



POLICY PAPER

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**MONEY LAUNDERING
RESPONSE IN KOSOVO:
IN BETWEEN POLICY AND PRACTICE**

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I. Current Overview on Money Laundering Activities

The phenomenon of money laundering in Kosovo is considered to be widespread, with the response of Kosovo state institutions at its initial stages. Proceeds from the crimes of corruption, tax offences including tax evasion, crimes related to procurement and the privatization process and other financial crimes are most common crimes of money laundering in Kosovo.¹ Other proceeds including from smuggling activities are believed to be laundered directly into the state economy in areas such as construction and real estate, retail and commercial entities, banks, financial services, casinos, and trading companies.² Substantial amounts of money are invested in real estate, restaurants, bars and games of chance operations such as casinos, slot machines and sport betting facilities.³ In addition, the informal economy in Kosovo has nurtured the appropriate environment for the money laundering phenomenon. The extent of informal economy in Kosovo is estimated to range from 26 % up to 35% of the total GDP.⁴ In a survey conducted in 2013 business managers and owners believe that on average the businesses in their industry report about 65.6 % of their sales, meaning 34.4 % is evaded.⁵ Kosovo institutional capacities to supervise these movements of informal economy and also legalisation of money, is limited.

The Government of Kosovo (GoK) Strategy conducted in 2013 showed that money laundering, terrorist financing and other economic and financial crimes are crimes that are hard to trace. In 2013 only the first national risk assessment was conducted by the GoK on money laundering and financing of terrorism. However, the document was not made public⁶ and amongst reasons quoted has been not to scare off potential investors outside of Kosovo.⁷ Further, the Financial Intelligence Unit of Kosovo (FIU) in 2013 published for the first time a study regarding the typologies of money laundering and financing of terrorism acts in Kosovo.⁸ This report states that money laundering forms used in Kosovo more typically are associated with using of the bank system through loaning

¹ Ministry of Finance of the Republic of Kosovo “National Strategy of the Republic of Kosovo for the Prevention of and Fight Against Informal Economy, Money Laundering, Terrorist Financing and Financial Crimes 2014-2018,” pg.7. Available at: <https://mf.rks-gov.net/en-us/National-Strategy>

² United States Department of State (US DS), Bureau for International Narcotics and Law Enforcement Affairs, Money Laundering and Financial Crimes Country Database, June 2015, pg.247. Available at, <http://www.state.gov/documents/organization/239329.pdf>

³ See pg.30 of the Council of Europe, Project against Economic Crime (PECK) “Assessment Report on Compliance with International Standards in the Area of Anti-money Laundering and Combating the Financing of Terrorism (AML/CFT),” published December 2014. Available at: http://www.psh-ks.net/repository/docs/AML_ENG_WEB.pdf

⁴ See Ministry of Finance of the Republic of Kosovo “National Strategy of the Republic of Kosovo for the Prevention of and Fight Against Informal Economy, Money Laundering, Terrorist Financing and Financial Crimes 2014-2018,” pg.25.

⁵ RIINVEST Institute, “To Pay or not to Pay: A Business Perspective of Informality in Kosovo, pg.15. Available at, http://www.fes-prishtina.org/wb/media/Publications/2013/BUSINESS_INFORMALITY_ENG_FINAL.pdf

⁶ KIPRED sent a request to the Ministry of Finance in March 2016 for sharing the document but the Ministry did not provide the document so far to KIPRED.

⁷ KIPRED interview with FIU official, Prishtina, September 2014.

⁸ Financial Intelligence Unit of Kosovo (FIU), “Typologies of Money Laundering and Terrorist Financing in the Republic of Kosovo”. Available at, <http://fiu.rks-gov.net/wp-content/uploads/2014/10/Typology-Eng1.pdf>

money via bank credits used to justify the origin of funds, transferring of funds to countries known for drug trafficking within Balkans without specifying the countries involved and by use of international transfer of funds outside of Kosovo including in cases of trafficking in human beings and other forms of organised crime. Other forms typically associated with money laundering are the use of large amounts of money transaction in cash deposits compared to the business activity of the account holder, investment of funds in real estate by moving funds between several companies with the same owner and integrating the sales from the assets through use of insurance companies with same owners i.e. use of construction companies.⁹ Overall tendency in money laundering cases is to conduct business transactions on private accounts without having the businesses registered.¹⁰

The field of construction in particular, has provided a proper environment for the development of potential money laundering activities in Kosovo. The construction related investments in Kosovo have been suspiciously led by investors not qualified in construction work often not knowing the origins of money invested. After 1999 Kosovo underwent considerable illegal building construction activities. It is estimated that there are over 350.000 illegal constructions Kosovo wide with 46.000 illegal constructions reported only in Prishtina Municipality.¹¹ In particular, suspicious money laundering activities in Kosovo occurred during the period of 1999-2000. Identifying illegal construction activities is seen difficult as large amounts of capital was accumulated and was used unmonitored as cash circulated in the absence of a functional banking system.¹² Prosecution continue to justify their lack of response due to cash flows during this period.¹³ The origin of the wealth accrued and laundered including of inexplicable wealth during this period remains unknown to date. Inexplicable wealth and origins of assets declared by high public officials reported on annual basis are showing inexplicable increase throughout the years that do not match their annual incomes, however continue not be investigated due to weak response of rule of law institutions in this regard.

Furthermore, political parties continue not to report regularly to the Financial Intelligence Unit of Kosovo,¹⁴ whilst most powerful companies in the country remain closely linked to political parties and continue to gain tenders and funding in the form of public tenders. It has been estimated that as of August 2007 until May 2014 few donors of political parties in power - business entities and owners – have gained around 220 million Euros in the form of public tenders.¹⁵ This vicious circle

⁹ Ibid, pg.19.

¹⁰ See pg.30 of the Council of Europe Project Against Economic Crime (PECK) “Assessment Report on Compliance with International Standards in the Area of Anti-money Laundering and Combating the Financing of Terrorism (AML/CFT),” published December 2014.

Available at: http://www.psh-ks.net/repository/docs/AML_ENG_WEB.pdf

¹¹ Prishtina Municipality, Annual Report 2015, pg.3. Available at, <https://kk.rks-gov.net/prishtina/getattachment/Municipality/President/President-Report/raporti-2015.pdf.aspx>

¹² KIPRED interview with official of FIU, Prishtina, September 2014.

¹³ Statement of State Prosecutor official from Gjakova Basic Prosecution, at the round table organized by KIPRED and Syri i Vizionit, 31st of March 2016 in Prishtina.

¹⁴ See FIU Annual Report, June 2015 pg.19.

¹⁵ Organization for Democracy, Anti-corruption and Dignity - Çohu, Kosovo Center for Investigative Journalism (KCIJ), Preportr, Periodic Gazette No.14, pg.2. Available at, http://preportr.cohu.org/repository/docs/1509-Preportr14ENG_290445_606574.pdf

continues to diminish further rule of law in Kosovo, causing that large amounts of money laundering activities in Kosovo is rarely investigated or convicted as shown from the analysis below.

II. The EU Requirements for Kosovo in Combating Money Laundering

The EU continues to seek from Kosovo institutions to deliver on anti-money laundering activities in particular related to the effective implementation of the legal framework, stronger cooperation amongst key institutions with focus on financial investigations and providing clear track record in terms of court decisions when combating this phenomenon.

