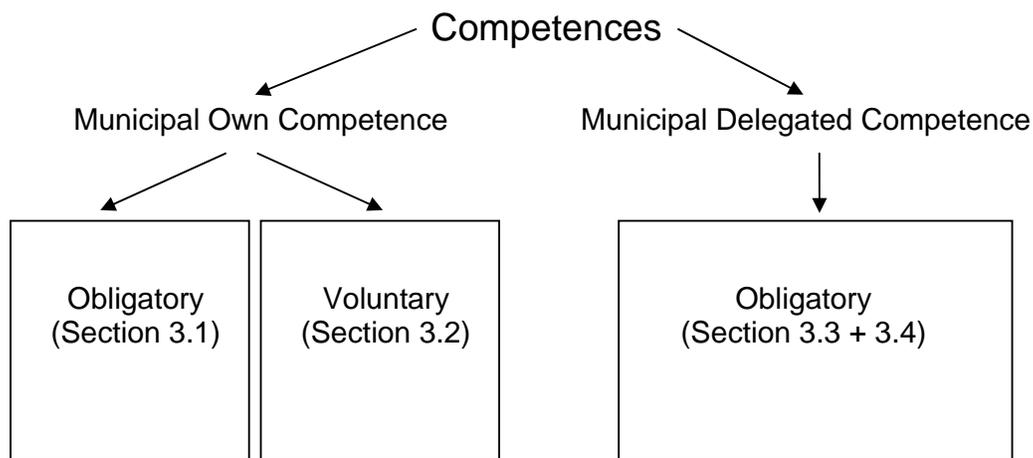
Local public affairs shall be dealt with as closely as possible to the inhabitants by the lowest level of government that is able to provide public services efficiently. This principle – the principle of subsidiarity – while not explicitly being mentioned in the applicable law in Kosovo, has shaped the European Charter on Local Self-

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<sup>1</sup> European Charter of Local Self Government, European Treaty Series-No. 122, Council of Europe, dated 15 October 1985.

Government, and thus the applicable legal framework in Kosovo, to a certain degree.<sup>2</sup> UNMIK Regulation 2000/45, On Self-Government of Municipalities in Kosovo (Regulation 2000/45),<sup>3</sup> entrusts to municipalities the competence to issue normative acts at the municipal level in relation to matters within the municipalities' area of competence.<sup>4</sup> According to the Regulation 2000/45, the municipalities are obliged to regulate a variety of activities ranging *inter alia* from social services, housing and primary health care to urban planning and public services, including fire and emergency services.<sup>5</sup> In addition to these activities, municipalities may also take action in relation to other matters of concern to the municipality, such as tourism, culture, sports, youth activities, economic and civic promotion.<sup>6</sup> The Regulation furthermore expands municipal legislative competences by envisaging that municipalities shall also be responsible for implementing central legislation at the local level. These competences include, among others, cadastre records, civil registries, business registration and such additional responsibilities within the central PISG's competency that have explicitly been delegated to the municipalities.<sup>7</sup>

**Picture 1: Competences**



Summarised, one can distinguish between municipal “own” competences (that is obligatory and voluntary competences as provided by Sections 3.1 and 3.2) and municipal “delegated” competences (as foreseen by Sections 3.3 and 3.4, which are always of obligatory nature). In the first group of competences, municipalities are either obliged to regulate or have full discretionary power to regulate issues of common interest at the local level (within the parameters of the central level laws that rule a specific field). The second group of competences are based on delegated powers from central level authorities to the municipalities to implement central legislation.

<sup>2</sup> The European Charter on Local Self-Government has influenced UNMIK Regulation 2000/45, On Self-Government of Municipalities in Kosovo, which explicitly refers to the Charter in its preamble.

<sup>3</sup> Promulgated and entered into force on 11 August 2000.

<sup>4</sup> Section 4.1 of Regulation 2000/45.

<sup>5</sup> See Section 3.1 a) to q) of Regulation 2000/45 for the complete list of competences.

<sup>6</sup> Ibid, Section 3.2.

<sup>7</sup> Ibid, Sections 3.3 and 3.4.

While Regulation 2000/45 does not explicitly refer to “own” and “delegated” competences when it defines the responsibilities and powers of municipalities, one implementing act, the Ministry of Local Government Administration (MLGA) Administrative Instruction (AI) 2005/7 for Implementation of Responsibilities of the MLGA in Relation to Monitoring and Supervision of Municipalities,<sup>8</sup> defines both terms. According to this AI, own competences are defined as “competences allocated to the municipality by means of legal or conventional provisions.”<sup>9</sup> The municipalities “are responsible and have full administrative authority, service, investing and regulatory authority for the realisation of these competences according to rules determined by law.”<sup>10</sup> Delegated competences on the other hand are defined as “functions of the central government or other central level institutions delegated to municipalities according to law, which shall be executed temporarily or permanently by municipalities as determined by government and other central institutions.”<sup>11</sup> Similar provisions will likely be included in a future law on local self-government.

Finally, Regulation 2000/45 defines the Municipal Assembly (MA), the highest representative body of the municipality exercising and performing all powers and duties of the municipality,<sup>12</sup> as the competent body to issue municipal legislation.<sup>13</sup>

*b) Types and normative content of municipal legal acts*

The naming of all municipal legislation should allow every person to easily identify municipal level legislation as opposed to central level legislation. Section 4.1 of Regulation 2000/45 states that “[m]unicipalities may make local *municipal regulations* relating to matters within the competence of the municipality”<sup>14</sup> (emphasis added). The same terminology is used in Section 11.3 (e). In lack of further specifications it can be concluded that municipal normative acts of a general nature shall be called “municipal regulations.”<sup>15</sup> Naturally, not every activity of a municipality, not every decision of the MA pertaining to matters which fall under the responsibilities and powers of municipalities needs to be regulated by way of a municipal regulation. Simple decisions, issues of a more technical nature, such as appointments or financial allocations, as well as other singular decisions<sup>16</sup> would follow the normal voting procedure in the MA and as a result lead to “municipal decisions.”

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<sup>8</sup> The MLGA AI 2005/7 entered into force in December 2005. See also B. 3. below, for a discussion on the AI and its legal basis.

<sup>9</sup> Please note that there is a difference in the English and Albanian versions of the AI. In Albanian, the own competences are defined as: “competences allocated to the municipality by constitutional or legal provisions.”

<sup>10</sup> Section 2, the MLGA AI 2005/7.

<sup>11</sup> Ibid.

<sup>12</sup> See Sections 4.1 and 10.1 of Regulation 2000/45.

<sup>13</sup> *Argumentum a contrario* following from Section 11.3 (e) of Regulation 2000/45, according to which the adoption, amendment or repeal of local municipal regulations, as one the MA’s responsibility, cannot be delegated.

<sup>14</sup> Section 4.1 of Regulation 2000/45.

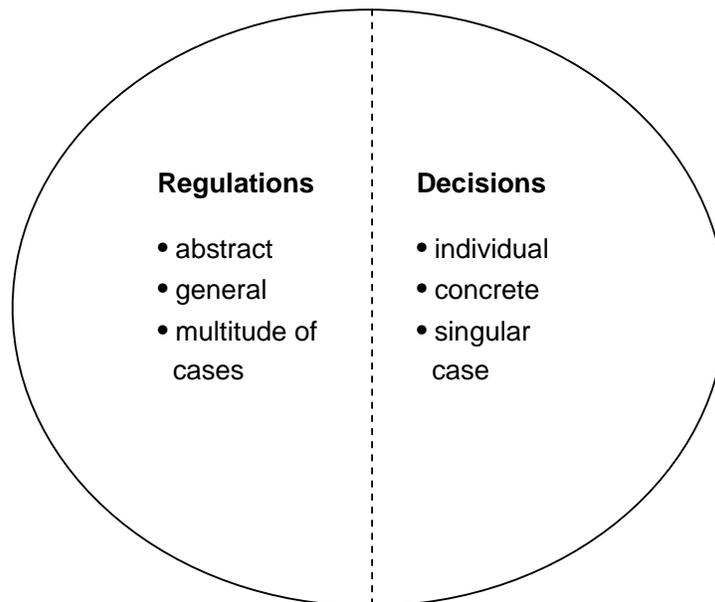
<sup>15</sup> One clearly should distinguish between the act of adopting such regulation which – in a technical sense – is a “decision” of the MA (see Section 11.3 first half sentence) and the naming of such legislation, which follows the provisions in Section 11.3 e) and Section 4.1 of Regulation 2000/45.

<sup>16</sup> See Section 11.3 a) to d) and f) to m) of UNMIK Regulation 2000/45 for a non-exhaustive list of decisions to be taken by the MA.

Hence, a clear distinction between a municipal “regulation” (Albanian: *rregullore*, Serbian: *pravilnik, uredba*) and a municipal “decision” (Albanian: *vendim*, Serbian: *odluka*) can be made. A regulation is a normative act regulating in an abstract and general way a multitude of cases. A decision, on the other hand, is a (normative) act regulating an individual and concrete case or issue.

