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Policy Making Review Kosovo

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Creating Change Together

Policy Making Review

Kosovo*

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FOREWORD

A well-functioning policy making system is a key pillar of a transparent and effective democratic system. It is also a crucial precondition for the country to make progress in the European integration (EI) process as the capacity of national administrations to undertake the obligations linked with European Union (EU) membership is a key criterion in the assessment of candidate preparedness.

Although there is no formal *acquis* in this area, previous experience and ongoing accession processes demonstrates that the preparations for EU accession and membership need to be underpinned by policy planning, development, co-ordination and implementation arrangements that:

- enable consistent policy planning and co-ordination of the Government activities, including priority setting;
- create policies that are not deficient in substance, are consistent with one another, are economically efficient and financially sustainable;
- include consultation with internal and external stakeholders;
- ensure that policies are properly implemented, communicated and monitored;
- support transposition and implementation of the *acquis* in all sectors;
- lay the foundations for operating effectively as an EU Member State.

The requirements for policy planning, development, co-ordination and implementation arrangements and capacities need to be enhanced as a country progresses along the path to EI. Kosovo is at a crucial stage of the EI process, with negotiations for the Stabilisation and Association Agreement (SAA) started in 2013 and formally concluded in July 2014. Entering into the SAA implementation process requires a new arrangement for EI structures and transposition of the EU *acquis*, as well as more efficient policy planning and decision making, and higher policy development and implementation capacities.

This review is the second in a series of SIGMA policy making reviews, looking into required policy making arrangements and the capacities of Kosovo. Covering both the Government and the Assembly, the review provides an in-depth analysis of the key aspects of Kosovo's public governance capacities in policy making and co-ordination. On the basis of this analysis, the review suggests how policy making capacities may be further enhanced.

Section one examines Kosovo's central co-ordination and horizontal planning systems in place, including the arrangements for policy analysis and monitoring within line ministries and planning the co-ordination of EI affairs. Section two concentrates on policy development procedures and capacities, including interministerial consultation, policy analysis and meeting EI requirements. Section 3 analyses the legal and institutional framework for parliamentary policy making and examines the Assembly's performance in the exercise of central policy functions, including: legislation, budgeting, executive oversight and control, and, as a cross-cutting function, the Assembly's responsibilities in the process of negotiating SAA and the harmonisation of Kosovo's legal system with EU law.

This review draws on a range of materials and data collected in 2013, including national legislation, central and sectoral planning documents, reports, international and national studies, working documents and data collected during the preparation of the study as well as numerous interviews with practitioners in the Kosovo administration.

The review was led by Keit Kasemets of the OECD SIGMA Programme, with substantial expert contributions from Juhan Lepassaar from the Estonian Government Office, Klaus Goetz from the University of Munich and Rachel Holloway from the OECD SIGMA Programme. Klas Klaas from SIGMA and Michal Ben-Gera provided valuable feedback and support in preparing and finalising the review. The review team would also like to thank Sabiha Shala who assisted with the data collection in Kosovo and Ruzhdi Halili, Eset Rama, Besim Kajtazi, Demush Shasha and Ismet Krasniqi from the Kosovo administration for their thorough support.

LIST OF ABBREVIATIONS AND ACRONYMS

APSAA	Action Plan for Stabilisation and Association Agreement
BOs	Budgetary operators
CoG	centre of government
DEIPCs	Departments of European Integration and Policy Co-ordination
DP	Declaration of Priorities
DPMs	Deputy Prime Ministers
EI	European integration
EPAP	European Partnership Action Plan
EU	European Union
FIA	Financial Impact Assessment
GAWP	Government Annual Work Plan
GCS	Government Co-ordination Secretariat
GIZ	Gesellschaft für Internationale Zusammenarbeit
IMC	Independent Media Commission
IPA	Instrument for Pre-Accession Assistance
LO	Legal Office
LPFMA	Law on Public Financial Management and Accountability
MAFRD	Ministry of Agriculture, Forestry and Rural Development
MCEI	Ministerial Council for the Co-ordination of the European Integration Process
MCR	Ministry of Community and Returns
MCYS	Ministry of Culture, Youth and Sports
MD	Ministry of Diaspora
MED	Ministry of Economic Development
MEI	Ministry of European Integration
MESP	Ministry of Environment and Spatial Planning
MEST	Ministry of Education, Science and Technology
MFA	Ministry of Foreign Affairs
MH	Ministry of Health
MI	Ministry of Infrastructure
MIA	Ministry of Internal Affairs

MKSF	Ministry of Kosovo Security Force
MLGA	Ministry of Local Government Administration
MLSW	Ministry of Labour and Social Welfare
MoF	Ministry of Finance
MJ	Ministry of Justice
MPA	Ministry of Public Administration
MTEF	Medium-Term Expenditure Framework
MTI	Ministry of Trade and Industry
NGOs	Non-governmental organisations
NIPAC	National Instrument for Pre-Accession Assistance (IPA) Co-ordinator
OECD	Organisation for Economic Co-operation and Development
OPM	Office of the Prime Minister
PAR	public administration reform
PCO	Public Communication Office
PM	Prime Minister
RoP	Rules of Procedure
SAA	Stabilisation and Association Agreement
SGSP	Steering Group for Strategic Planning
SIGMA	Support for Improvement in Governance and Management
SMEs	Small and medium-sized enterprises
SPO	Strategic Planning Office
WCEI	Working Committee for European Integration

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Policy planning and co-ordination in the Government

The first part of the review analyses the functioning of the centre of government (CoG) in Kosovo. The legal framework for policy planning and co-ordination is broadly in place and does not require any substantial changes in the coming years. Key laws and the Government Rules of Procedure (RoP) adopted in 2011 are in line with European values and practices, and are very ambitious compared with the existing capacities of Kosovo's administration in terms of what is expected from the policy co-ordination bodies and the ministries. The legal framework needed for embedding transposition of the *acquis* into law drafting and policy making practices is in place.

The institutions fulfilling the functions of the CoG in Kosovo are the Office of the Prime Minister (OPM), the Ministry of Finance (MoF) and the Ministry of European Integration (MEI). Overall, the roles of these three organisations are well-established and responsibilities between them are clearly divided in most cases. The OPM's adherence to relevant procedures has led to a stage of maturity, where they are broadly followed by all stakeholders. Proper institutional set-up has been created both in the OPM and the MEI, and the responsibilities inside the CoG institutions and the ministries are largely respected. Therefore, the overall set-up and structure of the central co-ordinating institutions provide a good basic level of preparedness for coping with the increasing workload derived from the EI process.

Central planning instruments, such as the Government Annual Work Plan (GAWP) and the Action Plan for Stabilisation and Association Agreement (APSAA), are used and are partly consistent with each other and with the Medium-Term Expenditure Framework (MTEF). The ability to plan ahead and include implementation costs in forward planning within ministries is still weak. Backlogs due to overburdening and unrealistic political expectations exist. Overall planning of the Government's work is of a rather technical nature and different units' efforts inside the CoG are often fragmented and lack co-operation. The capacities of all structures to implement an ambitious legal framework are still limited.

Therefore, Kosovo should maintain the system's stability, avoiding major changes in the overall set-up and procedures, instead focusing, in the next few years, on steps to strengthen and deepen the functioning of the legal and administrative system already in place.

Key recommendations

1. *Increase the coherence of planning of the Government's work and decrease delivery backlogs*

Short-term (1-3 years)

- Improve capacities (increase the number of available positions and provide training) of the Strategic Planning Office (SPO) of the OPM in the following fields: policy analysis, prioritisation and objective setting, development of strategies, and impact assessment.
- Translate the Declaration of Priorities (adopted by the Government in April 2014) into concrete and coherent sectoral priority measures when preparing the GAWP 2015.
- The planning format and process to be streamlined by the MEI, as well as the reporting on various EI processes, in particular SAA, visa liberalisation, implementation of the feasibility study priorities.

- In co-operation with the SPO and the Government Co-ordination Secretariat (GCS) of the OPM, under the co-ordination of the Steering Group for Strategic Planning (SGSP) and using the Departments of European Integration and Policy Co-ordination (DEIPCs) in ministries, harmonise the development of the GAWP 2015 as well as EI planning documents concerning process and priorities¹.
- Under the co-ordination of the SGSP, ensure that SAA negotiation commitments are integrated into EI and domestic planning documents, in particular the GAWP and the MTEF.
- Firmly apply planning criteria to ensure the annual backlog carried into the coming year of strategies to be adopted decreases considerably:
 - a) When preparing the four-year Government Programme for the new Government and the GAWP Plan 2015, introduce a rule where only sectoral strategies can be included in the annual plan of strategic documents. Exemptions from this rule should only be made in specific cases, such as EI requirements for a more targeted strategy or other international and domestic requirements;
 - b) Gradually move to only sectoral policy strategies being developed by ministries in order to consolidate the strategic planning system.
- Gradually channel all key EI and national planning and policy co-ordination activities through the DEIPCs.
- Under the co-ordination of the SGSP, harmonise (and, if possible, merge) reporting on the new Government Programme and EI-related strategic plans.
- Gradually introduce gradually programme budget elements into the budgetary planning system and strengthen both the overall and sectorial prioritisation of the MTEF.

Long-term (4-5 years)

- Gradually introduce performance indicators when reporting on key Government strategic documents (EI, Declaration of Priorities and Government Programme).
- Incorporate overall and sectoral performance indicators in the Government Programme and the GAWP during the next election cycle or change of coalition.
- Define monitoring of the implementation of sectorial strategies as a clear task for the SPO of the OPM, launch a reporting system to the Government on the implementation of sectoral strategies as an integrated part of the GAWP and introduce regular outcome based reporting on the implementation of the MTEF.
- Merge sectoral strategies with ministries' development strategies.

Policy development in the ministries

This part of the review analyses the policy development arrangements and capacities of Kosovo, including planning for implementing EI activities and transposing the *acquis*. Similarly to policy planning and co-ordination, the legal framework for policy development is in place and sets ambitious standards for the CoG institutions and ministries. Capacities of all structures to implement the ambitious legal framework are limited.

¹ Sources for the priorities should remain the same - for the GAWP, the main sources are the Government Programme and the Declaration of Priorities; for the EI planning, the main sources are the SAA and visa liberalisation processes.

Procedures are followed by the ministries, but the whole process has a technical and formal nature. Interministerial consultation processes and policy analysis are at the first stages of development, where formal requirements are mostly met but the level of actual policy discussion is modest. The system of concept papers has been launched which, if implemented rigorously, would be a remarkable contribution to strengthening policy analysis. Initiatives of the involved CoG institutions (the Legal Department and Government Co-ordination Department of the OPM and the Ministry of Finance) to improve the system are not always well co-ordinated.

There is room to improve policy development structures and procedures in the ministries. Responsibility for policy development is not clear and the share of staff in the departments dealing with policy development is low. The *acquis* transposition process introduced requires tables of concordance. The capacity of the ministries in law approximation is understandably low and should be increased gradually.

Ministries have generally launched co-ordinating structures to deal with EI co-ordination, strategic planning and policy development. This is to be commended. However, these structures need to be enhanced as these units' capacity to deliver is hampered, mostly due to a lack of standing in one ministry, a shortage of staff or lack of skills and expertise. However, some promising champions, such as the Ministry of Trade and Industry (MTI), seem to be emerging already.

Key recommendations

1. Increase the capacity of the CoG to co-ordinate and the ministries to develop and implement policies

Short-term (1-3 years)

- Improve the quality of concept papers by increasing the capacities for quality control and provision of day-to-day guidance of the CoG institutions responsible for policy and legal development and fiscal analysis.
- Consider adjustments in the Government sessions to enable more active and timely involvement of the Council of General Secretaries in the preparatory process.
- Strengthen the Council of General Secretaries' role in the Government decision making process as a main body for handling interministerial disputes, as well as discussing and deciding on horizontal issues.
- Review how new principles introduced by the Government RoP in late 2011 have contributed to improving the quality of policy discussions, and review how interministerial dialogue takes place between ministries and the central government. Consider the results and implement any necessary changes.
- Increase, through training and reallocation of staff, policy analysis capacities of the OPM's key departments providing more comprehensive analytical advice to the Government and more active steering of ministerial inputs.
- Define a coherent joint approach by CoG institutions to the improvement of policy development instruments and capacities, such as financial impact assessments (FIAs), cost evaluations of new policies, concept papers, etc.
- Strengthen the capability of line ministry staff to fully account for implementation issues and potential financial impacts when developing policies, strategies and drafting legislation.
- Develop the capability of line ministries to properly integrate non-governmental organisations (NGOs) and the public into the policy making process by providing written guidance and training on consultation methods.

- Launch a policy planning and strategy development capacity building programme for functional and policy departments starting with DEIPCs, legal departments and key policy development departments in the ministries mainly responsible for meeting requirements in the EI process, namely MTI, Ministry of Internal Affairs (MIA), Ministry of Justice (MJ) and the Ministry of Agriculture, Forestry and Rural Development (MAFRD). This programme can then be gradually extended to policy departments in all ministries.
- Analyse the internal policy development processes of the ministries to more clearly define the responsibilities of key departments and management levels in policy development. Find ways to strengthen the policy development departments.

Long-term (4-5 years)

- Build on the fiscal impact assessment process and introduce a wider process of policy analysis that evaluates a full range of costs and benefits and wider issues, such as potential environmental and social impacts.
- Launch an *ex-post* evaluation of policy initiatives and laws to review whether, once implemented they are achieving the original objectives.

2. Root created mechanisms and develop capacities for effective transposition of the EU acquis

Short-term (1-3 years)

- Gradually enforce the adopted regulatory and normative acts which establish a framework for the application of tables of concordance and clarify the division of labour of different departments and authorities involved.
- Enhance the capacity of the ministries' EI departments through staff evaluation, recruitment and training to better implement the new SAA-related processes, and tasks related to the tables of concordance. Ensure that all staff in EI departments have sufficient English skills and at least one lawyer in key ministries has adequate knowledge of the relevant *acquis*. In allocating resources for staff increases, prioritise those ministries that deal with a greater burden, such as the MTI, Ministry of Environment and Spatial Planning (MESP), MIA foremost, and the MoF, Ministry of Infrastructure (MI) and MAFRD secondly.
- Enhance the MEI's co-ordination capabilities through better political prioritisation of actions and by giving priority to the SAA process and imposing stringent criteria for including new actions in the framework planning documents. At the same time, allow ministries some flexibility in deciding the timeframes for delivery of objectives. This would enable the MEI to lead the process in a more systematic and targeted way and reduce backlogs.
- Review the functioning of the co-ordination system with a view to streamlining the reporting and planning mechanisms in a more unified system and ensuring a smooth transition from SAA and EPAP parallel structures to a unified co-ordination structure.
- Increase the budgetary planning capacities of the ministries and ensure that the procedures that enhance forward budgetary planning (including concept papers and financial impact analyses) are rigorously applied through all stages of the EI process.
- Strengthen the co-operation between the LO and the MEI and consider adopting the policy of issuing joint legal opinions (at least for pivotal EI-related acts) to avoid giving conflicting signals to ministries and ensure the homogeneity of legal oversight.

Long-term (4-5 years)

- Move towards a central single EI planning framework which would set clear and measurable quantitative or qualitative targets to assess progress.

- If the EI process progresses to a more advanced phase (*i.e.* accession negotiations), re-address the issue of how to involve the majority of cabinet members in the substantial preparatory political discussions.

Policy making in Parliament

The basic political and administrative structures of the Assembly are in place, in particular rules and regulations, and processes at political and administrative levels to plan the Assembly's work and carry out its main functions. However, the parliamentary policy making role in Kosovo is especially challenged in at least two ways.

First, the legal system is still in the process of maturing, so that many aspects of economic and social life, in particular, continue to await regulation through detailed parliamentary legislation. Between the end of March 2011, at the beginning of the IVth Assembly, and June 2013, *i.e.* within a little more than two years, the Assembly approved 164 laws, the majority of them being completely new laws rather than amended legislation². There are, accordingly, great pressures on the legislative capacity of the Assembly, and there is a concomitant danger that other parliamentary business, notably oversight and control, may become marginalised.

Second, there is, on the one hand, a strict institutional separation between the Government and the Assembly, most visible in the constitutional provision that prohibits members of the Government to hold an Assembly mandate. The emphasis on separation raises problems of effective executive-legislative co-operation. On the other hand, in some important respects, notably when it comes to its own budget and personnel, the Assembly is constrained by a lack of autonomy from the Government.

Regarding EU integration, the Standing Committee for EI has been given extensive responsibilities under the Assembly's RoP, with a special focus on the review and supervision of "the process of harmonisation of laws enacted by the Assembly with the legislation of the EU". Nevertheless, there is no comprehensive legal framework governing the powers and responsibilities of the Assembly in the EU integration process, and the Committee's role is geared towards review and co-ordination rather than the introduction and formulation of initiatives or detailed legislative scrutiny and amendment.