According to the 2015 EU Progress Report for Kosovo, the European Commission (EC) has found that Kosovo's legal framework is largely compliant to the Vienna and Palermo Conventions, despite gaps remaining related to declaration of assets by senior public officials.¹⁶ Also, Kosovo should make an effort to align its legislation and practices to the Financial Action Task Force on Money Laundering (FATF) recommendations.¹⁷ Furthermore, the EC has assessed that the Kosovo Action Plan including the national risk assessment on Money Laundering and Combating Financial Terrorism is mostly implemented on time.¹⁸

Nonetheless, the implementation process of laws, secondary legislation and regulations on money laundering and financial crime are still insufficient, despite the progress achieved by Kosovo institutions to put appropriate systems in place. Further, results keep missing despite the policy of Kosovo institutions to develop systematic serious financial investigations.¹⁹ The EU has praised the increase in the number of anti-money laundering cases that have been forwarded to prosecution mainly by the police during 2015, but remarks negatively few convictions to date. In order to increase results and convictions the EU recommends enhancing the cooperation between the Kosovo FIU and other stakeholders mandated to combat money laundering. According to the EU it is vital in particular for the co-operation and interaction between police and prosecution to be further improved and strengthened. Also, it has recommended the strengthening of the anti-corruption department of the Kosovo Special Prosecutors Office (SPRK) in order for it to be able to tackle more cases of money laundering, by working jointly with EU Rule of Law Mission in Kosovo-EULEX.²⁰

¹⁶ European Commission, Kosovo Country Report, pg.58. Available at, http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf

¹⁷ The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The FATF Recommendations are the internationally endorsed global standards against money laundering and terrorist financing: they increase transparency and enable countries to successfully take action against illicit use of their financial system. Available at, <http://www.fatf-gafi.org/about/>

¹⁸ European Commission, Kosovo Country Report, pg.58.

¹⁹ European Commission, Kosovo Country Report, pg.18.

²⁰ European Commission, Kosovo Country Report, pg.58.

The criteria related to money laundering are also among the criteria's set for Kosovo by the EU in its roadmap for granting Kosovo with free travel regime with the EU countries. In the Roadmap with Kosovo on Visa Liberalisation, the EU requires Kosovo institutions to fulfil the following requirements such as: adopt and implement legislation on the prevention, investigation, prosecution and adjudication of organised crime including money laundering, economic and financial crime, in accordance with the EU Acquis, ensure that any amendments of laws are also reflected in the criminal code and establish a sound anti-money laundering system. The anti-money laundering system should also be accompanied with results in implementing a solid system of asset confiscation and management and strengthening the capacity of the police and the FIU to conduct in an effective and impartial manner complex investigations of organised crime, including of money laundering and other economic crimes. Overall, the EU requires the strengthening of the capacity of the police to detect and investigate, prosecutorial services to prosecute and judges to adjudicate, in an impartial and effective manner, complex cases of organised crime, including economic and financial crime.²¹ This should be followed up by a track record of investigations and final court rulings in cases of organised crime and corruption including of money laundering. In ending, the third report on progress of Kosovo²² in fulfilling requirements for the visa liberalization emphasises the continuing number of low convictions regarding money laundering crimes.

III. The Legal Framework on Combating Money Laundering

The existing Law on Prevention of Money Laundering and Terrorist Financing (hereafter the Money Laundering Law), was adopted in 2010. The Law underwent its first amendments in 2013, and three years after the new law is currently discussed and drafted.²³ The EU has noted that Kosovo's legal framework regarding fight against money laundering is largely in compliance with international standards. Nevertheless, the initiative to draft the new law aims to match the Financial Action Task Force recommendations adopted in 2012²⁴ and the new EU Directive 2015/849 on the Prevention of the use of the financial system for the purpose of Money Laundering or Terrorist Financing.²⁵ Further, the new draft should also address the Egmont Group criteria that promotes amongst other

²¹ Visa Liberalisation With Kosovo Roadmap, pg. 11. Available at,

http://eeas.europa.eu/delegations/kosovo/documents/eu_travel/visa_liberalisation_with_kosovo_roadmap.pdf

²² European Commission, Third Report on Progress by Kosovo in Fulfilling the Requirements of the Visa Liberalisation Roadmap, pg.7. Available at, http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/third_report_progress_kosovo_fulfilling_requirements Visa Liberalisation Roadmap en.pdf

²³ The draft law is available at KIPRED.

²⁴ International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, The FATF (Financial Action Task Force) Recommendations, Recommendation B, 3. Money laundering offence. Available at, http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

²⁵ DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

the development of FIU's and cooperation.²⁶ The new draft law in line with these criteria's would also simulate Kosovo to become member of the Egmont Group.²⁷ Specifically, the shortcomings observed by the Egmont Group are related to the part of effective combat of financial crimes.²⁸ Furthermore, the EU has noted that the current law and the overall implementation of the legislative framework related to economic and financial crimes are still insufficient.²⁹

When it comes to the definition of the money laundering crime, in accordance with the FATF recommendations, all countries should criminalise the act on the basis of the Vienna Convention and the Palermo Convention.³⁰ Due to its complexity, the money laundering crime should be defined in several ways. One of the most used definitions commonly used is in line with Article 3(b) (i) of the Vienna Convention. Accordingly, the Kosovo law states in line with the Convention that money laundering is "...[A]ny conduct for the purpose of disguising the origin of money or other property obtained by a crime and shall include: conversion or any transfer of money or other property derived from criminal activity; or concealment or disguise of the true nature, origin, location, movement, disposition, ownership or rights with respect to money or other property derived from criminal activity..."³¹

The crime of money laundering in Kosovo was criminalised by the anti-money laundering law of 2010, even though previously covered by the UNMIK Regulation on the Deterrence of Money Laundering and Related Criminal Offences.³² It is also foreseen under the new Criminal Code of Kosovo (2013), under chapter XXV namely the Criminal Offences against the Economy, along with punishments as set forth in the anti-money laundering and financing of terrorism law.³³ The current Law defines the crime of money laundering under Article 32, and foresees punishments of up to ten (10) years of imprisonment and a fine of up to three (3) times the value of the property which is the subject of the criminal offence.³⁴ In addition, the GoK also adopted two (2) additional

²⁶ Egmont Group is an informal network of FIUs for the stimulation of international co-operation. Egmont Group FIUs meet regularly to find ways to promote the development of FIUs and to cooperate, especially in the areas of information exchange, training and the sharing of expertise. Available at, <http://www.egmontgroup.org/about>

²⁷ KIPRED interview with National Coordinator on Economic Crimes, January 2016.

²⁸ Kosovo State Prosecutor, Quarterly Report (April-June 2015) on Activities and Recommendations of National Coordinator for Combating Economic Crimes, July 2015, pg. 10. Available at, http://www.psh-ks.net/repository/docs/Raporti_%28prill-qershor_2015%29_shqip-per_publicim.pdf

²⁹ Pg.18 of the EU Progress Report for Kosovo, 2015.

³⁰ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (hereafter: Vienna Convention). Available at, http://www.unodc.org/pdf/convention_1988_en.pdf
See also United Nations Convention against Transnational Organized Crime (2001), (hereafter: Palermo Convention). Available at, http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf

³¹ Law No. 03/L-196 on the Prevention of Money Laundering and Terrorist Financing (hereafter: AML/ CFT Law), November 2010, Article 1, Paragraph 1.23. Available at, <http://www.assembly-kosova.org/common/docs/ligjet/2010-196-eng.pdf>

³² UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences, as amended by Regulation No. 2005/9. Available at, http://www.unmikonline.org/regulations/2004/RE2004_02.pdf

³³ See Article 308 of Kosovo Criminal Code. Available at, <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf>

³⁴ See Article 32, available at, <http://www.assembly-kosova.org/common/docs/ligjet/2010-196-eng.pdf>

Administrative Directives (AD)³⁵ and another six (6) Administrative Instructions (AI)³⁶ directly linked to the implementation of the prevention of money laundering legislation.