**Picture 2: Municipal legal acts**

## Municipal legal acts

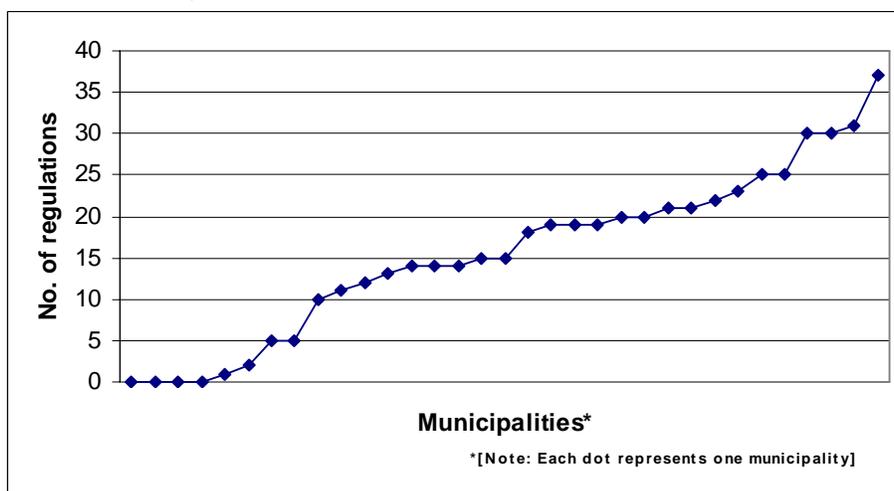


Unsurprisingly, in fulfilling their responsibilities to regulate issues within their competency, municipalities have indeed only issued normative acts named “regulations” and “decisions.”<sup>17</sup> MA members and municipal officials in most municipalities appear to have a rather firm understanding of the meaning and differences between both acts. Consequently, regulations are often adopted if issues require a standard solution in the form of a regulatory framework, while if a particular issue needs an *ad hoc* solution, it is regularly addressed by a decision.

However, while in theory the understanding seems to be clear in most municipalities, for some municipalities in reality it appears rather difficult to distinguish which issues are exactly to be regulated by which instrument. The chart below aims at illustrating the number of regulations issued by municipalities.

<sup>17</sup> Only one municipality differentiated between its normative legal acts by using the terms “municipal instruction” and “administrative direction” in addition to “regulation” (Pejë/Peć).

**Picture 3: Number of regulations issued per municipality (in ascending order)**



According to the research, a few municipalities had serious difficulties in distinguishing between municipal regulations and decisions. While the sheer numbers do not say much, it is striking that one municipality has issued 22 decisions and not a single regulation,<sup>18</sup> another one has issued 201 decisions and only one regulation,<sup>19</sup> and a third one has issued 104 decisions and 10 regulations.<sup>20</sup> If one looks into the subject matters which have been addressed with decisions, one can easily identify issues that are necessarily of a general abstract nature and should have been addressed by a regulation.<sup>21</sup>

On average, the Kosovo municipalities have issued 15 regulations each. There are also eight municipalities that have issued between 20-25 regulations,<sup>22</sup> while 37 regulations is the highest number.<sup>23</sup> Issues regulated by municipal legislation mainly cover the subject matters in the field of delegated (and thus necessarily obligatory) competences as well as municipal obligatory competencies.<sup>24</sup>

<sup>18</sup> Gillogoc/Glogovac.

<sup>19</sup> In Prizren municipality, since its constitution in November 2002, the MA has issued only one Regulation: the Regulation on Graveyards, Maintenance and Burials.

<sup>20</sup> Viti/Vitina.

<sup>21</sup> Such as spatial planning, road transportation, fire protection, controlling and licensing of agricultural and cattle products, protection of natural resources, etc.

<sup>22</sup> Gjilan/Gnjilane, Kaçanik/Kaçanik, Kamenicë/Kamenica, Suharekë/Suva Reka, Pejë/Peć, Klinë/Klina, Istog/Istok and Vushtrri/Vučitrn.

<sup>23</sup> Gjakovë/Đakovica (issued 37 regulations); other municipalities with a high number of issued regulations are Dragash/Dragaš (30), Mitrovicë/Mitrovica (31), and Skenderaj/Srbica (30).

<sup>24</sup> Such as municipal taxes and tariffs, economic activities (including licensing of businesses), urban planning, land allotment, use of construction land and of agricultural land, traffic and parking, public transport, road construction, fire protection, water supply and public utilities, graveyards, cattle protection and transport, exploitation of mineral resources, school rules in primary and secondary schools.

Most MAs have been quite active in issuing municipal legislation in their first years upon formation while their legislative activity slightly decreased in 2004, 2005, and most obviously in 2006.

There are a variety of reasons for the usage of an incorrect legal instrument. For a small percentage it might be a general lack of knowledge, but it seems that a more widespread problem is the absence of clear rules which would give the drafters guidance as to when to use which instrument. Arguably, the potentially lengthy requirements for issuing a municipal regulation (public participation, etc.)<sup>25</sup> might add to the tendency of MAs to use a decision rather than a regulation.

In summary, the legal framework for municipal competences and activities in Kosovo is rather clear. This leads to the positive assessment that none of the municipalities has exceeded its powers as defined in Section 3 of Regulation 2000/45 while issuing municipal legislation. It can be observed that most activities were related to obligatory competences (both delegated competences and own obligatory competences). However, it is only to a much lesser extent, that the municipalities have used their discretionary power in the field of own voluntary competences to regulate issues.<sup>26</sup>

On a critical note, the distinction between decisions and regulations is sometimes questionable. In this regard, clearer guidance to municipalities as to when to use which instrument is needed. If the normative act is to regulate in an abstract and general way a multitude of cases, there should be no doubt that the procedures for issuing regulations should be followed. While it is faster and more simple to issue a decision, avoidance of the proper procedures has a negative impact on public participation and automatically by-passes certain municipal committees. The impression that municipalities by-pass the statutory obligations for passing of municipal legislation in bad faith should be avoided.

## *2. Legislative procedure*

Drafting of quality legislation – whether on the local or central level – is a complex process that requires time. First of all, someone in the municipality must have the idea that a specific subject matter requires legal regulation. This will trigger the drafting, which goes hand in hand with research, consultation of experts, the public, and so forth. In other words, drafting consists of several steps not all of which can be carried out simultaneously. More importantly, most legislators establish procedures which should be followed during the drafting process. Some of the procedures stipulate periods of delay, for example for public participation purposes.

### *a) Initiating and drafting*

While Regulation 2000/45 states that municipalities may issue municipal regulations relating to matters within their competence, the law is silent as to who can initiate such legislation. The notion of initiating legislation can be distinguished from the broader idea of just “flagging” an issue that needs to be regulated by law. The latter concept can include virtually anyone who has sufficient knowledge on a matter, such as local residents, civil society institutions, Non-Governmental Organizations

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<sup>25</sup> See B. 2. c) below for details.

<sup>26</sup> Section 3.2 of Regulation 2000/45. These areas include mainly: public participation in decision-making, protection of cultural and religious monuments, and the allocation of scholarships.

(NGOs), etc. Each of these can be quite active in bringing issues to the table and having the elected bodies and the administration deal with them. The notion of initiating legislation determines who can formally introduce draft legislation at the municipal assembly. The step of formally initiating legislation is not mentioned anywhere in Regulation 2000/45. Also, other laws and municipal statutes<sup>27</sup> are silent in this regard.

Municipalities are not part of the central PISG as defined by the Constitutional Framework<sup>28</sup> since Section 2.1 of Regulation 2000/45 defines the municipality as the basic territorial unit of local self-government, which shall exercise all powers not expressly reserved to the central authority. One could nevertheless draw a comparison between the initiation of legislation at the municipal and at the central level. At the central level, the Constitutional Framework gives the Assembly of Kosovo (AoK) the responsibility to adopt laws and resolutions in the areas of responsibilities of the PISG.<sup>29</sup> The Rules of Procedure of the AoK state that a draft law may be introduced for discussion by: a) the government; b) a committee; c) a member of the Assembly supported by five members that have signed the draft law; d) a parliamentary group; or e) the AoK, through its decision directed to the Government to draft a law for the AoK debate.<sup>30</sup> In practice, most laws are initiated by the government.