The IVth Assembly shows major improvements in parliamentary policy making capacity, whilst there is awareness at both the political and administrative levels of the Assembly that further organisational development is required. The options for change briefly highlighted in this section focus on major organisational questions that affect both political and administrative structures and processes.

Key recommendations

- 1. *Increase capacity of the Assembly through improving functionality division of the Committees, strengthening the legal framework and increasing its independence.***

Short-term (1-3 years)

- Open meetings of the Presidency to a representative of the Government charged with handling executive-legislative relations to improve the co-ordination of work between the Government and the Assembly. Such a representative should not, have voting rights but should act as a source of information, allow the Presidency to express concerns about the flow of legislative business coming from the Government and act as an interlocutor when it comes to handling complaints about unanswered parliamentary questions.

² See the regularly updated "Evidence on processed and adopted laws", available on the Assembly's homepage: <http://www.kuvendikosoves.org/?cid=2,191,97>, last accessed 3 July 2013.

- Review the functionality of the division of labour between the Committee for European Integration and the Committee on Foreign Affairs and between the Committee for European Integration and the Committee of Legislation. It is worth exploring a structure in which all political aspects of integration are dealt with in a Committee for European and Foreign Affairs, whilst questions of compliance and harmonisation are dealt with in a Committee for Legislation and Harmonisation.
- Reconsider the legal status of Assembly personnel. It is not, at this stage, self-evident that there is a need for a law regulating the civil service status of Assembly staff, but there is a strong case for supplementary regulations that do justice to the special conditions in the Assembly.
- Reconsider the legal framework governing Assembly personnel policy and the administration of its budget to reduce dependency from the MoF and the Ministry of Public Administration (MPA) staff recruitment and budgeting processes.
- Create a comprehensive legal framework that sets out how the Executive and the Assembly co-operate in the area of EI. Such a framework needs to set out, in particular:
 - the rights of the Assembly to information in EU-related matters and the informational duties of the Executive (i.e. the types of information provided by the Executive, the timing of information to be made available, the parliamentary procedures for processing the information and the parliamentary rights for probing the information);
 - the rights to discuss and adopt parliamentary positions on the matters concerned, such as negotiation mandates;
 - the obligations on the part of the Executive to take parliamentary positions into account;
 - the rules and procedures for direct contacts between the Assembly and EU institutions.
- In line with evolving practices in EU Member States, consider introducing additional oversight and control instruments that are principally geared to enhancing institutional and policy performance. As concrete tools:
 - Foresee regular performance reviews in new sectoral legislation, so that evaluation and assessment are enshrined in legislation.
 - Create additional instruments that allow Deputies to solicit information from the Government, notably extended written questions to be answered by the Government or individual ministries.

Long term (4-5 years)

- Analyse the consequences of the structural reform of the Assembly once the new structure has had a chance to settle down, and its effects on the performance of the Assembly administration can be assessed more systematically.
- Encourage flexibility in the allocation of staff resources across functions, not least in response to the uneven flow of parliamentary business during the year.
- Since it might not be possible to increase the overall number of staff servicing committees, enable the sharing of staff across them. The allocation of scarce staff resources must be driven by the identification of the key political functions performed by the Assembly, i.e. it must be led by demand.
- After analysing the impacts of conducted reforms and exhausting effects provided by flexibility measures, move towards larger and more cohesive departments.

1 POLICY PLANNING AND CO-ORDINATION IN THE GOVERNMENT

1.1 Legal framework

The main elements of the legal framework include: organic budget law³; the Law on State Administration⁴; and the Regulation of Rules and Procedure of the Government⁵. The legal framework specifies the responsibilities of the OPM, provides authority to assume these responsibilities, and creates a framework for co-ordinating activities between key institutions at the centre of government, namely the OPM, the MEI and the MoF.

The general EI-related legal framework consists of the Government Decision No. 6/121 of 22 April 2010, Regulation No. 07/2010, and Regulation No. 32/2012, which established the MEI, created (and later amended) its internal structures and adopted interministerial structures for the EI process. With its latest EI-related decision, the Government has established the SAA negotiation structures. These acts empower the MEI to lead the EI process by initiating and driving the planning process (including Instrument for Pre-Accession [IPA] resources); monitoring the implementation activities (including the quality of harmonisation of the *acquis*); and reporting on the progress made. Government Regulation No. 01/2011 also established specialised EI departments (Departments for European Integration and Policy Co-ordination – DEIPC) within all line ministries.

Analysis of main challenges

The legal framework is substantially complete and of generally high quality. It provides a good basis for the management of all aspects of the policy process, including planning and monitoring, policy development, policy co-ordination, and decision making.

The legal framework clearly defines and divides the responsibilities between the OPM, the MEI and the MoF. In the SIGMA interviews conducted for the purpose of this review, all counterparts confirmed that informal co-operation and information exchange among the three government bodies is smooth.

The legal framework provides a transparent mechanism for conducting EI processes and, in a rather detailed manner, also defines all the specific tasks and obligations of the different parties involved. The empowerment of the institutions that fulfil leading roles in the EI process (MEI in particular) fits well within the overall and system of governance architecture in Kosovo.

1.2 Planning the work of the Government

The legislative framework stipulates four central planning documents: the GAWP, the APSAA⁶, the MTEF and Medium Term Declaration of Priorities (DP). Three of these (the APSAA, the MTEF and the DP) have a medium-term planning dimension.

³ Law on Public Financial Management and Accountability (17 December 2003).

⁴ Law No.03/L – 189 on the State Administration of Kosovo (16 September 2010).

⁵ Regulation on RoP of Kosovo, No. 09/2011.

⁶ The APSAA replaced the EPAP in late 2012.

According to Article 47 of the Government RoP, the Government approves by the end of December of each year a Government Work Plan for the following calendar year. The plan is prepared in accordance with the guidelines and instructions issued by the OPM and it is considered to be the principal planning and implementation document of the Government.

The GAWP covers both legislative and non-legislative matters, as well as the preparation and implementation of strategies. The legislative tasks and commitments for developing strategies are summarised annually in separate annexes to the work plan. The GAWP includes a prioritisation mechanism consisting of two sections: section A concentrates on activities needed for the implementation of the strategic priorities, and section B encompasses all activities of ministries.

Regulations define mechanisms for ensuring coherence among central planning documents. Every item foreseen under the GAWP has to make reference to other planning documents, such as the Government Statement of Priorities, the Action Plan for the Implementation of the Economic Vision and the MTEF.

The RoP are in place to link policy planning with annual and medium-term financial planning, although they are implemented with varying degrees of success, mainly through the strategic objectives.⁷ However, there are also requirements to link the GAWP to budget decisions and to include projected costs. In addition, the RoP specify the responsibility of ministries to provide the calculation of public revenues and expenditures for new initiatives. Fundamental to this is the requirement that the MoF reviews and approves the fiscal analysis⁸.

Requirements exist for linking the GAWP with the EI process. The guidelines on the preparation of the GAWP foresee a 'reference to EPAP/APSAA.' Moreover, Article 48 of the RoP expects the GCS of the OPM to co-ordinate the preparation of the GAWP with the MEI.

The RoP of the Government obliges the SPO and the GCS to issue general guidelines to enable better planning and more detailed guidance of the methodology for the GAWP, including strategies and a legislative programme⁹. Guidance materials are also provided by the MEI to support the preparation and monitoring of the APSAA.

The reporting and monitoring system is embedded in the legal framework. Ministries have to transmit data to the GCS quarterly for the purpose of monitoring the implementation of the GAWP, including data on the extent to which each activity has been achieved, whether the deadline has been met, and an assessment of any problems encountered in the implementation and recommendations for remedial action. Any recommendations for amendments to the work plan can be submitted for approval to the Government sessions. A similar process for monitoring the legislative programme is in place, with the LO able to create a mechanism for its implementation¹⁰. Also, the GCS quarterly monitors implementation of decisions of the Government.

⁷ These obligations are specified in point 1.7/Article 10 of the Administrative Instruction for No. 02/2012 on the procedures, criteria and methodology for the preparation and approval of strategy documents, and plans for their implementation.

⁸ Article 31 of the RoP of the Government.

⁹ Administrative Instruction No. 02/2012 on the Procedures, Criteria and Methodology for the Preparation and Approval of Strategy Documents and Plans for their Implementation; Manual on Drafting the Annual Government Work Report of 11 November 2011; Manual for Preparation of Sectoral Strategies (June 2013).

¹⁰ Regulation No. 01/2012 for the Board of Directors of the Legal Department, 29 February 2012. For the purpose of monitoring the implementation of this programme, ministries follow 255-259 of Guidelines for the design of the Annual Report of the Work of the Government, and 261-265 of the Guidelines for monitoring the implementation of Government Decisions.

Analysis of main challenges

Kosovo's legislation provides a solid framework for ensuring the coherence of the Government's central planning documents and enabling linkages between the GAWP and the work plans needed for EI and the budgetary process. The overall structure of the GAWP, including a section for priority activities and annexed plans for legislation and strategies, enables efficient planning of the work of the Government.

1.2.1 The Government decision making process

The Government's decision making procedures and requirements are defined mainly in the RoP, adopted in late 2011. The RoP regulates in detail the process of preparing meetings of the Government (including the responsibilities of various co-ordinating offices of the OPM and the MEI, the MJ and the MoF), as well as the organisational aspects of the meetings. The RoP also regulates the decision making procedures of the Government. Compared to the previous RoP, there is now a stronger emphasis on policy development and policy analysis.

The RoP clearly specifies the documents that must be presented to support items on which the Government must make a decision at Government meetings. In addition to the explanatory memorandum, a concept paper (policy paper) should accompany a policy proposal or a draft law. A fiscal impact assessment is also required, and it must adhere to the template provided by the MoF.

The requirement of a policy paper to be submitted for Government discussion prior to legal drafting for all proposals, except those of a minor nature, is a new principle in the RoP of 2011. To allow the Government to make informed decisions, ministries have to send policy analysis that includes the consideration of different options and their consequences¹¹. This policy analysis must be prepared in the format of a concept paper.

In addition, Article 26 of the Law on Public Financial Management and Accountability (LPFMA) states that whenever the Government considers a new law or an amendment to an existing law to be sent to the Assembly, the Government shall first require the sponsoring ministry or body to submit to the Government and the MoF a budgetary and economic impact statement that provides a detailed assessment of the likely effects of the proposed legislation on the Kosovo budget and its economy. Also, the sponsoring ministry shall prepare a report indicating the source or sources of funding, for such a draft law will require the expenditure of public money in the fiscal year during which the law is adopted.

The Government has also adopted legal acts to establish the interministerial co-ordination mechanisms for EI-related decision making. The first layer of these structures was set-up with a Government decision in 2010, which established the Ministerial Council (sometimes referred to as committee) for the Co-ordination of the European Integration Process (MCEI), chaired by the Prime Minister (PM). The main task of the MCEI is to function as a political decision making forum where all the EI-related issues are solved and agreed before their formal adoption by the Government¹². The members of the council include the Minister of the MEI (as Deputy Chair) and the Ministers of Finance and Economy, Public Administration, Local Government Administration, Foreign Affairs, Internal Affairs and Justice.

Below the MCEI is the Working Committee for European Integration (WCEI), which is chaired by the Minister of the MEI. The WCEI consists of representatives of all the ministries (and some Government

¹¹ Articles 28, 29 and 36 of the RoP of the Government.

¹² Among the MCEI's other tasks are to: co-ordinate the uniform state policy, as well as development and implementation of the strategy of Kosovo for integration into the EU (including the EPAP); define the main priority areas and deadlines for their enforcement; discuss the negotiating positions before their adoption by the Government; ensure a well-planned and comprehensive process of approximation; co-ordinate the development and activities related to the capacity building of the ministries; prepare the Government's decisions on the use of EU and EI related bilateral assistance.

bodies), and is responsible for preparing the work of the MCEI and running routine monitoring of the implementation work. Under the working committee, the system relies on seven sectoral executive committees, which consist of experts from ministries and are tasked with preparing the EPAP plans and implementing the commitments taken. All three co-ordination forums – the MCEI, WCEI and executive committees – were initially dedicated to the co-ordination of tasks deriving from Kosovo's aim to deepen its integration with the EU.

With the launch of the stabilisation and association process, a new set of co-ordinating layers were established in early 2013, such as the position of Chief Negotiator (*ex officio* MEI minister) and the Negotiation Team at ministerial level to prepare negotiation positions and commitments. The decision also established the post of Negotiating Team Secretary (Secretary-General of MEI) and created three SAA Negotiation Working Groups to prepare and conduct negotiations at the technical level, two of which (legal approximation and co-operation policies) are headed by MEI, and one (trade issues) by the MTI.

Analysis of main challenges

A proper procedural framework for Government decision making and policy development has been created by the OPM, the MEI and the MoF. The specific regulations – especially the Government RoP – are highly sophisticated and hence establish an ambitious benchmark for the existing capacities of Kosovo's administration in terms of what is expected from the CoG bodies and ministries. However, this provides a good model to strive towards.

The procedural aspects of policy analysis and policy development still require attention, especially concerning handling and steering policy analysis issues, in particular concept papers, at the CoG. Responsibility for co-ordinating policy development and policy analysis is not precisely established in the legislation. This has led to a situation where MoF deals with the financial issues of concept papers, and the LO, the SPO and the GCS all are involved in processing and providing feedback on concept papers. Responsibility for development of the system and guiding ministries is scattered.

The legal framework for EI is in place and is sufficient for a country which is in the phase of starting SAA negotiations. As some key elements have been introduced only recently and there is no widespread implementation practice, the legal framework might merit additional fine tuning after the SAA negotiations have been finalised. For example, although the normative acts needed for embedding and transposing the *acquis* into law drafting and policy making practices have been adopted, they have been used in practice in only a few cases.

The crucial issue at the CoG level is to ensure the MEI's role in monitoring that the draft bills related to the EU *acquis* conform with the general legal framework, which gives the tasks of legislative co-ordination and oversight to the LO of the OPM. The RoP of the Government (Article 42) give the LO quite a broad mandate not only in ensuring the overall co-ordination of legislative drafting of all draft laws that the Government submits to the Assembly, but also in empowering the LO to ensure (through instructions and assistance) that the drafts the ministries submit adhere to the overall legal framework of Kosovo and follow the overall standards and quality of legislative drafting.

This means that the MEI and the OPM should work closely together to ensure full compatibility between Kosovo's legal order and that of the EU. Although this co-operation already exists at the informal level and the working relationship is described by both sides as 'cordial', further steps could be taken to formalise this relationship at the procedural level. As the integration process advances, the transposition effort will increasingly penetrate all policy fields and every facet of legal order. To ensure that the transposing acts adhere to a single legal logic which takes into account the aims of the *acquis*, as well as what is viable within Kosovo's own legal order, the two bodies could issue joint legal opinions to the ministries on EI-related acts. This would also avoid having the two 'overseers' issuing contradictory opinions to line ministries.

1.3 Policy co-ordination and planning arrangements at the centre of the government (CoG)

1.3.1 Coherence of the CoG

Overall policy co-ordination and planning issues are regulated in the RoP. Responsibilities and functions of the CoG institutions are stipulated in regulations on internal organisations. The regulation for the OPM manages the structure and mandate of each office within the OPM¹³. The regulations of the MEI and the MoF also determine their competence on policy making issues. The MEI has the authority to co-ordinate composition and implementation of strategic documents relevant for EI, handle daily EI-related co-ordination issues, and check the compatibility of legislation with the EU *acquis*. The MoF has the competence to lead medium-term and annual budgetary processes and reviews and approve the FIAs of primary and secondary legislation and strategic documents.

Existing co-operation of CoG institutions was formalised in June 2012 with the creation of the SGSP¹⁴. The group is led by the political adviser of the Prime Minister and assembles key officials from the OPM (directors of three key departments), the MoF (directors of budget and macroeconomic departments), the MEI (director of the EU assistance co-ordination department) and the MPA (director of public administration reform co-ordination). The Group's functions include establishing coherence of key Government strategic documents, taking into account the EI process priorities, harmonising budget and policy planning, as well as ensuring realistic planning and streamlining of foreign aid with Government priorities. Thus the SGSP is primarily co-ordinating planning issues.

The main co-ordination forums for daily policy issues at the CoG are handled through informal regular meetings of the Deputy Prime Ministers (DPMs) and formal weekly meetings of State Secretaries. In 2013, the number of DPMs was extended from five to six¹⁵. The horizontal responsibilities of the DPMs are legally fixed with the regulation on internal organisation of the OPM; the specific areas for which the DPMs are responsible are established through the informal distribution of functions. The PM holds meetings with the DPMs and the Secretary-General of the OPM twice a week.

At administrative level co-ordination is formalised. The responsibilities of the weekly meetings of General Secretaries are set out clearly in the RoP¹⁶, covering consideration of items submitted to the Government sessions, discussion on the agenda for Government sessions, follow-up to implementation of the Government Annual Work Plan, and review of the EI process. The RoP also mandates the Council of General Secretaries to solve conflicting and unresolved issues between ministries.