The new draft law is currently undergoing review and is being finalised with few civil society members invited to provide comments to the process. Civil Society have recently shared comments under the lead of the initiative facilitated by the Kosovo Civil Society Foundation to voice out their concerns related to the requirements of the current draft law in amending the NGO reporting requirements. Furthermore, the comments of the civil society are in line with the EU comments and criticisms in the EU Progress Report of 2014 obliging civil society organisations to request dispensation for all donations above 1000 € from one single source and for all spending above 5000 € from one single source, to the FIU.³⁷ Furthermore, the EU found the lack of criteria for granting dispensation as a concern. The new draft law has lowered the bar to 500 € and has further raised criticisms by civil society groups interpreting these requirements as potential interference with the timely and independent work of the NGO sector. Moreover, with these foreseen restrictions, Kosovo institutions will take much harsher position in terms of prevention vis-à-vis civil society organisation than any other country in the Western Balkans region.

Under the new draft Law Articles 3 and 59,³⁸ the administrative requirements of NGO's to report are foreseen as criminal offences prosecuted by basic prosecutions levels of Kosovo. The change in the jurisdiction of investigation has also been criticized by civil society as these offences under the former law were under exclusive competence of the SPRK.³⁹ As a result of civil society pressure the new draft law appears to have minimized the restrictions for the NGO sector.⁴⁰ The above reporting requirements will be applied only to cash transactions of NGOs. Even though NGO's have shown globally the potential threat in the fight against terrorism, in accordance to the FATF recommendations,⁴¹ the GoK has justified its restrictions for controlling the potential abuse of NGO's that might be affiliated with terrorist organisations or with religious association.⁴² However

³⁵ AD FIU-K No. 02/2015 on Prevention and Detection of Money Laundering, and AD No. 001/2013 Training For Preventing and Combating Money Laundering and Terrorist Financing. Available at, <http://fiu.rks-gov.net/legislation/?lang=en>

³⁶ AI FIU-K no. 05/2014 on Minimum Standards, Written Procedures and Controls for Prevention and Detection of Money Laundering and Terrorist Financing by Covered Professionals, AI FIU-K no. 04/2014 on Politically Exposed Persons, AI FIU-K no. 03/2014 on Procedure for Applying Administrative Sanctions for Non-Compliance of Reporting Subjects with LPMLTF, AI of Financial Intelligence Unit no. 02/2014 on Exemption of Certain Transactions from Reporting, AI MF – no. 04/ 2013 on National Money Laundering and Terrorist Financing Risk Assessment, AI no. 001/2013 on Compiling Statistics, Reports and Recommendations on Money Laundering and Terrorist Financing, . Available at, <http://fiu.rks-gov.net/legislation/?lang=en>

³⁷ Pg. 12 of the EU Progress Report for Kosovo, 2014.

³⁸ Draft Law on anti-money laundering and financing of terrorisms, Articles 3 and 59, paragraph 3. Draft available at KIPRED.

³⁹ Comments facilitated and prepared by KCSEF, February 2016. Available with KIPRED.

⁴⁰ Statement by FIU official Legal Office, at the round table organized by KIPRED and Syri i Vizionit, 31 March 2016 in Prishtina.

⁴¹ See pg. 54 of the FATF Recommendations, Interpretative Note to Recommendation 9 for the Non-Profit Organizations.

⁴² Statement by FIU Official at KIPRED and SiV Roundtable, 31st of March 2016 in Prishtina.

the NGO sector remains not categorised in Kosovo leaving all NGO's as a potential threat. Differently organisations with humanitarian and religious character as well as religious associations are not considered NGO's.⁴³ In the absence of the new law on Religious Freedoms in Kosovo,⁴⁴ reporting requirements of the current draft law leave out this sector from any reporting requirements.⁴⁵ Leaving this sector in particular completely out of government oversight, the NGO sector is scrutinised. Appropriate balancing and risk assessments therefore should take into account realistic and potential threats. Meanwhile, as Kosovo is also undergoing drafting of the new Law on Freedom of Religion, it should consider addressing than the potential removal of NGO sector from the current prevention of money laundering and financing of terrorism reporting requirements. The GoK should aim to strike a balance by conducting a risk assessment in order to incorporate organisations with humanitarian and/or religious charity nature including their financial transactions with the enactment also of the law on Freedom of Religion.

Overall, the applicable law on anti-money laundering and financing terrorism, has been evaluated to the greatest extent in compliance with international standards and FATF recommendations of 2012, however its deficiencies related to combating effectively money laundering and financing of terrorism are currently being addressed. The focus of the law should also be on addressing the adoption of changes in the legal framework related to investigation, prosecution and conviction of money laundering cases as provided below. Furthermore, the current draft law should consider balancing clauses to address potential legal gaps and realistic threats by the NGO sector in line with the FATF recommendations and the need to scrutinise the financial transactions of organisations with humanitarian and/or religious charity nature.

IV. The Response in Investigation, Prosecution and Conviction of Money Laundering Crimes

Kosovo is considered to have progressed to have put in place a strategic regime of anti-money laundering.⁴⁶ In September 2014, the GoK adopted the National Strategy and Action Plan for the Prevention of and Fight against the Informal Economy, Money Laundering, Terrorist Financing,

⁴³ See Article 2 of the Law on Freedom of Association of the Non-Governmental Sector,

⁴⁴ Freedom of Religious Association in Kosovo is still governed by the UNMIK Regulation 2006/48 on Freedom of Religion in Kosovo. Available at http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=64&Itemid=28&lang=en

⁴⁵ See US State Department Report on International Religious Freedom Report 2014, chapter on Kosovo. The report states that religious groups agreed not to register as NGO's with many groups reporting difficulties in registering property and vehicles, opening bank accounts, and paying taxes on employee salaries. Few religious communities were able to open bank accounts but some communities had difficulties to undertake basic financial tasks. Available at <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>

⁴⁶ United States Department of State, pg.249.

and Financial Crimes 2014-2018.⁴⁷ Subsequently, a national money laundering and terrorist financing risk assessment report was prepared.⁴⁸ Nevertheless, the institutional response in combating money laundering has been weak due to political interferences, lack of willingness by respective institutions to react, followed by lack of capacities to deal with money laundering cases which have hampered with the effective delivery of the fight against money laundering.

Given that the money laundering crime is often interconnected with other crimes including corruption and organized crime the rule of law institutions need to tackle activities that precede money laundering including high profile corruption, informal economy and tax evasions.⁴⁹ Further the annual reported wealth by the public officials and their inexplicable wealth were reported as a helpful track to conduct potential investigation on money laundering and corruption related affairs.⁵⁰

Further, the successful investigation of money laundering crime depends highly on qualitative reporting of the potential activities of money laundering as well as coordination and cooperation of mandated institutions. The circle of response involves a number of stakeholders which hold responsibility and have respective competences to tackle money laundering activities. However, the lead remains with the Special Prosecutors and prosecutorial services in general. The poor track record of cases investigated (only one case in 2015), indicted and convicted so far in combating money laundering indicate deficiencies both in the work performance of responsible institutions as well as the chain of coordination and cooperation. The mandated institutions justify their limited performance to be a result of the complexity of money laundering crime and shortcomings of the legal framework and of the institutional capacities. In addition, there is a tendency to shift the blame on one another⁵¹ in the overall weak delivery of results to combat the phenomenon of money laundering.

a) The Prosecution of the Money Laundering Crime

The prosecutorial services and particularly the courts continue to handle poorly the investigation, indictment and final rulings on cases related to money laundering activities. The Special Prosecution Office (SPRK) continues to hold exclusive competences in investigating and prosecuting money laundering cases.⁵²

⁴⁷ Ministry of Finance of the Republic of Kosovo “National Strategy of the Republic of Kosovo for the Prevention of and Fight Against Informal Economy, Money Laundering, Terrorist Financing and Financial Crimes 2014-2018” Available at: <https://mf.rks-gov.net/en-us/National-Strategy>

⁴⁸ The document has not been made public, upon KIPRED’s request.

