



**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 II**

**Review Period: Laws Promulgated in 2004**

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## ABBREVIATIONS

AI	Administrative Instruction
CCC	Central Census Commission
CCK	Cinematographic Centre of Kosovo
EAR	European Agency for Reconstruction
EU	European Union
ECHR	European Court of Human Rights
ERO	Energy Regulatory Office
GTZ	Gesellschaft fuer Technische Zusammenarbeit
HLO	Head of Legal Office
HRRoL	OSCE Department of Human Rights and Rule of Law
KCA	Kosovo Cadastral Agency
KCC	Kosovo Competition Commission
KIPA	Kosovo Institute for Public Administration
KMA	Kosovo Medicines Agency
KOA	Kosovo Olympic Association
KSA	Kosovo Standardisation Agency
KVS	Kosovo Veterinary Service
LMU	Legal Metrological Units
MCO	Municipal Cadastral Offices
MAFRD	Ministry of Agriculture, Forests and Rural Development
MCYS	Ministry of Culture, Youth and Sports
MESP	Ministry of Environment and Spatial Planning
MEST	Ministry of Education, Science and Technology
MEM	Ministry of Energy and Mining
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
OPM	Office of the Prime Minister
OGK	Official Gazette of Kosovo
OLSS	Office of Legal Support Service (within the OPM)
OEIP	Office of European Integration Process (within the OPM)
OSCE	Organization for Security and Cooperation in Europe
PISG	Provisional Institutions of Self-Government
PPRC	Public Procurement Regulatory Committee
RoLS	Rule of Law Section
SOK	Statistical Office of Kosovo
SRS	Special Representative of the Secretary-General
UN SCR	United Nations Security Council Resolution
UNMIK	United Nations Interim Administration Mission in Kosovo

## 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 for Self-Government (PISG) have achieved substantial results in creating a legal framework necessary for the achievement of this goal by the enactment of numerous regulations and laws.

This report is the second overview of the implementation of Kosovo Assembly laws by the executive branch of the PISG conducted by the OSCE Department of Human Rights and Rule of Law, through its Rule of Law Section. The primary aim of the report is to analyse the extent to which laws passed by the Kosovo Assembly are being implemented through subsidiary legislation. The main scope of the report encompasses Kosovo Assembly laws promulgated in 2004, but also includes a follow-up from the last report covering the period 2002-2003. The report does not include implementation of UNMIK Regulations passed under its reserved powers and implementation of Kosovo Assembly laws at the municipal level.

The report presents relevant background information in Section I, followed in Section II by a chronological overview of Kosovo Assembly laws and an assessment of their implementation. In Section III the report examines some of the normative aspects of law implementation in Kosovo, followed by an analysis of some of the operational challenges that many ministries face. The report will then look into the way legal acts are or should be drafted by the ministries before concluding with a series of recommendations.

The report makes a general assessment that most ministries continue to make considerable progress in the drafting of subsidiary legislation. On the other hand, there is still much room for improvement in some ministries and in the Government, and in most cases the actors have proven unable to comply with the deadlines envisaged for the adoption of secondary acts. The follow-up research from the last report also makes it clear that several of the laws from the period of 2002–2003 still have not been implemented to the extent envisaged by the Assembly, notwithstanding vast progress in a number of ministries. The data shows that, with respect to a few laws at least, nothing or very little has been accomplished towards implementation. This is notwithstanding that it is often the case that secondary legislation is required to make the law an applicable document. For example, the Laws on Air Protection, Patents, Consumer Protection and Competition (from 2004) all remain unimplemented. From 2003, the Law on the Liquidation and Reorganisation of Legal Persons in Bankruptcy and the Law on External Trade Activity both require a vast amount of implementing acts, but still almost nothing has been realised. The Kosovo Assembly and the Government must both address such examples immediately. Arguably, in some cases from a rule of law perspective having a non-implemented law can be worse than having no law at all.

The difficulties in implementing laws can be partially attributed to the priority given by the executive branch to draft primary legislation at the expense of secondary legislation. This approach must be more balanced. The report puts forward a list of recommendations aimed at the executive and legislative branches of the PISG as well as the international community. For example the OSCE repeats its recommendation from the previous report that an oversight mechanism for the implementation of laws should be established within the Office of the Prime Minister, while focal points should be identified in each of the ministries who are responsible for preparing progress reports on implementation of laws on a periodic basis. The report also recommends increased parliamentary oversight over the drafting activities of the ministries.

The lack of authoritative and consistent open public access to all secondary legislation is still a significant problem. On the other hand, from a formal perspective, the OSCE is encouraged by the recent Government Decision on the Rules of Procedure of the Government, which has the potential to harmonise drafting procedures within the ministries as well as coordinating the efforts in the entire executive branch. The manner of application of these Government Rules by the various actors, however, remains to be determined.

## **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 Rule of Law Section (RoLS) implements the mandate of the Department of Human Rights and Rule of Law (HRRoL) – to promote the development of institutions that ensure that human rights and rule of law principles are respected – in three separate yet complementary ways. First, the RoLS aims to develop the structures of the legal community of Kosovo while building the capacity of its members. Second, the RoLS provides technical assistance to the PISG in drafting, reviewing and revising legislation. Third, the RoLS monitors, analyses and reports 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.

### **B. The Aim and Scope of this Report**

The legislative activity in Kosovo in the past five 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 have been devoted to fulfil this goal and the results of these activities could be viewed as notable achievements. At the same time, the concept of good governance is characterised not only by the enactment of the necessary legal regulations but also by the proper implementation of these regulations. Since our last report on this issue, the implementation of the new legal framework in Kosovo is still not a major focus of the PISG due to the existence of other priorities. However, it has become an issue in the various legal offices that implementation often is a connector between promulgation and application of a law and thus an important instrument to facilitate and simplify proper application of political decisions introduced by law. 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 report follows the first one released in January 2005. Its primary aim is again to establish to what extent laws passed by the Kosovo Assembly are being properly implemented. It also contains a part following up on the implementation of the laws from 2002 and 2003 assessed in the last report. Moreover, for the present report the research has been expanded on issues concerning the drafting, organisation and coordination of subsidiary legislation. It aims at verifying some general questions on legal drafting as well as the specific organisational structure related to drafting subsidiary legislation. The report addresses issues such as: whether the PISG is developing a uniform approach when implementing laws; the hierarchy of the subsidiary acts envisaged by the Kosovo Assembly laws and adopted by the PISG; whether the subsidiary acts are accessible to the public in the official languages; and how central institutions cope with the authorisation 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 2004 and thus assesses the drafting activities from the last report until November 2005, subject to the information received by the 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 as well as international and non-governmental organisations and is intended to serve as a tool in order to promote further development of implementation of laws in Kosovo by PISG.

### **C. Methodology**

The findings presented in this report are the result of a two-stage approach conducted by the Rule of Law Section: an initial research phase followed by a monitoring phase. Following the scope of the report, 27 Kosovo Assembly laws promulgated in 2004 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 (HLO) in ministries. During this phase, between June and November 2005, RoLS approximately conducted 20 interviews with officials from ministries, agencies and other actors involved. In the vast majority of cases it was possible to schedule meetings at short notice.<sup>1</sup> 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 the 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 the meeting was dedicated to the issue of drafting subsidiary legislation. For that purpose, RoLS created an informal set of questions in order to streamline the interviews and to cover various areas of interest: such as staffing, coordination of drafting, publication, training, oversight, access to official documents and others.

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 2004. Each law is followed by a presentation of the respective obligations of the PISG and an assessment of the implementation of these obligations. The section ends with a part following up on the assessment in the last report. Finally, Section III summarises the main findings and puts forward a set of recommendations.

### **D. Subsidiary Legislation**

Throughout the twentieth century the amount of legislation that is enacted by parliaments in Europe has grown substantially. Increasingly the 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 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.<sup>2</sup>

In practice a law usually reflects distinctly 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 the 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,

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<sup>1</sup> The Energy Regulatory Office was not willing to schedule a meeting with the OSCE. The Kosovo Competition Commission is not established yet and the responsible person in the Ministry of Trade and Industry (MTI) did not agree to talk about the current situation in a meeting.

<sup>2</sup> See also on page 28.



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 form the Provisional Institutions for Self-Government in Kosovo (PISG).<sup>3</sup> The first stage of establishing provisional self-governance in Kosovo started with the adoption of UNMIK Regulation 2000/1 on the Kosovo Joint Interim Administrative Structure (JIAS). 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 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<sup>4</sup>, 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.<sup>5</sup>

#### **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 precise definition of the acts 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.<sup>6</sup> It must be noted that

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<sup>3</sup> See Section 1.5 of UNMIK Regulation 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo.

<sup>4</sup> UNMIK Regulation 2001/19 was this year amended by UNMIK Regulation 2005/15.

<sup>5</sup> 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). 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.

<sup>6</sup> See also on page 27.

there is no legal act in force in Kosovo which contains a definition of the types of acts to be issued by the Government and none of the above-mentioned legal provisions specifies what the relationship is in terms of hierarchy between the administrative instructions and decisions, issued by the ministers, or which groups of social relations should be regulated by these two types of subsidiary acts.

## **SECTION II: IMPLEMENTATION OF KOSOVO ASSEMBLY LAWS**

This Section contains three parts. Part A. presents a review of findings related to the implementation of the Kosovo Assembly laws promulgated within the period 2004. Part B. provides a short summary following-up the implementation of laws from 2002-2003 since the last report was released in January 2005. Finally, this Section ends with part C., an individual note on the implementation of the Law on Access to Official Documents.

### **A. Implementation of Kosovo Assembly Laws 2004**

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

#### **Law No. 2003/16 on the Kosovo Population and Housing Census**

The purpose of the Law on Kosovo Population and Housing Census<sup>7</sup> is to provide the first census for Kosovo since the end of the armed conflict. The census should provide information on: the number and the geographical distribution of the population; the demographic structure and main socio-economic characteristics of the population; the number, the geographical distribution and the structure of dwellings and buildings used for housing purposes; and the housing conditions of the population. Besides other duties conferred,<sup>8</sup> the Law tasks the Government within six months from the promulgation to nominate members to the Central Census Commission (CCC), for approval by the Assembly of Kosovo.

In process of implementation of this Law the Government has so far nominated the members of the CCC, who have already drafted the Rules of Procedure of the CCC.<sup>9</sup> In addition, the Statistical Office of Kosovo (SOK) established a Census Office in each Municipality and selected the respective staff (enumerators, operators, controllers, supervisors, managers, statisticians, demographers and other necessary staff).<sup>10</sup> The Director of the Department for the Census of Population of the SOK has informed OSCE that a test census of population and housing has been conducted in six municipalities: Prishtinë/Priština, Prizren/Prizren, Gjilan/Gnjilane, Kaçanik/Kaçanik, Novo Bërdë/Novo Brdo and Skenderaj/Srbica.<sup>11</sup> In summary, the Government, CCC and the SOK have made progress in the process of implementing the Law.

#### **Law No. 2003/17 on Public Procurement in Kosovo**

The purpose of the present Law<sup>12</sup> is best described by Section 1 of the Law itself, which sets out its purpose to ensure the most efficient, cost-effective, transparent and fair use of public funds and public resources in Kosovo. For that it establishes the requirements and rules that shall be observed, the procedures that shall be followed, the rights that shall be respected and the obligations that shall be performed. The Law also aims to ensure the integrity and accountability of public officials, civil servants and other persons conducting or involved in procurement activities.

<sup>7</sup> Promulgated by UNMIK Regulation 2004/53 on 13 December 2004.

<sup>8</sup> Section 25 points to the implementation of Section 11–21 of the Law. However, most of these obligations will be fulfilled rather by issuing administrative decisions than instructions.

<sup>9</sup> Draft AI on the working rules of the CCC. See <http://www.ks-gov.net/mshp/legj/udhëz/udhëz4.html>.

<sup>10</sup> This information was provided to OSCE by the acting Chief Executive Officer of the Statistical Office of Kosovo. He was not able to show if the SOK has established the criteria for the selection, employment and training of census staff as required by Section 21.2 of the Law.

<sup>11</sup> According to the information provided by the Director for the Census of Population of the SOK, the test census of population was conducted from 31 October until 14 November 2005 and it was deemed successful.

<sup>12</sup> Promulgated by UNMIK Regulation 2004/3.

Responsible for the implementation of the Law is the Public Procurement Rules Committee (Rules Committee), which shall develop rules and procedures for the tendering and review process. The Rules Committee itself shall be established by the Public Procurement Agency within the Government, the Ministry of Finance and Economy and the Public Procurement Regulatory Committee (PPRC)<sup>13</sup>.

The Rules Committee has been working on several public procurement rules and has submitted to the OSCE a list indicating which rules have been approved and which are still in the approval process. For the implementation of this Law, the PPRC has prepared seven Rules: A. Instructions and Guidelines on use of the Public Procurement “Regulation”; B. Rules on Procurement Procedure; C. Procurement Code of Ethics; D. Rules on Review and Appeals Procedure; E. Administrative Rules and Instructions; F. Training and Certification; G. Revision of Threshold Values.

According to the list of the approved rules, the aforementioned parts have been further classified into subgroups. While some subgroups of certain rules have been approved, others are still in draft form.<sup>14</sup> Nevertheless, the representatives of the Rules Committee informed OSCE that by the end of this year, the entire package of public procurement rules will be approved and thus the Law will be completely implemented.