By analogy, the same could apply to the municipal level. It is mainly the municipal executive branch that initiates municipal legislation. Individual directors of the municipal departments or the Board of Directors (BoD) as a whole often make the initial proposal. Sometimes the initial proposal is also done upon request of the Chief Executive Officer (CEO) or the CEO himself initiates it, following a request originating from a specific department. In cases where the issue to be regulated is cross-cutting, thus involving several departments, the CEO or the BoD often establish a joint working group of representatives of the respective departments to compile the initial draft.<sup>31</sup> In addition, MA members can also propose legislation, but such initiatives are rare, and identified in only six municipalities.<sup>32</sup> Cases where civil society, local residents or the business community raise an issue to the attention of the public, thus prompting the initiation of legislation by either MA members or the appropriate directorate are sporadic and have been reported only from six municipalities.<sup>33</sup>

Once initiated, the drafting process starts. Generally, there is little formal guidance concerning drafting of municipal normative acts. There is no precise definition of the

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<sup>27</sup> UNMIK Administrative Direction (AD) 2000/28 Implementing UNMIK Regulation 2000/45 prescribes procedures for the adoption of the municipal statute and rules of procedure. The AD determines in Section 1.1 that Municipalities should ensure compliance with models issued by UNMIK. Based on the AD, UNMIK has drafted a Model Municipal Statute and a Model Rules of Procedure. All references to the Model Municipal Statute rather than to individual Municipal Statutes in this report are therefore only made to simplify the reference.

<sup>28</sup> Chapters 1.5 and 11, UNMIK Regulation 2001/9.

<sup>29</sup> Ibid, see Chapter 9.1.26.

<sup>30</sup> See Chapter 10, Rule 33 of the Rules of Procedure of the Assembly of Kosovo.

<sup>31</sup> Lipjan/Lipljan, Viti/Vitina, Pejë/Peć, and Zvečan/Zveçan.

<sup>32</sup> Podujevë/Podujevo, Shtime/Štimlje, Kamenicë/Kamenica, Viti/Vitina, Klinë/Klina and Zvečan/Zveçan.

<sup>33</sup> Podujevë/Podujevo, Shtime/Štimlje, Kamenicë/Kamenica, Viti/Vitina, Klinë/Klina and Zvečan/Zveçan.

legal drafting requirements, nor is there a determination of the responsible drafting authority. Persons in charge of drafting of municipal legislation are either the legal officers of the municipal legal office, or since such an office is not established in every municipality,<sup>34</sup> legal officers from within the municipal directorates.<sup>35</sup> In other municipalities the lead is with the directors themselves or the CEO, while in some municipalities it is mainly the Directorate of General Administration that is actively involved in the drafting. Only in four municipalities have municipal officials confirmed having received training on legislative drafting.<sup>36</sup> This training was provided through the Kosovo Institute for Public Administration (KIPA). A few municipal civil servants have received some training by the KIPA, on specific laws, but not on legal drafting techniques. In addition, the MLGA has also provided some general training on public administration for municipal officials.

In certain municipalities officials expressed reluctance and insecurity regarding their legislative drafting abilities. While some municipalities openly admitted having insufficient legal drafting capacity, five municipalities only highlighted the need for training on legislative drafting.<sup>37</sup> Notably, all three pilot municipal units pointed out the need for capacity building in the area of legislative drafting.

The lack of legal experts specialised in drafting was emphasised as a source of confusion while interpreting laws and during the decision-making process. Therefore, some municipalities proposed the establishment of a professional legal team to draft municipal legislation. One municipality has proposed that the MLGA could provide model municipal regulations in connection with the central level legislation that could serve as guidance for implementation. In light of this rather mixed picture, and although many municipal officials have expressed a high level of confidence with their drafting responsibilities, training on legislative drafting seems to be needed in most municipalities Kosovo-wide.

In this context, it is worth mentioning that this issue has also been taken up by the Association of Kosovo Municipalities (AKM).<sup>38</sup> The AKM has recently established a Collegium of Legal Officers.<sup>39</sup> This Collegium has issued the recommendation that the position of legal officer or even the establishment of legal offices (depending on the size of the municipality) should be envisaged by all Kosovo municipalities.<sup>40</sup>

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<sup>34</sup> For example, out of eight municipalities in the Gjilan/Gnjilane region, Legal Offices have been so far established only in: Ferizaj/Uroševac, Štrpce/Shtërpçë and Gjilan/Gnjilane with the recruitment of qualified staff being a major challenge. Also Legal Offices do not exist in Kaçanik/Kaçanik, Kamenicë/Kamenica, Hani i Elezit/Đeneral Janković, Mitrovicë/Mitrovica and Vushtri/Vučitrm.

<sup>35</sup> Only one municipality reported not consulting at all the legal officer in the drafting process.

<sup>36</sup> Lipjan/Lipljan, Podujevë/Podujevo, Gjilan/Gnjilane and Štrpce/Shtërpçë. The following municipalities stated the lack of training as a larger problem: Hani i Elezit/Đeneral Janković PMU, Fushë Kosovë/Kosovo Polje, Kamenicë/Kamenica, Novobërdë/Novo Brdo and Štrpce/Shtërpçë.

<sup>37</sup> Hani i Elezit/Đeneral Janković, Mamuşë/Mamushë/Mamuša and Junik PMUs, Rahovec/Orahovac and Ferizaj/ Uroševac municipalities,

<sup>38</sup> See B. 4. below for more details on the AKM.

<sup>39</sup> The Collegium was formally established on 6 February 2007.

<sup>40</sup> The AKM proposes to have a mandatory municipal legal office included in the future law on local self-government, with a clear description of their duties and competencies.

*b) Involvement of municipal committees*

Regulation 2000/45 obliges the MA to form a Policy and Finance Committee (PFC), a Communities Committee (CC) and a Mediation Committee (MC), as standing committees.<sup>41</sup> The PFC is *inter alia* in charge of the municipal strategic planning.<sup>42</sup> The role of the CC is to ensure equal enjoyment and promotion of the rights and interests of the communities living within the municipality, taking particularly into account the needs of communities which are not in the majority in the municipality.<sup>43</sup> If the CC considers that an action of the MA has violated or may violate the rights of a community, it shall refer the matter to the MC. Upon examination,<sup>44</sup> the MC submits a report with recommendations to the MA, based on which the MA decides on the appropriate course of action.<sup>45</sup>

The involvement of the CC in the process of issuing municipal legislation is envisaged by UNMIK Administrative Instruction (AI) 2003/002 On Procedural Guidance for the Work of Municipal Communities Committees<sup>46</sup> which states that “[a]ny proposed municipal regulation shall be submitted to the Committee for its opinion and recommendations.”<sup>47</sup> The CC shall make recommendations to the MA within two weeks of receipt of the proposed legislation.

As far as the practical involvement of the committees is concerned, one has to clearly distinguish between the mentioned committees. In all Kosovo municipalities, the PFC is involved in the legislative drafting process. As a rule, a prepared draft, being reviewed by the BoD, is later submitted to the PFC for review. However, when it comes to the involvement of the CC, the situation is different. In the vast majority of municipalities the CC is not at all, or very rarely, involved in the review process. Only six municipalities reported on regular involvement of the CC in the review process.<sup>48</sup> In 10 municipalities, the CC is involved only occasionally, in cases when legislation obviously affects the interests of the minority communities. These cases include fair share financing, the Municipal Community Office budget, or issues related to language compliance.

The municipalities have stated several reasons for their failure to adequately consult the CC. First, not all municipalities have even fulfilled the legal requirement to establish the CC as a standing committee.<sup>49</sup> In three municipalities the CC is not established at all, while in 14 municipalities the CC is to the OSCE estimation, although formally established, either not operational, poorly functioning, or not

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<sup>41</sup> Section 21.1 and 21.2 of Regulation 2000/45. In addition, it may establish other committees if it deems necessary.

<sup>42</sup> Ibid, Section 22.1.

<sup>43</sup> Ibid, Sections 23.4 and 23.10.

<sup>44</sup> Ibid, Sections 23.6 and 23.7.

<sup>45</sup> Ibid, Section 23.8.

<sup>46</sup> Issued on 15 September 2003. Please note that, while usually subsidiary acts issued by UNMIK are called “Administrative Directions”, UNMIK is authorised to issue legislative acts in the form of regulations and subsidiary instruments, see section 1.1 (a) of UNMIK Regulation 1999/24, as amended. The AI 2003/002, has indeed been drafted and issued by UNMIK Pillar II (DCA).

<sup>47</sup> UNMIK AI 2003/002, Section 5.1.1.

<sup>48</sup> Hani i Elezit/Đeneral Janković and Mamuşe/Mamushë/Mamuša PMUs, Suharekë/Suva Reka, Pejë/Peć, Istog/Istok and Leposavić/Leposaviq.