Analysis of main challenges

The institutional architecture for carrying out policy development, co-ordination and planning functions at the CoG is in place. The CoG comprises multiple institutions but many are based within the Prime Minister's Office, making co-ordination easier. There is clarity at the administrative level about the respective roles of institutions and established procedures for co-operation and co-ordination among them.

¹³ A draft new regulation on internal systematisation of the OPM has been prepared, but was not yet approved by the Government at the time of compiling this review.

¹⁴ Government Decision No. 05/83 on the Establishment of the Steering Group for Strategic Planning (11 July 2012).

¹⁵ According to the regulation on the organisational structure of the OPM, adopted by the Government in June 2013, a DPM shall be responsible for a special field of importance and high priority for the Government, but may also co-ordinate a sphere of policies within the responsibility of few ministries.

¹⁶ Chapter VIII of the RoP specifies the competences/responsibilities of the Council of General Secretaries.

Co-ordination forums contribute to policy planning. The composition of the SGSP is adequate, and the definition of its functions sufficient to ensure a harmonised and efficient strategic planning system. However, additional efforts by all counterparts should be made to fully exploit the benefits of the SGSP and assure its sustainable and effective functioning. Since its formal creation, the SGSP has met only three times and has not been the joint decision making centre in relevant strategic planning processes. The planning and implementation of key processes (EI, public administration reform (PAR), the review of the legislative programme) are regular weekly items on the agenda of the Council of General Secretaries, which creates a good basis for whole-of-government planning and enables discussions of key implementation challenges.

Regular preparatory discussions of the Government session agenda items by the Council of General Secretaries has the potential to efficiently address contentious issues of the ministries before the sessions. However, developing the capacity and tradition of dealing with these issues effectively takes time: analysis of minutes of the Council meetings demonstrates that the emphasis of discussions is currently on providing an overview by the OPM of items included in the agenda. On very few occasions were contentious issues actually raised by the ministries.

With six Deputy Prime Ministers, political-level co-ordination is a challenging task. However, clear, informal mandates of the DPMs and informal working processes created for preparing decisions of the Government, are meeting the challenge relatively well¹⁷.

1.3.2 Structure of the OPM

The OPM has over 15 departments fulfilling functions set by government regulation on the internal organisation of the OPM and in some cases (*e.g.* the Office of the Co-ordinator of the Strategy of the North of Kosovo) by specific law. Also, the number of the central state administration bodies reporting to the OPM was extended to six with the new regulation on internal organisation of the OPM¹⁸. The key departments for policy making and co-ordination are the GCS, the SPO and the LO, but also the Public Communication Office (PCO) is involved in the Government decision making process. Directors of these departments are well connected to the relevant policy co-ordination forums (they all are members of the Council of General Secretaries) and with the Prime Minister's advisers. The SPO has a direct subordination to the Prime Minister, being at the same time accountable for administrative issues to the General Secretary. Other key departments are accountable to the General Secretary. Each key department runs its own co-ordination network in the ministries; these networks contribute, among other things, to the preparation of Government sessions. Responsibilities of the key departments are defined in the RoP.

¹⁷ Before an item is included on the agenda of the Government session, it is sent to the responsible DPM and the responsible adviser of the PM for approval and feedback. The Secretary-General of the OPM acts as a liaison between politicians and the highest administrative level concerning Government decision making issues.

¹⁸ Regulation No.16/2013 on the organisational structure of the OPM was approved in 123 meeting of the Government of Kosovo with decision No.06/123 (5 April 2013).

Table 1. Functions of the OPM in policy making and co-ordination

Organisation	Responsibility	Key functions
Key departments for policy making and co-ordination		
The GCS	Check compliance of ministry inputs with overall Government policy and ensure that ministries understand what they need to produce in order to submit proposals to Government.	<p><u>Policy planning and co-ordination:</u> co-ordination of the development of the GAWP and implementation follow-up, including issuing guidelines and manuals.</p> <p><u>Policy development and Government decision making:</u> development of guidelines for explanatory memorandums; checking the quality of concept papers; preparation and follow-up of Government sessions, including preparation of briefs for the Prime Minister; handling relations with the Parliament.</p>
The SPO	Check compliance of ministries inputs with the Government's priorities, co-ordinate strategic planning activities and provide advice to the Government on issues related to the priorities.	<p><u>Policy planning and co-ordination:</u> co-ordination of the development of strategic documents, including issuing guidelines and manuals; providing opinions on Table A (priorities) of the GAWP.</p> <p><u>Policy development and Government decision making:</u> review and comment on those concept papers and agenda items of the Government sessions which have strategic implications.</p>
The LO	Check compliance of ministry inputs with the constitution and the existing legal framework, and plan legislative work of the Government.	<p><u>Policy planning and co-ordination:</u> co-ordination of the development of the legislative programme (annexed to the GAWP) and implementation follow-up; co-ordination of the overall legislative issues and developing the relevant legal framework, including managing the Council of Legal Directors.</p> <p><u>Policy development and Government decision making:</u> review those concept papers preceding legislative action to ensure the need for new legislation, has been identified; provide an opinion on the legal correctness of Government agenda items.</p>
Departments related to policy making and co-ordination		
The Government Spokesperson	Check whether documents submitted by ministries are for public or internal use and ensure	<u>Policy development and Government decision making:</u> comment on the necessity of making a public announcement of a

The PCO	that the public is kept informed of the work and decisions of the Government.	decision and the means by which any announcement should be made; make information about the decisions of the Government available to the public through various communication tools.
The Office of Good Governance	Ensure the principles of open government, such as transparency and active information flows to the public, are adhered to.	<u>Policy development and Government decision making</u> : check the compliance of draft laws, sub-legal acts, policies and programmes with internationally recognised standards of human rights and matters relating to corruption; provide advice to the PM on good governance, human rights, equal opportunities and anti-discrimination issues.

Sources: RoP; draft regulation on internal organisation of the OPM; interviews with OPM staff.

There are regular, weekly meetings of the Secretary-General with the Directors of the Offices within the Government Secretariat. They may discuss issues related to the forthcoming Government session, although the focus of the meetings is wider.

Analysis of main challenges

Internal co-ordination within the central government works well. The system has reached the stage of maturity where each department knows its responsibilities in fulfilling one of the core functions of the OPM – planning the work of the Government and handling Government sessions – and is capable of providing quality outcomes flexibly and within tight timeframes. The OPM has leverage in relation to the ministries and has been able to set-up procedures which are followed by all stakeholders.

Remaining challenges are related to the rather fragmented and cumbersome structure of the OPM, some grey areas between the key departments and the capacity of key structures to meet with high quality all responsibilities established by the RoP.

The OPM comprises various departments with very different tasks, for example the Office for issues of Categories Deriving from the Kosovo Liberation Army War. Agencies under its supervision also cover a broad range of areas, for example the Veterinary and Food Agency. This is a legacy from the pre-independence era, and it would be useful for Kosovo to continue the process of transferring some of these functions to relevant ministries.

Supporting departments and key departments for policy co-ordination and government decision making are accountable to the General Secretary, others to the Prime Minister's Cabinet. A high number of rather small departments with a wide scope of functions requires substantial management from the PM Cabinet staff and the General Secretary, and makes the design and implementation of coherent strategy for the whole organisation, as well as daily management, challenging.

The number of staff in key departments is modest compared with the overall size of the OPM. According to the draft regulation on internal organisation, the SPO has 5 positions, the GCS 12, the LO 11 and the Communication Office 6, but not all of these are filled. Staffing issues are particularly challenging for the SPO. This creates some capacity issues in fulfilling all the responsibilities envisioned by the RoP, in particular in setting priorities, planning in substance the work of the Government and providing analytical support to the PM and the Government.

As per normal practice, all main departments are involved in the key processes of the OPM: policy planning and co-ordinating government decision making. Responsibilities established by the RoP do not

exclude overlaps between departments, particularly concerning analytical tasks and handling materials submitted to the Government sessions. In practice, however, no remarkable duplications exist due to the limited capacity of departments. At the same time, the arrangement of each department looking at submitted documents from its own perspective has led to some key processes having many contributors, creating co-ordination challenges. A good example is concept papers where the formal responsibility of the GCS for ensuring their overall quality could be supported by a much stronger co-ordination role in practice, including commenting on substance, co-ordinating inputs and activities of the CoG actors, and guiding ministries towards higher quality materials.

1.3.3 The MEI and co-ordination structures for EI

Recent organisational changes, prompted by the new systematisation, have been introduced within the MEI. These were steps in the right direction and, overall, the MEI's internal structures and development plans accommodate the new challenges of the process¹⁹. In addition to the departments that lead the planning, monitoring and co-ordination efforts of the EI process²⁰, the MEI has a separate unit to oversee the harmonisation effort (Department of EU law) as well as a new, separate unit for co-ordinating donor assistance. It is important to note that the MEI has, since the start of 2013, introduced formal practices to foster interdepartmental co-operation, especially between the EU law department and other functional departments (including the department dealing with IPA). The EU law department now participates in preparatory meetings when IPA assistance and SAA Action Plans are discussed and, in return, the EU law department involves the functional departments in the formulation of its legal opinion once the ministries submit draft EI-related laws.

As indicated above, with the launch of the SAA process, a second layer to the interministerial co-ordination mechanisms was introduced with the establishment of the Negotiation Team and the Working Groups for SAA negotiations. The Negotiation Team is chaired by the Minister for the MEI and consists of ministers from the Ministry of Foreign Affairs (MFA), the MAFRD, the MoF, the MTI, the Ministry of Economic Development (MED), and the MJ.

In addition to these co-ordination layers, the MEI also administered an EI Task Force, a broad forum consisting of representatives from the administration, NGOs, academia and interest groups, brought together to draft a new national EI strategy, which was adopted by the National EI Council on 7 October 2013. The strategy is a framework document which aims to solidify a broader national consensus around EI goals, which could then facilitate compromises on important, specific EI-related reforms. It deals with five topics: 1) effective governance, 2) the rule of law and the fight against organised crime, 3) economic growth, 4) the enhanced involvement of stakeholders and 5) regional co-operation and development. It does not address the operational side of EI, which is left to the GAWP and the SAA Action Plan.

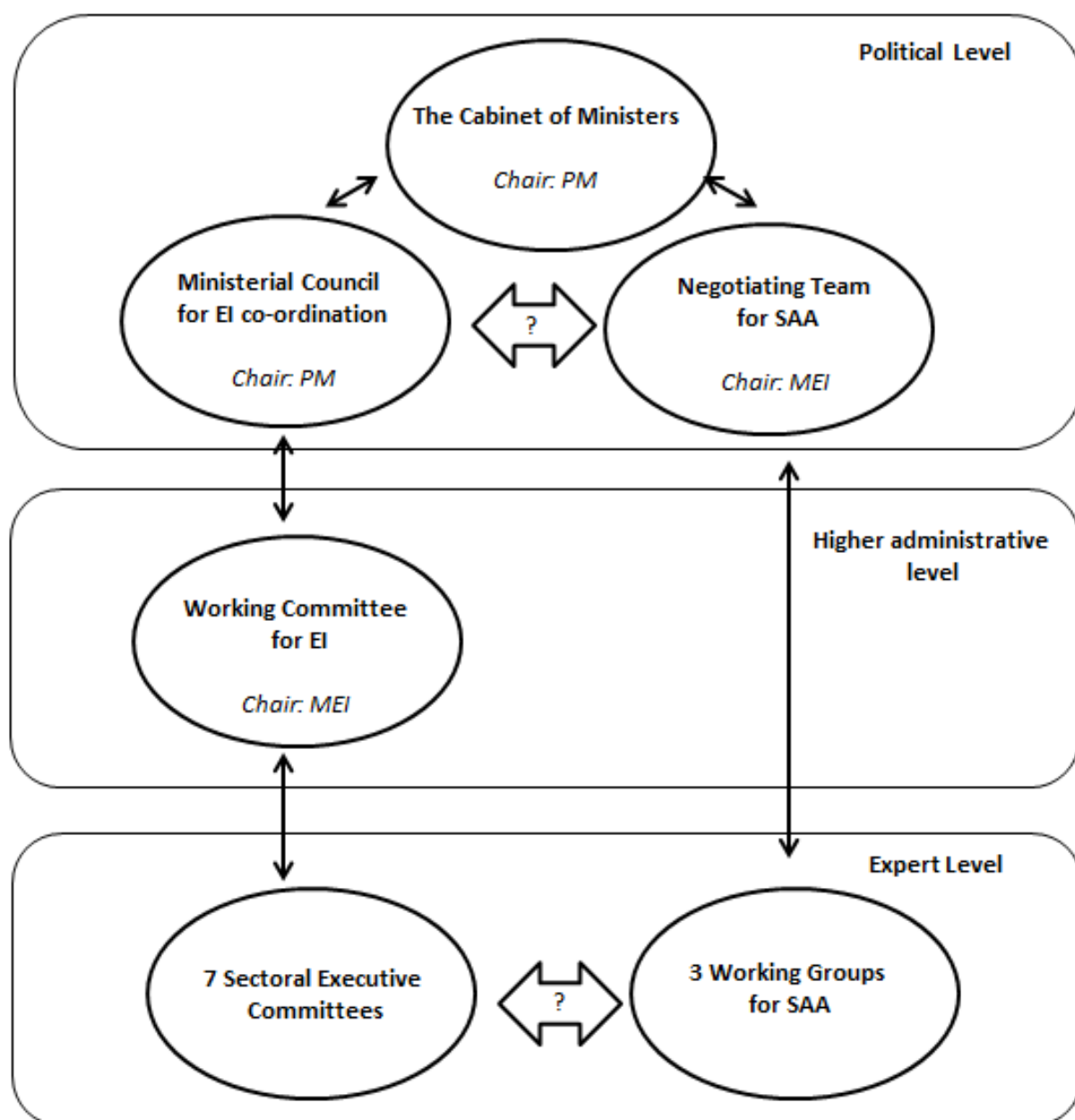
As the Task Force was an *ad hoc* mechanism with the sole purpose of drafting the strategy, the MEI has no plans to continue with it and therefore it will be abandoned. However, the National EI Council convened by the President of Kosovo, which sees itself as a consensus-building platform and which complements to some extent the Parliament's EU committee, will continue. Its secretariat consists of two members from the President's Office and one member from the MEI. Its discussions normally focussed on major specific policy areas or reforms (such as PAR), to discuss and assess progress and problems involved. With the adoption of the national EI strategy, there are plans for the National Council

¹⁹ The reform of organisational structures took into account analysis and recommendations made by the GIZ. See Engelman, Andrej (May 2012), *"Strengthening of the European Integration Process and Structures"; Support to the European Integration Process in Kosovo*, Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH.

²⁰ Such as the Department of Political Criteria, Department of Economic Criteria and Internal Market and Department for Sectoral Policies.

to monitor, perhaps once a year, progress in implementing the national EI strategy and to use the MEI and the established co-ordination mechanisms (such as the WCEI) as implementing and reporting channels. As the National Council does not directly influence operational policy planning and neither are they part of the operational co-ordination system of the executive, it will not be considered in the functional analyses of the co-ordination system.

Figure 1. General architecture of Kosovo's EI co-ordination system



Source: MEI.

Analysis of main challenges

The co-ordination system has all the necessary arrangements at the political, higher administrative and expert level, which should ensure the proper leadership, planning, monitoring and reporting functions necessary for Kosovo in its current stage of the EI process (Figure 1). The co-ordination system is relatively well equipped to set enforceable deadlines and to monitor and report on the progress made.

However, the potential of interministerial co-ordination mechanisms is not fully exploited as both MCEI and WCEI function mainly as reporting mechanisms on the progress of commitments and forums of information exchange regarding the reasons for these problems and delays. This pattern is also followed in the other interministerial forums established for more specific tasks. The assessment of interviewees is that both administrative and political level forums give little input into policy or decision making processes (for example, providing decision makers with real alternative policy choices, or solving

technical-level disputes). There is some evidence which indicates that the situation is gradually changing and these forums (Trade Council, WCEI) are more often used also as decision making and problem-solving bodies. Feasibility study short-term and medium-term benchmarks and SAA negotiations are a good trigger for more substantive discussions on problematic issues, which indicates that when the EI agenda advances, the nature of the discussions changes and interministerial forums have good potential to develop into interministerial decision making centres.

In terms of the functioning logic of the system, one can make a distinction between the interministerial mechanisms adopted at the political, higher-administrative and expert levels. On the other hand, the system is also divided between two functional work processes: the new SAA process and the old EPAP and more general EI process. In this context, three issues can be outlined.

First, the coherency of the system is guaranteed mainly through the MEI, which functions as the central co-ordinator between the different levels (expert to political) and two functional pillars (SAA and EPAP). The fact that MEI's role has been strengthened should be commended.

Second, at the political level, the role of the Minister for European Integration is crucial to ensure the link with the PM and the Cabinet. This gives the process the necessary political leadership and clout, which are useful for prioritisation, as well as the appropriate arbitration tools to solve conflicts. In the future development of the system, great care should be taken to maintain and strengthen both the institutional and non-institutional linkages between the Minister for EI and Head of the Government.