#### **Law No. 2003/26 on Medicinal Products and Medicinal Devices**

This Law<sup>15</sup> defines medical products and medical devices for use in human and veterinary medicine as well as conditions for their production and placement on the market. The aim of the Law is to assure the quality, safety and efficacy of medical products and medical devices placed in Kosovo in accordance with legislation applicable in the European Union.

The number of provisions within the Law that require implementation is vast. The Kosovo Assembly, the Government and the Ministry of Health (MH) shall issue subsidiary acts as defined by the Law, whereby the bulk of the work has been placed on two newly established institutions: the Kosovo Medicines Agency (KMA)<sup>16</sup> for medical products and the Kosovo Veterinary Service (KVS) for veterinary medicinal products. The KMA and KVS shall establish advisory bodies, such as the Kosovo Committee for Evaluation of Medicinal Products and Medical Devices the Official Medicines Quality Control Laboratory within one year of the entrance into force of this Law; i.e., by 7 July 2005. The institutions are further tasked to define requirements and criteria for specialised areas.

To implement the Law, the KVS has issued AI No. 2005/7 on Designation of Conditions for Licensing of Subjects that Conduct Activities of Circulation, Import of Veterinary Medical Products and Medical Devices at Wholesale and Retail, implementing Sections 3.1.(ii), 6 and 7 of the Law. In addition, the KVS has completed a draft AI on Marketing Authorization of Medical Products, which implements Section 9 of the Law.

The KMA has issued AI No. 2004/32 regulating the list of Medical Products and Medical Devices that need to be licensed for import, while the MH has adopted one AI which regulates provisionally marketing authorisations for medicinal products placed in Kosovo. Section 1 of this AI determines that the act has provisional character and that it will be in force until the complete procedures for marketing authorisation are finalised. The Head of the Legal Office (HLO) of MH

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<sup>13</sup> Section 94 of the Law.

<sup>14</sup> More precisely part A of the rules contains subgroups A1 and A2 which have been approved, part B is classified in seventeen subgroups out of which seven have been approved, part C has five subgroups one approved, part D is not approved, under part E the Administrative Instruction on Creation of a Procurement Department has been approved while the Instruction on Tariffs is marked as draft, part F on Training and Certification contains three subgroups all of which are still drafts, and finally part G on Revision of Threshold Values is not approved.

<sup>15</sup> Promulgated by UNMIK Regulation 2004/23.

<sup>16</sup> According to Section 3 of the Law the KMA replaces the Kosovo Authority for Regulation of Medicaments (KARM) that had been established based on UNMIK Regulation No. 2001/19.

admitted that they are delayed in the drafting of secondary legislation, which implements laws from the field of health, due to the office currently being understaffed.<sup>17</sup> The MH Legal Office also provided the OSCE with a list of 13 AIs implementing this Law, which are currently in the process of drafting and approval.

The Government has to fulfil some obligations under this Law as well. Section 34.7 foresees that the Government shall make provisions for establishing a conformity assessment body for medical devices in Kosovo responsible for issuing a Declaration of Conformity for medical devices manufactured in Kosovo and for those imported into Kosovo. The same provision envisages a deadline of two years for its implementation, thus the deadline has not expired yet.<sup>18</sup> Nevertheless, to date the Government has not implemented this provision.

#### **Law No. 2003/24 on Sports**

The Law<sup>19</sup> regulates the organisation, terms and rules of physical sports activities. For instance, it sets out the requirements for the management and registration of sports organisations. The Ministry of Culture, Youth and Sports (MCYS), only referred to by the Law as “the relevant Ministry”, is in charge of its implementation and in particular to draft a programme on the development of sports and physical education within the next four years. Moreover, the Law foresees the establishment of the Kosovo Olympic Association (KOA). The Law imposes a deadline for the preparation of subsidiary acts no later than 6 months after the Law’s enactment; i.e., no later than 28 January 2005.

In the implementation of Section 21 of the Law, the MCYS has issued AI No. 04/2005 on the Organization and Functioning of the Kosovo Olympic Association (KOA). This AI determines the structure and the status of the KOA. It shall include federations of Olympic and non-Olympic Sports and shall be registered as an NGO in compliance with the applicable law.<sup>20</sup> The MCYS has also fulfilled the requirements set forth in Sections 30 and 31.2 by adopting AI No. 02/2005 on Registration and Licensing of Federation and Sports Associations in Kosovo. This AI determines that sports federations are non-governmental, non-political and non-profit organisations, which shall be established and organised on a voluntary basis and registered as NGOs. The MCYS has also approved subsidiary acts envisaged in Section 37.2, 50.2 and 60 by promulgating AI No. 01/2005 on Establishment and Registration of Public and Private Sports Clubs, AI No. 05/2005 on Supervision of Administrative and Professional Work in Sports Clubs and AI No. 03/2005 on Sports Medicine.

According to the HLO of the MCYS, a draft AI on subvention of Trade Associations, which shall provide benefits to sports clubs through sponsorship, has been prepared by the MCYS in coordination with the Ministry of Finance and Economy. Hence, it is assessed that the MCYS has implemented a majority of the provisions of the Law, though not within the time frame provided. What remains to be done by the MCYS, in order to have this Law completely implemented, is the definition of the programme on the development of sports and physical education.

#### **Law No. 2003/25 on Cadastre**

The Law<sup>21</sup> establishes the Cadastre as the Official Register to make the census of land, parcels, buildings and parts of buildings, conductors and underground premises in Kosovo. The Cadastre is maintained by the Kosovo Cadastral Agency<sup>22</sup> (KCA), which shall have the authority to constitute and maintain official documents related to immovable properties.

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<sup>17</sup> Currently the Legal Office of the MH has only two lawyers who are engaged in drafting primary and secondary legislation.

<sup>18</sup> The Law was promulgated by the SRSG on 7 July 2004.

<sup>19</sup> Promulgated by UNMIK Regulation 2004/26.

<sup>20</sup> UNMIK Regulation 1999/22 on the Registration and Operation of Non Governmental Organizations in Kosovo.

<sup>21</sup> Promulgated by UNMIK Regulation 2004/4.

<sup>22</sup> The KCA was established by virtue of UNMIK Administrative Direction 2000/14 of 7 June 2000 on the Kosovo Cadastral Agency, which was issued pursuant to the UNMIK Regulation No. 2000/12 of 14 March 2000 on the Establishment of the Administrative Department of Public Services.

The KCA shall have authority over the Municipal Cadastral Offices (MCO) and licensed surveying companies. However, the Ministry of Public Services (MPS) is responsible for issuing other subsidiary acts for the overall implementation of the Law. Together with the MPS, the KCA shall be responsible to issue guidelines for the practical work of the MCO and licensed companies.

For the implementation of this Law the MPS has adopted AI No. 2004/08 which implements the Law by establishing a cadastre. The MPS has also prepared a draft AI that should define the requirements for a license, the conditions for performance of cadastral surveying by licensed surveying companies and their responsibilities (Sections 4.3 and 5.2 of the Law). Another draft, which has been prepared by the MPS, should determine the level of fees for cadastral services to be charged by the MCO (Section 26.4). Although, to date these two draft AIs have not been signed by the Minister, the major part of the Law has been implemented through the above mentioned AI. It regulates essential parts of the Law such as authorisations and responsibilities of the KCA and MCO, units in the cadastre, registration of land, parcels, buildings and parts of buildings, conductors, underground premises and so forth.

### **Law No. 2004/2 on Gender Equality in Kosovo**

The aim of the Law<sup>23</sup> is to promote and establish gender equality as a fundamental value for the democratic development of the Kosovo society, providing equal opportunities for both female and male participation in the political, economical, cultural and other fields of social life. The Law creates conditions and opportunities for gender equality through policies that support overall development, especially for the improvement of the status of women, so that they are entitled to authority in the family and society. The present Law introduces general and specific measures that need to be undertaken for the provision of equal rights and specifies the responsible authorities and their relevant competencies.

The Government is tasked to draft the Kosovo Programme for Gender Equality and submit a draft resolution to the Assembly of Kosovo within a period of six months from the entry into force of the Law, thus by 7 December 2004. The Government is also tasked to establish the Office for Gender Equality within three months; i.e., by 7 September 2004.<sup>24</sup>

For the purpose of implementation of the Law and in accordance with Sections 5 and 17<sup>25</sup> of the Law, the Government has issued "Regulation"<sup>26</sup> No. 2/2005 on Establishment and Internal Organization of the Office on Gender Equality, signed on 16 June 2005 by the Prime Minister of Kosovo. The Regulation defines the working method and internal organisation of the Office on Gender Equality.<sup>27</sup> According to the information OSCE has received the Gender Equality Office has been established within OPM.<sup>28</sup>

Additionally, Section 4.15 of the Law determines that the competencies of the gender officers in municipalities shall be set in a special regulation drafted by the Department of Local Administration in the MPS and the Kosovo Civil Services Regulation. According to the information obtained, draft terms of reference for municipal gender officers have been submitted

<sup>23</sup> Promulgated by UNMIK Regulation 2004/18.

<sup>24</sup> The Government has to issue a "regulation" to implement the Law, instead of an administrative instruction. See also below on page 27.

<sup>25</sup> The AI refers to the implementation of Sections 5 and 17 of the Law. However, Section 17 of the Law which is published on the official web page [www.unmikonline.org](http://www.unmikonline.org), determines the field of penalty provisions which apparently has nothing to do with creation of the Office of Gender Equality. The answer to this confusion can be found in UNMIK promulgating Regulation 2004/18, point (c) (ii) which reads: "Sections 7 and 18.6 shall be deleted and sections whose sequential numbers are affected by the deletion shall be renumbered accordingly". Thus, it is apparent how the practice of changing provisions of a law by way of the promulgation regulation creates confusion. See also on page 29.

<sup>26</sup> When referring to instruments issued by the PISG, this report usually refers to the name chosen by the institution or the translation notwithstanding the fact that the arbitrary use of terminology can be quite confusing. See also below page 27.

<sup>27</sup> Section 1 of the Regulation.

<sup>28</sup> It has to be pointed out that Section 5 of the Law requires the Government to establish the office as a "separate governmental institution". Further, the office seems to be operational, but is apparently still understaffed by around 50%.

for signature to the Ministry of Local Government, however, to this date the draft has not been signed.

#### **Law No. 2004/4 on Health**

The Law on Health<sup>29</sup> defines the health care system, health care activities and the health financing system in Kosovo. The Law foresees a large number of provisions that require implementation through subsidiary acts. The major responsibility lies with the Ministry of Health, which is responsible for the organisation of the health care system and activities, ranging from accreditation and licensing to the definition of conditions and requirements. Health care measures in social care institutions are defined in subsidiary acts to be issued together with the Ministry of Labour and Social Welfare. Finally, according to the Law the Kosovo Assembly is responsible for organising a private health scheme.

The Head of Legal Office of the MH pointed out that the major focus of the Legal Office has recently been on the preparation of draft laws, mentioning that this year the MH is engaged in several working groups drafting laws in the field of health. Though the MH is continuously engaged in the implementation of the enacted laws, until the necessary legal infrastructure is created, the Ministry's main activity shall be the drafting of primary laws.

In the process of implementation of this Law, the MH has issued three AIs implementing Sections 67, 76 and 79 of the Law. AI No. 2004/24 determines the official stamp of health professionals, AI No. 2005/29 sets up the establishment, organisation and functions of primary health institutions while AI No. 2004/30 defines the organisation and administration of the professional mental health service of Kosovo. This is only a small fraction of the AIs required.

In addition to AIs falling under the responsibility of the MH, the Government also has responsibilities in the area. However, the Government so far has not issued any subsidiary act implementing the Law. The Kosovo Assembly has also not fulfilled its obligation under this Law to organize the private health scheme. According to our research, more than 40 provisions of the Law remain unimplemented.

#### **Law No. 2004/6 on Transport of Dangerous Goods**

The Law<sup>30</sup> aims to prevent risk and ensure traffic safety during the transportation of dangerous goods through Kosovo. It regulates the terms of such transport as well as obligations of persons involved in transport. In view of European Integration, the Law is based on the European Union directives and other international mechanisms on safety and transport of dangerous goods. The Ministry of Transport and Telecommunications and Industry (MTT) has been granted competencies and responsibilities for the implementation of the Law with respect to the licensing of transporters and the classification, designation and regulation of dangerous goods transport. The Ministry is also responsible for developing emergency measures.

Section 5 of the Law establishes the European Agreement for Transport of Dangerous Goods by Road (ADR) as one of the international mechanisms to be implemented in Kosovo. In view of this, the MTT Legal Office has translated this Agreement into Albanian and produced a two-volume book, which will serve all actors when implementing this Law. The same provision foresees another two mechanisms to be implemented in Kosovo: the European Agreement for Transport of Dangerous Goods by Rail (RID) and the Convention on International Railway Transport (COTIF). However, the Ministry is not responsible for the implementation since railway transport falls under the reserved powers of the SRSG.<sup>31</sup>

The MTT has issued AI No. 2005/3 on Training and Examination of Conductors of Dangerous Goods to implement Sections 21.1 and 21.2. This AI determines the basic training programme and specific training for people who transport dangerous goods and those that are in any way involved in packing, loading, unloading and examining of such items. In addition, the same AI determines

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<sup>29</sup> Promulgated by UNMIK Regulation 2004/31.