<sup>49</sup> Envisaged with Section 23.1 of Regulation 2000/45. Additionally, Article 40 of the Model Municipal Statute envisages that the Communities Committee (CC) shall be appointed by the MA at its first meeting in each fiscal year.

functioning at full capacity.<sup>50</sup> In many municipalities, arguably a lack of understanding of the municipal authorities about the mandate and the role of the CC leads to a failure to submit legislation for review.<sup>51</sup> On the other hand, among the reasons identified, there is an apparent lack of commitment and skills of the CC members themselves. Many seem not to be dedicated enough, possibly because some members themselves are not clear as to their role. In one municipality, the municipal authorities started consulting the CC to review proposed legislation only after capacity building activities by the OSCE had been carried out with the municipal authorities.<sup>52</sup>

It can be concluded that further capacity building activities of MA members in general and of the CC members in particular should be seriously considered. Efforts should also be undertaken to increase the awareness of municipal officials regarding the responsibilities of the CC and the MC and their importance for the municipal life. Focus should be given to the CC, even though the MC is currently not at all relevant for the municipal legislative process. The activity of the latter however depends on the functioning of the former.

### *c) Public participation*

Regulation 2000/45 foresees obligatory public consultation prior to the adoption of municipal regulations. This obligation is also reflected in the municipal statutes.<sup>53</sup> According to identical provisions in the statutes throughout Kosovo, the MA shall – as a minimum – use the following types of public consultation and participation:

- Publicity and information campaigns to promote awareness;
- Contact with focus groups and interested parties;
- Public advertisement of the proposal, inviting representation and allowing at least 14 days for their receipt; and,
- Impact assessment studies.

In addition to these, the Model Municipal Statute envisages other possible types of public consultation and participation, such as surveys concerning policy implementation, public meetings, public hearings, public inquiries, advisory committees, referenda, etc.<sup>54</sup>

The picture with regard to public participation in practice is rather mixed. Three municipalities stated that public consultation is not a part of the legislative process. Fifteen others expressed that public participation, although envisaged, takes place only to a limited extent in exceptional cases, or linked only to some particular issues

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<sup>50</sup> Obiliq/Obilić, Glogovc/Glogovac and Kačanik/Kaçanik did not establish the CC, while the CC is either not functioning or not at all involved in the legislative process in the following municipalities: Junik PMU, Lipjan/Lipljan, Prishtinë/Priština, Shtime/Štimlje, Fushë Kosovë/Kosovo Polje, Ferizaj/Uroševac, Novobërdë/Novo Brdo, Štrpce/Shtërpçë, Viti/Vitina, Malishevë/Mališevo, Rahovec/Orahovac, Klinë/Klina, Deçan/Deçane, and Mitrovica/Mitrovicë.

<sup>51</sup> It has been reported, that in some municipalities the CC is involved only upon its own request.

<sup>52</sup> Gjakovë/Đakovica.

<sup>53</sup> Section 4.1 of UNMIK Regulation 2000/45. The Model Municipal Statute contains a similar provision.

<sup>54</sup> Article 8 of the Model Municipal Statute.

such as urban planning, budget or taxes.<sup>55</sup> On the other hand, almost half of the municipalities (15) report to have regular public discussions or public debates prior to the adoption of municipal legislation. However, the answers provided by the municipalities are not always convincing as per actual public involvement. It seems that the public consultation, although foreseen, actually presents just a sort of ornament within the municipal legislative process and very seldom takes place in reality.

On a positive note, Kamenicë/Kamenica and Pejë/Peć are two examples of good public consultation practices. In the first municipality, the Municipal Information Office jointly with the MA Professional Services advertises in both official languages (Albanian and Serbian) on billboards and through local radio stations, announcements for public discussions on draft legislation and invites interested residents to provide their contributions. In addition, draft regulations are available at the municipal reception office. This public discussion process lasts 14 working days.

Another good example of public participation comes from the second municipality where the MA reviews the draft and prior to final approval disseminates it for public consultation. For this purpose, the draft regulation is usually announced both in Albanian and Serbian language through local TV, and sometimes in the local newspapers.<sup>56</sup> Moreover, the draft regulation is placed for public review in the municipal building. All interested parties are invited to submit written comments within 14 days. Comments are often taken into account, i.e. are included in the draft which is then sent to the MA for final approval. At the end of the legislative process, the municipal legal officer prepares a report describing all stages of the process and all comments made by the different actors.

In certain cases, public participation is linked to specific issues only. One municipality<sup>57</sup> reported having organised three public discussions to date: during the process of issuing a Regulation on Managing Graveyards; while amending the Regulation on Tax Regulation for Residential Buildings, Businesses, and Industrial Zones; and when issuing a Decision on Cultural Heritage Sites. In these cases, the public consultation process had started with a notice issued by the Municipal Information Office inviting residents to give their comments on the respective regulation. The notice was placed for 15 days, during which the municipal residents had the chance to raise their concerns and needs. This was then followed by a public debate.

As far as contact with focus groups and interested parties is concerned, only three municipalities reported that they had external actors, such as NGOs or public utility companies involved to provide input on the legislative drafting.<sup>58</sup>

On a more critical note, none of the municipalities reported on organising information campaigns to promote awareness or undertaking impact assessment studies although

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<sup>55</sup> In one case the municipality, Fushë Kosovë/Kosovo Polje, started with the public discussion only following OSCE MT recommendation to respect the MLGA Administrative Instruction 2006/03 on Municipal Transparency.

<sup>56</sup> The announcement indicates to whom the comments should be addressed.

<sup>57</sup> Suharekë/Suva Reka.

<sup>58</sup> Kamenicë/Kamenica, Štrpce/Shtërpçë and Vushtrri/Vučitrn.

these are envisaged as practices to achieve better public participation. One can conclude that the stringent requirements envisaged in Regulation 2000/45 for issuing a municipal regulation are not often fully complied with. To avoid such requirements, municipalities might feel tempted to use the instrument of a decision rather than a regulation.<sup>59</sup> On the other hand, it is somewhat surprising that despite the law being quite explicit, so many deficiencies can be observed. The issue of public participation should urgently be addressed by the municipalities.

#### *d) Timeline*

To ensure a good quality end-product, i.e. clear legislation compliant with the already existing legal framework, none of the steps in the process should be rushed. On the other hand, the lawmaker should not unnecessarily delay the procedure. If the need for legislation is identified, it is also imperative to have it drafted and eventually adopted within a reasonable amount of time. Yet, there are no set rules as to how long the procedure should take. Neither a speedily adopted legal act nor a long drawn out procedure as such will guarantee quality.

According to the OSCE's research, the average duration from initiating to adopting municipal legislation is two months. Finalisation of the first draft mainly depends on the complexity of the issue to be regulated since complex issues require a certain amount of research. Once a first draft is finalised, it is examined by the BoD and forwarded to the Policy and Finance Committee (PFC) for review and approval. Usually the PFC first provides comments on the draft, and then either sends it back to the drafter for inclusion, or includes the changes itself. The BoD and the PFC both need usually two weeks for this.

The duration of the next steps depends mainly on factors such as special legal requirements as well as public participation. As far as involvement of the public is concerned, it can be stated that the shorter the legislative process, the less time is allowed for public consultation. For example, issuing legislation related to urban planning takes up to six months.<sup>60</sup> In this case the law prescribes obligatory public consultations of at least 60 days.<sup>61</sup> In other cases, public consultation lasts a minimum of two weeks.<sup>62</sup> Once the public consultation process is finalised, proposed amendments are included by either the legal office, the director of general administration, or the CEO's office prior to submission to the MA.<sup>63</sup> The draft

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<sup>59</sup> See the discussion of this matter at B. 1. b), above.

<sup>60</sup> In Prizren, issuing of legislation related to urban planning took approximately 6 months due to the public consultation. In Gjakovë/Đakovica the Regulation on Public Transport and Taxi Services took five months due to the long public consultation process, involving several interest groups.

<sup>61</sup> The Law on Spatial Planning, promulgated by UNMIK Regulation 2003/30 of 10 September 2003, envisages that each municipality shall be responsible for preparing a municipal multi-sector development plan covering its entire territory. Urban development plans and urban regulatory plans shall be prepared by all municipalities. Prior to finalisation, the draft municipal development plan, or other spatial plans, shall be made available to the public for review and comment. For the municipal development plan the period for review and comment shall be at least sixty days, see Articles 13.1, 13.7, 13.8, 14, 15 and 19.

<sup>62</sup> In some municipalities, public debate takes, as a rule, at least one month (Podujevë/Podujevo, Ferizaj/Uroševac) and sometimes more than two months (either because of legal requirements as in the case of urban planning or because of the issue being of particular interest for the public, such as public transport).

<sup>63</sup> While in one municipality (Rahovec/Orahovac) this is done by the MA Support Office.

legislation is then sent to the MA for debate and/or final approval. Naturally, sometimes the MA does not immediately approve the draft but requests the inclusion of amendments. In such case, the amended version is sent back to the MA for final approval.

The work of the municipalities could be supported by clear and specific procedures which are to be followed when preparing legislation. Ideally, the future law on local self-government would contain provisions with more precise guidance. Alternatively, a new model municipal statute should be more precise on the preparation procedures.