Third, at the expert level, the fact that the SAA and EPAP structures are different for the expert groups, with different chairs and slightly dissimilar (though to some extent overlapping) membership and mandates (see Table 2), raises issues which should be closely followed after the SAA negotiations are finished. Knowledge and know-how gained from SAA negotiations needs to be transferred to the implementation side.

Table 2. Comparison of expert level committees and their mandates²¹

Sectorial executive committees (EPAP structure)	Negotiation Working Groups (SAA structure)
Governance (Chair: Secretary-General for MJ): Institutions; Public Administration; Anti-corruption Policies and Judiciary; Regional Co-operation; Justice, Freedom and Safety.	
Internal market (Chair: Secretary-General of MTI): Free movement of goods; Free movement of workers; Free movement of capital; The right to establishment and freedom to provide services; Intellectual and industrial rights; Competition policies; Financial services; Consumer and health protection; Public procurement.	Trade issues (Chair: Deputy Minister of MTI): Free movement of goods (incl. Industrial Products, Agriculture and Fishing); Free movement of Labour, Enterprises, Service Providing; and Free Movement of Capital.
Agriculture and fisheries (Chair: Secretary-General of MAFRD): Agriculture, forestry and rural development; Fishery; Food safety, veterinary and phytosanitary policies.	

²¹ The list of EPAP committees is preliminary, as accounts differ.

Infrastructure (Chair: Secretary-General of MI): Transportation policies; Environment; Energy and mines; Trans-European Networks; Regional Development.	Co-operation policies (Chair: Deputy Minister of MEI): includes financial control and statistics, transport, energy, environment.
Economy, financial control and statistics (Chair: Secretary-General of MoF): Economic and monetary policies; Financial and budgetary provisions; Statistics; Regional policies and co-ordination of structural instruments; Financial control.	
Trade, industry customs and taxes (Chair: Secretary-General of MTI): Foreign Trade; Industry and Policies of SMEs; Tax; Customs Union.	Legislation harmonisation issues (Chair: Deputy Minister of MEI): Approximation of the Legislation, enforcement of the Laws and Regulations of the Competition (incl. Competition and other economic provisions; Public enterprises; Intellectual, industrial and commercial property; Public procurement; Standardisation, metrology, accreditation and conformity assessment; Protection of the consumer; Work conditions and equal opportunities.
Innovation and social cohesion (Chair: Secretary-General of MLSW): Social policies, employment and social welfare; Science and research; Education and culture; Electronic communication, informative society, audiovisual policies.	

Source: MEI

Although SAA-related structures are viewed as *ad hoc* instruments that will be disbanded once they achieve their purpose, this might not be the best course of action. All policy co-ordination mechanisms will develop their own working practices and co-operation dynamic, and abolishing *ad hoc* structures once the original mandates are achieved may engender the loss of good practices and co-operation methods which could be transferred to the management of other processes in a more permanent framework (like the future accession process).

1.4 Processes and implementation capacities

1.4.1 Planning the work of the Government

There is a clear set of Government priorities (Statement of Priorities), approved by the Government each year. The source of the priorities is the Government programme 2011-2014, Plan for implementation of Economic Vision 2011-2014 (for economic area), sectorial and sub-sectorial strategies and political decisions of the Government. The method of communicating priorities to the ministries is not regulated; however, the process is being improved at a practical level each year. Priorities are developed through a consultative process, whereby ministries propose priorities for their area of competence. However, the final selection of priorities is done by the SGSP and is forwarded to the Government for a decision.

The preparation and approval of the Government's strategic priorities and work programme, and its link to the budget, is co-ordinated by the OPM. The development of the Declaration of Priorities, which also feeds into the MTEF, is co-ordinated by the SPO of the OPM. Part A of the GAWP is composed of the Government priorities.

Monitoring the implementation of the GAWP is co-ordinated by the GCS; ministries give a progress report on a quarterly basis²². The information is consolidated into quarterly and annual government-wide reports by the GCS and submitted to the Council of General Secretaries. The annual report for the implementation of the annual work plan is published and distributed by the GCS during the first quarter of the subsequent year.

Development and monitoring of key operational planning documents for the EI process is co-ordinated by the MEI. Until 2012, the key document was the European Partnership Action Plan (EPAP); it was replaced at the end of 2012 by the APSAA. The APSAA is targeted to timely implementation of commitments derived from the EI process, where reforms needed for SAA are prioritised. Coherence between the GAWP and the APSAA is sought by the administration: both documents are adopted by the Government at the same time, but there are no formal mechanisms for streamlining the development and reporting process.

The OPM and the MEI have the authority to require that ministries submit their plans in line with priorities, and they can set the agenda for ministries. The system has formal mechanisms that require prudent planning in terms of setting achievable deadlines, creating links with budgetary resources to ensure implementation, and foreseeing and planning for other possible impacts. Both institutions have produced detailed guidelines for ministries to simplify the planning and reporting process.

The MTEF is developed by the MoF; it is compiled for three years and is approved annually in April. It is a clear statement of the Government's priorities as set out in the DP, followed by macroeconomic and fiscal analyses, a sectoral expenditure analysis and individual *fiches* for budgetary operators, setting out objectives and three-year expenditure ceilings.

Ministries compile various strategic documents; a list of strategies to be developed is annexed to the GAWP. In February 2013, 59 strategic documents were in force. Of these, 44 can be considered strategies and five have the characteristics of sectoral strategies, covering the policy field in full²³.

Analysis of main challenges

Guiding the development of the Statement of Priorities and its application in the MTEF and GAWP development processes was a challenge for the SPO of the OPM in 2012, mainly due to vacant positions. The SPO was strengthened in 2013 with two additional staff. The process of developing the Statement of Priorities has been changed in order to move from macro-level priorities to sectoral-level priorities and to link priorities with the development of sectoral strategies and medium-term budgetary ceilings. The stated efforts are steps in the right direction and will strengthen the priority-setting and implementation capacities of the Government, including in the SAA process, and enable the more efficient use of scarce resources. Analysis of the coherence of key strategic documents – the MTEF and the GAWP – demonstrates that the situation improved in 2012, with both documents approved for the year 2013 and beyond being more coherent compared with the documents adopted in the previous year. Their structure and priority objectives follow the structure of the Programme of the Government and are largely consistent.

However, in 2013, when developing the Declaration of Priorities 2014-2016 and MTEF for the same period, co-operation of the OPM with the MoF deteriorated. Commitment of the MoF to contribute to the development of the priorities to ensure alignment with the financial opportunities of the Government remains a challenge. The SPO of the OPM and the MoF are still applying a somewhat different approach to the Government priorities, leading to a modified version of priorities in the MTEF

²² The GCS evaluates the quarterly reports on the following three criteria: 1) quality of reporting; 2) meeting of implementation deadline; 3) level of implementation.

²³ A list of strategic documents in force is provided by the SPO of the OPM; concrete numbers are derived from expert analysis of the stated list.

compared with the Declaration of Priorities prepared by the SPO and approved by the Government. As the guardian of financial resources, the MoF must accommodate the Government priorities within the funding opportunities of the state, a consideration which is not fully taken into account during the development of the priorities statement. Better co-operation is therefore needed between the MoF and the OPM, and mechanisms need to be built into the planning process to frame the prioritisation exercise within short and medium-term funding opportunities.

The planning of coherent sectoral measures in the MTEF, GAWP and APSAA has improved, but can evolve further. Whilst remarkably improved, compared to 2012, the integration of EI priority measures into other key strategic documents can be further enhanced.

This analysis demonstrates that the planning involved in the implementation of Government priorities still varies between individual ministries, so overall planning quality depends on ministerial capacities. The planning of work in policy areas that fall under several ministries is still challenging for the administration.

Table 3. Coherence of key strategic documents²⁴

	MTEF	GAWP	MTEF	GAWP	
Overall structure ²⁵	2012-2014	2012	2013-2015	2013	Coherence of documents
Priorities section	coherent		coherent		
Sectorial sections	partly		partly		
Priority objectives ²⁶	largely		largely		
Measures/activities	slightly		partly		
Priority objectives	partly	slightly	largely	largely	Coherence with EPAP and APSAA
Priority measures	partly	slightly	partly	partly	
EI priorities clearly dominating	not	not	partly	largely	
Measures/activities	partly	slightly	partly	partly	

Source: Key strategic documents of the Government²⁷ and expert analyses.

²⁴ In order to analyse coherence of the documents' structure, objectives and measures of the MTEF and GAWP were compared. To analyse coherence of the MTEF and GAWP with the EPAP (2012) and APSAA (2013), inclusion of EPAP/APSAA objectives, priority measures and sectoral measures in the MTEF and GAWP were assessed.

²⁵ When the structure of the documents in the section of priorities and in sectoral sectors was the same, documents were assessed as consistent. When the difference was not more than one heading under each priority area (in the case of sectoral sections, priority objectives and measures), documents were assessed as largely consistent. When up to three headings differed, documents were considered partly consistent. When the difference was greater, documents were considered slightly consistent or not at all.

²⁶ See categorisation above.

²⁷ MTEF 2012-2014; [MTEF 2013-2015](#); GAWP 2012; GAWP 2013; EPAP 2012; APSAA.

The analysis of 2012 working practices and the study of key strategic documents demonstrate that both the OPM and the MEI have the capacity to guide the development process of the GAWP 2013 and the APSAA respectively. The process for the development of these documents has been streamlined in terms of timing. Both documents were adopted at the last Government session of 2012. Nevertheless, the analysis of the documents and working practices demonstrates that prioritising the various obligations remains a challenge, in the case of both EI-related processes and policy making in general.

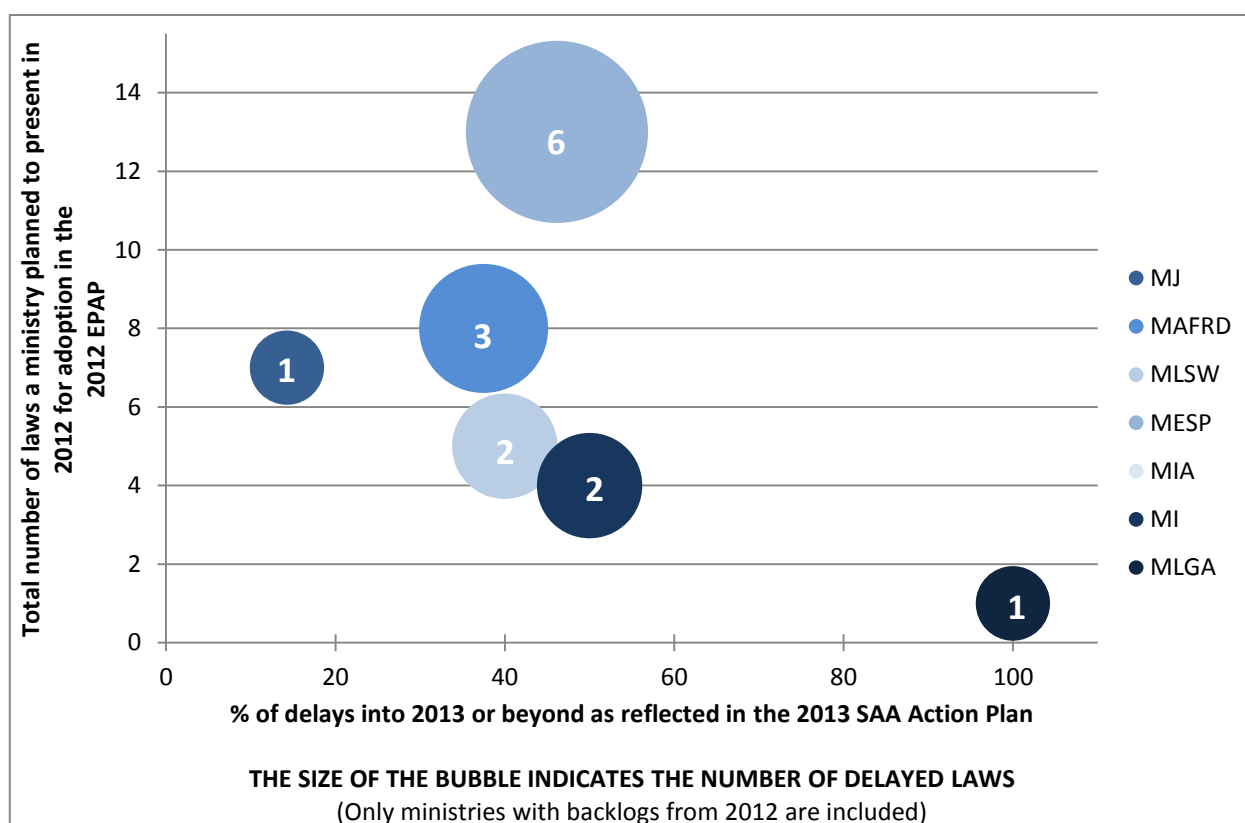
The linkage between planning priorities and the budgetary process can be still improved, in particular at the level of ministries. The MTEF 2013-2015 comprises narrative material regarding high-level governmental priorities and strategic objectives, which are complemented by objectives and associated resources at the level of individual ministries or budgetary operators (BOs). The BO-level material includes an overview presentation of mission, context (current situation), objectives and activities, together with an allocation of resources in aggregate terms to each activity. This descriptive material is clearly and logically presented and has been significantly streamlined from the previous year's MTEF. Each BO chapter also includes the more formal, tabular presentation of expenditure ceilings on a functional rather than programmatic basis. Since the functional tables form the basis of the budget appropriations, and of subsequent audit by the Office of the Auditor General, the programmatic allocations are indicative rather than normative.

In principle, this process sets the foundation for a coherent strategy-driven approach to resource allocation and is a basic, potentially useful "presentational" approach to performance-type budgeting, with some elements of the more developed "performance-informed" approach. In practice, the alignment between the objectives at the central government level and BO-level objectives is not apparent, and there is little cross-referencing from the BO level back to the broader priorities. Understandably, there is no visible linkage between these priorities and budget allocations.

Evidence obtained from interviews indicates that for some EI-related obligations, ministries feel considerable pressure from the centre (MEI, OPM) towards more ambitious deadlines and feel bound to accept those deadlines, which may be clearly undeliverable from the start. Comparative analyses of the 2012 EPAP with the 2013 APSAA indicates that, on average, 36% of primary legislation that was planned for adoption in the EPAP was delayed and subsequently incorporated into the 2013 APSAA with renewed deadlines. However, ministries that have more than an average number of primary law-drafting duties are overburdened. They also tend to be the ministries with more postponed deadlines, such as the MI, the Ministry of Labour and Social Welfare (MLSW), the MAFRD, and the MESP (Figure 2).

At the same time, specific tasks within the EPAP and APSAA, as well as in the GAWP, are usually formed bottom-up, with little scrutiny or prioritisation from the centre (although more with EI matters, due to the European Commission's Progress Reports). The OPM and the MEI should, implement more stringent criteria to focus on the most important tasks and scale the workload down to more manageable levels, bearing in mind the limited resources (budgetary resources included) and the capacity in ministries.

Figure 2. Backlog of EI-related primary acts (from 2012 to 2013 and beyond)



Sources: EPAP 2012; APSAA 2013; and expert analyses.

Monitoring of the implementation of key strategic documents is regular, has a quarterly rhythm and provides an overview of the general implementation record of each ministry. The analysis of implementation reports of the GAWP and EPAP demonstrates the technical nature of the GAWP reporting²⁸, which concentrates on taking stock of delivered items. The EPAP reporting also provides an overview of implemented activities and does not go into the real implementation or achievement of objectives. In the current stage of the system's maturity, this level of reporting is sufficient and meets the general expectations of the European Commission and the Government, although it creates additional administrative burdens with parallel reporting requirements from the OPM and the MEI.

For now, monitoring mechanisms do not distinguish between process implementation, such as the amount of secondary legislation that has been enacted and achievement of intended outcome or for example, the amount of road infrastructure built and poverty levels reduced.