<sup>30</sup> Promulgated by UNMIK Regulation 2004/17.

<sup>31</sup> UNMIK Regulation 2004/17 on the Law on Transport of Dangerous Goods.

the classification of dangerous goods, thus implementing Section 7. The Ministry has drafted AI No. 2005/6 on Certification of Vehicles for Transportation of Dangerous Goods, which currently awaits the signature of the Minister. Moreover, AI No. 2005/15 on Transportation of Dangerous Goods on the Roads is expected to be finalised by the working group soon.

As a result of the research, the Ministry still has to determine the emergency measures envisaged in Section 22. In summary, the MTT has made substantial progress in the implementation of this Law.

#### **Law No. 2004/8 on Energy**

The aim of the Law on Energy<sup>32</sup> is to ensure good power supply for Kosovo. It defines the basic principles for an energy strategy and energy programme in Kosovo and the rules for ensuring the efficient use of renewable energy sources. The Law sets out the framework for establishing an energy market and other measures necessary to ensure the proper functioning of activities in the energy sector.

The Ministry for Energy and Mining (MEM) in consultation with the Energy Regulatory Office (ERO)<sup>33</sup> is responsible for most of the Law's implementation. The biggest joint requirement is the proposal of an Energy Strategy, for which the system operators and the regional oversight bodies must also be consulted. After approval by the Cabinet of Ministers, the Energy Strategy must be adopted by the Assembly. It also falls into the responsibility of MEM to promote the efficient use of energy and the use of renewable energy sources. Furthermore, the Ministry has to implement standard rules on costs for technical changes, such as grid connections and grid reinforcements. The MEM must also enact restrictive measures for energy supply and compensation for the right of way and access to property. According to the deadlines stipulated in the Law, the Energy Strategy as well as all other necessary subsidiary legislation shall be adopted by 5 June 2005.

For the implementation of this Law, the MEM has issued the following AIs: AI No. 2005/1 on Energy Inspectorate AI No. 2005/2 on the Right of Construction or the Expansion of the Existing Energy Sites for the Transmission and Distribution of Electricity, AI No. 2005/3 on Rules and Rights of Way and Access to Private Land and AI No. 2005/4 on Rules on Energy Balance. Each of these subsidiary acts were issued only two weeks after the deadline expired.<sup>34</sup> The Ministry of Energy and the ERO prepared jointly the Energy Strategy that was adopted by the Government and finally approved by the Assembly on 5 October 2005. Overall, it can be assessed that the MEM has established the necessary legal framework for the implementation of the Law on Energy.

#### **Law No. 2004/9 on the Energy Regulator**

By virtue of this Law<sup>35</sup> an independent Energy Regulatory Office is to be established. The ERO shall be responsible for the establishment and enforcement of a regulatory framework for the energy sector in Kosovo. The aim is to ensure non-discrimination, effective competition and the efficient functioning of the energy market. By way of subsidiary legislation the ERO shall define procedures for its functioning, the conditions for issuing licenses, as well as for the settlement of disputes and related issues. The Law foresees various deadlines. Within 60 days of the promulgation of this Law, the initial members of the Board shall be appointed. After this, but no later than four months after the appointment of the initial members of the Board, the Board shall develop subsidiary legislation on licensing and pricing. Since the Law came into force on 30 June 2004, the members were to be appointed by 29 August 2004, while the mentioned subsidiary acts were to be developed by 29 December 2004.

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<sup>32</sup> Promulgated by UNMIK Regulation 2004/20.

<sup>33</sup> Established under the Law on the Energy Regulator, Law No. 2004/09, promulgated by UNMIK Regulation 2004/20.

<sup>34</sup> Section 37.2 of the Law on Energy, stipulates, "that not later than twelve months after the promulgation of this Law, the MEM shall adopt secondary legislation". The AIs issued by MEM are dated on 19 July 2005, while the Law on Energy was enacted on 30 June 2004.

<sup>35</sup> Promulgated by UNMIK Regulation 2004/20.

In course of the implementation of this Law, the ERO has prepared several draft subsidiary acts.<sup>36</sup> The Board was established in April 2004 to implement Section 9. It has drafted the Statute, which determines the internal structure, organisation, representation, the authority and the decision-making process of the ERO. The Board also designed the draft Code of Professional Conduct as envisaged in Section 11. The Code is aimed to ensure that ERO members and employees perform their duties with honesty and capably, avoiding actual or apparent conflict of interests. In addition, the Board also prepared a draft Rule on Dispute Settlement Procedures in the Energy Sector and a draft Rule on Principles of Calculation of Tariffs in the Electricity Sector. So far, the Ministry of Energy and Mining has not adopted any of these acts.

Thus, it can be concluded that, whereas there is a certain drafting dynamic within the ERO the implementation of this Law has only started.

#### **Law No. 2004/10 on Electricity**

The Law on Electricity<sup>37</sup> complements the Law on the Energy Regulator. It establishes the conditions for the organisation of the electricity market. The purpose of the Law is to achieve a competitive and sustainable market in electricity and to guarantee the conditions for a safe, reliable, efficient and permanent supply of electricity as well as best services for the customers. The ERO is responsible for the implementation of the Law. It must approve rules and tariffs, a grid code proposed by the Transmission Network Operator and a trade code issued by the market operator. Moreover, the ERO is responsible for establishing the terms and procedures for customer billing. Further, the Law obliges the Transmission Network Operator to prepare a grid code within 12 months of the promulgation of the Law; i.e., by 30 June 2005.

Based on the information provided by ERO, it can be assessed that the implementation of this Law has just started - the ERO is currently in the process of drafting the subsidiary legislation which will eventually implement the provisions of this Law. So far, they have finalised the draft subsidiary acts on terms and conditions for the connection to transmission and distribution networks as well as the definition of procedures for billing, bill collection and payment. The ERO is also in the process of drafting rules and tariffs envisaged in Section 15.3. The Grid Code and the Trade Code have yet to be drafted.

#### **Law No. 2004/11 on Measurement Units**

Pursuant to the International Document of the International Committee of Legal Metrology, this Law<sup>38</sup> defines the establishment of measurement units in Kosovo, their designation and symbols, the scope and areas of mandatory application of such units and their manner of application in Kosovo. The Law requires the Legal Meteorological Institute of Kosovo to draft subsidiary acts to determine the definition, appraisal and manner of usage of measuring units, which have to be approved by the Ministry of Trade and Industry (MTI). In the Law, the subsidiary acts are referred to as rules and by-laws.

Implementing Section 3 of the Law, the MTI has adopted AI No. 01/2004 establishing the Legal Meteorological Institute of Kosovo (KMI) within the MTI, which shall function in conformity with the European Union model. In addition, the AI determines: the organisation and functioning of the Metrological Institute; the duties and responsibilities of the Legal Metrological Units (LMU); the duties of the Institute for Legal Metrology; the duties and responsibilities of the supervisor of the LMU; and tariffs. On 4 November 2004, the MTI has adopted AI No. 2005/11 on Metrological Requirements for Static Active Electrical Watt-Hour Meters of First and Second Accuracy Class. By this act, the MTI has established the watt-hour metrological requirements. Thus, considerable progress has been made in implementation.<sup>39</sup>

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<sup>36</sup> Except of the draft Code on Professional Conduct, all other draft subsidiary acts can be viewed on [www.ero-ks.org](http://www.ero-ks.org).

<sup>37</sup> Promulgated by UNMIK Regulation 2004/22.

<sup>38</sup> Promulgated by UNMIK Regulation 2004/14.

<sup>39</sup> Section 3 of the Law gives a very general authorization to the Executive. It is thus difficult to assess when the obligations by the Assembly have been fulfilled.



#### **Law No. 2004/12 on Standardization**

The standards enacted and defined by the Law on Standardization<sup>40</sup> are technical norms. They apply to certification of products, processing, services, quality and personnel systems in order to ensure relevant quality in Kosovo pursuant to international standards. The Law determines procedural rules from drafting to the application of these standards in Kosovo.

The Law foresees the establishment of the Kosovo Standardization Agency (KSA) as an executive body, which together with the Ministry of Trade and Industry (MTI) is responsible for the implementation of the relevant provisions of the Law. The Law stipulates a six month deadline according to which all provisions had to be implemented; i.e., by 28 November 2004.

The KSA shall be responsible for the administration, organisation and control of the standardisation agency as well as accreditation, certification and safety of the quality system in Kosovo. For the implementation of provisions from Sections 15 and 16, the MTI has issued AI No. 2005/15 on the Organization and Functioning of the KSA. In further progress of implementation, the MTI Minister issued Decision No. 193, by which the relevant working group within the MTI is established. The task of the working group is the adoption of standards with provisional character and provisional accreditation of licensing and inspecting bodies until the capacity of the KSA is further strengthened. The MTI has also drafted an AI which determines the criteria and competences in the field of standardisation and accreditation, but it is not issued yet.

By establishing the KSA, which is responsible for enforcement of relevant legal provisions, the MTI has created the necessary preconditions for the implementation of this Law.

#### **Law No. 2004/13 on Planting Material**

The Law on Planting Material<sup>41</sup> regulates matters related to: the production, trade, import and export of planting material, the control of planting material as well as the registration of producers and traders of planting material. The Ministry for Agriculture, Forest and Rural Development (MAFRD) is responsible for its implementation. The issuance of AIs is required for the registration of producers and traders, for categories of planting material and for various other requirements ranging from production to marketing and inspection duties.

In adherence with the provision of Section 3, which provides that all producers, importers, exporters and traders of planting material shall be registered in the official register of the MAFRD, the Ministry has issued AI No. 12/2004 on Registration of the Producers of Seedling Material. The MAFRD has also fulfilled other implementation obligations under this Law, such as: the registration, licensing and assignment of tax for importers, exporters and traders of seedling material (AI No.14/2004); setting the standards of nursery-seedling material for fruits, vine and vegetables (AI No. 05/2005); the registration of producers and traders of planting material, control of planting material production, issuance of registration and registration fees; the licensing of producers of planting forestry material and decorative woods (AI No. 06/2005); and the packaging and labelling of planting material (AI No. 27/2005).

It still remains to be determined by subsidiary legislation how new varieties can be incorporated in the Kosovo Variety List. Furthermore, AIs are required: on evidence keeping and reporting of planting material producers; on procedures on packing; and on methods of control of the quality, packaging, labelling and trading of planting material. Nevertheless, it can be assessed that the MAFRD has fulfilled most of its obligations related to the creation of a subsidiary legal framework for the implementation of this Law.

#### **Law No. 2004/15 on Construction**

The objective of the Law<sup>42</sup> is to determine the main requirements for the design, construction and use of construction materials, professional supervision, as well as procedures for construction

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<sup>40</sup> Promulgated by UNMIK Regulation 2004/15.

<sup>41</sup> Promulgated by UNMIK Regulation 2004/16.

<sup>42</sup> Promulgated by UNMIK Regulation 2004/37.

permits, use permits and building inspection. It also regulates the design and building conditions regarding public safety and protection of environment in Kosovo.

The Ministry of Environment and Spatial Planning (MESP) is required to issue various subsidiary acts on technical specifications for buildings, building techniques, criteria for building products and other matters related to the construction of buildings. The MESP is also tasked to develop professional examinations for designers, supervising engineers and revisers. Licensing terms and measures for executors and engineers, and requirements and qualifications for the technical inspection and inspectors must also be developed. Further, decisions on the removal and demolition of objects can be issued together with sanctions. The MESP shall by way of an AI determine details on the administrative penalty payments and other administrative offences. The Law establishes a deadline for implementation of 18 months from the date the Law entered into force; i.e., until 14 April 2006.

In the process of implementation of this Law, the MESP has approved six AIs regulating following fields: Criteria and Procedures for Issuing Licenses<sup>43</sup>; Technical Professional Exams in the Field of Construction<sup>44</sup>; Qualifications of Inspectors<sup>45</sup>; Maintaining the Inspection Evidence<sup>46</sup>; Supervision of Inspectors<sup>47</sup> and Closing of Building Sites<sup>48</sup>. Further, The Ministry of Trade and Industry in accordance with the Law has issued another AI.<sup>49</sup>

Hence, bearing in mind that the deadline for issuance of subsidiary acts envisaged in this Law<sup>50</sup> has not yet passed, it can be assessed that the MESP is well on its way towards complete implementation of this Law.

#### **Law No. 2004/17 on Consumer Protection**

The aim of the Law<sup>51</sup> is specified by its title – consumer protection. It determines, regulates and protects the rights of consumers in their business dealings, in services and other forms in the free market. It seeks to protect the health, environment and economic interests of consumers. The institution responsible for its implementation is the Ministry of Trade and Industry (MTI), which was given the very short deadline of one month to implement the requested subsidiary acts, in other words, until 19 November 2004.

The MTI is requested to enact subsidiary acts - referred to in the Law as “by-laws”- for food product labelling information, rules for additional commodity declaration, as well as rules on certain declaration exemptions. The rules on the declarations, which according to the Law are named “internal by-laws”, are to be issued within six months from entry into force; i.e., by 19 April 2005.