⁴⁹ Statement of a EULEX official at the round table organized by KIPRED and Syri i Vizionit, 31 March 2016 in Prishtina.

⁵⁰ See for example KIPRED Report “The Impunity in Kosovo: Inexplicable Wealth” November 2013. Available at http://www.kipred.org/repository/docs/THE_IMPUNITY_IN_KOSOVO_INEXPLICABLE_WEALTH_632453.pdf

⁵¹ PECK Assessment Report 2014, pg.64.

⁵² Article 5 of the Kosovo Law on the Special Prosecution Office of the Republic of Kosovo, available at http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=143&Itemid=56&lang=en

The poor track records have often been justified with the fact that the crime of money laundering is complex by nature and often may enrol international transactions that are hard to track.⁵³ Complex in nature however, spending activities for suspected criminal transactions including money laundering may easily be tracked if closely followed up. However, there is lack of initiative and willingness on the side of the prosecutorial services to investigate and prosecute cases often justified with the need for Kosovo to draft a special law in order to shift burden of proof on the suspected defendant.⁵⁴ The new law initiated in 2015 by the Ministry of Justice, known as the “Anti-Mafia Law,” would make illegal funds easily available for sequestration, seizing or confiscation without the final conviction, requiring that the suspected defendant should proof that the existing funds are not illegal funds and do not derive from illegal/criminal activities.⁵⁵ Known as the “shift of burden of proof” principle the suspected defendant needs to proof the origin of its funds and how these funds were created. Nevertheless, Kosovo’s current legislation provides for improved and enhanced legal provisions on investigation and prosecution of money laundering cases in particular if compared to the Kosovo Criminal Procedure Code of 2003.⁵⁶ The State Prosecutor has better tools at disposal when investigating the crime of money laundering and in identifying bank accounts that might contain illegal funds and freeze funds quickly if needed. The indictment by the State Prosecutor should enlist the assets suspected that have derived from the crime or are the benefits of the crime.⁵⁷ The court should review the stronger powers of the prosecutors to freeze, sequester and confiscate the assets. In cases of corruption related offences involving bribery for example, the new Criminal Procedure Code favors the confiscation of assets under Article 281, if there is an indictment charge related to a corruption offence, the bribe may not be returned, even when the defendant is acquitted.⁵⁸

Further, if items are seized by a court order, the courts within 60 days should move to permanent sequestration by reviewing the order. Under Article 275, paragraph 3, the State Prosecutor is advised to use qualified financial experts to express their opinions on whether the building, immovable property, movable property and other assets listed in the indictment were proceeds of the criminal offence under investigation in a report or during testimony in a main trial.⁵⁹ However, there is reluctance on behalf of Special Prosecutors to utilize the financial expertise available. Even though there are profiled experts including nine (9) financial experts covering procurement, taxes and other financial matters their assistance is rarely utilized by special prosecutors.⁶⁰ Overall, the legal framework seems sufficient however prosecutors would prefer an easier solution to handle cases of

⁵³ Input based discussions, Official Transcript from the round table organized by KIPRED and Syri i Vizionit, 31 March 2016 in Prishtina.

⁵⁴ Ibid.

⁵⁵ Draft Copy of the Law available with KIPRED.

⁵⁶ See pg.42 of the “Guide to the Criminal Procedure Code of Kosovo and Criminal Procedure Code of Kosovo,” Jon Smibert for US DoJ, OPDAT US Embassy Pristina, 2003. Copy available with KIPRED.

⁵⁷ Ibid.

⁵⁸ Pg.42 Supra note at 53.

⁵⁹ Ibid.

⁶⁰ Statement of a high official of the EU Office in Kosovo, at the roundtable organized by KIPRED and Syri i Vizionit, October 2015 in Prishtina.

high profile corruption and of potential money laundering activities by shifting the burden of proof to the suspected defendants. Kosovo institutions should ensure that any future initiative to shift the burden of proof in cases of investigating money laundering and of economic crimes, should strike a balance in between the protection of ownership rights of defendants and any potential violation from selective approaches of state prosecutors.

Generally, there is reluctance by special prosecutors to instigate and conduct investigations of money laundering cases. As shown from the data of the prosecution record their performance has been poor. For example during 2015, the SPRK received nine (9) criminal reports against 27 persons. The majority of the reports were filed by the Kosovo Police with seven (7) criminal reports, whilst one (1) report was filed by the FIU and one (1) by self-initiative of the state prosecutor.⁶¹ During 2015, the SPRK also inherited additional 28 criminal reports from 2014 and kicked off 2015 with 36 cases of money laundering in total.

However, during 2015 the SPRK managed to solve only six (6) cases of money laundering out of 36 cases with 83% of cases remaining unresolved and only 17% of cases resolved. The record is weaker when compared to 2014 with the SPRK solving 14 cases or 67% unresolved and 33% resolved ratio of cases.⁶² (See Table 1.1)

Table 1.1: Record of SPRK in resolving Money Laundering Cases (2014-2015)				
Special Prosecutors Office	The number of resolved cases	% of resolved cases	The number of unresolved cases	% of unresolved cases
Year 2014	14	33%	28	67%
Year 2015	6	17%	30	83%

Source: Kosovo Prosecutorial Council

Further, during 2015 from the 6 resolved cases out of 36 in total, the SPRK reports to have resolved the cases by indicting six (6) persons, ordering of measures of psychiatric treatment for 4 persons⁶³ and terminating the investigation against 4 persons. By end of 2015 the SPRK prosecutors have not dealt with criminal reports against 92 persons. Additionally, the indictments were lower in 2015 when compared to 2014 with 18 persons indicted, from the total of cases resolved against 37 persons.

⁶¹ Annual Report 2015, submitted to KIPRED in E-mail communication from Kosovo Prosecutorial Council (January 2016). See also Annual Tracking Mechanism Report 2014, available at: http://www.psh-ks.net/repository/docs/TRACKING_MECHANISM_ANNUAL_REPORT_FOR_2014.pdf.

⁶² The table reflects only the cases at work of the SPRK. One (1) case of money laundering was reported by the Basic Prosecution of Prizren in 2014. The case was transferred and remains unresolved during 2015. Statistics from e-mail communication of KIPRED with Kosovo Prosecutorial Council Officials, Annual Report 2015, January 2016.

⁶³ KIPRED has sought clarification on how psychiatric treatments have been ordered in money laundering cases to the KPC. No answer has been provided so far.

In justifying their poor performance prosecutors report that the quality of the criminal reports submitted by the Kosovo Police is weak. Prosecutors also admit responsibility for filing poorly argued indictments due to the complexity of the nature of money laundering cases, consequently leading to cases being dropped by the Courts.⁶⁴ For example, throughout Kosovo in 2015 prosecutors have ordered temporary sequestration in the value of 20,000,000.00 € related to cases of economic crimes, including narcotic drug offences and organised crime. Additionally, the Kosovo National Coordinator on Economic Crimes has also reported that in cases related to narcotic drug offences, prosecutors were reluctant to use sequestration and confiscation orders even for cases of vehicles caught in transporting the drugs.⁶⁵ Furthermore, the courts have continued to deliver with a low track record of final judgements including of money laundering cases, with one (1) judgement in 2015. The poor track record in final judgements and dropping of cases by courts are bringing considerable damage to Kosovo budget with considerable amounts of assets remaining under administration awaiting permanent confiscation by the state. Stuck in an endless blame game in between law enforcement, prosecution and courts, nevertheless the Kosovo Prosecutorial Council should enhance its monitoring capacities and assess in depth the accountability of prosecutorial services in delivering on money laundering cases. Further analysis should also look into the weak track record in delivering on investigation, prosecution and the quality of indictments related to money laundering acts.