Consolidation of the overall strategic planning system remains a challenge. The state of play of planning sectorial policies is still fragmented, with a huge tendency for unrealistic planning and visible bottom-up pressure leading to unrealistic plans that have not been prioritised. A total of 48 strategic documents²⁹ were planned for adoption in 2012³⁰, but 34% were carried over to 2013 due to the backlog. In 2013

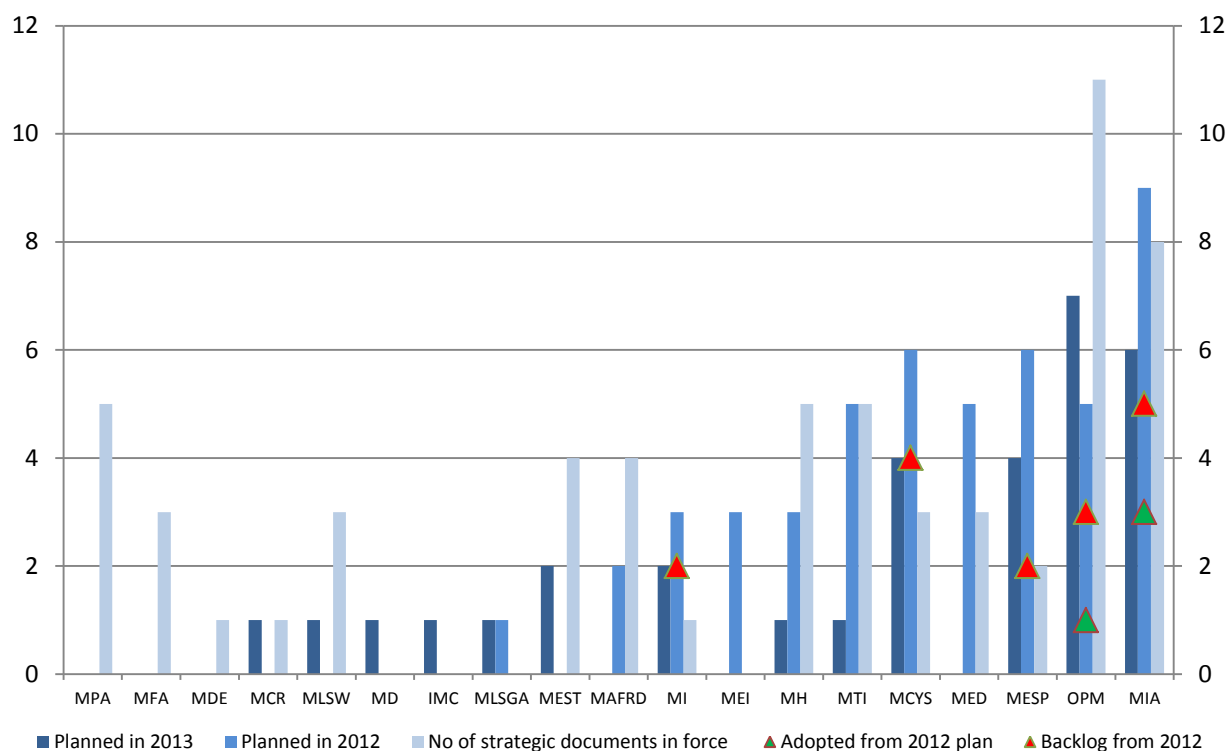
²⁸ Analysis of implementing the Annual Plan of the Work of the Government, 1st, 2nd and 3rd quarter of 2012, submitted by the Co-ordination Secretariat of the Government of the OPM to the Council of the General Secretaries.

²⁹ Strategic documents are defined as multi-annual policy documents aiming to set policy objectives and key measures for their fulfilment.

³⁰ Annual Plan for Strategic Documents for 2012 (annexed to the GAWP) and Annual Plan for Strategic Documents for 2012 as amended by Government Decision No. 05/85 of 1 August 2012.

backlog to 2014 was 36%. Overall, 36 strategies were planned for 2013³¹ and 37 for 2014, far too many for a consolidated planning system, especially as the implementation record of the annual plan is very low. In 2012, only 8% of the strategic documents foreseen were adopted by the Government, showing unrealistic planning but clearly demonstrating the efforts of the SPO to guide ministries towards wider sectoral strategies and decrease the number of fragmented policy documents³².

Figure 3. Strategy development, backlog and planning implementation record



Sources: Annual Plans for Strategic Documents 2012/2013 and SPO of the OPM.

Most ministries are reporting on the implementation of their strategies regularly. The quality of the reporting varies and they rely mostly on reviewing the status of planned activities. However, performance data and outcome indicators are occasionally used in the process.

³¹ Annual Plan for Strategic Documents for 2013 (annexed to the GAWP 2013) and Annual Plan for Strategic Documents for 2014 (annexed to the GAWP 2014).

³² A two-year EU assistance project to assist the OPM, and particularly the SPO, began early 2014 with a focus on addressing the above issues.

Table 4. Reporting processes used by the ministries

Ministry	Strategies and action plans in place	Frequency of reporting					Type of indicator used (%)			Sources of data			Is the data verified?	Use of performance data within the ministry	
		Annual	Biannual	Quarterly	Monthly	Ad-hoc	Completion of activity	Output	Outcome	External	Internal	Statistical Office		Budget & external report requirements	Monitoring achievements & improving processes and procedures
MAFRD	Agriculture Rural Development Plan 2007-2013			√		√			75-100	√		√	No	√	√
MED	Energy strategy 2009-2018 Sub strategy for heating 2009-2018 Action plans	√	√	√	√	√	0-25	0-25	25-50	√	√	√	Yes	√	√
MIA	Currently 14 strategies covering issues such as integrated border management & counter-terrorism. Future plans to integrate into a single strategy	√			√	√	60	40		√	√	√	Yes		√
MJ	Strategic development plan 2012-2016 Action plan	√		√		√	75-100			√	√	√	No	√	√

MLSW	Sectoral strategy 2009-2013 Action plan	√		√	√	√	75-100	0-25			√		No		√
MPA	Strategy for PAR 2010-2013 Annual Action Plans Strategy on e-governance 2009-2015 Strategy for accommodation of institutions Training strategy for civil servants 2011-2013 Annual Action Plans	√		√		√	25-50	0-25	0-25		√	√	No		√
MTI	13 strategies in the sector, such as SME Strategy for Kosovo 2012-2016, Export Promotion Strategy, Industrial Strategy, Intellectual Property Strategy and Action Plan 2010-2014	√		√	√	√	75-100	0-25	0-25	√	√	√	Yes		√

Source: Data submitted by the ministries to the World Bank.

1.4.2 Government decision making

Principles for holding Government sessions are regulated in detail in the RoP. It establishes procedures and requirements for submitted materials as well as consultation, and defines the roles of the relevant OPM departments and other key stakeholders. Materials should be submitted to the OPM 15 days before the Government session. The RoP also specifies the schedule and recipients for materials distributed before and after the meetings, such as the agenda and minutes. The invitation, agenda and materials for agenda items must be sent to the relevant units no later than three days before the Government session. Draft minutes of the meetings are circulated three days after the session with the feedback deadline of two days. The General Secretary provides a detailed overview of what was decided in the Government session in the following week's Council of General Secretaries' meeting. There is also a formal procedure to enable the consideration of urgent issues at a Council of Ministers' session³³.

The Government Secretariat is authorised to return items submitted to the Government sessions to ministries if the substance is problematic or other requirements are not fulfilled. For example, material can be sent back to ministries if the proposal does not contain the opinion of the MoF, the MEI and the LO, or if it is not in line with the GAWP and/or Government priorities. In practice, however, the GCS resolves issues more informally. It usually consults the proposing ministry and requests additions or clarification rather than sending documentation back. For example, no items were sent back to ministries in the fourth quarter of 2012³⁴.

EI issues and legislation needed for transposing the *acquis* follows the same procedure as all Government agenda items. However, the MEI is responsible for providing an opinion on harmonisation with the *acquis*. The LO of the OPM follows transposed norms in line with the Constitution and general legal framework. Until recently, the MEI was responsible for checking that the proposed legislation does not contradict with the *acquis*. The requirement to steer transposition of the *acquis* was introduced only in 2013.

Analysis of main challenges

The overall co-ordination cycle ensures the involvement of key stakeholders and enables inputs at both the political and administrative levels as well as sufficient time for processing the dossiers for the OPM. Interaction between the political level (the DPMs and advisers of the PM) and the administrative level (General Secretary of the OPM and key directors) is active, and the roles of different levels are clear and respected by the relevant actors in the process. Government sessions are regularly held on Wednesdays and the agenda is set either on the Friday of the week before, or on the Monday after the PM and the DPMs have met. The current timing of the Council of General Secretaries meeting, regularly held on Tuesday mornings, reduces opportunities for the Council to be active in the preparatory process, and restricts the channels available to the ministries for designing session agendas and holding discussions on immediate, disputed issues. On Tuesdays, the agenda for the upcoming Government session is already fixed and the discussion therefore mainly provides an overview (by the General Secretary) of what is included in the agenda.

Co-ordination of session preparations happens routinely, and relevant rules and time periods are generally well adhered to. The GCS has applied a flexible and communicative practice for solving issues openly with the ministries and improving the quality of the dossier. Interviews revealed that 60% of the items on the agenda are submitted through the normal procedure (15 days ahead), whereas 40% of

³³ Article 33 of the RoP specifies the cases; the reason for the use of the emergency procedure shall be clearly reported to the Government and the Minister responsible for the proposal shall, immediately after the Government's discussion of the proposal, ensure that the procedures required under this regulation are complied with and reported to the Government as soon as practicable.

³⁴ According to the interviewed official at the GCS.

items are included three to four days before the Government session takes place. Only 1% of agenda items are added at the very last minute or through the urgency procedure described in the RoP. An average of ten items per agenda is manageable for the OPM.

In a comparatively small administration with many issues on its agenda which require a rather rapid response from the Government, the 15-day submission deadline is too restrictive for ministries, and is therefore often not followed. An average of four items out of ten submitted three to four days before the session suggests that this is indeed the case. As three to four days does not provide the OPM enough time to handle the dossier according to normal working practices, a high volume of late submissions can lead to overburdening of the OPM structures and decreasing the quality of their input. Sufficient time for processing the materials is crucial: in addition to the basic technical checks, more time allows for high-quality analytical input and deeper involvement with the substance of the materials.

The GCS has a main co-ordination role concerning Government decision making preparations and monitoring its decisions. The LO and the SPO are contributing in their area of responsibility in relation to legislation, and strategies and priority items, respectively. Both departments routinely provide input on dossiers submitted by the ministries. These departments are also involved in the earlier stages of policy development, guiding and advising ministries on preparing items to be approved by the Government, as well as supporting initiation of relevant preparatory processes.

The LO is involved in the preparation of draft laws from the very initial phase. For example, the MTI has created a working group for drafting an amendment to the Law on Consumers, of which a representative of the LO is a member. If a ministry decides not to create a working group for drafting a law, the person in charge within the ministry has to inform the LO of their progress monthly. Once the ministry approves the first draft, the legal department sends it to the LO for comments. The final draft is sent once more to the LO for its opinion. The SPO also participates in the strategy development process managed by ministries. The prioritisation of issues takes into account the limited resources of the SPO, but active support for the ministries in the preparatory stages is an opportunity for the OPM which could be better exploited. It increases the quality of the materials submitted by the ministries and decreases the workload of processing the files submitted to Government sessions.

In leading and co-ordinating EI-related decision making and policy development, the MEI has under-exploited its existing tools available to incorporate EI commitments into national working practices, to act as a watchdog and quality controller of the *acquis* transposition and give valuable feedback to ministries on the matter. Evidence considered from only a few examples of randomly selected and translated legal opinions prepared by the MEI showed that the analysed opinions concentrate on formalities rather than on content. One ministry demonstrated the case by stressing that it had to redraft and resubmit one quarter of all legislative acts in 2012, which had previously been given the green light from the MEI via its legal opinions. It later emerged that these acts failed to transpose the directives they were supposed to. Also, the MEI concentrated only on the text of the law itself, without addressing possible problems in achieving the aims of the *acquis*. The MEI's capacity to give meaningful feedback thus remains a challenge. The recent decision of the MEI to assign members of staff in the relevant departments as contact points for each ministry, and to co-ordinate activities between the MEI and relevant ministry therefore merits approval.

The MEI employed in 2013 four to five lawyers, and although the anticipated number of staff members is seven, this will still not be enough to cope with the workload. It is also clear that the real expertise of the sectoral *acquis* should be developed within the ministries. The MEI should focus not only on the approximation of the text of law itself but also more on possible problems regarding delivery of the aims of the *acquis*. As the EU itself will increasingly emphasise the need to achieve actual and measurable progress in different policy fields (on commitments made by Kosovo), in order to proceed with the EI process the MEI could also replicate this in national planning by putting more emphasis in the planning

documents on achieving measurable progress of real outcomes on the ground. An outcome-based approach is not anything new, and is already used by the MTI in defining their yearly priorities³⁵. This practice could be developed further by enhancing the MEI's capacity to lead this shift and provide feedback to guide ministries should be planned.

In this respect, the decision of MEI to nominate members of its staff in relevant departments as contact-points for each ministry, to serve as focal points for co-ordination activities between MEI and the ministry, merits approval. The Government should focus in the coming years on strengthening the capacities in the central co-ordination bodies (OMP, MEI, MoF).

³⁵ The booklet entitled "*MTI priorities of 2013*" not only sets desired qualitative aims and outcomes but also tries to budget for and co-ordinate the use of different aid programmes for different tasks.

2.1 Legislative framework

The new policy development procedures and requirements ministries must follow were established in the RoP adopted in 2011 and enforced at the beginning of 2012. Compared with the previous version, the RoP introduced new elements for enhancing the use of policy analysis and changed the interministerial consultation and co-operation principles used for policy development.

Since the beginning of 2012, the originating body of a draft policy proposal is obliged to send a policy analysis or concept document for approval to the Government before drafting the legislative act. Within a month of the approval of the policy analysis/concept paper, the responsible ministry should start drafting the legislative acts in compliance with the deadlines set out in the approved GAWP³⁶.

Concept papers usually precede new primary legislation or amendments to primary legislation, important secondary legislation, and recommendations that have significant social, economic or other impacts. Concept documents also precede proposals that have high implementation costs, or represent important Government or ministry priorities³⁷.

Interministerial consultation is required for all policy proposals, although there is no requirement to consult all ministries, only the central state administration and those affected by the proposal. The requirement to create inter-ministry working groups was in place from 2007 to 2011 but discontinued under the current RoP³⁸. It is too early to say whether and what impact this has had on the policy making process. The process is summarised in Figure 4.

Ministries have 15 working days to comment on the proposal, although this deadline can be shortened if the ministry needs a more timely response for reasons of genuine urgency outside its control, or lengthened if a more thorough examination is required.³⁹

Requirements for consultation are mandatory and ministries should consult relevant institutions in advance of drafting concept papers, explanatory memorandum, draft laws or sub-legal acts, a strategic plan of a ministry or a sectorial strategy for deliberation by the Government. Key government stakeholders who must be consulted are well defined, and the RoP also covers the list of institutions which should be consulted when defined criteria are met. The originating body is also obliged to consult the public⁴⁰. The RoP specifies which institution and stakeholders should be consulted and at which stage of the proposal.

³⁶ Articles 28, 29 and 38 of the RoP.

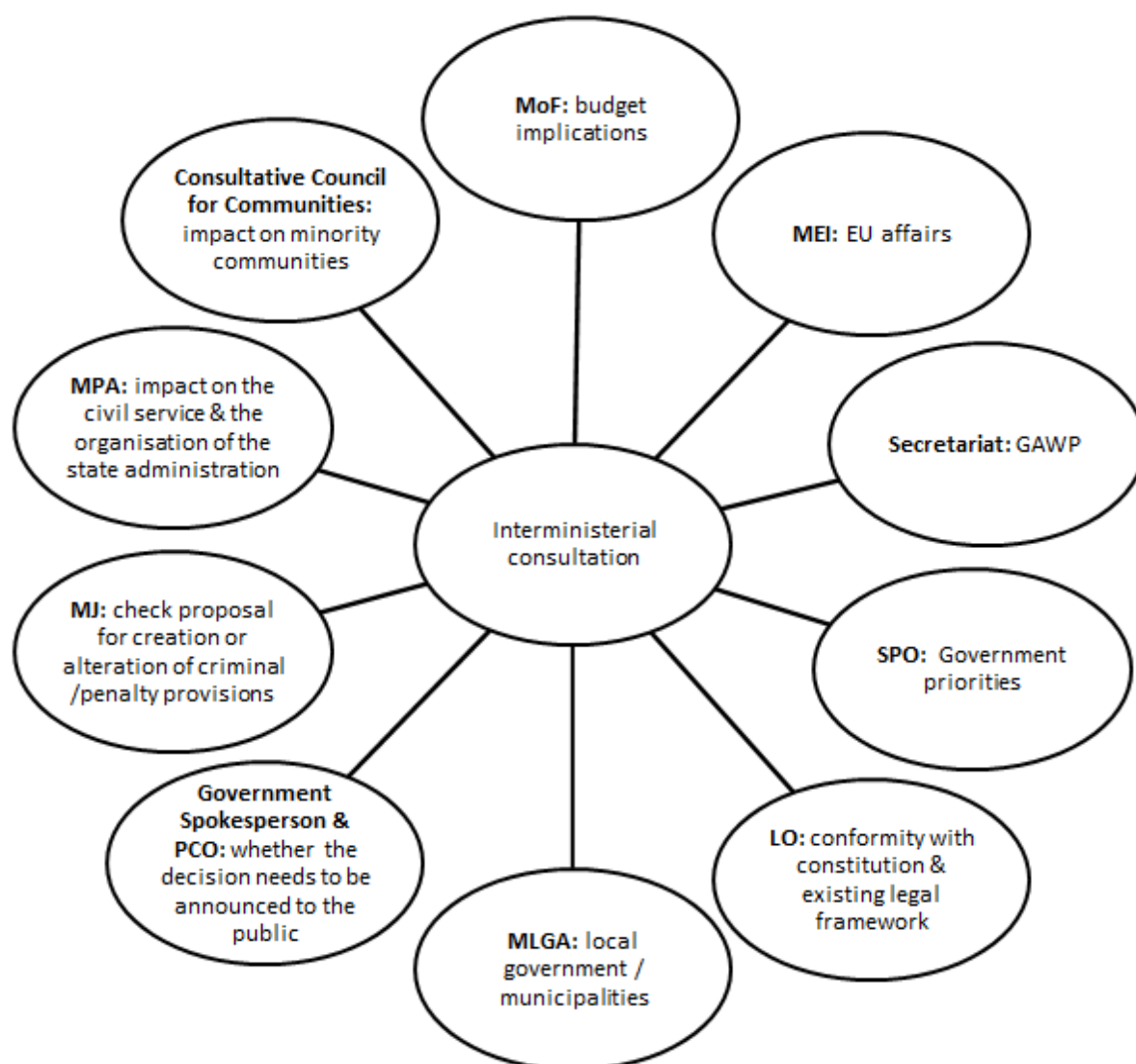
³⁷ Article 29 of the RoP.