The Law further orders the preparation of a Kosovo Consumer Protection Programme by a council nominated by the Government consisting of representatives from the Ministry of Trade and Industry, Consumer Protection Organisations, the Kosovo Chamber of Commerce and other experts in the field of consumer protection. The Kosovo Consumer Protection Programme shall be endorsed by the Government and transmitted to the Assembly no later than six months after the

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<sup>43</sup> See AI No. 5/2005 on the Criteria and Procedures for Issuing Licenses for Exercising the Activities in the Field of Projecting, Construction and Professional Supervision and Reviewing.

<sup>44</sup> See AI No. 6/2005 on Technical Professional Exams for Engineering, Electro-Technician and Machinery in the Field of Construction.

<sup>45</sup> See AI No. 18/2005 on Qualification Conditions for Construction Inspectors of the MESP and for Municipal Construction Inspectors.

<sup>46</sup> See AI No. 19/2005.

<sup>47</sup> See AI No. 20/2005 on the Manner of Inspective Supervision of Construction Inspectors.

<sup>48</sup> See AI No. 21/2005 on Closing of Building Sites and the Manner of its Enclosure by Construction Inspector.

<sup>49</sup> See AI No. 4/2005 on determination of the Terms and Technical Rules for the Licensing of Construction Enterprises, Enterprises for Production of Construction Material, Designing Enterprises and Labs of Control for Construction Material.

<sup>50</sup> Article 72.1 of the Law.

<sup>51</sup> Promulgated by UNMIK Regulation 2004/42.

Law comes into force, again by 19 April 2005. Then, the Kosovo Consumer Protection Programme shall be adopted by the Assembly no later than 90 days after it is received.

Based on the material provided by the MTI and the OPM legal office the Ministry has so far prepared one draft AI on Declaration and General Designation of the Food. Nonetheless, no subsidiary acts have been adopted for the implementation of this Law.

#### **Law No. 2004/18 on Internal Trade**

The aim of the Law<sup>52</sup> is the development of the internal market. It foresees the regulation of a wide range of matters such as: trade; wholesale, retail sale and auction; mediation in trade; restrictive practices and protection measures for the development of trade activity; illegal competition; supervisory measures; administrative measures; and punitive provisions.

The Ministry of Trade and Industry, being in charge of the Law's implementation, shall determine by "regulation" the aforementioned trading activities. The MTI must also determine special conditions for facilities, warehouses and conditions for storing the goods as well as on hygienic information for the packing of food in order to ensure protection of life, health and the environment. According to the deadline stipulated by the Law, subsidiary acts shall be issued within one month from the day when the Law entered into force, therefore by 20 November 2004.

Section 65 specifically foresees that several acts shall be issued by the MTI within the deadline as noted above.<sup>53</sup> Out of these eight sections, to date the MTI has implemented Sections 14 and 38.1 (a, b) by adoption of the AI No. 2005/12 on Fulfilment of Minimal Technical Conditions for Business Objects of Gross and Retail Sale and for Trade Intercession and AI No. 2005/13 on the Format and Content of Request Form on Minimal Conditions for Conducting Trade Activities. The remaining six provisions of the Law remain unimplemented. Nevertheless, the MTI has made initial progress in implementing this Law.

#### **Law No. 2004/21 on Veterinary**

The purpose of this Law<sup>54</sup> is to regulate the combating and prevention of infectious animal diseases. It aims at establishing rules on the control of the import, export, transit and circulation of live animals and products of animal origin. Moreover, it determines the rights and obligations of public and local government institutions as well as of individual persons in this field. The Ministry of Agriculture, Forest and Rural Development (MAFRD) is in charge of implementing the Law.

The MAFRD has issued 13 AIs implementing various provisions of the Law. Section 5 oversees the creation of an Executive Agency and has been implemented by AI No. 11/2004 on the Establishment and Responsibilities, Functions and Organization of the Kosovo Veterinary and Food Service. The issues concerning mandatory treatment and vaccination have been regulated by AI No. 10/2005 Against Zoonotic Disease Rabies and AI No.14/2005 against Disease of Poultry.<sup>55</sup> For establishment of the livestock system for registration and identification, the MAFRD issued AI No. 3/2005 on Animal Registration and Identification, while requirements from Sections 14.1, 28 and 29 have been fulfilled by AI No. 17/2005 on Movement of Live Animals within Territory of Kosovo. Section 15.1 of the Law foresees specific rules under which live animals and products may be imported from abroad. AI No. 13/2004 implements these provisions in view of the import of poultry. Regarding other animals, MAFRD has issued AI No. 18/2005 on Veterinary Control of Import, Transit of Food and Non-food Products of Animal Origin, Live Animals and Animal Breeding Material. The MAFRD has also issued a variety of other AIs such as: on Bio-Security Points; on Production, Processing and Marketing of Animals and Products of Animal Origin; on Prohibition of Illegal Slaughtering and Marketing of Unstamped Meat; on Medical Products and Medical Devices; on License of the Ambulances, Stations and Veterinary Clinics; on Conditions for Licensing the Facilities of Milk Processing and Packaging; and just recently on the Combating of Bird Disease-"Aviano Influenza".

<sup>52</sup> Promulgated by UNMIK Regulation 2004/43.

<sup>53</sup> Acts under Sections 8.2, 11.2, 14, 17.4, 38.1, 38.2, 40 and 41.3.

<sup>54</sup> Promulgated by UNMIK Regulation 2004/28.

<sup>55</sup> Implementing Sections 8.1, 8.2, 8.5 and 13.

MAFRD has with the adoption of 13 AIs implemented a major part of the Law. Moreover, it should be mentioned that in most provisions of this Law the Assembly used the terminology “the Ministry may prescribe an AI” which leaves implementation of these legal provisions non-obligatory. Overall, the MAFRD has done a remarkable job of implementation.

#### **Law No. 2004/22 on Cinematography**

The Law<sup>56</sup> establishes standards for cinematography in Kosovo. It protects the production, distribution and public showing of works of film from censorship and ideological, political and religious pressure. At the same time, it regulates the organisation of film making, the issuing of permission and labelling for screening and shooting. The responsible authorities for implementing the Law are two-fold: while the Ministry of Culture, Youth and Sports is in charge of regulating the framework, such as the manner and terms of issuing permissions for shooting films<sup>57</sup> and the organisation and functioning of Kosovo Film<sup>58</sup>, the Cinematographic Centre of Kosovo (CCK) is responsible for monitoring and follow-up activities. The Law foresees for both, the Ministry as well as the CCK, a deadline to adopt the subsidiary acts within six months from entry in force; i.e., by 14 April 2005.

The MCYS has not fulfilled any obligations deriving from this Law, failing also to respect the deadline for issuance of subsidiary acts as envisaged in Section 60.2 and 60.3. None of the aforementioned objectives determined in Sections 6 and 51 have been enforced through subsidiary legislation. Moreover, according to the information which was provided to OSCE by the MCYS, the CCK lacks a management board and a director; thus, this body is technically not yet established.

#### **Law No. 2004/24 on Kosovo Water**

The purpose of the Law<sup>59</sup> is to ensure the development and sustainable use of water resources and to establish procedures and guiding principles for the optimal allocation of water, its protection and management. The Ministry of Environment and Spatial Planning (MESP) is responsible for implementation. One of the main tasks is the drafting of a Strategic Plan for Water and preparing the Water Management Plan. Furthermore, the MESP shall determine in detail the water infrastructure. By virtue of this Law, two river basin districts have been established. The MESP shall determine the procedures, composition and structure of the River Basin District Authorities by subsidiary act. The MESP is also tasked to classify surface and groundwater bodies as well as swimming zones.

Upon proposal by the MESP, the Government shall define detailed measures for flood protection and within twelve months from the day the Law came into force, i.e., by 14 October 2005, measures and actions for protection from erosion are to be adopted by a subsidiary act. Again, upon proposal by the MESP, the Government shall determine protected water areas. The MESP is tasked to define the criteria for this together with the Ministry for Health.

All aspects related to the granting of water permits and with respect to the water information system must also be issued by subsidiary act. Moreover, the Government shall establish in a subsidiary act the structure of charges for the use and pollution of waters. Furthermore, the methods of registration and authorisation of water inspectors shall be determined by the MESP in a subsidiary act. The Law foresees a deadline of 24 months, according to which all subsidiary acts have to be issued; i.e., by 14 October 2006.

The MESP has so far issued two subsidiary acts implementing this Law: the AI on Identification of Water Inspection and the AI on Determination of the Procedure, the Form and the Conditions for Issuance of Water Licenses. During the further implementation process, the MESP has prepared three AIs defining the following areas: the prices for water and the price for sewage

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<sup>56</sup> Promulgated by UNMIK Regulation 2004/38.

<sup>57</sup> Section 6 of the Law.

<sup>58</sup> Section 51 of the Law.

<sup>59</sup> Promulgated by UNMIK Regulation 2004/41.

discharge service, the water strategic and administration plan and the limit values of effluents discharged into waters. In addition, the Water Department of the MESP is in the drafting process of an AI on the work and the methods of the water information system and an AI on a regional river dam authority.

Overall, it can be assessed that the MESP has made recent progress toward implementation. However, a further 21 provisions of this Law envisage issuance of subsidiary legislation by the MESP or by the Government.

#### **Law No. 2004/28 on Precious Metal Products**

This Law<sup>60</sup> regulates the production and selling of precious metal products in accordance with international standards with respect to the content, makeup and fineness of precious metal products. The aim is to establish the rights and obligations of precious metal producers and importers as well as the manner of control, investigation and marking of precious metal products. Although rights and obligations foreseen by the Law are to be implemented by the Institute of Legal Metrology of Kosovo, it is the obligation of the supervising Ministry of Trade and Industry (MTI) to issue the so-called “by-laws” within six months from the entry into force; therefore by 24 February 2005.

Based on the material which has been provided to the OSCE, none of the AIs issued by the MTI in 2004 and 2005 implements this Law. However, according to the information provided by the Legal Issues Official from the MTI, there are two AIs which are currently in the final preparation phase: an AI on Identification Symbols and an AI on the Legal Meteorology Institute Stamp. In this regard, it can be assessed that the MTI was not able to meet the deadline for implementation as envisaged under this Law.

#### **Law No. 2004/30 on Air Protection**

The purpose of this Law<sup>61</sup> is to ensure a healthy and clean air environment for residents and protect fauna, flora and natural and cultural values of the environment. The Ministry of Environment and Spatial Planning (MESP) is responsible for the implementation of the Law. It is called upon to define indicators of air quality and to propose standards for air quality and air discharge. The MESP shall also define criteria for the establishment of a smog warning and regulatory system as well as norms for mobile discharge. Moreover, the MESP shall determine, for the purpose of pollution reporting, the procedures and reporting periods. The latter requires a joint instruction by the MESP, the Ministry of Health and the Ministry of Transport and Telecommunication. All standards, criteria and norms need the approval of the Government. The MESP also has to draft a strategy for air protection, which also needs to be approved by the Government. The Government must present once per year a report on the fulfilment of plans and programmes envisaged by the strategy to the Assembly. The Government, by way of normative act, is authorised to determine tax allowance and exemptions in order to promote air cleaning and recycling equipment.

The MESP and the Government have not issued any implementing subsidiary acts, nor has a strategy for air protection been drafted.

#### **Law No. 2004/33 on Livestock**

The aim of the Law<sup>62</sup> is to ensure quality standards regarding livestock breeding. The Ministry of Agriculture, Forestry and Rural Development is requested to regulate by AI issues concerning livestock breeding and livestock feed materials; quality standards concerning classification and grading of farm produced livestock products sold to processing industries; and zoological standards for livestock-keeping. Moreover, to implement the Law, the Ministry is tasked to establish two institutions: the Standing Commission on Livestock Breeding (to advise the Ministry on issues related to livestock breeding) and the Centre for Livestock Breeding (to collect and analyse data concerning breeding matters).

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<sup>60</sup> Promulgated by UNMIK Regulation 2004/33.

<sup>61</sup> Promulgated by UNMIK Regulation 2004/48.

<sup>62</sup> Promulgated by UNMIK Regulation 2004/39.

The MAFRD has so far implemented the following: Section 5 of the Law, concerning the establishment of herd-books, accreditation of breeders association and certification of persons; Section 7, on the establishment of the Centre for Livestock Breeding; and Section 8, on the responsibilities of the Centre for Livestock Breeding. These provisions of the Law have all been implemented by AI No. 04/2005. Further, the Ministry has issued AI No. 20/2005 on Quality Standards, Labelling and Classification of Eggs. It has also prepared a draft AI on Domestic Animal Food Ingredients, which awaits signature by the Minister. Other obligations under this Law, such as creation of the Standing Commission of Livestock Breeding by the Ministry, remain unimplemented.

Besides creating the entire structure necessary for the implementation of the Law, the MAFRD has still to implement another six provisions of the Law through issuance of AIs. Nevertheless, it can be concluded that MAFRD has implemented a substantial part of the Law.

#### **Law No. 2004/36 on Competition**

The purpose of the Law on Competition<sup>63</sup> is to prevent and prohibit any acts, which may restrict, suppress or distort competition in order to ensure the development of a sound market economy in Kosovo. By Title V of the Law, the Kosovo Competition Commission (KCC) shall be established. The KCC shall develop, adopt and publish detailed sub normative acts for the implementation of the Law.