The SPRK also continues to work with limited capacities, including the insufficient number of prosecutors and lack of expertise in money laundering cases.⁶⁶ The special prosecutors continue to work with lower numbers with nine (9) prosecutors dealing with cases of money laundering and with other serious crime cases including economic crimes, organized crime and corruption. The limited capacities to recruit new prosecutors may be hampered by the sensitive nature of cases dealt by special prosecutors. Additionally, the National Coordinator for Combating Economic Crimes has reported that limited human resources of the SPRK continue to be hindered by the internal recruitment procedures of the prosecutorial services.⁶⁷ The Coordinator further recommends that Kosovo Ministry of Justice should amend the 2008 SPRK law and by aiming to allow for the possibility of including prominent lawyers to apply for joining the SPRK. The current recruitment rule requires that prosecutors should spend within prosecution for a minimum of seven years. Relying on these strict internal recruitment procedures of the prosecutorial services to increase the number of prosecutors within the SPRK, so far has not provided for any results. The current set up of the SPRK has not necessarily provided for qualified candidates showing further reluctance in investigating money laundering cases.

⁶⁴ Statement of a State Prosecutor at the Round Table organized by KIPRED and Syri i Vizionit, 31 March 2016 in Prishtina.

⁶⁵ See pg.4 of the “Quarterly Report on the Activities and Recommendations of the National Coordinator against Economic Crimes, October-December 2015,” for Kosovo Prosecutorial Council. Copy available with KIPRED.

⁶⁶ Statement of state prosecutor at the round table organized by KIPRED and Syri i Vizionit, March 2016 in Prishtina.

⁶⁷ See Recommendations section of the “Quarterly Report on the Activities and Recommendations of the National Coordinator against Economic Crimes, October-December 2015,” for Kosovo Prosecutorial Council. Copy available with KIPRED.

Furthermore, when it comes to actions undertaken by the SPRK prosecutors related to the crimes of money laundering, during 2015 prosecutors saw no need to request additional information and ordinance for covert measures regarding money laundering investigations. Differently, during 2014, there were 34 requests by prosecutors for additional information with at least nine (9) Ordinances for Covert Measures requested (See Annex Table 1.5). Adding also to the reported reluctance of special prosecutors to utilise the expertise of nine (9) financial experts available to the SPRK, it remains a concern the fact that special prosecutors are not requesting additional information nor are using covert measures, taking into account the complexity of the money laundering crimes. In particular, these deficiencies remain an obstacle to prepare cases as prosecutors have argued to face difficulties in proving their cases in front of the courts due to lack of evidence.

Overall their lack of initiative and willingness to work on the complex crimes of money laundering may be subject to potential political interference, not reported by special prosecutors. So far special prosecutors rarely report to have had any external pressures by suspected defendants as they have rarely dealt with high profile cases including of cases involving high profile political figures.⁶⁸ Kosovo is known to have had a substantial increase of wealth of senior public officials when comparing their annual incomes, that may be easily traced through monitoring of the asset and wealth declaration to the Agency Against Corruption.⁶⁹ As inexplicable wealth remains untouchable in Kosovo, special prosecutors continue to remain in their comfort zones, rarely reporting or requesting also for protection measures.

Further, it has been reported that institutional officials that have denounced potential money laundering activities, have often faced arbitrary measures by their management, often followed with suspension or transfer in other institutional branches.⁷⁰ Without developing a proper mechanism to also protect sufficiently the potential ‘whistle blowers,’ successful reporting and investigation of the money laundering crimes will continue to be low. With the current reported minimal response of the SPRK in prosecuting the money laundering activities, the probability that Kosovo will develop a track record on investigating and prosecuting the crimes of money laundering remains very low. The role that courts have played out in this regard put-off Kosovo further away in its successful track record of investigating, prosecuting and convicting the crimes of money laundering and economic crimes in general.

b) The Judicial Response

Kosovo continues to have a Special Prosecution Office at national level related to the investigation and prosecution of exclusive and subsidiary competences such as organised crime, terrorism, money

⁶⁸ KIPRED Source, Special Prosecutor of the SPRK, 2015.

⁶⁹ See KIPRED Report “The Impunity in Kosovo: Inexplicable Wealth” November 2013. Available at http://www.kipred.org/repository/docs/THE_IMPUNITY_IN_KOSOVO_INEXPLICABLE_WEALTH_632453.pdf

⁷⁰ Statement of law enforcement official, at the round table organized by KIPRED and Syri i Vizionit, 31 March 2016 in Prishtina.

laundering acts and corruption related crimes.⁷¹ The existing national court structure relates to crimes similar to the SPRK however handling also all crimes punishable by ten years or more as provided by the law including aggravated murder.⁷² These crimes are handled under the new court structure within the Department of Serious Crimes of Basic Courts however judges continue to deal on daily basis with a vast number of cases within the Department handling also crimes punishable with ten years or more.

Kosovo courts have been suffering from endemic human resource deficiency with the annual budget divided only in 2015 by Government of Kosovo, amounting to 1.14% of the 2015 Annual Kosovo Budget.⁷³ The courts have low numbers of judges when compared also to the low number of resolved cases. For example, the Basic Court of Prishtina during 2015 worked with only twelve (12) judges in the Department of Serious Crimes with 1970 unresolved cases transferred from 2014. Whilst in the beginning of 2016, the Department has resumed its work with 2170 cases unresolved.⁷⁴ This department solved only 520 cases out of 2732 cases at work.⁷⁵ The conditions set by the Visa Liberalisation Roadmap have made possible that by January 2016, six (6) judges have been transferred to the Serious Crimes Department and now the Department has 18 judges.⁷⁶ The Government of Kosovo continues to argue that there is no need to further increase the number of judges.⁷⁷ Judicial services in Kosovo continue to work with serious systemic and human resource deficiencies, hampering with effective delivery of justice to Kosovo citizens. By mid 2015 the judiciary had 400.000 cases of unresolved backlog of cases inherited throughout the years.⁷⁸ During 2016 it has continued to work with an annual budget of 1.22% divided by the Ministry of Finance for the judicial sector.⁷⁹

The poor track record is also justified with the judicial officials requiring a special department/court to deal with the SPRK cases.⁸⁰ In the courts view it's impossible to show effective track records in solving money laundering cases by also dealing with a number of generalist crimes such as

⁷¹ Article 5 and 9 of the Law on the Special Prosecution Office of the Republic of Kosovo, 2008. Available at http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=143&Itemid=56&lang=en

⁷² Article 15, paragraph 21 of the Kosovo Law on Courts, adopted 2010. Available at <http://www.assembly-kosova.org/common/docs/ligjet/2010-199-eng.pdf>.

⁷³ The budget for the Kosovo Judicial Council in 2015 covers all expenditures of the Kosovo judiciary including human resources. See Ministry of Finance, Law Nr.05-L-001 on the Budget of Republic of Kosovo for the year 2015. Available at <https://mf.rks-gov.net/sq-al/Buxheti/Buxheti-i-Republikes-se-Kosoves/Buxheti-qendrore>

⁷⁴ See page 10 of "Statistical Annual Report of Courts – 2015", Kosovo Judicial Council, February 2016. Available at: file:///C:/Users/PC/Downloads/RAPORTI%20I%20PERGJITHSHEM%202015_22_02_2016.pdf

⁷⁵ Ibid.

⁷⁶ See pg.1 of the Kosovo input on the fulfillment of the remaining eight (8) recommendations from the Visa Liberalisation Dialogue, January 2016. Hard Copy with KIPRED.

⁷⁷ Ibid, pg.2.

⁷⁸ See pg.35 of the EU Progress Report for Kosovo, 2015.

⁷⁹ See also Ministry of Finance, Law on the Budget of Republic of Kosovo for the year 2016.

⁸⁰ KIPRED Interview with former Head of the KJC, Mr. Peci, August 2015.

aggravated murder.⁸¹ Nevertheless, these needs have continued to meet a dead end within the current government priorities in order to strengthen rule of law.