³⁸ Articles 38 to 41 of the RoP.

³⁹ Article 7 of the RoP.

⁴⁰ Articles 7 and 32 of the RoP mandate consultation.

Figure 4. Stakeholders in the interministerial consultation process



Source: The RoP, interviews.

The RoP does not specify what methods of consultation should be used, but does make it clear that the originating body is obliged to send the concept paper or draft law to the relevant institution for consultation and, once the consultation is closed, detail the comments received from the other bodies together with an indication of whether such comments were incorporated in the proposal and, if not, the reasons why⁴¹.

Analysis of main challenges

Kosovo has made good progress in enhancing its approach to policy development, although the process is still hampered by varying skills and capacities within the ministries and poor availability of data and statistics. The RoP provides a sufficient policy development framework for the ministries, which follows practices used in the EU and OECD countries.

⁴¹ Article 7 of the RoP.

Introducing the principle of using concept papers for policy analysis in the early phase of the policy making process was a step in the right direction. The current RoP does not require ministries to establish interministerial working groups for preparation of draft law/policy documents, so policy staff from other ministries or the Government Secretariat may not be involved in the initial policy development phase. However, ministries are still establishing internal working groups, where policy staff from other ministries can be involved. This has been the case when policy papers were developed in 2012 by the Ministry of Health (MH) and the Ministry of Culture, Youth and Sports (MCYS). The CoG is involved in the prior consultation phase and when the ministries send the final draft to the GCS/LO. At these stages, they are supposed to check the quality of the concept document or explanatory memorandum. The newly introduced approach involves the risk of decreased policy consultations and may impact the quality of legislation; however, it is too early yet to assess the functioning of the new system.

2.2 Policy development arrangements and capacity in the ministries

2.2.1 Policy development structures

The structure of the ministries and the responsibilities of management positions and departments are outlined in each ministry's regulations on internal organisation and systematisation of positions. The reorganisation of all ministries was taking place whilst this review was being conducted; this process is co-ordinated by the MPA. As a general logic, all ministries should have a similar structure, composed of policy departments, whose number and tasks are not centrally decided; functional departments, such as the DEIPC and Legal Department (LD); and supporting departments, such as a Finance and General Services Department, a Communication and Public Relations Division, a Public Procurement Division and an Internal Audit Division. Each ministry is headed by the General Secretary, which has a small support office. There is also the Cabinet of the Minister, consisting of Deputy Ministers, political advisers and support staff.

The responsibilities of the two functional departments are determined through horizontal legislation. The work of the legal departments is guided by several pieces of horizontal legislation, in particular by the administrative instruction on organisation and scope of legal services of the Government of Kosovo⁴².

The creation of DEIPCs in all ministries was launched centrally in 2011. The authority and responsibilities of these departments are established by regulation 01/2011, which details functions of DEIPCs for all ministries except CoG institutions -the MEI, MoF and OPM - which have the flexibility to organise themselves. These departments in the ministries are responsible for policy co-ordination and planning, as well as co-ordinating EI issues. As a general rule, there are specific divisions within the DEIPC for fulfilling those functions.

Whilst performing their tasks and duties, ministries tend to maintain regular co-operation with the OPM, MEI, and the MoF. The guidance for the EI agenda to these departments comes from the MEI, and the guidance for the strategic planning and identification of ministerial priorities comes from the SPO of the OPM. Relations with the MoF are not formalised and/or institutionalised.

Analysis of main challenges

The reorganisation of the organisational structures of ministries creates the opportunity to establish policy development roles within ministries more clearly, and integrate functional departments into

⁴² Administrative instruction No. 13/2007 on "Organisation and Scope of Legal Services of the Executive Branch – Government of Kosovo" sets the structure and functions of Legal Departments, which are responsible for, among other things, drafting policies and legislative strategies, drafting primary and secondary legislation and ensuring the compatibility of laws and other bylaws with the EU *acquis*.

mainstream structures and working practices within each ministry. Similar organisational structures should support interministerial co-operation and make administration more transparent.

However, analysis of the regulations on internal organisation and the systematisation of working positions reveals that responsibilities for policy development are often not explicitly set out in the regulations. As a general practice, in EU and OECD countries, policy development is a key function of the administrative apparatus of the ministry, with responsibilities determined at a higher managerial level and clear functions established for policy departments. In the case of Kosovo, the analysis of regulations from five ministries approved by the Government up to April 2013, reveals a common pattern where a triad – the LD, DEIPCs and line departments – are involved in policy development and drafting of legislation, but it is not clear who takes the lead. In most cases, line departments ensure implementation of policies, analyse situations and handle monitoring as well as data collection. A commonly used term for responsibility over legislative processes is “co-operation with the Legal Department in drafting legislation.” Terminology varies more in the developing of policies and strategies where, in some cases, line departments are expected to draft policies and, in other cases, contribute to policy development. Often, common terminology is not applied for all line departments at the same ministry; rather, each department has its own interpretation of the roles.

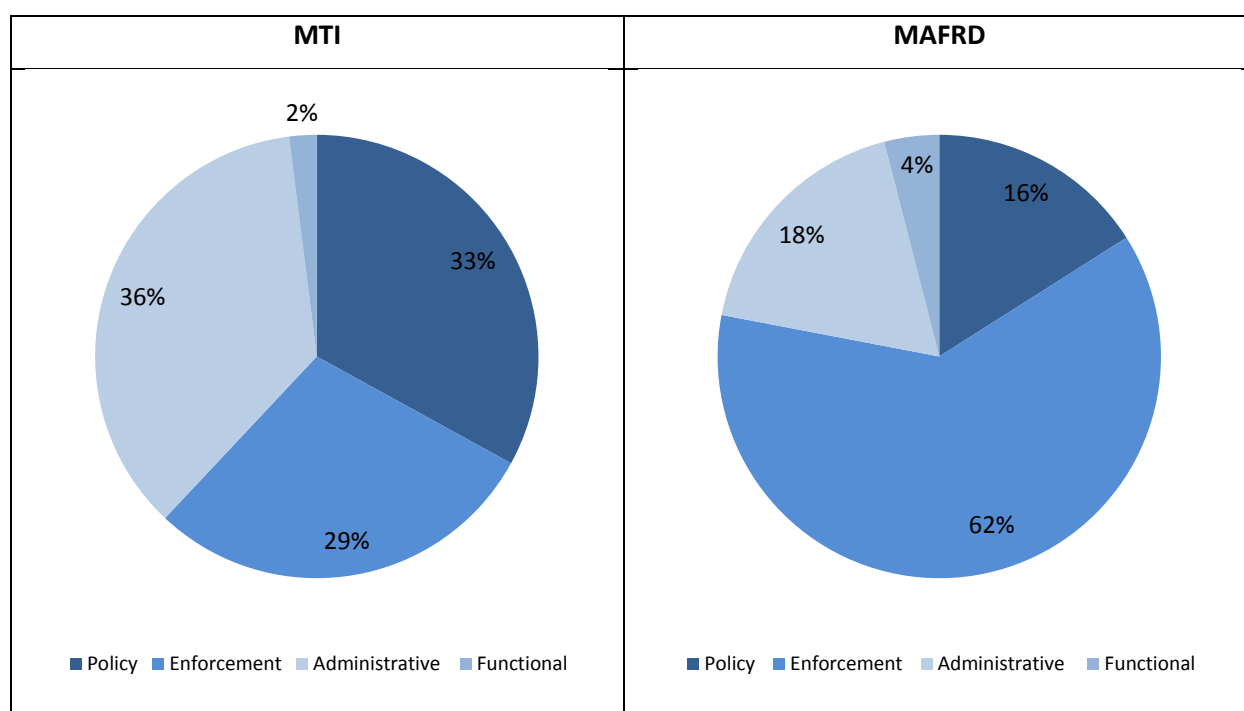
According to regulations on the internal organisation of ministries, in cases where policy development responsibility is clearly set, it is assigned to a department and its director, who fulfils this responsibility in co-operation with other departments and with the Cabinet of the Minister. Higher administrative managerial positions – the General Secretaries, for example – are not formally responsible for policy development; however, they submit the dossier to the OPM for the Government sessions. Interviews in sample ministries confirmed that policy development happens mainly at the level of the department and has a rather technical nature. Final policy decisions are taken in the Cabinet of the Minister, which processes all the files before they are sent out from the ministry.

The policy development capacity of the ministries remains a challenge due to staffing: policy development departments still account for only a modest share of overall positions compared to enforcement and administrative support functions. Figure 5 below illustrates the distribution of staff across the four key functions within two line ministries⁴³.

In OECD and EU countries, ministries have different types and functions, for example in some countries the whole enforcement staff (e.g. tax inspectors or teachers) is ministry officials and belong to the department of the ministry. Therefore, comparisons between the countries are hard to make. However, some conclusions can be drawn when analysing ministries in a given country and comparing results with the countries with similar administration set-up.

⁴³ The categorisation of staff is made according to four categories: 1) Policy; 2) Enforcement; 3) Functional support, such as legal departments and co-ordination of EU affairs; 4) Administrative support staff. To enable more precise analysis and to demonstrate that ministries have different type of tasks, one category (enforcement) was added to the categories used by Kosovo authorities in the reorganisation process. This approximate categorisation was undertaken by SIGMA, based on commonly recognised roles within government administrations. The Secretary-General's Office and the Cabinet of the Minister are excluded from the data set, as the aim was to compare staff numbers in key departments.

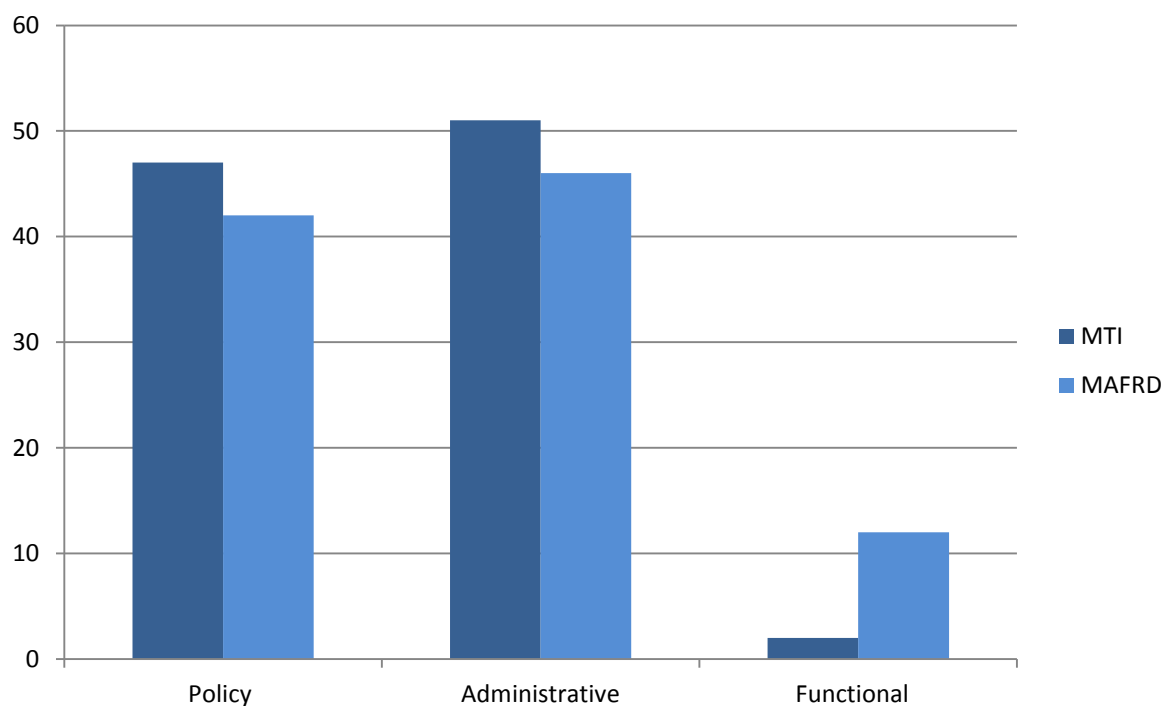
Figure 5. Share of positions in different departments



Source: Data provided by MTI and MAFRD through questionnaire.

Although the cases of these two ministries do not provide a complete picture (in MAFRD enforcement functions is understandably more relevant compared with the MTI), they allow indicative conclusions to be drawn. When excluding the enforcement function, the share of administrative staff is more numerous in both ministries compared with the number of staff in line departments.

Figure 6. Percentage of staff in policy, functional and administrative departments



Source: Data provided by MTI and MAFRD through questionnaire.

Analysing the allocation of positions in the Ministry of Local Government Administration⁴⁴ confirms these conclusions. 31% of positions (41 in total) were allocated to policy development departments. Out of those, around 40% deal directly with policy development issues and 60% concentrate more on enforcement. The share of functional departments is 25% and administrative departments is 44%. Such a distribution of resources impairs the capacity of the ministries to handle the policy development workload and implement a high-quality process with proper policy analysis.

Ministries have generally launched structures to deal with EI co-ordination, strategic planning and policy development. Departments for EI and Policy Co-ordination (with slight variations in precise title) exist in all ministries. However, as the ministries were free to choose how best to arrange the new structure, there are still three ministries which have other units with a similar mandate, which risks confusion and duplication of functions. For example, the MIA has the department for co-ordination and the DEIPC, and the MPA has the DEIPC and the department of PAR, whose scope is similar.

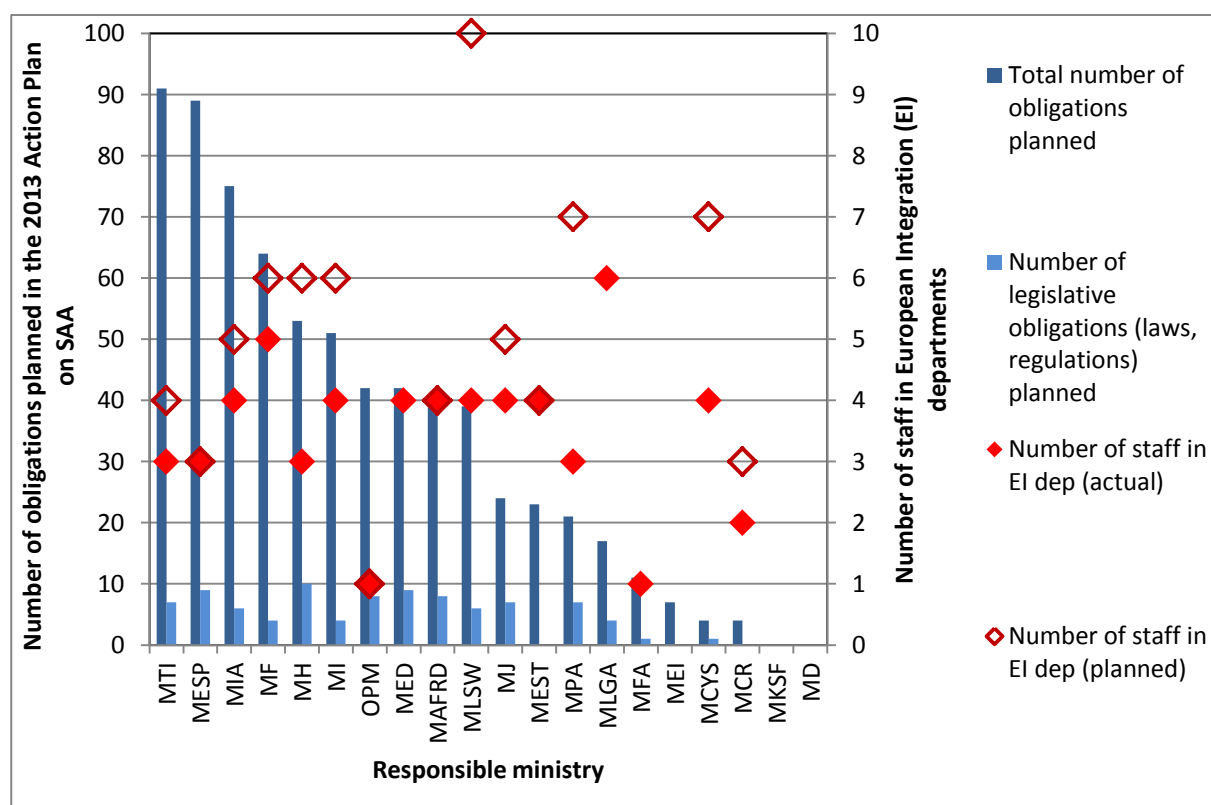
These departments are embryonic and suffering from some challenges. They are not fully staffed and are not widely recognised within some ministries. For example, in Kosovo's 2013 Budget Law, only three ministries (MTI, MoF and MJ) made note of a separate EI department; the other ministries have submerged the department within the subheading "central administration" and the average staffing rate at the end of 2012 was 78%. As the DEIPCs are relatively new and were set-up by a central order, it is not surprising that the actual profile of the departments and their ability to fulfil these tasks varies considerably. The actual capacities of all structures to implement ambitious goals are very limited.