To the knowledge of the OSCE the KCC has not yet been established.

#### **Law No. 2004/37 on Inspection of Education in Kosovo**

The purpose of the Law<sup>64</sup> is to regulate the rights, duties, authorisations and responsibilities of the Education Inspectorate in Kosovo. The Education Inspectorate is an executive body under the umbrella of the Ministry of Education, Science and Technology (MEST). The MEST is responsible for the implementation, which amounts to setting up of the framework for the work of the inspectors.

Initially, the MEST issued one AI which determines administrative procedures of various types of inspections in the educational and scientific institutions. This issue is regulated by AI No. 11/2005 which has been signed by the Minister on 4 April 2005. In the course of preparation of this report, the MEST has adopted another six AIs implementing various provisions of the Law: Annulment of Receipts, Diplomas and other School Documents which have been obtained contrary to this Law; Cessation and Suspension from Work and Commencement of Disciplinary Procedures against Teachers, other Employees and the management of Educational and Scientific Institutions; Appeals against such Suspension; and the Substitution of Missed Classes Unrealized by Teachers. The MEST has set up the necessary legal framework for the work of education inspectors and has thus fulfilled its obligations under this Law.

#### **Law No. 2004/38 on the Rights and Responsibilities of the Citizen in Health Care**

The purpose of the Law<sup>65</sup> is to protect and ensure the rights and responsibilities of the citizens within the health care system and establishes mechanisms to guarantee these rights and responsibilities. The Government through a sub-legal act is required to determine conditions by which residents have access to a health care system in case no health system is available in Kosovo. The Ministry of Health is tasked to issue a sub-legal act on data protection and management. The MH shall also establish a Commission for evaluation and compensation of damage occurred through medical expenses. Funding of the health care institutions shall be defined through a sub-legal act to be issued by the MH in cooperation with the Ministry of Finance and Economy.

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<sup>63</sup> Promulgated by UNMIK Regulation 2004/44.

<sup>64</sup> Promulgated by UNMIK Regulation 2004/55.

<sup>65</sup> Promulgated by UNMIK Regulation 2004/47.

Out of four provisions envisaged by Law to be implemented by subsidiary acts, only one has been issued so far. It is Section 29.3 on establishment of an Appeals Commission. However, from the copies of AIs provided to the OSCE by the MH, none of the AIs refer to the creation of this Commission.<sup>66</sup> What remains to be done by the MH is the determination of rules for the management and protection of health care data and personal data and setting up the fund, insurance premiums and contractual relationships between health care institutions and the Ministry of Health. With regard to the Government's obligation under this Law, Section 4.14 on determination of conditions for health care outside Kosovo remains unimplemented. Over all it can be assessed that the major part of the Law remains unimplemented.

#### **Law No. 2004/49 on Patent**

The purpose of this Law<sup>67</sup> is to protect inventions by granting patents, thus giving further rights to the patent holders. The Law defines patentable inventions and sets out the procedures for application. A Patent Office<sup>68</sup> shall be established as an independent agency within the Government entrusted with all functions specified in the Law. Although the Government is required to issue AIs prescribing details for the implementation of this Law<sup>69</sup>, the responsibility to draft the AI has been assigned to the MTI.<sup>70</sup> The Law does not envisage any deadline for issuance of subsidiary legislation.

According to the MTI Legal Office no sub-legal act has been issued yet.

#### **B. Follow-up on the Implementation of Kosovo Assembly Laws 2002-2003**

In the last report 24 laws were reviewed concerning obligations for implementation. At that time four of the laws had been implemented fully.<sup>71</sup> The remaining ones had either not or only partly been implemented. The following paragraphs provide a follow up overview on the progress of implementation of Laws from 2002-2003 since the last assessment.

For some of the laws that in the last report were assessed to only be partly implemented, a very positive development has been noticed. In our estimation the Law on the Labour Inspectorate<sup>72</sup>, the Law on Social Assistance Scheme<sup>73</sup>, the Law on Disability Pensions<sup>74</sup> and the Law on Pesticides<sup>75</sup> have now been fully implemented by the responsible institutions.

Concerning the vast majority of the laws assessed in the last report considerable progress was made in 2005 for their implementation: the Kosovo Cadastral Agency (KCA) has introduced

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<sup>66</sup> The placement of Appeal Boxes in health institutions through out Kosovo can be an indicator that the Law provision on Appeals Commission is being implemented. OSCE was informed about the Appeal Boxes by the HLO of MH and their presence in health institutions was also confirmed by OSCE field presence.

<sup>67</sup> Promulgated by UNMIK Regulation 2004/56 on 21 December 2004.

<sup>68</sup> Section 13.1.

<sup>69</sup> Section 13.3.

<sup>70</sup> Section 81.

<sup>71</sup> See OSCE Implementation Report for the laws promulgated in the period 2002–2003, under Sec. III A., page 8: Law No. 2002/1 on the Methodology for setting the Level of Basis Pension in Kosovo and Determining the Commencement Date for Provision of Basic Pension. And Sec. III B., page 15 and 19: Law No. 2003/9 on Farmers Cooperatives; Law No. 2003/19 on Occupational Safety, Health and the Working Environment; Law No. 2003/22 on the Sanitary Inspectorate of Kosovo.

<sup>72</sup> The MLSW has issued AI No. 3/2005 implementing Section 4.3, which was highlighted as not implemented in the last report.

<sup>73</sup> The MLSW has adopted two additional AIs: No. 01/2005 on Purview and Responsibilities of the Monitoring Units of the Social Welfare Independent Scheme of the MLSW and No. 06/2005 on the Determination of Procedures for Financial Support for Families and Individuals in Specific Cases.

<sup>74</sup> See OSCE Implementation Report for the laws promulgated in the period 2002–2003, concluded on pages 19-20 that five issued subsidiary acts set the foundation for the implementation of the Law on Disability Pensions in Kosovo. Since then, the MLSW has issued another two AIs: No. 14/2004 on Engagement of Medical Experts in Medical Commissions of the MLSW and No. 15/2004 on Implementation of Disability Pensions.

<sup>75</sup> AI No. 2004/15 on Determination of the Special Conditions for Production, Import, Export, Distribution, Sale and Professional Appliance of Pesticides, AI No. 2005/11 on Establishment of the Registration Authority of Pesticides in Kosovo and AI No. 21/2005 on Administrative Registration of the Commercial Name for Pesticides which contain Active Substances permitted for Disposal in the Market, for Circulation and for their Usage in Kosovo.

administrative guidelines<sup>76</sup> in view of the Law on Establishment of Property Rights Register. This is supported by a draft AI by Ministry of Public Services (MPS) on determining the level of fees for services and products by the KCA; nevertheless, it is not signed yet.<sup>77</sup> The implementation of the Law on Telecommunications, the Law on Roads and the Law on Postal Services has been complemented by further Administrative Instructions.<sup>78</sup> However, according to the latest information from the Ministry of Transport and Telecommunications (MTT), the AI on drafting rules on weight and dimensions of vehicle using public roads has not been issued yet although at the time of the last report the draft AI was ready for signature.<sup>79</sup>

Concerning the Law on Environment Protection an administrative instruction regulating a database on pollution<sup>80</sup> has been issued, whereas the Kosovo Environmental Protection and Sustainable Development Strategy<sup>81</sup> is currently subject of debate within Kosovo municipalities.<sup>82</sup> For the implementation of the Law No. 2003/2 on Public Financial Management and Accountability, one AI has been issued.<sup>83</sup> In the process of implementing the Law on Spatial Planning another five AIs and two guidelines have been adopted.<sup>84</sup> In addition, the Deputy Director of the Institute for Spatial Planning informed the OSCE that the MESP is in process drafting the Spatial Plan for Kosovo and he expects the first draft to be finished by the end of the year.<sup>85</sup>

Progress concerning the Law on Libraries was made through approval of the Strategic Plan for National Network Libraries, the Regulation on the Registry of Libraries and the Regulation for Clearance and Deregistration of Collections. However, Administrative Instructions on Professional Titles, Professional Exams for Library Activities and on Professional Work and Conditions for its Exercise in Library Activities still await ministerial signature.<sup>86</sup> Pursuant to the obligation under the Law on Archive Material and Archives, regional archives have been established in Prishtinë/Pristina, Mitrovicë/Mitrovica, Peja/Pec, Prizren/Prizren and Gjilan/Gnjilane. Almost all municipal archives are established, except in Deçan/Deqane, Shtime/Štimlje and Rahovec/Orahovac. All of the above mentioned archives are not completely functional due to financial difficulties.

In the area of education, AIs have been continuously issued on curricula for secondary school, telecommunications, medicine, machinery and construction. Nonetheless, the implementation of the Law on Higher Education still lacks progress.<sup>87</sup> The implementation of the Law on Forests made a step forward since four AIs have been issued.<sup>88</sup> One AI has been issued to implement the Law on Artificial Fertilisers<sup>89</sup>, but the two respective institutions still have to be established.<sup>90</sup>

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<sup>76</sup> In further implementation of this Law, the KCA has issued AI No. 2004/01 on Implementation of the Law on Establishment of an Immoveable Property Register.

<sup>77</sup> See <http://www.ks-gov.net/mshp/legj/udhëz/udhëz4.html>.

<sup>78</sup> AI No. 2004/3 determining the Sentences for Minor Offences in Telecommunications, AI No. 2005/5 on the Level of Compensation for Extraordinary Transport on the main and regional Roads and AI No. 2004/7 on Licensing of Postal Services Operators.

<sup>79</sup> See OSCE Implementation Report for the laws promulgated in the period 2002–2003, page 16.

<sup>80</sup> AI No. 61/2005 on the Cadastre of the Emission for Environmental Polluters.

<sup>81</sup> This obligation is based on Section 6.1 of the Law on Environmental Protection.

<sup>82</sup> See <http://www.mmph.org/dmm.html>.

<sup>83</sup> The Financial AI No. 3/2004 on Government vendors is implementing Section 3 of the Law.

<sup>84</sup> See <http://www.mmph.org/dph.html>.

<sup>85</sup> The obligation in Section 10.1 of the Law No. 2003/14 on Spatial Planning to adopt spatial plans for special areas is dependent on the finalisation of the Spatial Plan for Kosovo.

<sup>86</sup> The Information has been provided by the Head of Division for Libraries of the MCYS.

<sup>87</sup> Section 17.1 contains an obligation to issue an Administrative Instruction for the methodology to be used for the allocation of funds for teaching and research in the public interest.

<sup>88</sup> AI No. 02/2005 on Responsibilities and Obligations of Forest Guards, AI No. 06/2005 on Registration, Licensing of Forests Young Plant Material Producers and Producers of Decorative Woods, AI No. 12/2005 on Determination of the Prices/Taxes for Usage of Wood/Forestry Products, Non Wood Products and for Technical Professional Services and AI No. 25/2005 on the Rules of Sale of the Wood Material and Wood Assortments. One draft AI on Selection, Marking and Rating of the Wood Assortments is awaiting signature.

<sup>89</sup> AI No. 2005/13 on the Conditions of Licensing of Subject for Repackaging of Artificial Fertilizers.

<sup>90</sup> The Artificial Fertilizers Regulatory Service and the Kosovo Artificial Fertilizers Advisory Board. The Information has been provided by the Legal Office of the MAFRD.



Further in the same field, the Government did not fulfil its part of the obligation to prescribe an Administrative Instruction for the registration fee for a certificate of registration.<sup>91</sup>

The OSCE has observed that in the case of some laws, there has been a serious lack of implementation. For example, the Law on External Trade Activity contains 21 provisions that task the Government of Kosovo for subsidiary acts. So far, the Government has issued only one AI on Classification of Goods in Forms of Import and Export implementing two of the provisions.<sup>92</sup> Similarly incomplete is the status of the implementation of the Law on Liquidation and Reorganisation of Legal Persons in Bankruptcy. To our information no subsidiary act has been issued yet to implement the Law. Finally, although currently the MPS is working on an AI, the Law on Access to Official Documents has not been implemented yet.

### **C. Note on Access to Official Documents**

The Kosovo Assembly adopted the Law on Access to Official Documents<sup>93</sup> in 2003. It should serve the purpose of enabling residents of Kosovo to participate more closely in the decision making process of public institutions and guaranteeing that the public institutions enjoy greater legitimacy, transparency and are more effective and accountable. Already in the last report it was pointed out that several provisions of the Law envisage measures that should be undertaken for its implementation. The provisions that refer to the Government and the institutions<sup>94</sup> themselves have to our knowledge not been supplemented sufficiently with secondary legislation as required.

Besides other obligations the Law requires that the Government shall draft a list of documents, which shall be treated as sensitive documents<sup>95</sup> and adopt adequate rules and procedures regarding their classification.<sup>96</sup> Moreover, the Law establishes that the OPM at the latest by 31 July 2004 and every year thereafter shall publish a report and file a copy with the Assembly of Kosovo, on the implementation of this Law.<sup>97</sup>

The Law on Access to Official Documents requires that every institution take the necessary measures to establish a register. These registers should have been operational by 1 January 2004 and should contain the names of documents that are housed by the institution and their respective locations.<sup>98</sup> Furthermore, the criteria by which the institutions determine classification of sensitive documents should have been made public.<sup>99</sup>

In the course of preparing this report, the OSCE discussed the implementation of the Law on Access to Official Documents with representatives of the legal offices of most of the central institutions of the executive branch. As a result, the OSCE is ultimately concerned that the implementation of the Law has not been taken seriously.