When it comes to conviction of money laundering cases, Kosovo courts during 2015 managed to issue only one (1) decision against one (1) person, that has been found guilty as charged.⁸² During 2014 there were no convictions of courts related to the indictments of money laundering. (See Table 1.2) The poor court results are also often justified by the limited knowledge and experience of Kosovo’s judiciary to deal with the money laundering crime.⁸³

Besides Kosovo institutions, the EU Rule of Law Mission in Kosovo EULEX also dealt with cases of money laundering. EULEX has not specifically targeted money laundering cases, although they were part of organized crime investigations. By June 2014, EULEX had eight (8) pending cases of money laundering dealt by their prosecutors.⁸⁴ During 2014 and 2015 their prosecutors filed in total four (4) indictments on money laundering cases. Subsequently, two (2) judgements were issued, in one case (1) the defendants were acquitted and in the other the defendants were found guilty and convicted for inter alia this crime.⁸⁵

Table 1.2: Court verdicts for the indicted persons on the money laundering crime, during period 2013, 2014 and 2015		
Year	The number of persons for whom the Court issued a verdict	The number of persons found guilty
2013	-	-
2014	-	-
2015	1	1

Source: Kosovo Prosecutorial Council

With the poor track record of convictions on money laundering crimes, the lack of human resources of courts and of specialised judges continue to hamper with the effective delivery of their mandate. In order to increase the results of the judiciary to deliver in the fight against complex crimes of organised crime, money laundering crimes and fight against high profile corruption, Kosovo judiciary should conduct a thorough analysis of the current deficiencies within the judicial system aiming to initiate a reform that could support implement further specialisation of courts and increase in number of judges on need basis.

⁸¹ KIPRED interview with a judge from Basic Court of Prishtina, August 2015.

⁸² These statistics are based on the Annual Report 2015, submitted to KIPRED in E-mail communication from Kosovo Prosecutorial Council (January 2016) known as the Inter-Institutional Tracking Mechanism of the KPC. Differently courts report 2 cases of money laundering conviction during 2014 and no cases convicted in 2015. KIPRED E-mail communication with KJC Director of Statistics Department, KJC in April 2016.

⁸³ KIPRED interview with the National Coordinator for Economic Crimes, 29 January 2016 in Prishtina.

⁸⁴ E-mail Communication of KIPRED with EULEX, Office for Public Relations, February 2016.

⁸⁵ Ibid.

Finally, the rule of law institutions need to increase their efforts in conducting successful investigation, prosecution and conviction related to money laundering crimes as requested also by the EU. In addition, they should address their institutional needs accordingly in order to maximize their results in this respect. These needs should be addressed also by the government ensuring that all key institutions mandated to combat money laundering are fully equipped with human resources, well trained and are left free from any potential political interference.

c) The Role of Other Institutions in Investigating Money Laundering Crimes

Similar to other rule of law institutions, Kosovo Police also has a considerate role in investigating the crimes of money laundering. The Police continues to face numerous challenges during the investigation of money laundering crimes including of the informal economy, cash circulation of cash and the unregistered properties.⁸⁶ Their investigations may be further hampered by the operation of money laundering activities through international transactions, with persons using international bank transfers or in few cases opening also “off-shore companies.”⁸⁷ Therefore, investigations should also involve cooperation outside of Kosovo, representing a challenge for Kosovo Police.⁸⁸ As Kosovo is not a member of the UN it has been limited in exercising its role in participating in regional or international bodies.⁸⁹ In addition to cross-border immobility and limited international cooperation, the Kosovo Police continues to be challenged by lack of capacities and expertise.

For example, the Directorate against Economic Crimes and Corruption has 14 police investigators, whilst the Financial and Money Laundering Investigation Unit has only five (5) investigators.⁹⁰ Other Police units may also conduct investigations related to money laundering but remain part of other criminal investigations. Besides these shortcomings Kosovo Police is challenged also by instances of political interference.⁹¹ With political parties required to report and failing to report their finances to the Kosovo Financial Intelligence Unit (FIU), Kosovo Police so far has not undertaken any investigations in this regard. As the police continue to be one of the key investigative chains in Kosovo, police structures should be strengthened to operate free from any potential political interference. During 2014, the Kosovo Financial Intelligence Unit referred majority of its intelligence reports to the Kosovo Police, namely 27 reports or 46% of them.⁹² The information

⁸⁶ KIPRED E-mail Communication with Kosovo Police, Office for Public Relations, February 2016.

⁸⁷ The term offshore is used to describe foreign banks, corporations, investments and deposits. A company may legitimately move offshore for the purpose of tax avoidance or to enjoy relaxed regulations. Offshore financial institutions can also be used for illicit purposes such as money laundering and tax evasion. See at, <http://www.investopedia.com/terms/o/offshore.asp>

⁸⁸ KIPRED E-mail communication with Kosovo Police, Office for Public Communication, 10 February 2016.

⁸⁹ United States Department of State, Country Database, pg.249.

⁹⁰ KIPRED E-mail communication with Kosovo Police, Office for Public Communication, 10 February 2016..

⁹¹ PECK Assessment Report 2014, pg.15.

⁹² In addition, 21 intelligence reports or 36% were referred to the Kosovo Tax Administration, one (1) report was referred to SPRK, two reports (2) were referred to EULEX and two (2) to the Kosovo Customs, whilst 6 (six) of them to international FIUs. See FIU Annual report 2014, pg.29.

submitted by the FIU, was not useful for the Kosovo Police as there were only 2 (two) criminal reports against six (6) persons filed during 2014 on money laundering cases.⁹³ The co-operation in investigating and tracking money laundering activities, by the FIU and Kosovo Police remains crucial in the effective fight against this complex crime.

The Kosovo FIU is relatively new in its experience with its mandate fully transferred from EULEX only in 2012.⁹⁴ It is mandated to request, receive, analyse and disseminate information from competent authorities, and should disclose information concerning potential money laundering and financing of terrorism acts.⁹⁵ The FIU works with total 18 staff and two (2) liaison officers, one with Kosovo Customs and one with Kosovo Police. The FIU was also supported by four (4) EULEX officials however, following EULEX restructuring in 2014, no EULEX officials remain within the unit.⁹⁶ Their departure has reduced substantially the human resources within the FIU. By end of 2017 the FIU plans to increase its staff by six (6) more members.⁹⁷ Considering the important role of the unit in combating money laundering it will be necessary for GoK to equip this institution with sufficient human resources in order to be able to fulfil its mandate.

The Unit mainly monitors the phenomenon of money laundering and financing of terrorism through analysis of Suspicious Transaction Reports (STR) and Cash Transaction Reports (CTR). The suspicious transactions are reported to the FIU mostly from the bank sector and other money remittance agencies.⁹⁸ Other reporting entities required to report to the FIU, in accordance to the Law on prevention of money laundering and financing of terrorism,⁹⁹ are lawyers, accountants and auditors, casinos and gambling games, political parties and construction companies. However, these entities continue not to report to the FIU.¹⁰⁰ The FIU justifies this with the lack of willingness of these entities to act in compliance with the Law. The fact is worrisome when taking into account that political parties are not reporting, with most powerful business companies in Kosovo remaining closely linked to political parties and continuing to gain funding in the form of public tenders. For example there have been estimations that from August 2007 until May 2014 few donors of political parties in power - business entities and owners – have gained around 220 million Euros in the form

⁹³ KIPRED E-mail communication with Kosovo Police, Office for Public Communication, 10 February 2016.