### 3. *Compliance with central level laws and supervision*

Regulation 2000/45 determines that “no local municipal regulation shall be valid if it is in conflict with the applicable law.”<sup>64</sup> It is the Special Representative of the Secretary General (SRSG) who has the authority to “set aside any decision of a municipality, which he considers to be in conflict with [UNSCR 1244] or the applicable law [...]”<sup>65</sup> According to the Constitutional Framework,<sup>66</sup> and more specifically Annex XIV of UNMIK Regulation 2001/19 as amended,<sup>67</sup> the MLGA shall *inter alia* “oversee [...] compliance of municipalities with responsibilities and powers delegated to the municipalities [...]” With the promulgation of UNMIK Regulation 2007/18<sup>68</sup> the MLGA recently assumed further the competence to “assess compliance with the applicable legislation of any decision or action of a general nature taken by municipal authorities in the exercise of its own competencies [...] and, through the Prime Minister, make recommendation for the suspension or setting aside by the SRSG of the municipal decision or action where non-compliance has been identified.”

The MLGA AI 2005/7<sup>69</sup> determines that the MLGA is responsible to supervise the municipalities, by means of supervision of legislation and compliance of municipal acts with delegated competences.<sup>70</sup> The AI also establishes the right of the MLGA to supervise municipalities in performing their “own” competences (which shall be limited to the supervision of legality).<sup>71</sup> While the OSCE was not entirely convinced that this provision was fully in conformity with UNMIK Regulation 2001/19 as amended (forming the legal basis for the MLGA’s work) the latest amendment – UNMIK Regulation 2007/18 – clarified the issue. The OSCE is of the opinion that the MLGA AI 2005/7 should be interpreted in light of its legal basis. In other words, the notion “supervision” in MLGA AI 2005/7 should be interpreted in such a way that it complies with UNMIK Regulation 2007/18. Consequently, the MLGA can only “assess compliance” of municipalities as defined in UNMIK Regulation 2007/18.

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<sup>64</sup> Section 4.2 of Regulation 2000/45.

<sup>65</sup> Ibid, Section 47.2.

<sup>66</sup> Paragraph 5.2 (i) of UNMIK Regulation 2001/9 On a Constitutional Framework, as amended.

<sup>67</sup> Paragraph (iii) (i) of Annex XIV of UNMIK Regulation 2005/15 Amending UNMIK Regulation No. 2001/19 On the Executive Branch of the PISG.

<sup>68</sup> See Section 1 of UNMIK Regulation 2007/18 Amending UNMIK Regulation 2001/19 On the Executive Branch of the PISG.

<sup>69</sup> See footnote 8, above.

<sup>70</sup> Sections 2 and 5.1 of the MLGA AI 2005/07. And, in case of delegation by another central government organ, it is that organ which shall conduct the supervision of delegated municipal competences, Section 5.2, Ibid.

<sup>71</sup> Ibid, Section 6.1.

Each municipality is obliged to deliver all normative acts to the MLGA within seven days upon promulgation.<sup>72</sup> The MLGA<sup>73</sup> has the right to request revocation of a municipal act if the municipality has violated the law, or the act is not in compliance with delegated competences. The municipality is obliged to renew the act.<sup>74</sup> If the municipality fails to revoke the act, the MLGA itself can repeal or replace the municipal act.<sup>75</sup>

The assessment has shown that almost all Kosovo municipalities are aware of the need for compliance of municipal normative acts with the applicable central level laws. Applicable central level legislation is always used as the legal framework guiding the municipal law. Exceptions are the three northern Kosovo municipalities that have not co-operated with the PISG structures since June 2006, and which, even before that time, took into consideration central legislation of both Serbia proper and Kosovo.<sup>76</sup>

The primary responsibility for compliance with central level laws rests with the drafters. Indeed, a regular part of their work is the comparison with central legislation. This is done by the individual drafter, the CEO or the relevant departments involved in the drafting. Furthermore, central level laws are normally consulted during the review process within the BoD and the PFC, or in the MA prior to their approval. A positive example has been reported from one municipality where there is a legal officer appointed particularly to ensure that municipal and central legislation are in accordance.<sup>77</sup> Sometimes guidance is provided by the relevant Ministry through AIs to the municipal departments. Occasionally municipalities also consult the MLGA during the drafting process and send draft legislation for review to the MLGA,<sup>78</sup> or the MLGA monitoring team is present at the MA sessions.<sup>79</sup>

However, the co-operation with the central level has not always been assessed as satisfactory. The main concern frequently raised is the lack of guidance. For example, clearer guidance is expected regarding the implementation of new central level legislation.<sup>80</sup> Sometimes central level AIs are disseminated with delay and occasionally municipalities are not supplied with central level legislation thus causing legal uncertainty.<sup>81</sup> The Ministry of Public Services (MPS) and the Ministry of Agriculture, Forests and Rural Development (MAFRD) have been mentioned by one

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<sup>72</sup> Ibid, Section 13.

<sup>73</sup> If the supervision is not allocated to another ministry, see Section 5.1.

<sup>74</sup> Ibid, Section 9.

<sup>75</sup> Ibid, Sections 10 and 11. Please note, that this report does not evaluate the proportionality of actions of the controlling authority in exercising its prerogatives. However, it should be noted that the European Charter on Local Self-Government in Article 8.3 prescribes that the administrative supervision of local authorities “shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which is indented to protect.”

<sup>76</sup> Zubin Potok, Zvečan/Zveçan and Leposavić/Leposaviq.

<sup>77</sup> Gjilan/Gnjilane.

<sup>78</sup> This is foreseen in Section 14.1 of MLGA AI 2005/07.

<sup>79</sup> Hani i Elezit/Đeneral Janković PMU, Obiliq/Obilić, Lipljan/Lipljan, Pejë/Peć and Vushtrri/Vučitrn.

<sup>80</sup> Hani i Elezit/Đeneral Janković PMU, Pejë/Peć, Lipjan/Lipljan, Podujevë/Podujevo, Fushë Kosovë/Kosovo Polje and Štrpce/Shtërpçë.

<sup>81</sup> Pristinë/Priština, Suharekë/Suva Reka, Klinë/Klina and Deçan/Deçane.

or more municipalities as organs which do not give clear guidance when delegating competences. Another matter of concern is the need to harmonise existing municipal legislation with newly adopted central level laws. Many municipalities stated that following the adoption of new central level laws, they initiate changes to existing municipal legislation. At the same time, many municipalities also expressed uncertainty as to who should initiate such harmonisation, and how should the technical process work. In this regard, the basic legal framework, namely Regulation 2000/45, is considered not to be sufficient.

In summary, the current legal framework needs adjustments which will probably come with the new law on local self-government. Attention should be given to providing clear guidance regarding the process of initiating legislation, harmonising legislation and competences. While the MLGA AI 2005/7 can be interpreted in light of UNMIK Regulation 2001/19 as amended, it is recommended to review and amend it so as to avoid any ambiguity.

#### *4. Inter-municipal co-operation*

Boundaries are created by human beings, and not all matters can necessarily be contained within such boundaries. Some subjects are of common interest to people within two or more municipalities. This is addressed by the European Charter of Local Self-Government and Section 3.6 of Regulation 2000/45. According to the latter provision: “municipalities may make arrangements between themselves for the carrying out of any of their responsibilities and powers in co-operation with one another.”<sup>82</sup> Article 10 of the European Charter of Local Self-Government envisages the entitlement of local authorities to co-operate and form consortia on a functional basis, or to belong to an association for the protection and promotion of their common interest.

When it comes to legislation, it can be assessed that two thirds of the municipalities do co-operate with other municipalities.<sup>83</sup> Such inter-municipal co-operation is sometimes achieved through a consultation process initiated by the central government on legislation procedures in areas requiring concrete actions by several or all municipalities.<sup>84</sup> Co-operation on legislative drafting is most common between neighbouring municipalities, as they often have similar municipal profiles. Sometimes advice is sought from larger municipalities within the region, as they are considered to be more experienced. Consultation amongst municipalities is mostly informal and sporadic, although six municipalities have reported on the regular use of model legislation and best practices from other municipalities.<sup>85</sup> In addition, the co-operation depends to a large extent on the issue to be regulated. Some municipalities have for

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<sup>82</sup> The only exception are those matters that the MA cannot delegate according to Section 11. 3: *inter alia* the approval of the budget; the adoption, amendment or repeal of local municipal regulations; the election of the municipal president; naming and renaming of roads etc.

<sup>83</sup> Ten municipalities have stated that no co-operation in drafting legislation with other municipalities takes place. These are: Ferizaj/Uroševac, Gjilan/Gnjilane, Viti/Vitina, Prizren, Rahovec/Orahovac, Istog/Istok, Deçan/Deçane, Mitrovica/Mitrovicë, Skenderaj/Srbica and Leposaviç/Leposaviq.

<sup>84</sup> Mitrovicë/Mitrovica.