Only a few of the institutions the OSCE interviewed have started to take measures in order to establish a register as required by Section 10.3 of the Law; despite that a register should have been operational in every institution nearly two years ago. To our information, the Government has not yet introduced a list of documents that shall be treated as sensitive despite the obligation in Section 4.3. Moreover, further effort is needed to facilitate the obligation in Section 13 for any institution to take the requisite measures to inform the public of the rights they enjoy under the Law.

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<sup>91</sup> According to the documents provided by the Head of Legal Office of the Government.

<sup>92</sup> This AI implements Section 16 and 30 of the Law.

<sup>93</sup> Promulgated by UNMIK Regulation 2003/32.

<sup>94</sup> According to the National Democratic Institute Kosovo, "institutions" shall be interpreted broadly to include all PISG organs and agencies, Kosovo Trust Agency, municipal organs and agencies, as well as independent bodies and offices listed under Chapter 11 of the Constitutional Framework.

<sup>95</sup> See Section 4.3. UNMIK Regulation 2003/32.

<sup>96</sup> See Section 17.1. UNMIK Regulation 2003/32.

<sup>97</sup> See Section 16.2. UNMIK Regulation 2003/32.

<sup>98</sup> See Section 10.3. UNMIK Regulation 2003/32.

<sup>99</sup> See Section 8.5 UNMIK Regulation 2003/32.

The Government has not yet adopted any rules and procedures for the classification of sensitive documents in order to implement Section 17.1. To our knowledge, none of the ministry officials interviewed have ever been contacted concerning their respective sensitive documents. Some have taken the position that their ministry does not have any sensitive documents. These institutions do not seem to realise that the Law is introducing a right for any eligible person to access any document unless it is classified.<sup>100</sup> Thus, positive action by the respective institutions is needed in order to classify any given document or group of documents, given that every institution has sensitive documents: for example, the personal files of employees and other personal information.

In summary, the implementation of the Law on Access to Official Documents is still rather incomplete. For the sake of completeness it has to be mentioned that the OSCE just recently received a copy of a draft AI implementing the Law on Access to Official Documents. It remains to be assessed whether it covers the various obligations of the law sufficiently.

### **SECTION III: FINDINGS AND RECOMMENDATIONS**

#### **A. General Assessment**

As a general assessment on the implementation of Kosovo Assembly laws in the year 2004, the OSCE finds that most ministries continue to make considerable progress in the drafting of subsidiary legislation. As examples, the Ministry of Agriculture, Forestry and Rural Development and the Ministry of Education, Science and Technology have both proven highly successful and organised in this regard. On the other hand, there is major room for improvement in some ministries and in the Government, and in most cases the actors have proven unable to comply with the deadlines envisaged for the adoption of secondary acts. The follow-up research from the last report also makes it clear that several of the laws from the period of 2002–2003 still have not been implemented to the extent envisaged by the Assembly, notwithstanding vast progress in a number of ministries.

The data shows that, with respect to a few laws at least, nothing or very little has been done towards implementation, although it is often the case that secondary legislation is required in order to make the Law an applicable document. For example, the Laws on Air Protection, Consumer Protection, Patents and Competition (from 2004) all remain unimplemented. From 2003, the Law on the Liquidation and Reorganisation of Legal Persons in Bankruptcy and the Law on External Trade Activity both require a vast amount of implementing acts, but still almost nothing has been done. The Kosovo Assembly and the Government must each take measures to address such gaps immediately. Arguably, in some cases from a rule of law perspective having a non-implemented law can be worse than having no law at all.

The difficulties in implementing laws can be partially attributed to the priority given by ministries and the Government to draft primary legislation at the expense of secondary legislation. The lack of human resources in various legal offices has created the need to prioritise further. The remainder of this report will examine several aspects surrounding the implementation of laws. It will examine certain normative aspects of implementation and analyse some of the operational challenges that the ministries tend to face. The report will then look into some formal aspects of the way legal acts should be drafted by the ministries before offering a list of recommendations.

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<sup>100</sup> One thing that should be addressed as well is the question of a confirmation slip when applying for access to documents. There have been cases where institutions have not given such slips to individuals. By that however the institution deprives the individual of evidence to prove when the institution does not handle the request promptly. See Section 6.1.

## **B. Normative Aspects**

### ***1. Lack of Definition and Hierarchy Concerning Normative Acts***

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 the Ministry: decisions and administrative instructions.<sup>101</sup>

Decisions regulate particular and concrete administrative issues while administrative instructions are designed to regulate a general field of activity by the respective competent minister. The distinction is workable as the first instrument is used when a singular situation has to be addressed while the second points to the regulation of executive activity that is not connected to a particular incident or addressee. One could say that, with a decision, the executive regularly applies the law, while with an administrative instruction it usually implements the law.

As pointed out, the legal framework of Kosovo is exhaustive on the instruments for executive action. However, many of the laws passed by the Kosovo Assembly are still referring to other than these two categories of subsidiary acts.<sup>102</sup> Similar to the last report, a rather high number of different repeating terminologies were identified in the various laws: special legislative act<sup>103</sup>, sub legal act<sup>104</sup>, special regulation<sup>105</sup>, normative act<sup>106</sup>, guidelines<sup>107</sup>, provisions<sup>108</sup>, bylaw<sup>109</sup>, special sub legal act<sup>110</sup>, secondary legislation rules<sup>111</sup> and sub normative act<sup>112</sup>, just to mention some of the categories. Additional confusion is produced by the use of the terms regulation<sup>113</sup> and administrative direction<sup>114</sup>, as these terms refer also to the legislative acts created by UNMIK.

The OSCE is concerned over this arbitrary use of terminology by the Assembly of Kosovo, but also by the executive branch for the administrative activity of the ministries. The lack of precise definition of the category of subsidiary act used creates a situation of legal uncertainty in applying the law itself. The presence of different categories and subsequently a variety of definitions of subsidiary acts can also generate confusion with respect to their hierarchy and uniformity. Although many inconsistencies are related to irregularities in translation, they either way contribute to confusion.

The Assembly orders by law the executive branch to take action in a specific field. The identified institution (normally a ministry) will then draft an administrative instruction that, after the signature of the minister, will regulate the specific field in connection with the parent Assembly law. Thus, the administrative instruction is dependent on an authorisation by the Assembly. It is a normative act, but of a lower rank. For example, a court would have the obligation when applying secondary legislation to check whether that act has a proper legal basis in primary legislation. If the court in its assessment comes to a negative conclusion the secondary legislation cannot be applied in the specific case and the court decision can solely be based on the primary legislation. If the secondary legislation has a proper legal basis in primary legislation and is not going beyond

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<sup>101</sup> See Section 1.3 (d) UNMIK Regulation 2001/19.

<sup>102</sup> Already in the last report, covering laws promulgated in 2002-2003, the OSCE on pages 20/21 pointed with several examples to the arbitrary use of terminology that creates legal uncertainty.

<sup>103</sup> See e.g. Section 5 UNMIK Regulation 2004/17 on the Law on Transport of Dangerous Goods (No. 2004/6).

<sup>104</sup> See e.g. Section 30 UNMIK Regulation 2004/17 on the Law on Transport of Dangerous Goods (No. 2004/6).

<sup>105</sup> See e.g. Section 4.15 UNMIK Regulation 2004/18 on the Law on Gender Equality (No. 2004/2).

<sup>106</sup> See e.g. Section 3.3 UNMIK Regulation 2004/23 on the Law on medicinal Products and medicinal Devices (No. 2003/26).

<sup>107</sup> See e.g. Section 8.1 UNMIK Regulation 2004/23 on the Law on medicinal Products and medicinal Devices (No. 2003/26).

<sup>108</sup> See e.g. Section 34.7 UNMIK Regulation 2004/23 on the Law on medicinal Products and medicinal Devices (No. 2003/26).

<sup>109</sup> See e.g. Section 6.2 (b) UNMIK Regulation 2004/28 on the Veterinary Law (No. 2004/21).

<sup>110</sup> See e.g. Section 29.2 UNMIK Regulation 2004/31 on the Kosovo Health Law (No. 2004/4).

<sup>111</sup> See e.g. Section 18.2 UNMIK Regulation 2004/42 on the Law on Consumer Protection (No. 2004/18).

<sup>112</sup> See e.g. Section 23 UNMIK Regulation 2004/44 on the Competition Law (No. 2004/36).

<sup>113</sup> See e.g. Section 8.2 UNMIK Regulation 2004/43 on the Law on Internal Trade (No. 2004/18).

<sup>114</sup> See e.g. Section 6 UNMIK Regulation 2004/38 on the Law on Cinematography (No. 2004/22).

the authorisation provided, the court would then have an obligation to apply the secondary legislation in conjunction with the primary law.<sup>115</sup>

The aforementioned examples show that the introduction of every new category of subsidiary act would need a proper definition as to the scope of authority given to the respective administrative body as well as the relation of the act to all the other acts. Therefore, there is a need to address the subject of hierarchy and uniformity of normative acts in Kosovo in general and in particular concerning the subsidiary acts issued by the executive branch of the PISG. This discussion should also tackle the question of whether the two categories - decisions and administrative instructions - as enshrined in UNMIK Regulation 2001/19 on the Executive Branch of the PISG are sufficient in order to properly regulate the activities of the ministries in general or their particular fields of activity. Legal clarity requires an enumerated set of instruments established and defined by law. Thereby it is not helpful at all that the newly released Rules of Procedure of the Government point out that Government may “draft secondary or sub normative legal acts (e.g., regulations, rules and instructions necessary to ensure the proper implementation of a law)”.<sup>116</sup>

The European Court of Human Rights (ECHR) has made it very clear by stating that the “rule of law, one of the fundamental principle of a democratic society, is inherent in all articles of the convention”.<sup>117</sup> This requires parties bound by the European Convention on Human Rights “not only to respect and apply, in a foreseeable and consistent manner, the laws they have enacted, but also, as a corollary of this duty, to ensure the legal and practical conditions for their implementation”.<sup>118</sup> Moreover, the court pointed out that “the principle of lawfulness also presupposes that the applicable provisions of domestic law be sufficiently accessible, precise and foreseeable.”<sup>119</sup>

The OSCE strongly believes measures to enhance clarity in this field are strongly needed. As pointed out in the last report, one option could be to draft and pass a Law on Normative Acts that defines the types and hierarchy of normative acts in Kosovo as well as the sphere of social relations regulated by them.<sup>120</sup> Another option would be to incorporate the clear definitions of governmental instruments envisaged in an amendment or new version of the law regulating the executive branch.

## **2. Legal Basis for Normative Acts**

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.<sup>121</sup> 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 has to be conducted by the legislature but it does have to maintain effective oversight of the process. The legislative branch can delegate certain legislative powers to other actors, for example the executive branch<sup>122</sup> or a specialised agency. It has to authorize 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.

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<sup>115</sup> Chapter 2 of the constitutional framework (UNMIK Regulation 2001/9) obliges the PISG to promote and respect the principle of division of powers. The basic notion of that principle is inter alia that the legislative powers are vested with the parliament. See also on page 28.

<sup>116</sup> Section 4.1.2 Government Regulation 1/2005 on the work of Government, signed on 18 July 2005.

<sup>117</sup> Hasan and Chaush v. Bulgaria [GC], No. 30985/96, § 87 ECHR, 2000-XI.

<sup>118</sup> Broniowski v. Poland, No. 31443/96, § 184 ECHR, 2004-V.

<sup>119</sup> Beyeler v. Italy, No. 33202/96, § 109 ECHR, 2000-I.

<sup>120</sup> For interesting examples concerning the content of such a law see the Law on Normative Acts in the Republic of Bulgaria (<http://www.bild.net/legislation/docs/1/state11.html>) or Georgia ([http://www.iris.ge/docs/translations/law\\_normative\\_acts.doc](http://www.iris.ge/docs/translations/law_normative_acts.doc)).

<sup>121</sup> UNMIK Regulation 2001/9.

<sup>122</sup> It cannot delegate legislative powers to the judiciary, as this would conflict with its task to interpret and apply the law.

The principle of division of powers is not adhered to when an administrative instruction is based on another administrative instruction, as for example in AI 2005/11 (MTI).<sup>123</sup> There the choice of secondary legislation as a parent act circumvents the legislative power of the Assembly and mingles the powers of government. An administrative instruction issued by an executive body must be based on an act of parliament.

Besides a legal basis in a law as such 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.<sup>124</sup> A rule of thumb in a democratic society should at least be that important political decisions shall be taken in parliament.