Still, some promising bright spots such as the MTI seem to be emerging already. In the MTI, the EI department has been able to partly fulfil the tasks of a policy co-ordination unit, leading the preparation of horizontal strategies (merging the existing 11 into a single horizontal strategy) and co-ordinating the preparation of the Ministry's annual plans (including budgetary plans). But in most cases they seem to lack an actual presence within ministries' policy making processes and thus have little impact on content. The majority of EI departments in the ministries seem to function as post offices with little capacity and limited expertise on substance.

In most cases, the EI departments are also not sufficiently staffed. Moreover, neither the actual nor planned staff numbers adequately reflect the needs deriving from planned obligations a given ministry's EI department must monitor and report on, or generally co-ordinate and give input into, as per the 2013 SAA Action Plan. The analysis summarised in Figure 7 indicates that the EI departments in at least three ministries, MTI, MESP and MIA, have larger workloads in comparison with obligations than those in other ministries.

⁴⁴ Regulation No. 03/2013 on the Internal Organisation and Systematisation of Jobs in the MLGA.

Figure 7. Obligations foreseen in the 2013 SAA Action Plan in comparison with staff numbers



Source: MEI, APSAA 2013.

The above chart is, of course, indicative and fails to present a comprehensive picture. For example, the obligations for the MAFRD are probably higher in reality, as the Veterinary and Food Agency (curiously formally under the PM's structure) has a number of obligations, including legislative and regulative, that are not covered in the analyses, but involve the MAFRD at least indirectly. Nevertheless, it indicates broad trends and gaps. In this regard, the MoF, MH and MI also have a considerable number of obligations in comparison with staff members in their EI departments. It is important to note that the picture does not change when the number of obligations is compared to the overall number of employees in ministries' central administrations, or those in the offices of ministers. If anything, the contrasts between the 'overburdened' and the rest become even sharper (Table 5). The need to strengthen the staff capacities of the more overburdened ministries is clear. As any additional budgetary allocations will be limited, the budgetary applications for additional staff recruitment in the more burdened ministries should be a priority. Only once their essential needs are satisfied should the staff of DEIPCs in the rest of the ministries be increased.

Table 5. Obligations in different plans (2012 and 2013) versus staff numbers

Ministry	Comparisons (obligations per staff)						
	Note: Different shades of colours are used as gradual indicators from 'burdened' (dark red) to 'manageable' (dark blue). Commitments of the OPM, MEI, MKSF and MD were not included (or were not relevant)						
	EPAP 2012 / EI dept.	GAWP (Leg) 2012 / EI dept.	EPAP(Leg) 2012 / EI dept.	SAA 2013 / EI dept.	SAA(Leg) 2013 / EI dept.	SAA 2013 / Central Admin.	SAA 2013 / Office of Ministry
MTI	25,7	3,0	2,0	30,3	2,3	1,8	11,4
MESP	15,7	3,0	6,0	29,7	3,0	1,4	9,9
MIA	22,0	0,3	1,3	18,8	1,5	1,6	8,3
MoF	9,8	1,4	0,6	12,8	0,8	2,1	9,1
MH	10,7	2,0	1,7	17,7	3,3	0,8	6,6
MI	10,5	1,0	1,0	12,8	1,0	1,0	6,4
MED	9,5	0,3	0,5	10,5	2,3	0,8	2,5
MAFRD	9,0	2,0	2,0	10,3	2,0	1,0	3,7
MLSW	17,5	0,8	2,3	9,8	1,5	0,6	4,9
MJ	9,8	2,5	2,0	6,0	1,8	0,5	1,5
MEST	13,8	0,8	0,8	5,8	0,0	0,1	2,6
MPA	8,7	1,7	2,3	7,0	2,3	0,3	2,1
MLGA	6,8	0,2	0,5	2,8	0,7	0,1	1,5
MFA	5,0	0,0	0,0	11,0	1,0	0,1	1,1
MCYS	1,5	1,8	0,0	1,0	0,3	0,1	0,2
MCR	3,0	0,0	0,0	2,0	0,0	0,0	0,4

Source: EPAP 2012, GAWP 2012, APSAA 2013, MEI.

Of course, the capacity of the ministries to deliver not only rests on the number of staff, but crucially on the staff's profile, skills and expertise. Interviews indicated a sizeable gap in skills and knowledge as well as desired profile. Although some officials have been recruited through the Young Cells scheme, and thus have a good educational background and knowledge of English, others lack either language skills or understanding of the EU legal system, or have limited insight on the specifics of the *acquis* in a given field. All interviewees (MEI, MTI, MIA, MAFRD, OPM) pointed to the lack of language skills and knowledge of EU law as main shortcomings.

2.2.2 Policy development processes

The policy development process as established by the RoP, and the main principles of policy development and interministerial consultation, were already described in this review. Here it is analysed how responsible stakeholders are implementing the principles and to what extent the process is followed by the ministries. Special attention is given to the implementation of novelties introduced with the new RoP, namely conducting policy analysis and holding interministerial consultations.

Policy analysis includes the consideration of different options and their consequences in order that the Government can make adequately informed decisions. The extent and complexity of the analysis should be proportionate to the importance of the issue, for example where it ranks in the Government's strategic priorities. The policy analysis shall be conducted with the preparation of a concept paper or explanatory memorandum and, in some cases, a fiscal analysis. Guidelines for conducting a FIA are issued by the MoF and are annexed to the RoP. The annex covers both the process and format for fiscal assessments. Whilst this review was conducted, the MoF was developing instructions for determining the form, content and procedures and cost of new policy initiatives. Separate guidelines for preparing policy papers are established by the OPM.

There are some requirements and mechanisms in place for planning implementation in the policy development process, but these are not uniform. Not all materials submitted to the Government require an implementation plan. For example for two key topics – the GAWP and legislation – there is no such requirement. However, for strategic documents, details about implementation are required to be submitted⁴⁵. The FIA has a section which addresses implementation issues including guarantees, loans, or other actual or contingent obligations on the Government. There is no requirement to conduct an *ex-post* evaluation of implementation of Government policies. However, there are monitoring arrangements in place to assess the implementation of the GAWP and other decisions of the Government.

During the interministerial consultation process, the MoF, the OPM, the MEI and other relevant institutions are consulted twice: on the first and on the final drafts. A ministry shall submit the final draft of the law/proposal to the Secretariat 15 days before the Government meeting at which it is to be discussed. This permits the Government Secretariat to verify that the materials are complete and can be submitted to the Government meeting for approval. Relevant line ministries and other stakeholders are consulted once, on the first official draft.

The consultation process with non-governmental stakeholders shall be conducted in accordance with the Guidelines for Public Consultation Process⁴⁶. They specify that the originating ministry shall publish the substance of its proposal for public comment and shall specifically seek the comments of any non-governmental organisation that would be affected substantially by the proposal. In conducting this consultation, the originating body shall provide sufficient information in a publicly understandable form to permit the public to comprehend the nature and consequences of the proposal. The originating body also must publicly announce the beginning of the consultation and permit sufficient time for the public and non-governmental organisations to consider the recommendations and offer a considered response⁴⁷. The results of such consultations shall be reported to the Government meeting or Ministerial Committee as part of the concept document or explanatory memorandum. The Guidelines do not specify a minimum or maximum period of time allowed for a Government response.

⁴⁵ Article 10 of administrative instruction 02/2012 on preparing Strategic Documents and Plans for their Implementation.

⁴⁶ Issued by the Legal Office in September 2011.

⁴⁷ Article 32 of RoP.

Concerning the internal processes of the ministries in submitting materials to the Government session, the General Secretary of each ministry is designated to submit all required documentation to the relevant part of the OPM. The legal department sends the first and final drafts to the General Secretary and Cabinet of the Minister through the General Secretary. However, the materials for the proposed laws are not always reviewed at the meeting of the General Secretary and the Directors of Department⁴⁸. Co-operation between key functional departments and line departments has an informal nature; there are normally no formal internal procedures, and in each ministry the process depends on the leverage of each department and traditional working practices.

The ministries have new challenges in the policy development process derived from the SAA negotiations, and more widely from the intensified EI process. The legal framework for transposing the *acquis* is in place. However, the capacity of the ministries to follow the requirements and successfully fulfil the tasks required by the SAA process depends mainly on their ability to fully develop and make use of the system of tables of concordance. Although some ministries have already made the first steps in using this tool, the instrument is not yet fully functional and although the Parliament's RoP foresee that all draft laws submitted by the Government will be accompanied by the tables, the executive does not yet have the capacity to deliver on this.

Analysis of main challenges

The policy development structures in ministries are small, but they have proved to be effective and have been used flexibly, notably through working groups, to mobilise resources for particular analytical or preparatory work required prior to the elaboration of new policies. Interministerial and public consultation works routinely, but is often partial and at a fairly late stage in the drafting process.

In total, 47 concept papers were submitted to the Government by 11 ministries in 2012. The largest number of them was developed by the MIA and the MoF (7 each). A sample of 15 concept papers was evaluated, which highlighted the varying quality of the analysis⁴⁹. The examples analysed show that ministries do tend to fulfil the requirements of a concept paper, but the level of detail within each of the seven required sections, such as problem analysis and results of consultation with civil society, can be variable⁵⁰. The policy analysis in the concept papers tends to be fairly superficial, often without financial analysis, or it is narrowly focussed on whether the proposal is affordable within the current budgetary agreement rather than in terms of the systemic impact (*e.g.* whether the proposal would impose costs on businesses).

There could be greater alignment between concept papers and key strategic planning documents and budget management. The budgetary detail included in concept papers demonstrates an inconsistent approach to conducting budgetary impact analyses, and the level of detail and rigour is varied. The scheduling and handling of concept papers within the budgetary and policy making process has not yet matured to the point where the papers can maximise their impact on decision making. Whilst some are

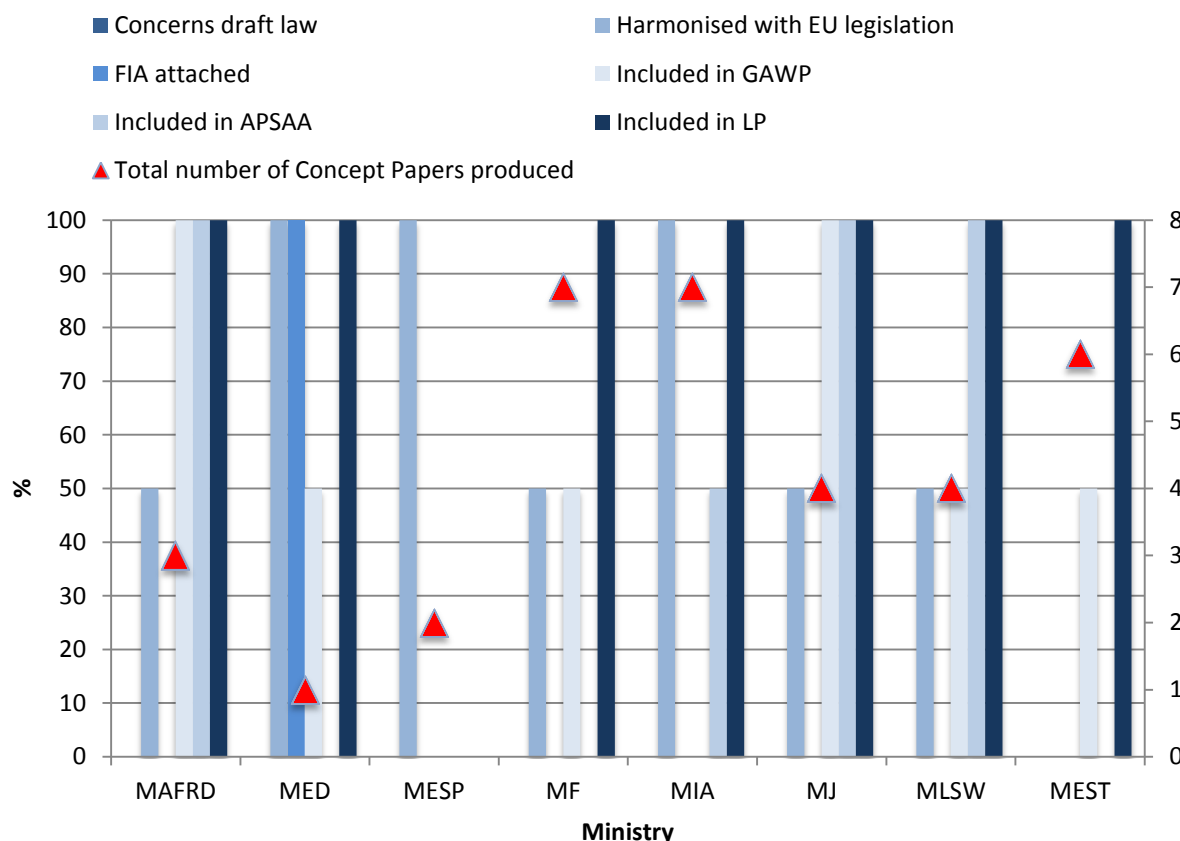
⁴⁸ The Director of the Legal Department should report about how the drafting process has taken place and, at the cabinet level, one of the Advisers of the Minister is supposed to review the materials. However, we found this not to be the case in all instances, based on the interviews carried out for the 2013 SIGMA Assessment.

⁴⁹ Two concept papers per ministry were analysed against key documents regarding the policy making process. In terms of the content and quality of the analysis against key benchmarks, such as the extent of problem definition, the use of data and the scale of consultation. Three ministries were excluded from the analysis as English translations of their concept papers were not available – the MPA, the MH and the MTI.

⁵⁰ Article 36 of the RoP specifies that seven areas should be covered: 1) problem analysis, 2) identification of options, 3) analysis of implications of options/impact assessment, 4) analysis of approximation with EU legislation, 5) fiscal impact analysis, 6) consultation with other ministries and public bodies, 7) consultation with civil society.

included in the Government's legislative programme, they are very rarely included in the APSAA or the GAWP.

Figure 8. Compliance with the requirements for concept papers



Source: analysis of 15 concept documents submitted to the OPM by ministries in 2012.

The capability of ministries to plan ahead and to include implementation costs, as well as the capacity to scrutinise draft proposals within the CoG remains challenging. The ministries claim they do not have the capacity to carry out these tasks, as the requests are disproportionate to the number of assigned staff. Moreover, the instrument of the concept paper is a new process for the GCS and line ministries and, as a result, their capacities are limited.

Ministries have begun to follow new requirements for interministerial consultations, although mechanisms and policy development deal more with process than content. Consultation input from external organisations is virtually non-existent. Random examples of consulting non-governmental stakeholders demonstrated good implementation of procedures, but feedback from them was very limited. For example, a draft law on Geographical Indications was sent by the MTI to all relevant business associations: no feedback was received from any of them. This is unfortunate, as consultation brings many benefits, including a greater likelihood of the proposed changes working, as stakeholders have been involved in the development of the solution from the outset and government processes become more transparent and accountable to the public. This process enables both governments and citizens to understand the costs and benefits of potential changes and to make informed decisions about legislation that affects their lives.

The implementation of new principles for the transposition of the *acquis*, and using the tables of concordance in policy development, are still in their early phases. First, there is no coherent baseline which could be used in a systematic way for creating a horizontal list of *acquis* to be scrutinised during

legislative drafting. As there has not been any systematic screening exercise, the ministries do not appear to know which parts of EU legislation are relevant in different policy fields or where to find this information. There also does not appear to be a database which could be used to organise and save the relevant information which will be accumulated over time. This issue may be settled in a centralised manner as the LO has plans to establish a database, which could also accommodate information regarding transposition.