<sup>85</sup> Prishtinë/Priština, Fushë Kosovë/Kosovo Polje, Gjakovë/Đakovica, Dragash/Dragaš, Malishevë/Mališevo, and Suharekë/Suva Reka.

example reported cases of successful co-operation regarding establishing special zones for inter-urban traffic or agreements on areas of operation for taxi drivers.

A more institutionalised means for co-operation between municipalities is the AKM, which has been established in 2001.<sup>86</sup> The mandate of the AKM includes *inter alia* to improve the legislative structure for self-government, to promote decentralisation of governance through practical support and co-participation, to provide legal and organisational assistance to municipalities, and to promote active co-operation and communication between municipalities.<sup>87</sup> The AKM has recently established the Collegium of Legal Officers<sup>88</sup> wherein each municipality is represented. The Collegium meets on a regular basis and seeks to co-ordinate municipal activities related to central level legislation, being at the same time a forum for exchanging experiences. It also aims to support municipalities in drafting legislation. However, not all municipalities have reported to have regular contacts with the AKM. Consistent contacts and consultations are reported only by six Kosovo municipalities.<sup>89</sup> In the context of legal drafting this is unfortunate and municipalities should consider using the AKM more frequently.

Two northern municipalities have reported on inter-municipal co-operation among municipalities which are members of a union of Serbian municipalities and settlements in Kosovo. This co-operation results in decisions that are presented to the public by the union and are unanimously approved by participating municipalities.

The Comprehensive Proposal for Kosovo Status Settlement also acknowledges the need for inter-municipal co-operation between Kosovo municipalities. In its Annex III “Decentralisation,” co-operations between municipalities in Kosovo are foreseen in Article 9, paragraphs 1 and 2. Also, co-operation of Kosovo municipalities with municipalities and institutions in the Republic of Serbia are foreseen in Article 10.<sup>90</sup> Regardless of the status proposal, inter-municipal co-operation in the framework of the AKM should be further encouraged. It is in the interest of the municipalities as such co-operation allows them to speak with one voice and to lobby for their positions vis-à-vis the central institutions.

### **C. Publication of municipal legislation and public accessibility**

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. A public authority, here a municipality, cannot demand compliance with a normative act which it has not announced, as this would violate any basic sense of justice.

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<sup>86</sup> The AKM is open to all municipalities in Kosovo. Currently most municipalities are members with the exception of Leposavić/Leposaviq, Zvečan/Zveçan, Zubin Potok and Štrpce/Shtërpçë. The three pilot municipal units have an observer status.

<sup>87</sup> See more on: [www.komunat-ks.net/](http://www.komunat-ks.net/).

<sup>88</sup> The Collegium of Legal Officers has been established in February 2007.

<sup>89</sup> Junik PMU, Podujevë/Podujevo, Shtime/Štimlje, Malishevë/Mališevo, Klinë/Klina, and Skenderaj/Srbica.

<sup>90</sup> See [www.unosek.org/unosek/en/statusproposal.html](http://www.unosek.org/unosek/en/statusproposal.html) for “The Comprehensive Proposal for Kosovo Status Settlement.”

Closely connected to publication is public access to the respective normative acts. From a formal point of view, the municipality is obliged to ensure the technical possibility for an individual to receive a copy of the law. This can be ensured by various mechanisms, such as public posting, compilation of texts at public places, and the internet.

From a substantive point of view, one must also have a law in one's own language, since to receive a copy of a law in a language one does not speak is of limited effect. In view of this, publication is closely connected to the rules and regulations regarding official languages in Kosovo as well as in the respective municipality.

### *1. Translation into official languages*

Regulation 2000/45 provides that all official documents of a municipality shall be printed in both Albanian and Serbian language, while in municipalities where communities live whose language is neither of the two, the official documents shall be made available in the official language of that community as well.<sup>91</sup> An integral part of this provision is the obvious preceding step of translation.

The Law on Languages,<sup>92</sup> in force since 20 October 2006, is quite specific on this matter. It contains explicit provisions on the use of languages also in municipal institutions, including provisions referring to the translation of municipal legislation. The Law clearly stipulates that municipal regulations and subsidiary acts adopted by the municipal institutions shall be printed and published in the official languages of the municipality.<sup>93</sup>

The Model Municipal Statute contains no additional provisions on the issue of translation of official documents. In Part V, "languages," it refers to Section 9 of Regulation 2000/45, but only contains a specific provision to identify the languages which, besides Albanian and Serbian, are official languages in a specific municipality. It also authorises the Communities Committee to oversee the use of language in the conduct of municipal affairs.<sup>94</sup>

The municipal statutes were adopted by the municipalities based on their competence deriving from UNMIK Regulation 2000/45.<sup>95</sup> The statutes exist only within the existing legal framework of Kosovo. Article 2 of the Model Municipal Statute states that "[w]henever a conflict arises between the law and the Municipal Statute, the law shall prevail." In order to determine the legal requirements regarding the use of languages, municipalities have thus to consult the applicable (central) law. Until the Law on Languages entered into force on 20 October 2006, the relevant central law was UNMIK Regulation 2000/45. Now, the Law on Languages as *lex specialis* and *lex posterior* is applicable.

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<sup>91</sup> Section 9.3 of UNMIK Regulation 2000/45 of 11 August 2000.

<sup>92</sup> Promulgated by UNMIK Regulation 2006/51 of 20 October 2006.

<sup>93</sup> Article 7 of the Law on Languages, UNMIK Regulation 2006/51.

<sup>94</sup> Model Municipal Statute, Part V *Languages*.

<sup>95</sup> Section 11.1 of UNMIK Regulation 2000/45.

Based on the research conducted, it appears that a significant number of municipalities do not comply with the applicable law regarding the translation of municipal legislation. More precisely, 17 have stated that municipal legislation is not always translated into the official languages. Out of this number, in some cases none of the municipal regulations have been translated, while in other cases only a few legal acts have been translated (often only the Municipal Statute and the Rules of Procedure). Further, it has been reported that in some municipalities only the regulations that are of obvious concern to and addressed to minority communities have been translated. A common reason stated for non-translation has been the lack of human resources and translation posts in the staffing table.

Out of those municipalities that are in compliance with the language policy, it is worth mentioning two positive examples. In one municipality, the municipal legislation is translated and published in four official languages – Albanian, Serbian, Bosnian and Turkish.<sup>96</sup> In another municipality, with the support of UNMIK staff, the municipal regulations have been translated into English language as well.<sup>97</sup>

When it comes to translation of municipal legislation, there is much room for improvement. Unlike on the central level, huge efforts need to be undertaken to ensure compliance with the official language policies. Municipalities should focus on two areas: to ensure that already adopted legislation is made available in all official languages, and to set up a functioning system ensuring that new legislation is translated in time.

## *2. Publication and dissemination*

The legal framework on local self-governance does not contain an explicit provision regarding the dissemination of municipal legislation. However, as said before, there is the obligation of municipalities to print and publish all official documents, including regulations and subsidiary acts adopted by municipal institutions, in the official languages of the respective municipality.<sup>98</sup>

The issue of publication should not be separated from dissemination. The underlying reason for making the publication of laws an obligation is that the addressee of the laws should know the norms in order to comply with them. In other words, unless legal acts are announced and disseminated to those concerned and the wider public, authorities cannot expect compliance. The respective legislative bodies should establish a sustainable and efficient unified system for publication and dissemination of legal acts. In a broader sense, UNMIK Regulation 2001/19 On the Executive Branch of the PISG, as amended<sup>99</sup> addresses the issue of dissemination, by stating that the MLGA is obliged to assist the municipalities in making their activities transparent to the public.<sup>100</sup> The publication and dissemination of municipal legislation could be seen as one way to make the activities of the municipalities transparent as well as

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<sup>96</sup> Prizren.

<sup>97</sup> Skenderaj/Srbica.

<sup>98</sup> See Regulation 2000/45 and Article 7.6 of the Law on Languages promulgated by UNMIK Regulation 2006/51.

<sup>99</sup> UNMIK Regulation 2005/15 Amending UNMIK Regulation on 2001/19 on Executive Branch of PISG.

<sup>100</sup> Ibid, Annex XIV (iii) (f).

accessible to the wider public. In this regard, it can be mentioned that the MLGA has issued AI 2006/03 on Transparency in Municipalities, in order to increase public participation in decision-making.