⁹⁴ See FIU Annual report 2014, pg.8 available at <http://fiu.rks-gov.net/wp-content/uploads/2014/10/Annual-Report-FIU-K-2014.pdf>. Also Law No. 04/L-148 on Ratification of the International Agreement Between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo. Available at: http://www.mfa-ks.net/repository/docs/Ligji_per_ratifikimin_e_marreveshjes_KS-BE-Eulex_%28anglisht%29-1.pdf

⁹⁵ It is managed by two bodies i.e. the Management Board and the office of the Director. The board under the current law is chaired by the Minister of Finance that should oversee and ensure independence of the FIU. In accordance to the law the Minister does not hold any executive power vis a vis the FIU and should not interfere in any way in FIU ongoing cases. The Director leads the work of the FIU and day to day management duties. The FIU Official website at <http://fiu.rks-gov.net/about/?lang=en#about>

⁹⁶ FIU Annual report 2014, pg.12.

⁹⁷ E-mail Communication of KIPRED with FIU and Ministry of Finance, March 2016.

⁹⁸ FIU Annual Report 2014, pg. 19.

⁹⁹ See Articles 24 through 28 of the Law, available at <http://www.assembly-kosova.org/common/docs/ligjet/2010-196-eng.pdf>

¹⁰⁰ FIU Annual Report 2014, pg. 19.

of public tenders.¹⁰¹ The lack of reporting and financing sources for political parties is continuously diminishing efforts to strengthen rule of law in Kosovo.

Besides the FIU, another important institution in the prevention and combating of money laundering is the Central Bank of Kosovo. In accordance with the Law on the Central Bank, this institution shall be exclusively responsible to license, supervise and regulate financial institutions.¹⁰² Initially, the 2010 Law on Prevention of Money Laundering and Terrorist Financing, didn't foresee any specific mandate for this institution regarding anti-money laundering measures.¹⁰³ Only in 2013 when the respective law was amended, it was included an additional article giving the Central Bank the competency to conduct compliance inspections. However, in this article the Central Bank remains responsible to supervise the implementation of the provisions of the law by the entity under their supervision only if the FIU delegates the right for supervisor base in written agreement.¹⁰⁴ Subsequently, the FIU and the Central Bank have signed a Memorandum of Understanding that mandates the Central Bank together with the FIU to monitor and ensure AML/CFT compliance by banks, micro-financial institutions, foreign exchange bureaux and other money transfer agencies as well as insurance, securities and other non-bank financial activities.¹⁰⁵ Accordingly, the Central Bank has restructured its supervisory framework and created the Money Laundering Prevention Division, that reports directly to Deputy Governor that is responsible for financial supervision.¹⁰⁶

d) Co-ordination Efforts to Combat Money Laundering

The fight against money laundering involves several stakeholders each with their mandated role to report and to combat potential money laundering activities. These institutions are challenged internally with lack of capacities and limited expertise in dealing with money laundering crimes, whilst the law enforcement agencies are still at the initial stage of creating proper and systematic mechanisms for interagency information exchange and cooperation. Obtaining information from different institutions mandated to report to financial intelligence structures has been limiting the investigation, indictment and conviction of money laundering.¹⁰⁷ The joint database system of rule of law institutions that would improve overall statistical data management continues to be dysfunctional. Amongst challenges remaining are also lack of credible data on money laundering cases as well as data on convictions and final executed judgements by courts.¹⁰⁸

¹⁰¹ Organization for Democracy, Anti-corruption and Dignity - Çohu, Kosovo Center for Investigative Journalism (KCIJ), Preportr, Periodic Gazette No.14, pg.2. Available at, http://preportr.cohu.org/repository/docs/1509-Preportr14ENG_290445_606574.pdf

¹⁰² Law No. 03/L-074 on the Central Bank of the Republic Of Kosovo, Article 42 , Financial Institution Supervision and Regulation. Available at: http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L074_en.pdf

¹⁰³ See Law No. 03/L-196 on the Prevention of money laundering and prevention of terrorist financing.

¹⁰⁴ The Law on Amending and Supplementing the law no. 03/l-196 on the Prevention of money laundering and prevention of terrorist financing

¹⁰⁵ See PECK Assessment Report, pg.45, 2014.

¹⁰⁶ Ibid.

¹⁰⁷ PECK Assessment Report, pg.15.

¹⁰⁸ FIU Annual Report 2014, pg.7.

In order to enhance the inter-institutional cooperation, in 2014 joint mechanisms were created for the exchange of information between agencies working in the field of financial crimes. A cooperation agreement was reached between the FIU, State Prosecutor, Kosovo Police, Kosovo Customs and Tax Administration, with the aim to exchange information, assess risk analysis and coordination.¹⁰⁹ Another cooperation agreement was signed in November 2014 between the FIU and the Civil Registry Agency (CRA).¹¹⁰ The purpose of this Agreement was to improve cooperation between these two institutions in order to enhance prevention of money laundering, by ensuring the exchange of information through the database access.¹¹¹ The coordination and cooperation between the mandated institutions to combat money laundering crimes continues to lag behind and what was agreed on paper has seen poor implementation.

The FIU exchanges information regarding money laundering mainly through the online system known as goAML.¹¹² The goAML reporting forms allow entities to report their analysis through narrative text and attach any supporting reference documents, if the entity wants to provide through information in support of its suspicions.¹¹³ Nevertheless, the FIU is most of the time obliged to request additional information from the reporting entities. In addition, the access of the FIU to various databases is not fully satisfactory, negatively impacting the analytical function of the Unit.¹¹⁴ Consequently, both the FIU analysts and financial institutions remain over-burdened as they are forced to allocate additional resources to answer different requests, instead of focusing on increasing the quality of reports submitted to the FIU.¹¹⁵

The poor reporting quality of the entities reporting to the FIU is further hampered by the total lack of feedback of the FIU towards the reporting entities, related to the outcome of investigations of specific cases. The FIU itself faces similar problems as the extent and quality of feedback it receives on the outcomes of reports filed with the Kosovo Police and State Prosecutor, is very low and unsystematic.¹¹⁶ In addition, the joint institutional work in handling the cases of money laundering is not sufficient. For example in 2014, the FIU conducted only two (2) joint projects of analyses/investigations with other mandated institutions.¹¹⁷ Taking into account the complexity of money laundering crimes and the limited expertise in tackling this phenomenon, Kosovo institutions should work on increasing further their joint efforts and progress in investigation and prosecution of money laundering crimes.

¹⁰⁹ FIU Annual Report 2014, pg. 31.

¹¹⁰ Ibid.

¹¹¹ FIU Annual Report 2014, pg.47.

¹¹² The United Nations Office on Drugs and Crime (UNODC) standard software system available for Financial Intelligence Units to counter Terrorist Financing and Money Laundering.

¹¹³ PECK Assessment Report 2014, pg.105.

¹¹⁴ PECK Assessment Report 2014, pg.14.

¹¹⁵ Ibid.

¹¹⁶ PECK Assessment Report, pg.14.

¹¹⁷ FIU Annual Report, pg.27.

The current insufficient institutional capacities of the FIU have also undermined cooperation of the FIU with domestic authorities, the access of information and improvement of the quality of analysis by the unit.¹¹⁸ For example, the number of intelligence reports that the FIU distributed to the national institutions and international counterparts, decreased from 74 reports distributed in 2013 to 59 reports distributed in 2014.¹¹⁹ From the total reports referred to relevant institutions in 2014, only one (1) report was submitted to the Special Prosecution Office of Kosovo and 27 reports were referred to the Kosovo Police.¹²⁰

In ending, the poor response by mandated institutions has continued despite significant trainings that have been offered to enhance their professional expertise in investigating, prosecuting and convicting the money laundering crimes. However, frequent changes in the legislation have made difficult also for the prosecution and courts to follow the pace of legal changes.¹²¹ Meanwhile, several trainings have been provided to Kosovo Customs and the FIU related to the aspects of money laundering and financial analysis.¹²² In 2015 the Kosovo Judicial Institute (KJI) organized 15 trainings for judges and prosecutors on topics of corruption, organized crime, money laundering and other related financial crimes.¹²³ At least seven (7) training sessions are foreseen to be held in the year 2016.¹²⁴ Nevertheless, level of knowledge in providing trainings remains limited related to the topic of money laundering and often judges and prosecutors with the trainers are at the same knowledge levels.¹²⁵ For this reason, the number of trainings provided by the Kosovo Prosecutorial Council and the Kosovo Judicial Council in cooperation with donors has been increasing.¹²⁶ It is necessary to create a specific training plan in cooperation with all stakeholders. Moreover, the frequency of specialised trainings for law enforcement personnel must be increased and of prosecutors, with the knowledge level approach of trainings offered equalised and adjusted based on the needs of the institutions in dealing with money laundering crimes.