Delegation of legislative powers to the executive is an exception from the rule of division of powers. Consequently, the exception must be defined to a certain extent in order not to contort the pattern of rule and exception. The European Court of Human Rights (ECtHR) pointed out that the “law should be both adequately accessible and foreseeable”.<sup>125</sup> Thus, at least the specific content and extent of the concrete delegation should be defined in the law. Thereby it is for example also essential that a specific body is authorised to prepare secondary legislation. A reference to a “competent Ministry” as for example in the Law on Construction is not enough<sup>126</sup>; nor is a general authorisation at the end of a law.<sup>127</sup>

### ***3. Adoption of Changes Envisaged in the Promulgating Act***

Each law passed by the Assembly of Kosovo has to be promulgated by the SRSB in order to become effective.<sup>128</sup> Promulgation thus means to put a law into force or effect. This act of promulgation allows the SRSB 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. These changes range from the replacement of individual wording<sup>129</sup>, deletion of a paragraph of a section<sup>130</sup> to the introduction of completely new paragraphs and sections<sup>131</sup>. 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.<sup>132</sup>

From a rule of law perspective, this situation creates a cause for concern. A “law should be adequately accessible and foreseeable”<sup>133</sup> as well as clear and concise.<sup>134</sup> This is not the case when changes in the promulgating act are not incorporated technically in the body of the assembly law

<sup>123</sup> See for example the Administrative Instruction No. 2005/11 issued by the MTI that besides mentioning UNMIK Regulation 2001/19 is based on Sections 6, 7 and 9 of Administrative Instruction 2004/01 from 4 November 2004.

<sup>124</sup> See *Hasan and Chaush v. Bulgaria*, [GC], No. 30985/96, § 84 ECHR, 2000-XI: “In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power.”

<sup>125</sup> *Hasan and Chaush v. Bulgaria*, [GC], No. 30985/96, § 84 ECHR, 2000-XI.

<sup>126</sup> See Section 21.5 UNMIK Regulation 2004/37 on the Law on Construction (No. 2004/15).

<sup>127</sup> See e.g. Section 12.3 UNMIK Regulation 2004/32 on the Anti-Discrimination Law (No. 2004/3).

<sup>128</sup> Sections 9.1.44/45 UNMIK Regulation 2001/9.

<sup>129</sup> See e.g. UNMIK Regulation 2004/56 on the Patent Law (No. 2004/49); UNMIK Regulation 2005/34 on the Law on the Independent Media Commission and Broadcasting (No. 02/L-15).

<sup>130</sup> See e.g. UNMIK Regulation 2004/32 on the Anti-Discrimination Law (No. 2004/3); UNMIK Regulation 2004/28 on the Law on Veterinary (No. 2004/21).

<sup>131</sup> See e.g. UNMIK Regulation 2004/44 on the Law on Competition (No. 2004/36); UNMIK Regulation 2004/30 on the Law on International Financial Agreements (No. 2004/14); UNMIK Regulation 2004/26 on the Law on Sports (No. 2003/24).

<sup>132</sup> See UNMIK Regulation 2004/18 on Gender Equality in Kosovo (No. 2004/2).

<sup>133</sup> See *Hasan and Chaush v. Bulgaria*, [GC], No. 30985/96, § 84 ECHR, 2000-XI.

<sup>134</sup> See the Resolution of the Council of the European Communities of 8 June 1993 on the quality of drafting of Community Legislation, now incorporated in Section 25(1) m of the Government Regulation 1/2005 on the Work of Government, signed on 18 July 2005.

itself. Thus, in order to consult the final version of a law one has to check the wording of the law against the promulgating act.

Unfortunately, there is no procedure by which changes made by the Office of the SRS in the promulgating regulation are incorporated into the texts of the assembly laws. Neither the Assembly or UNMIK have addressed this problem.

It is important that a mechanism is created to address this once the new Law on the Official Gazette, promulgated in 2005, is implemented and applied.<sup>135</sup> It remains to be determined exactly how the laws in the gazette will reflect the changes of the promulgating act and who has the authority to make the changes.

### **C. Functional Aspects**

Already during the interviews for the last report, the OSCE realised that the executive branch legal offices encountered various problems in their work. One of the more obvious issues identified has been the staffing situation in the legal offices. Given the experience of last year's interviews, the OSCE decided to obtain a more comprehensive picture of the problems and to broaden the scope of the interviews to include issues ranging from the drafting of the laws themselves up to their publication and dissemination. The following sections present some of the main problems identified. It must be noted that the findings are as comprehensive as the information revealed to the OSCE. While most interviewed heads of legal offices were very cooperative, some showed reluctance to discuss problems faced in their work.

#### ***1. Staffing***

The problem of understaffing of the legal offices has already been noted in the previous OSCE implementation report.<sup>136</sup> At the time of drafting this report, with the exception of the Office for Legal Support Services (OLSS) of the Office of Prime Minister, which currently holds nine legal officers, the average size of the legal offices in ministries ranges from two to four staff members.<sup>137</sup> Having in mind just the vast number of laws drafted this year alone, the offices need more capacity. Some representatives from offices with a high number of laws in the drafting process confirmed that they have very little capacity left to work on the implementation of laws. The OSCE recommended in the previous report that the capacity of the legal offices within the executive branch should be strengthened.<sup>138</sup> Compared to last year however, the staffing situation in most legal offices has become worse. This is due to a number of factors. First, it appears that all legal offices face a high fluctuation of staff. In addition, this apparently was further worsened by a Decision of the Government from January 2005, implementing a full employment freeze in the public sector.<sup>139</sup> Positions left vacant due to the resignation of staff members are currently not being filled. The current acting Director of the OLSS took the opinion that these positions could be refilled, however, no vacancy announcements have been issued so far. Although last year several legal offices reported that they expected to be allocated additional staff positions the opposite has become a reality. As a consequence of the Government Decision the number of staff members has diminished, and those staying on in the offices are reportedly overloaded with work.

Some staff members leaving their posts have transferred to more senior position within the PISG. In view of capacity building, the OSCE welcomes this fact. On the other hand, the responsibility for the fluctuation of staff members to a certain extent is due to recruitment by the international community. A tendency, which cannot be ignored, is that a number of comparatively better

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<sup>135</sup> UNMIK Regulation 2005/25 on the Law on the Official Gazette (No. 2004/47) from 12 May 2005.

<sup>136</sup> See OSCE Implementation Report for the laws promulgated in the period 2002–2003, under Sec. IV E. Legal Offices within the Executive Branch, page 22, and the subsequent recommendation under F., page 23.

<sup>137</sup> The Legal Office of OPM is the biggest office with as of 15 November 10 legal officer and another nine vacant positions, MTI has five legal officers, MCYS two, MTT three and the MPS even six legal officers. MH has currently two filled and one vacant position. MAFRD, MEM, MLSW, MFE: three legal officers. KVS has only one lawyer who was delegated from the MAFRD recently. MESP was not able to provide a figure.

<sup>138</sup> See OSCE Implementation Report for the laws promulgated in the period 2002–2003, under Sec. IV F. Recommendations, page 23.

<sup>139</sup> Several interviewees have referred to this decision. The OSCE requested several times a copy of the decision, however, the OLSS was not able to provide one.

qualified staff members have moved to international organisations, NGOs and other private companies simply because of better salaries. Having in mind that a major aim of many international organisations and NGOs is the strengthening and capacity building of the PISG, it is rather unfortunate that these organisations hire the better qualified people from the PISG, thus resulting in “brain drain” from the relatively newly created institutions. It becomes even ironic when these staff members in their new positions consequently have the duty to observe, monitor and advise the PISG for capacity building purposes.

## **2. Publication/Official Gazette**

The OSCE used the opportunity of its interviews with legal offices to inquire whether and how subsidiary acts are made available to the relevant institutions and the public. After all, a signed AI which has not been published or at least made accessible to the respective institutions and the public at large cannot be deemed properly implemented. It is a simple yet fundamental rule of law principle that the public shall be informed of the legal acts which bind them.

According to the information received in the interviews, most ministries have either published their respective AIs in hard copy format, such as compilations, or they have uploaded them on their web pages in the internet for free access, or both. Most ministries are in the practice of disseminating these acts directly to the relevant institutions or bodies subject to the AI. Only in a few cases has no systematic distribution taken place. In these cases, the only recourse for interested persons is to approach the relevant Ministry in order to obtain an AI. Out of 11 ministries, six have uploaded their respective AIs on their web pages in the internet.

Free and easy access to information by the public is still a serious issue. In the process of compiling the report when the respective AIs were not available on the internet, the OSCE had to request copies directly from the ministry. Often these Ministries would not have copies at hand. Moreover, many of these ministries had to be contacted several times (in one case six times) before they eventually complied with the request. In three cases the recovery of information proved to be particularly complicated, requiring an assistant of the OSCE to download the respective AIs on an USB memory stick. This clearly highlights the difficulties a resident is facing when it comes to accessing subsidiary acts.

According to the Law on the Official Gazette<sup>140</sup>, official documents of the PISG shall be published in the Official Gazette of Kosovo (OGK). [The OGK must not be mistaken with the UNMIK Official Gazette in which all UNMIK legislation is published by the Official Gazette Unit of UNMIK.] The Law stipulates that secondary and other legislation issued by the Government and ministers shall be published in the OGK. At the time of the drafting of this report this has not been achieved. Interviews with the legal officers have shown that only a few were aware of the fact that the Law was promulgated or aware of the implication the Law has with regard to subsidiary legislation. Moreover, at the time of drafting this report, no legal offices had been contacted in order to provide AIs issued so far for the purpose of publishing them in the OGK. According to information received from the OLSS, problems exist with respect to funding the publication. By the end of this year, however, the OGK should start publishing subsequently.

The OSCE has also followed up whether and to what extent subsidiary acts are available in all three languages; i.e., whether the acts have been translated into Albanian, Serbian and English.<sup>141</sup> Overall, although the situation is not satisfactory a positive trend has been identified. At the time of drafting this report, the OSCE has received copies of AIs issued from 10 out of 11 ministries it contacted. Out of these ten Ministries, three have not translated their AIs into Serbian. One Ministry issued their AIs only in Albanian. A positive remark has to be made with regard to the situation at the ministerial agencies and offices interviewed<sup>142</sup>, such as the Energy Regulatory Office and the Kosovo Veterinary Services<sup>143</sup>, they all have published their AIs in three languages.

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<sup>140</sup> UNMIK Regulation 2005/25 on the Law on the Official Gazette (No. 2004/47) from 12 May 2005.

<sup>141</sup> See Government Regulation 1/2005 on the work of Government, signed on 18 July 2005, Sec. 25 (1) n.

<sup>142</sup> The Competition Committee has not yet been established.

<sup>143</sup> Furthermore: Kosovo Veterinary Service, Public Procurement Committee and Cadastral Agency.

### **3. Training**

In the previous implementation report, the OSCE has identified the need for continuous education and subsequently recommended that additional training be provided to the legal officers in their respective fields.<sup>144</sup>

The organisational structure of the PISG foresees that training for legal officers is handled by the Kosovo Institute for Public Administration (KIPA), which is responsible for training and continuous education of all civil servants. The KIPA training programme consists of seven main topics: one of them is on legislation, which is directed to civil servants working in this field. The training programme on legislation includes administrative training and continuous legal education such as on human rights and the applicable law in Kosovo.<sup>145</sup>

Additionally, an EAR funded support project on Capacity Building of the Public Sector is currently being implemented at the KIPA. The support project is a training of trainers, who from next year onwards are supposed to train senior and medium level civil servants within the public sector. The training encompasses 15 training modules for senior management and another five for middle management. The modules range from issues such as administration, budget to personal management, etc. One of the 15 modules for the senior management deals with the implementation of laws. A module on legislation focuses on the idea and the concept of law; it does not deal with the details of the actual drafting of primary and subsidiary legislation. Positively, it should be remarked that the training does try to enhance the trainees understanding of the concept and policies of drafting legislation.

Overall, the KIPA support project appears to be a step into the right direction. Nevertheless, it has been noted that so far there is no follow up envisaged for the training, such as supervision of the individual trainer performance in their future activities.

When interviewing the legal offices, the OSCE followed up the current situation and needs with respect to training. The need for additional training was shared amongst all legal offices. For instance, the representative from the Ministry of Finance and Economy stated that, since the creation of this legal office the legal officers have only participated in one training. It was organised by the German governmental development agency GTZ<sup>146</sup>, comprising modules on EU legislation and the organisational structure of the EU.

The training situation with respect to the OLSS appeared to be better. According to the former Director, a number of trainings were provided by international organisations on various legal topics. Regarding the implementation of laws, he recommended the idea of an in-service training on drafting secondary legislation. He suggested that an external expert could join the legal office for some time to work on the implementation of laws, and thereby train and advise legal officers on the job in drafting secondary legislation and the necessary follow up process.

According to the information received, it can be concluded there has been no significant training on the implementation or drafting of legislation. The idea of an in-service training on drafting primary and secondary legislation should be considered by international donors. The currently running EAR funded KIPA support project appears to be a significant step forward in creation of local training capacities on organisational issues for the improvement of the civil servant sector. However, in order to ensure its sustainability, supervision and follow up workshops are needed.

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<sup>144</sup> See OSCE Report on Implementation of Kosovo Assembly by the Executive Branch of the PISG, Review Period, Laws Promulgated 2002–2003, Recommendations, page 23.

<sup>145</sup> Information provided by the Training Coordinator for Legislation on 26 October 2005.

<sup>146</sup> Gesellschaft fuer Technische Zusammenarbeit.



#### **4. Oversight/Follow up Mechanism**

In the last report it was recommended that an oversight mechanism for the implementation of Kosovo Assembly Laws should be established within the OPM.<sup>147</sup> This recommendation has not been taken up by the Government or by the Kosovo Assembly.