Twenty municipalities have confirmed that municipal legislation is being published, through various means. The majority of municipalities mention the official web page as a place where the documents are posted. Other means include a municipal official gazette or bulletin, and compilations of local legislation.<sup>101</sup> Outdoor posting and radio broadcasting are also stated as means for publication. One municipality regularly prints a brochure or leaflet on newly adopted regulations. However, this is not a sustained municipal strategy but rather an initiative of the respective directorate.<sup>102</sup> Three municipalities regularly publish their regulations and decisions in compilations<sup>103</sup> or in a monthly municipal booklet.<sup>104</sup>

Even though most municipalities have mentioned their official web page as a place where they publish their legislation, research done by the OSCE<sup>105</sup> reveals a more mediocre picture. Often the respective web pages are incomplete in terms of the numbers of regulations posted. Often the regulations are not posted in all official languages and sometimes the website is completely non-operational.<sup>106</sup> In eight municipalities a certain number of municipal regulations can be found on the websites. This number, however, varies from a minimum of one legal act<sup>107</sup> to a maximum of twelve municipal regulations plus the Municipal Statute. One municipality has also posted municipal decisions on their website.<sup>108</sup> Additionally of concern is the fact that, with the exception of a few municipalities,<sup>109</sup> these regulations can only be found in one language.

### *3. Access to municipal legislation*

Closely connected to publication and dissemination is the notion of public accessibility. To ensure transparency of municipal activities the municipalities need to ensure that the public can access normative acts and inform themselves about the applicable law even if the acts are not published. This obligation includes the establishment of the appropriate mechanisms and the necessary infrastructure. Section 7 of Regulation 2000/45 contains the general principle that any person can inspect any document held by a municipality. Furthermore, implementing this provision, the Model Municipal Statute determines the procedure by which residents can access

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<sup>101</sup> The OSCE through its Mitrovicë/Mitrovica MT funded the publishing of a compilation which include the municipal regulations from 2000-2006.

<sup>102</sup> Rahovec/Orahovac.

<sup>103</sup> Mitrovicë/Mitrovica and Zvečan/Zvečan.

<sup>104</sup> Prizren. The Booklet has been published since 2000.

<sup>105</sup> The web pages were last visited on 14 August 2007.

<sup>106</sup> Zubin Potok, Vushtrri/Vučitrn and Zvečan/Zvečan.

<sup>107</sup> Dragash/Dragaš.

<sup>108</sup> Suharekë/Suva Reka municipality has posted 14 decisions and one regulation issued within 2005-2006; and 2 regulations, 10 decisions, as well as 10 draft decisions and 2 declarations for the 2007 legislative activity on their official web page.

<sup>109</sup> In Podujevë/Podujevo for example, the municipal regulations including the Municipal Statute, are posted in Albanian and Serbian language.

municipal documents.<sup>110</sup> The Statute determines the ways documents can be inspected as well as fees which may be charged.

In general, all municipalities guarantee access to municipal legislation not only in their statutes but also in practice. However, the ways by which residents can obtain the municipal legislation vary in different municipalities. Differences exist regarding the form of access and the authorities in charge of granting access. In different municipalities, a variety of – in total 10 different – municipal offices are responsible to provide the access.<sup>111</sup> In the majority of municipalities, an applicant has at first to submit a written request. Only in two municipalities residents can simply go and get the regulation.<sup>112</sup> Furthermore, in two other municipalities residents are under certain conditions charged with a fee for receiving a copy of a regulation.<sup>113</sup>

From the point of view of a local resident, another way of accessing this information is to base the request on the Law on Access to Official Documents (LAOD).<sup>114</sup> The LAOD grants the individual right to access principally all information held by the municipalities. It defines procedural details such as processing of applications, time frame, and the ways official documents can be accessed.<sup>115</sup>

One should clearly distinguish these two different concepts: on the one hand the obligation to guarantee access and on the other hand the individual's right to access. However, the legislative discretion of the municipality to establish the appropriate mechanisms to fulfil their obligation is, when it comes to limitations such as fees etc, limited by the provisions governing the individual's right.

Only two municipalities<sup>116</sup> referred to the LAOD when explaining the access procedure. The vast majority of municipalities are apparently not aware of the implications the LAOD has on their obligation to guarantee access. Some of the systems set up by the municipalities seem to comply only partially with the LAOD.<sup>117</sup> The main reason for this deficit is that the LAOD was not yet in force when the municipal statutes were first drafted and adopted, though the municipalities could have amended their statutes. Besides the differing offices in charge, the provision on fees in two municipalities gives reason for concern. Depending on how the provisions are applied in practice they may, to a certain degree, be in contradiction with the LAOD.<sup>118</sup>

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<sup>110</sup> Model Municipal Statute, Chapter 6 *Information*.

<sup>111</sup> Municipal Legal Office; Municipal Secretariat; CEOs Office; Deputy CEOs Office; Municipal Information Office; General Administration Office; Archive Office; Citizens Service Centre; Archive Office and Reception Office.

<sup>112</sup> Pejë/Peć and Hani Elezit/Đeneral Janković PMU.

<sup>113</sup> Fushë Kosovë/Kosovo Polje and Štrpce/Shtërpçë. In the first case applicants are charged a fixed fee of one Euro per copy of a regulation, while in the second case, copies are free if the document is not too long; however, if the requested document is large, 0.25 Euro per page is the charge.

<sup>114</sup> Promulgated by UNMIK Regulation 2003/32 of 6 November 2003.

<sup>115</sup> Ibid, Sections 5, 7 and 9.

<sup>116</sup> Klinë/Klina and Junik PMU.

<sup>117</sup> Article 15 of Ministry of Public Services Administrative Instruction 3/2006 implementing the LAOD envisages, for example, the establishment of an archive office which shall also deal with requests for access to official documents. However, only a few municipalities have actually tasked the archive offices to deal with these kind of requests.

<sup>118</sup> See footnote 113, depending on the length of the document, a fee of one Euro per regulation may well be in line with the LAOD, however if the document is short, it could contradict the LAOD

While access to legislation is by and large guaranteed Kosovo wide, the current practise shows minor deficiencies in several municipalities as far as the application of the applicable law concerning access to legislation is concerned.

#### *4. Index and database*

In general terms, an index represents a detailed list, usually arranged alphabetically, which contains relevant information on certain categories of documents. Ideally the index is not simply a list of information on relevant documents, but rather an organised map of its content. In case of a municipal legislation index, the list should at least contain the title of the regulation or decision, the date of approval and a reference number, in order to find the right document when needed.

The notion “database” refers to an electronic compilation of information arranged in a systematic way and offering search tools to locate specific elements it contains. The term originates within the computing discipline<sup>119</sup> but has been broadened by popular use and can also be referred to non-electronic databases. Ideally such electronic or non-electronic database would contain all legislation of one municipality in a comprehensive manner.

Both tools aid first and foremost the public accessibility of laws and the transparency of municipal legislative activities. At the same time, both are supportive of the work of municipal officials in general and of drafters of future legislation in particular. The main purpose of an index is to help the user find information quickly and easily. The purpose of a database is to access the information easily. In the case of municipal legislation, an index would also serve as an overview of decisions taken and regulations approved. Furthermore, in the case of requests to access these documents, an index as well as a database would enable municipal officials to easily access certain legislation or find out whether such decision or regulation exists and where it is published/stored. The more municipal legislation is passed, the more useful both instruments will be. Yet, it seems advisable to establish a functioning system right from the beginning and to plan for the future.

There are no explicit legal requirements for the establishment of an index or a database for municipal legislation in the legal framework governing local governance in Kosovo. Arguably however, it can be indirectly deduced from the mentioned obligations to publish and disseminate as well as to guarantee access to legislation. In any case, both the index and the database will simplify and ease the work of the municipal officials responsible for granting access to legislation. Indeed, many municipalities stated having some form of an index in which they keep relevant information on municipal documents. Also, many declared to have some sort of a database.

However, the majority of municipalities do not seem to have an index as defined above, i.e., one single document listing all municipal legislation in alphabetical order

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provision. A fee of 0.25 Euro per page if applied only for documents longer then 20 pages may well be in line with the LAOD.

<sup>119</sup> The term database is usually related to an electronic database.

including certain references. Instead, of those that have reported having an index, many stated having established one based on a chronological order<sup>120</sup> and in several cases they are not regularly updated. The disadvantage of a chronological instead of an alphabetical order is the difficulty in finding legislation if the requestor does not know the reference number or the date of issuance. There are a few exceptions where a proper index of all municipal regulations exists, including a reference as to where they have been published and stored.<sup>121</sup>

More than half of the municipalities have reported having established some sort of a database as compilation of municipal legislation. Among these municipalities, two have specified that they have established a computer database.<sup>122</sup> Nonetheless, even in these cases the databases are often either incomplete, established on a temporary basis or not maintained properly. For instance, in one case the database covers only the period from 2004 until 2006 and in another case the list of the legislation is incomplete. Several municipalities have a physical database (i.e. an archive with hard copies).<sup>123</sup> Of concern is that 16 municipalities<sup>124</sup> have stated that they have not established any sort of database yet. In this context, it is noteworthy that the Local Government Information Network (“LOGIN”)<sup>125</sup> project has been implemented in Kosovo, with the AKM as its implementing partner. This project aims to promote the professional development of local government officials and their staff and to strengthen the capabilities of organisations that support the reform of public administration at the local level.