¹¹⁸ PECK Assessment Report 2014, pg.12.

¹¹⁹ FIU Annual Report 2014, pg.28.

¹²⁰ Other 21 cases were send to Kosovo Tax Administration, two (2) reports were referred at EULEX, two (2) of them to the Kosovo Customs and six (6) reports to the international FIUs. Ibid. pg.29.

¹²¹ KIPRED interview with official from Kosovo Judicial Institute, January 2016 in Prishtina.

¹²² Also other stakeholders were part of the trainings as the Kosovo Police investigators, prosecutors, judges, tax inspectors and banks. See PECK Assessment Report, pg.117.

¹²³ Statement of the official of Kosovo Judicial Institute at the round table organized by KIPRED and Syri i Vizionit, 31 March 2016 in Prishtina.

¹²⁴ Ibid.

¹²⁵ KIPRED interview with official of State Prosecutor, January 2016.

¹²⁶ KIPRED interview with KJI official, January 2016.

V. Conclusion and Recommendations

In conclusion, Kosovo has shown limited progress in its fight against money laundering, despite the strategic and legislative framework in place. The key ingredient, the political and institutional willingness seems to be missing while Kosovo continues to be conditioned by the EU to show results in combating this phenomenon. Hence, rule of law institutions are urged by the EU to greatly strengthen their commitment to prosecute money laundering cases and to take appropriate measures in order to increase the number of cases ending with indictments, convictions and final executed judgements. Further, Kosovo's limited membership in international bodies and forums related to money laundering also hampers the proper investigation of these cases.

Meanwhile, key rule of law institutions mandated to combat money laundering activities, continue to suffer from insufficient institutional capacities, miss cooperation and potential political interferences. Challenges remain primarily in the successful track record of investigations, indictments and final convictions on money laundering crimes. With a 2015 ratio of 1 person (case) found guilty of money laundering by Kosovo courts and 83 % of cases remaining unresolved and carried over to 2016 by the Kosovo Special Prosecution Office, Kosovo seems to substantially lag behind in setting up effective track record of indictments and of convictions.

Kosovo rule of law institutions need to enhance overall their efforts to improve their record in combating money laundering crimes. In addition, the links between politics and suspicious business activities including the construction area should ensure investigation and prosecution. Given that the money laundering crime is often interconnected with other crimes, Kosovo rule of law institutions need to tackle activities that precede money laundering including high profile corruption, informal economy and tax evasions. Further the annual wealth reported by public officials is inexplicable wealth when compared to their annual incomes, and could serve as a helpful track to conduct potential investigations of money laundering and corruption related affairs. Without ending the sense of impunity in Kosovo of high profile public officials through a non-selective approach of courts, Kosovo will not be able to move forward in creating a stable and functional state for its citizens.

In order to improve the fight against money laundering crimes, KIPRED and SiV propose the following recommendations for Kosovo institutions to implement:

- The new draft of the Anti-Money Laundering and Combating of Financing of Terrorism Law should foresee that the reporting bar lowered for the NGO's, as it currently stands with the new draft law, should be removed as it may infringe with the independent work of the NGO sector. Further, with appropriate reporting requirements developed for the NGO sector in line with recommendations 8 of the FTAF Kosovo institutions should also work on and adopting the new Law on Freedom of Religion in order to oversee any suspicious

funding from abroad and within Kosovo as organisations with humanitarian and religious character or associations are not considered NGO's, leaving this particular sector from any reporting requirements;

- In addition to the National Risk Assessment against money laundering, Kosovo institutions, in cooperation with other stakeholders such as civil society, should develop sectoral risk assessment, with priority given to the already known high risk sectors such as construction. These risk assessments should be then translated into concrete action plans with set targets and outputs.
- Coordination among rule of law institutions mandated to combat money laundering cases should enhance further. The Financial Intelligence Unit in particular must strengthen communication and cooperation with reporting entities and other rule of law bodies including the police and prosecution. All stakeholders must enhance their joint efforts and provide feedback to each institution involved when dealing with money laundering cases by conducting regular coordination meetings on a case by case basis;
- Investigative capacities of all stakeholders should increase in particular of special prosecution, serious crimes department of courts and of the law enforcement agencies. In particular the FIU must urgently fill out its human resources needs resulted by the departure of EULEX officials. Additionally, the investigative and prosecution deficiencies in Kosovo should be addressed to the government by conducting regular strategic and budgetary reviews, in order to be able for the mandated institutions to fulfil their mandate in combating money laundering and of other organised crime cases;
- As money laundering is relatively new area for Kosovo institutions to handle and considering the poor record of indictments and convictions, the professional capacities of mandated institutions should be further boosted. The FIU, Kosovo Police, State Prosecution and other institutions, should continue to conduct and attend specialized trainings in this field and increase trainings frequency as deemed necessary;
- The government of Kosovo should demonstrate willingness in creating the necessary preconditions for Kosovo rule of law institutions to combat money laundering, ensuring that their work is free from any political interferences. Furthermore, persons that report potential money laundering activities should be offered necessary institutional protection and motivation with current practises of suspension and other measures ending;
- Finally, Kosovo rule of law institutions need to tackle activities that precede money laundering including high profile corruption, informal economy and tax evasions. Further the annual wealth reported by public officials is inexplicable wealth when compared to their annual incomes, and should serve as a helpful track to conduct potential investigations of money laundering and of corruption related affairs;

VI. Annex

Special Prosecution of the Republic of Kosovo (SPRK)	Total number of cases at work	Total number of persons with cases at work	The number of resolved cases	% of resolved cases	The number of persons whose cases were resolved	% of persons whose cases were resolved	The number of unresolved cases	% of unresolved cases	The number of persons whose cases were unresolved	% of persons whose cases were unresolved
Year 2014	42	117	14	33%	37	32%	28	67%	80	68%
Year 2015	36	106	6	17%	14	13%	30	83%	92	87%

Source: Kosovo Prosecutorial Council

By submitter of the criminal report	Year 2014				Year 2015			
	Total		%		Total		%	
	Reports	Persons	Reports	Persons	Reports	Persons	Reports	Persons
The Anti-Corruption Agency	1	3	9%	12%				
Kosovo Customs	1	1	9%	4%				
EULEX								
Received in competence	2	2	18%	8%				
The Financial Intelligence Unit (FIU)	1	2	9%	8%	1	2	11%	7%
Kosovo Police	5	14	45%	56%	7	21	78%	78%
Prosecutor with self initiative					1	4	11%	15%
Others (citizen, ...)	1	3	9%	12%				
Total	11	25			9	27		

Source: Kosovo Prosecutorial Council

Special Prosecution of the Republic of Kosovo (SPRK)	The number of requests for additional information	The number of orders for covert measures	The number of decisions to initiate investigations	The number of requests for detention	The number of requests approved by the Court	The number of decisions to expand the investigation	The suspension of proceedings	The resumption of proceedings after suspension of the investigation
2014	34	9	27	2	1	3	6	1
2015			18	1	1	2	9	

Source: Kosovo Prosecutorial Council