The recently passed “Regulation” on the Rules of Procedures of the Government of Kosovo<sup>148</sup> (hereafter: Government Rules) assigns to the OLSS the responsibility to coordinate the drafting activities for legislation (including subsidiary legislation) and to ensure compliance of the drafts with substantive requirements. However, this does not include the task of overseeing the implementation of laws or to follow up achievements on the ground once a law has been adopted and promulgated.

The same assessment seems to apply to the Assembly. After the adoption and promulgation of a law no office or committee is tasked to follow up whether there has been any progress on its implementation. To the OSCE’s knowledge, the Assembly does not ask for any reports on the progress of implementation from the ministries or the Government.

Whether or not a law will be implemented is left entirely to the initiative of the ministry designated in the respective law. During OSCE’s interview with the former Director of the OLSS, he endorsed the idea of creating a follow up mechanism within the Government and Assembly, but confirmed that no such structure or mechanism is currently in place. Valuable tools for follow-up could include progress reports to be issued by the responsible ministry on a regular basis after the adoption and promulgation of a law. Furthermore, both the Assembly and the Government should consider the use of a matrix indicating the various stages a law has to pass from its adoption until its full implementation through subsidiary legislation and follow up checks.

#### **D. Drafting Requirements and Coordination**

The following chapter deals with the law making process of the PISG. Starting with the formal and substantial requirements of laws, it then turns to the ministerial coordination and governmental review of the drafting process.

##### **1. Formal and Substantial Requirements**

The structural and formal requirements of primary and secondary legislation have not been fully defined by the Government. The quality of drafting is mainly left to the skilfulness of the respective ministry in charge or to the international expert or team contracted to draft a particular law. It was notable, especially during the first years of legislation in Kosovo under the UNMIK Interim Administration, that style and form reflected the legal background of the international drafters rather than the need for harmonization and consistency. With the introduction of the above mentioned Government Rules, the use of foreign models has now been limited to the legislation of an EU member country, preferably Germany, Austria or Slovenia or model legislation prepared by an international organisation such as UNCITRAL, UNCTAD or the OECD.

Due to information obtained, there are still no written guidelines in use on techniques of drafting primary and secondary legislation. However, the Government Rules do establish that the draft shall avoid vague, ambiguous and imprecise provisions, it shall be drafted in a manner reflecting the best legal drafting practices by EU Member States and should rely on the ten basic drafting principles set forth by the Council of the European Communities<sup>149</sup>. While the ten principles give

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<sup>147</sup> See OSCE report on Implementation of Kosovo Assembly by the Executive Branch of the PISG, Review Period, Laws Promulgated 2002–2003, F. Recommendations, page 23.

<sup>148</sup> Government Regulation 1/2005 on the rules of procedures of the Government, signed on 18 July 2005, Sec. 26 (3).

<sup>149</sup> Resolution of the Council of the European Communities of 8 June 1993 on the quality of drafting of Community legislation, OJ C 166, 17.6.1993, page 1:

1. the wording of the act should be clear, simple, concise and unambiguous; unnecessary abbreviations, Community jargon’ and excessively long sentences should be avoided;
2. imprecise references to other texts should be avoided as should too many cross references which make the text difficult to understand;

comprehensive guidance for drafting legislation covering most of the standard problems regarding formalities, it would have been preferable if these guidelines were directly enacted in the Government Rules.

According to the Government Rules, a draft must be prepared with the standard legislative format in use. To the knowledge of OSCE however such a standard legislative format does not exist. Some ministries have come up with a unique structure for secondary legislation as a result of one training on legislative structure, which was organized by GTZ in 2002. Then again, this structure is probably only known to those legal officers who took part in that particular training. With respect to formal requirements, unwritten rules usually apply; there are informal general standards that “everybody knows”, but no written guidelines or instructions.

Regarding substantial requirements, the Government Rules contain special provisions governing the substance of draft laws and subsidiary legislation. Following these rules, the Government considers a draft fit for review when it has been prepared in strict compliance with substantive and procedural requirements. According to the listed requirements the draft laws and subsidiary acts must: a) be consistent with the Constitutional Framework; b) comply with all applicable standards, treaties, conventions and obligations; c) be “standardized”, i.e., brought into conformity with the relevant mandatory provisions of the EU (to the extent reasonably practicable given Kosovo’s level of administrative and economic development); d) promote the overall public interest and legislative stability (consistent with the legal framework); e) minimize the potential for the abuse of government authority and jurisdictional conflict as well as negative impact on the public budget; and f) be free of any prohibited discriminatory elements. Finally, the acts shall not create unnecessary administrative and bureaucratic structures and must be prepared in all three applicable languages.

## **2. Ministerial Coordination**

Concerning the drafting of primary and secondary legislation within ministries, the coordination is either done from the respective substantial department or the legal office in charge. However, in all cases the substantial departments and legal offices must work together to prepare the draft laws. In one case, the legal officers are even permanently located throughout the various substantial departments. Often a legislative plan is created in order to allocate drafting responsibilities to the respective offices for a distinct period of time.

External experts from or hired by various international organisations often play a crucial role in the drafting process. In most of the ministries, it is rather the rule than the exception that external experts are participating in working groups drafting legislation. Some of the ministries are even supported on a permanent basis by EAR, USAID or CoE, for example.

The final revision of drafts at the ministerial level is regularly provided by the respective legal office in order to guarantee compliance with other domestic and EU legislation. The latter is done in close cooperation with the Office of European Integration Process (OEIP) located in the OPM.

## **3. Governmental Coordination and Review**

The responsibility of drafting primary and secondary legislation is in the first phase allocated either to the ministries or the OPM. The second phase foresees a comprehensive review process at

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3. the various provisions of the acts should be consistent with each other; the same term should be used throughout to express a given concept;
  4. the rights and obligations of those to whom the act is to apply should be clearly defined;
  5. the act should be laid out according to the standard structure (chapters, sections, articles, paragraphs);
  6. the preamble should justify the enacting provisions in simple terms;
  7. provisions without legislative character should be avoided (wishes, political statements);
  8. inconsistency with existing legislation should be avoided as should pointless repetition of existing provisions. Any amendment, extension or repeal of an act should be clearly set out;
  9. an act amending an earlier act should not contain autonomous substantive provisions but only provisions to be directly incorporated into the act to be amended;
  10. the date of entry into force of the act and any transitional provisions which might be necessary should be clearly stated.

the level of government. Besides the Office of Legal Support Service (OLSS) in the OPM, the Ministry of Finance and Economy and the OEIP are involved at this stage.<sup>150</sup> The latter is responsible for the coordination of governmental action in aligning practices and legislative activities with relevant EU norms and standards in the context of the EU Stabilisation and Association Process.

Since July 2005, this review mechanism has been regulated by the Government Rules. Information obtained shows that the adherence to that decision has already begun. According to Section 26 of the Government Rules, the Head of the OLSS now has a comprehensive responsibility for the coordination of any drafting process that happens within the Government. Anyone engaged in drafting is obliged to inform the Head of OLSS at least twice per month on all such activities. The success of this system will very much depend of course on the cooperation between the various ministries, the OEIP and the OLSS.

The Government Rules in Section 24 require strict compliance with both the substantive and procedural rules established. In order to ensure this, a coordination mechanism has been established for all government meetings regarding the drafting of laws and sub-legal acts. For example, a draft has to be accompanied by a certificate from the Permanent Secretary of the OPM to attest such compliance. Moreover, three statements must be attached. First, a statement by OLSS is required regarding the compliance of the document with the Constitutional Framework and legislation in force. Second, a statement by the OEIP is required stating that the item has undergone a professional standardisation review and thus appears consistent with the *acquis communautaire* and good legal drafting practices in use by EU member states. Third, a statement from the Ministry of Finance and Economy is required on the drafts economic and budgetary impact.

The Government Decision is very ambitious and sets out a comprehensive framework for the purposes of drafting primary and secondary legislation. It not only lays down specific rules and regulations in order to streamline the drafting process, but also introduces a central system to coordinate the various drafting inputs. The aim is well set and deserves the full support of the international community. Having in mind that the decision is still new, the Government must be allowed time to implement it before the quality of the results can be estimated.

#### **4. Balance between Drafting and Implementing**

In the last implementation report, the OSCE had already identified an imbalance between the drafting and the implementation of laws resulting in a delay of implementing laws. It was recommended to the legal offices to adopt a more balanced approach, giving a similar priority to the drafting of secondary legislation as to the primary legislation.<sup>151</sup>

As during the previous review period, most officers confirmed that they have been focused more on drafting of primary legislation than subsidiary acts. Although positive indications have been noted during this year's round of interviews in that some of the ministerial legal offices changed their practice and focused more on implementation<sup>152</sup>, most of the offices admitted delays in the implementation. The former Director of the OLSS very frankly admitted that implementation of laws still remains a problem due to engagements in drafting primary legislation foreseen in the action plan of the Government.<sup>153</sup> OLSS has been under enormous pressure for drafting laws and for that reason suspended most work on drafting subsidiary legislation.<sup>154</sup> The current managing

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<sup>150</sup> In the meeting with the OLSS it was explained that the Government Rules are applicable to primary as well as secondary legislation. It has to be shown in the future whether these theoretical rules will truly be apply for every Administrative Instruction finalised in a Ministry.

<sup>151</sup> See OSCE report on Implementation of Kosovo Assembly by the Executive Branch of the PISG, Review Period, Laws Promulgated 2002–2003, F. Recommendations, page 23.

<sup>152</sup> MAFRD, MEM, MFE and MLSW.

<sup>153</sup> Interview with the Legal Office of OPM on 13 July 2005.

<sup>154</sup> According to the working report of the legal office of the OPM dated 18 August 2005, 55 draft laws have been prepared and harmonized with Constitutional Framework, the applicable law and European standards.

Director of the OLSS confirmed that the Government in general faces serious problems with the implementation of laws due to budgetary constraints.<sup>155</sup>

As a result, the OSCE has again identified an imbalance between drafting and implementing, which is due to several reasons. In view of its many political obligations, such as the standard fulfilment process, the law drafting strategy of the Government has been very ambitious. However, the capacity of the ministerial legal offices and the OLSS is limited by several factors including a lack of human resources. Subsequently, while the law drafting is an obvious priority the implementation has been neglected.

#### **E. Recommendations**

To address the concerns related to the process of implementation of Kosovo Assembly laws, the OSCE recommends the following:

1. The OPM should establish an oversight mechanism for the implementation of Kosovo Assembly laws with focal points designated in each institution within the executive branch to report to the OPM on the progress of implementation within its respective field of activities. While the Head of the OLSS in the OPM currently has the responsibility to *coordinate* all primary and secondary legal drafting, it is not clear whether this includes *overseeing* all substantial areas where subsidiary legislation is needed.
2. The Kosovo Assembly should consider establishing periodic parliamentary oversight over the activities of the executive branch to ensure increased governmental accountability in the field of implementation of Assembly laws. As part of this, the OPM should issue an annual report to the Assembly on the process of implementation.
3. Ministry officials should make best use of available human resources by assigning the same persons who drafted the primary legislation to draft the subsidiary legislation. This is a path already taken in some ministries. Moreover, it is advisable that subsidiary legislation is drafted in a timely manner subsequent to the adoption of the respective law in order to make best use of acquired expertise and knowledge in relation to the subject matter of the law.
4. For several years there has been a gap in the publication and distribution of legal acts in Kosovo, especially with respect to the secondary legislation. Now that the Law on the Official Gazette of Kosovo is promulgated, the Assembly and the Government must ensure that the Gazette is adequately funded, staffed and operational.
5. The PISG should consider drafting and passing a Law on Normative Acts, to define the types and hierarchy of normative acts in Kosovo and the sphere of social relations regulated by them. Another option would be for UNMIK to incorporate clearer definitions of governmental instruments envisaged in an amendment of the law regulating the executive branch.
6. Officials preparing draft laws should be precise when giving authorizations 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 authorization for the drafting and issuance of such acts and a clear indication of the basic starting points.
7. The Office of the SRSB and the Assembly of Kosovo should agree to a procedure whereby changes made by an UNMIK promulgating regulation are incorporated into the text of the respective Assembly law, in order to avoid confusion about the content of the law.

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<sup>155</sup> Interview on 15 November 2005.

8. The Kosovo Institution for Public Administration should offer continuously effective courses on drafting primary and secondary legislation as well as regulatory management. This could be combined with in-service training on drafting subsidiary acts to ensure progress on the job. International donor support in this area is also highly appreciated.
9. The legal offices at the various ministries should adopt in their work a more balanced approach, where the implementation of laws, already in force, receives a similar priority as the drafting of new legislation.
10. The international 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. Otherwise it is likely that highly specialised and complicated laws will remain unimplemented.
11. In a couple of instances, implementation of a legal act has not begun even after two years. In such cases, the Assembly and/or the Government should immediately intervene to ensure that pressure is placed on the responsible actors.
12. The Law on Access to Official Documents must be implemented immediately. At the same time the institutions in Kosovo should comply with the provisions of the Law that has been in force for more than two years. This Law has special importance because it enables inhabitants of Kosovo to participate more closely in the decision making process of public institutions and guarantees that public institutions enjoy greater legitimacy and transparency.
13. Actors within the Government should pay close attention to the application of the Government Decision on Rule of Procedure of the Government, as the document sets out a comprehensive framework for the purposes of drafting primary and secondary legislation.