#### **D. Municipal strategy for legislative activities**

In the long run, planning facilitates and supports ones work, especially if several actors are involved in the work as it is the case in a municipality. Additionally, the very process of planning provides room for one to think about what issues need to be addressed, and what activities should be undertaken. In the municipalities it is first and foremost the PFC who is charged with formulating and researching the future strategic direction.<sup>126</sup> Part of formulating the future strategic direction includes the planning of legislation needed to guide the municipality in its desired direction.

However, legislative planning depends not only on the municipalities’ strategic direction. Partially, it is the extent to which central level laws delegate responsibilities

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<sup>120</sup> Prishtinë/Priština, Prizren, Leposavić/Leposaviq and Vushtrri/Vučitrn.

<sup>121</sup> Mamuşa/Mamushë/Mamuša PMU for example states that it runs a list of all decisions of the Provisional MA and of all PMU municipal regulations adopted.

<sup>122</sup> For instance, in Mitrovicë/Mitrovica a database of all municipal legislation is kept by the secretariat and a considerable number of regulations is posted on the official municipal webpage. In Zvečan/Zveçan municipality, there is an electronic compilation of the regulations posted on the municipal website in addition to the physical compilation of municipal legal acts held in the municipality.

<sup>123</sup> Regulations are simply physically kept in the CEOs archive office or other municipal offices.

<sup>124</sup> Hani i Elezit/Đeneral Janković PMU; Obiliq/Obilić; Gjiilan/Gnjilane; Shtime/Štimlje; Lipjan/Lipjan; Fushë Kosovë/Kosovo Polje; Pejë/Peć; Deçan/Deçane; Istok/Istog; Viti/Vitina; Štrpce/Shtërpçë; Novobërdë/Novo Brdo; Kamenicë/Kamenica; Kaçanik/Kaçanik; Ferizaj/Uroševac and Zubin Potok.

<sup>125</sup> See [www.logincee.org/](http://www.logincee.org/) or [www.komunat-ks.net/eng/html/index.php](http://www.komunat-ks.net/eng/html/index.php) for details.

<sup>126</sup> Section 22.1 of UNMIK Regulation 2000/45.

that determine their legislative planning. In other words, in many areas only when a central level law is passed and delegates responsibilities to the municipalities, the municipalities can analyse the law and subsequently plan the drafting of the legislation needed.

Moreover, there are also numerous municipal own competences.<sup>127</sup> In these areas the municipalities have full responsibility to regulate.<sup>128</sup> This enables municipalities to develop long-term legislative plans for each of the municipal own competences. Since these areas cover the core of subject matters relevant to the population living in a municipality, strategic planning on how to address these matters, including legislative planning, is a crucial element of local self government.

Despite of these advantages of legislative planning, the majority of municipalities have no comprehensive legislative strategy.<sup>129</sup> As reasons for this absence some municipalities state that they are awaiting central level instructions. Others remark that the drafting process is usually the outcome of a request from the municipal executive branch or is initiated upon the need arising from central level legislation; neither of which can be planned. Hence, the legislation is mainly – and allegedly can only be – initiated on an *ad hoc* basis. Many municipalities also claim that the existing circumstances related to the pending status issue negatively affect the municipal legislative planning. More specifically, municipalities are expecting major changes with the enactment of a future law on local self-government (envisaged in the Comprehensive Proposal).<sup>130</sup> Due to this fact, many municipalities have put their legislative planning on hold,<sup>131</sup> awaiting the new law to be passed. Consequently, municipal legislation is currently almost always drafted on an *ad hoc* basis.

On a positive note, eight municipalities have stated having plans for passing municipal legislation in the future. However, in only two cases have they referred to concrete plans which also specify a certain time period for which the legislative plan is drafted. For example, one plan refers to regulations which shall be passed for the implementation of the municipal strategic economic development 2007-2009.<sup>132</sup> Another plan, which is in the preparation phase, refers to the planning of municipal regulations to be passed in the year 2007.<sup>133</sup>

When asked about their legislative activities in general, the majority of municipalities referred to some particular regulations they are planning to issue in the near future (without having a long term plan as such). In these cases the answers focussed mainly on obligatory responsibilities<sup>134</sup> and only to a much lesser extent on voluntary

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<sup>127</sup> Section 3.1 of Regulation 2000/45.

<sup>128</sup> Within the laws regulating each activity, see Section 3.1 of Regulation 2000/45.

<sup>129</sup> Only eight municipalities have confirmed to have a plan outlining future legislative activities.

<sup>130</sup> See [www.unosek.org/unosek/en/statusproposal.html](http://www.unosek.org/unosek/en/statusproposal.html) for “The Comprehensive Proposal for Kosovo Status Settlement.”

<sup>131</sup> Some municipalities have stated that in fact a draft legislative working plan exist but is pending the adoption of the future law on local self-government.

<sup>132</sup> Lipjan/Lipljan.

<sup>133</sup> Štrpce/Shtërpçë.

<sup>134</sup> Section 3.1 of Regulation 2000/45. Mainly they mentioned areas such as: property tax collection; naming of streets; municipal fees and taxes; property taxes; fines; municipal transparency; education; transport; health; urban planning; public utilities (waste management); environmental management; business; economy; and internal financial management.

competences. In addition, almost all municipalities mentioned areas which are envisaged to be decentralised (for example municipal revenues). Only two municipalities have stated that they have not identified any area to be regulated by municipal legislation.<sup>135</sup>

Legislative planning in the field of delegated competences is somewhat challenging. However, none of the reasons given impedes municipalities' ability to develop plans in the field of municipal "own" competencies. The pending status issue does not justify inactivity in this area, nor can it be justified by the prospect of a future law on local self-government. In light of the described positive aspects of legislative planning the PFCs should take on their duties and start planning for the future.

## **E. Conclusions and recommendations**

### **Recommendations to the municipalities**

- 1) Municipalities should be careful to use the appropriate legal instruments. With a regulation a multitude of cases are regulated in a general and abstract way; consultation of committees and the public is mandatory. A decision should only be used to address an individual and concrete case.
- 2) Municipalities should ensure involvement of the Communities Committee in the municipal legislative process, by ascertaining that: a) the committee is established in their respective municipality; b) the committee is operational and fully functioning; c) capacity building activities are undertaken for the committee members to help them understand their role; and d) every proposed municipal regulation is submitted to the committee.
- 3) Municipalities should ensure that the public is always consulted during the process of issuing municipal regulations, by regular public advertisement of the proposed legislation, public meetings and public hearings, as well as contacts with focus groups and interested parties.
- 4) Municipalities should ensure that legal officers serving in the municipality are always involved in the drafting of legislation.
- 5) Municipalities should consider the regular use of model municipal legislation. To this end, municipalities should consider closer co-operation with other municipalities and make use of the AKM, which could play an active role in developing such model legislation.
- 6) Municipalities should ensure that all municipal legislation is translated into the official languages of a municipality. Municipal statutes need to reflect the requirements of the Law on Languages.

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<sup>135</sup> Both municipalities justified this by expressing their expectation that the municipal statute will undergo adjustments following a status settlement.

- 7) Municipalities should ensure that all municipal legislation is published in a timely and organised manner. Additional publishing of municipal legislation on their municipal websites is recommended.
- 8) Municipalities should establish a system for dissemination of and public access to municipal legislation.
- 9) Municipalities should establish and regularly update an index and a database for municipal legislation including alphabetical/keyword categorization. They should consider involving the AKM to establish a uniform system.
- 10) Municipalities should develop a municipal strategic legislative plan within the scope of a municipal development plan. As a minimum, legislative planning at this point in time should address municipal own competences.

#### **Recommendations to the Association of Kosovo Municipalities**

- 11) The AKM should consider developing additional model provisions to supplement both the municipal statutes and the Rules of Procedures clarifying the sequences of the legislative process in the municipalities.
- 12) The AKM and other associations should assume a more active role in ensuring that all municipalities make good usage of the AKM when it comes to municipal co-operation *inter alia* in the field of legislative drafting.
- 13) The AKM should consider playing an active role in developing model municipal legislation.

#### **Recommendations to the PISG**

- 14) The MLGA should ensure that clear definitions of legislative tools (e.g. for regulation and decision) are incorporated in the future law on local self-government.
- 15) The MLGA should review the MLGA AI 2005/7 in view of the applicable legislation, the subsidiarity principle and the future law on local self-government.<sup>136</sup>
- 16) The central level authorities should provide to give clear guidance when assigning legislative authority to the municipalities, by explaining the legislation and its implementation at the municipal level.
- 17) The MLGA should by default invite municipalities to legislative drafting working groups on central level legislation affecting

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<sup>136</sup> According to the information obtained by the MLGA, the AI 2005/07 is currently under review.

municipalities. Municipalities should co-ordinate their participation and inputs through the AKM.

- 18) The KIPA should ensure that regular training on legislative drafting is offered to municipal officials. A special focus should be given to newly created municipalities and their needs.