There is also some confusion within the ministries regarding the division of labour between the Legal Departments and DEIPCs. The recently adopted Regulation on Legal Services should make the necessary clarifications. According to it, the legal departments of line ministries will be responsible for the tables of concordance – ensuring that they are accurate, formulated according to instructions, etc. – and co-ordinating the work of transposition. In this context, the issue of co-operation between the DEIPCs and legal departments of ministries merits some further clarification. It has happened that when ministries have to respond to new demands (for example, requests to respond to European Commission questions), DEIPCs are sometimes side-lined and issues are passed directly to legal departments or operational/functional departments in the ministries. As DEIPCs are in charge of overall monitoring and reporting of the EI process, they should be part of the discussion or at least be informed. In the course of enacting the new procedures, ministries must strengthen the link between strategic planning and monitoring of the EI process (both done by DEIPCs) and execution of transposition (co-ordinated by the legal departments).

Second, practices in implementing normative standards of transposition are still limited. It is commendable that the MEI (in co-operation with GIZ) has prepared a practical manual on how to fulfil the tables, which should help the ministries to execute this new obligation; however, a prioritised approach is needed both to launching new transpositions rules and providing capacity building to ministries.

Third, due to the limited number of people in the ministries who have a good knowledge of English (or any other EU official language), there is a lack of comprehension of the *acquis* (especially in the legal departments).

Another crucial functional capacity which must be enhanced within the ministries in order to deliver the implementation goals the SAA process envisions, is forward budgetary planning. For example, in the 2012 EPAP, the MESP had 14 laws to draft with a deadline of 2012, including the “Law on Kosovo waters”, the “Law on Nuclear Security and Protection from Radiation” and “Amending and Supplementing the Law on Chemicals”. The total financial impact of these 14 laws (which also included waste management) was estimated at EUR 5 000⁵¹. The reason for such a small sum is that only the cost of drafting the necessary bills (legal consultation, possible foreign expertise) was planned and thus linked with the budget, but the actual implementation costs were not. Although costs are generally foreseen in the second phase (after legislation has been promulgated and implementation measures are drafted), the lack of foresight in the legislative phase has hampered the ministries’ ability to ensure proper funding for implementation. Many interviewees pointed to foreign assistance as the main source of funding, used by more enterprising ministries to ensure coverage of implementation costs for new legislation. This system, however, is not sustainable. The proper use of concept papers could be one way of enhancing forward planning in the ministries.

⁵¹ EPAP 2012, page 85.

3 POLICY MAKING IN PARLIAMENT

This chapter examines the role of the Assembly of Kosovo in policy making. The review is prepared with a number of assumptions about the role of parliaments in the policy process. First, parliaments have a positive contribution to make throughout all stages of the policy cycle, including: agenda-setting, policy formulation, decision-taking, implementation and evaluation, though the relative emphases vary. Second, the orientation towards enhancing the quality of public action and public policy affects not only the legislative process, but also other key functions, such as the budgetary process, parliamentary oversight and control over the executive, and parliamentary involvement in EU integration. Third, whilst the focus of this review is on the internal conditions shaping the impact of the Assembly on public policy making, this contribution is decisively influenced by the quality of interinstitutional relationships, most notably with the Government, but also with public sector institutions, civil society, and international bodies. Finally, a policy-focused analysis needs to focus on both political and administrative structures and procedures in Parliament.

The following analysis focuses on areas seen as critical to parliamentary policy making. Whilst the review contains descriptive material, the emphasis is on highlighting potential bottlenecks within the parliamentary policy process. It should be noted that some of the points highlighted have also been raised in other documents, notably: the European Commission's Kosovo Analytical Report 2012, the Commission's Feasibility Study for a Stabilisation and Association Agreement between the EU and Kosovo 2012, the Joint Report to the European Parliament and the Council, on Kosovo's progress in addressing issues set out in the Council Conclusions of December 2012 in view of a possible decision on the opening of negotiations on the SAA of April 2013.

3.1 Legal framework

The normative framework that regulates the policy related powers of the Assembly consists of a range of sources, including, *inter alia*, the Constitution, notably its Chapter IV (Articles 63 to 82), and the RoP of the Assembly, including several annexes. Some committees, such as the Committee for Budget and Finance, have adopted additional RoP. A range of other laws also touch on individual aspects relevant to the policy making powers and capacity of the Parliament, such as: the Law on the Financing of Political Parties of 2010, amended and supplemented in 2011, which regulates, amongst other matters, the provision of funds for parliamentary party groups; legal acts that contain the reporting requirements of the public authorities and independent regulatory bodies to the Assembly; laws on financial management and accountability, which spell out the powers of the Assembly in the different stages of the budget process; and the Law on the Civil Service, which also applies to most Assembly staff. In sum, there exists a fairly differentiated legal framework with a clear hierarchy of norms. Moreover, the Assembly has adopted a number of "manuals" intended to set out the best procedural practices in a number of areas, including: the organisation of work in committees; the holding of committee hearings; the consultation of external experts in committees; and the exercise of the oversight and control functions at the committee level.

Analysis of main challenges

Although Kosovo is still in the early stages of its path towards the EU, it is worth considering the early adoption of a comprehensive legal framework that would set out the principles and practices governing executive-legislative relations in matters pertaining to EU integration. The Assembly's RoP regulate the powers of the Committee for European Integration, but they do not establish anything approaching a comprehensive framework for the effective parliamentarisation of the integration process. In any case, it is debatable what normative force the RoP possess *vis-à-vis* the Government and the President of Kosovo. This is in contrast to some EU Member States, such as Germany, with its Law on Co-operation

between the Federal Government and the German Bundestag in matters concerning the EU and the Law on Responsibility for Integration, or Denmark, where the Parliament has agreed on a series of legally binding reports with the Government on how to handle EU-related matters.

3.2 Institutional framework

The key elements of the institutional framework include: the Assembly's Presidency, the parliamentary party groups, the plenary, four parliamentary standing committees and nine functional committees, and the administration of the Assembly.

3.2.1 Assembly Presidency

The main political leadership structure is the Presidency, which consists of the President of the Assembly and five Vice Presidents. It is charged with planning and steering the work of the Assembly. The agendas of its meetings are publicly available and show that the Presidency is centrally concerned with arranging the flow of work for the plenary sessions. For this purpose, it also holds regular meetings with the heads of the parliamentary groups.

Analysis of main challenges

At least three points deserve highlighting. First, the President of the Assembly performs a political function rather than a primarily ceremonial function, as in some European parliaments. The President has his own cabinet, including a Chief of Cabinet, a senior political advisor, and advisers for information, legal matters, protocol and international relations, and economic affairs. Members of the President's cabinet are appointed by the President and do not belong to the civil service of the Assembly administration. Second, the Presidency, as a whole, is regarded as a political body. Thus, the total of 30 staff currently working for the Presidency – including chauffeurs – are not subject to the civil service legislation that governs the employment of the administrative staff of the Assembly. Their employment is tied to the term of office of the Presidency. Third, as will be discussed below, meetings of the Presidency are not attended by a representative of the Government, although Article 16 of the RoP allows for such participation without voting rights.

3.2.2 Parliamentary party groups

As in any parliamentary system, the parliamentary party groups play a key role in structuring the work of the Assembly. There are currently eight parliamentary groups, ranging in size from 6 to 34 members. There are also six Deputies who do not belong to a group. Some of the groups contain members from several political parties, i.e. political parties and party groups are not identical.

Analysis of main challenges

For a number of reasons, it is difficult for the groups to promote the professionalisation and specialisation in the work of Deputies that is required to deal with the Assembly's complex tasks. Only the members of the Presidency, the heads of parliamentary groups and chairpersons of committees have their own offices at the seat of the Assembly, whereas other Deputies do not have access to dedicated office facilities or assistants. The parliamentary party groups themselves employ some advisory staff, but these serve primarily the leadership of the group. Six of the eight groups are small, with between 6 and 12 members; only the Democratic League of Kosovo and the Democratic Party of Kosovo have 27 and 34 members respectively. In the case of groups consisting of members of several parties, cohesion is low. It is also noteworthy that during the IVth Assembly, 17 elected Deputies have so far resigned their positions (for a variety of reasons, including the incompatibility of a parliamentary mandate and the Government office), adding further pressures to the policy making capacities of the groups.

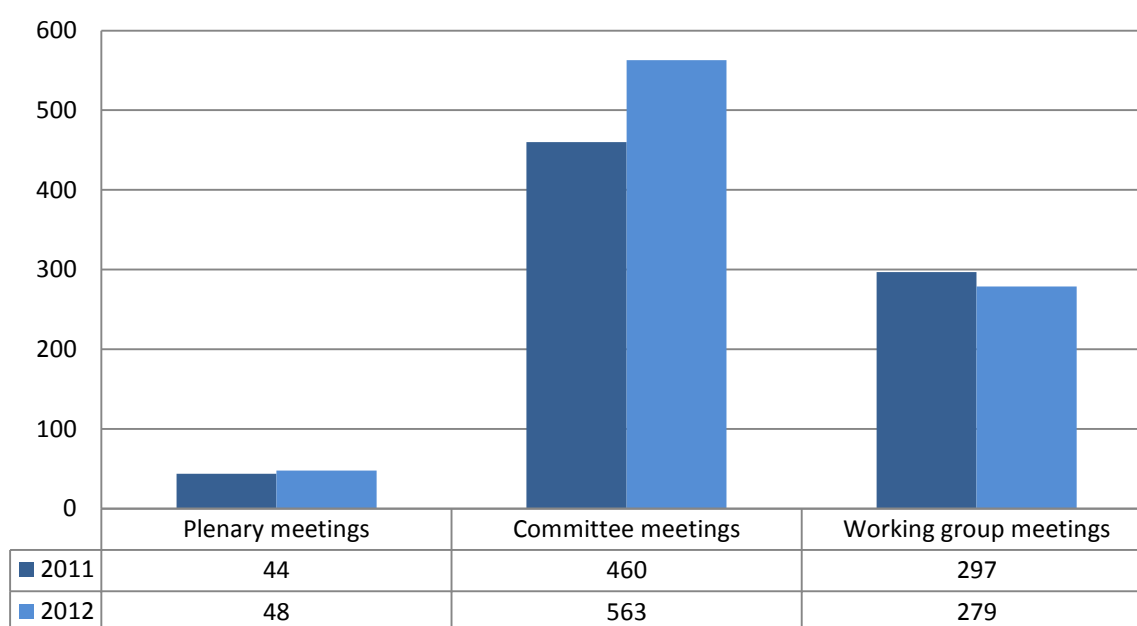
3.2.3 Plenary and committees

The main working bodies of the Assembly include the plenary; four standing committees – the Committees for Budget and Finance; Rights, Interests of Communities and Returns; Legislation; and EI. There are also nine functional committees, dealing with: 1. Foreign Affairs; 2. Economic Development, Infrastructure and Industries; 3. Internal Affairs, Security and Supervision of the Kosovo Security Force; 4. Human Rights, Gender Equality, Missing Persons and Petitions; 5. Education, Culture, Youth, Sports, Public Administration, Local Government and Media; 6. Health, Labour and Social Welfare; 7. Agriculture, Forestry, Environment and Spatial Planning; 8. Oversight of the Kosovo Intelligence Agency, and 9. Oversight of Public Finances. There is also a sub-committee of the Standing Committee for Legislation dealing with mandates, immunities and the rules of the Assembly. Finally, as will be explained at greater length below, Assembly committees regularly form working groups to deal with individual bills. Each standing committee has a dedicated support staff of four members of the Assembly administration. The functional committees are normally served by two staff each. The meetings of both committees and working groups for the consideration of bills are invariably attended by committee staff.

Analysis of main challenges

An examination of the Assembly's workload underlines its character as a "working parliament". As Figure 9 shows, there are weekly or biweekly plenary meetings during the two annual sessions and most committees also meet at least once a week during that time.

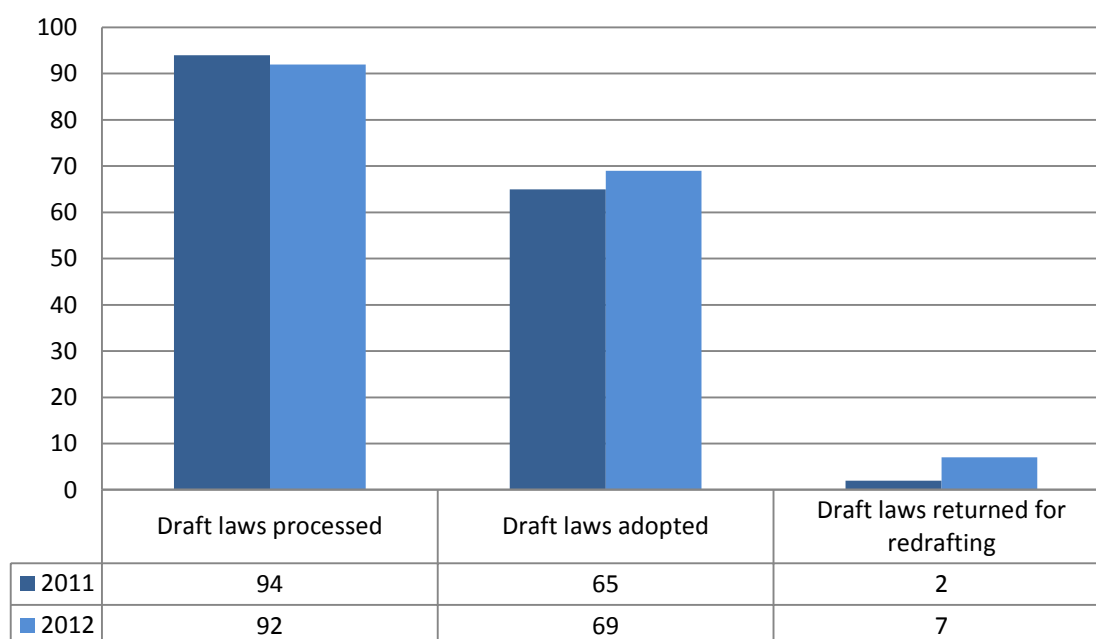
Figure 9: Assembly workload 2011-2012



Source: Activity reports of the Assembly of Kosovo, 2011 and 2012.

Figure 10 below indicates that the legislative workload of the Assembly is considerable. Legislation takes up most of the time of the working groups, which consider bills in detail prior to their second reading, and also makes up a large part of the agenda of committee meetings and sittings of the plenary.

Figure 10: Legislative output of the Assembly 2011-2012



Source: Activity reports of the Assembly of Kosovo, 2011 and 2012.

The intensive schedule of meetings of the plenary, committees and working groups means that the parliamentary support staff, notably the staff of the Division for Committee Support, devotes a large part of their time preparing, attending and following up meetings during the two annual sessions of the Assembly. As a consequence, time for other tasks, notably the detailed consideration of the reports of independent agencies and reviews of the implementation of laws, is scarce.

3.2.4 Assembly administration

The political structures are served by an Assembly administration, which is headed by the Secretary General. At the end of 2012, the Assembly had filled 168 posts of 180 approved budgeted positions. Of these, about two thirds, 109 staff, possessed a university level education; 96 were male, 72 female. The recruitment plan of the Assembly for 2013 envisages the hiring of 11 new staff in total, including a Senior Officer for Donor Co-ordination and Relations with Civil Society and two Senior Officers for Legislation in the Department for Legal Standardisation and Harmonisation. As already noted, there are also 30 staff working for the Presidency who operate outside the organisational structure of the main administration (with the exception of two administrative assistants). A number of temporary interns also work at the Assembly).

Analysis of main challenges

Several features of the Assembly administration merit further comment. First, it is notable that although the overall staff number is not high, there is a considerable degree of organisational differentiation. There is the Office of the Secretariat, the Department for Media and Public Relations, the Department for Protocol and International Relations, and the Department for Procurement. There are also two main General Departments – for Legal and Procedural Issues and for Administration – and nine departments that report to them. Most of these departments are further divided into units. The organisational set-up and associated job descriptions are based on acts of the Presidency. The current structure, with two General Departments and nine departments is of recent origin. It was devised in the spring of 2012 and became fully functional in the autumn of that year, and was accompanied by a rise in the number of

positions of director in the administration. Participants in this process of organisational reform mention several reasons for the growth in the number of departments: the desire to establish better direct communication between the Secretary-General and staff, and the aim of improving responsibility in the administration by increasing the number of managerial positions.

It is worth considering the allocation of staff across different functions. At present, the General Department for Legal and Procedural Issues, with its four Departments for Plenary and Procedural Issues, Parliamentary Committees, Standardisation and Legislative Harmonisation, and Research, Archive and Library, employs merely a third of the overall Assembly staff. This means that direct support for the core bodies and functions of the Assembly takes up a third of personnel capacity, whilst more indirect “backroom” functions, such as procurement, IT, internal administration (budget and personnel), transport, mail and supplies take up the remainder of resources. Considering the heavy emphasis on legislative and oversight and control activities at the level of committees and working groups, the number of officials servicing committees and working groups, 36 at present, is small.

There are also synergies in the work performed by the Committee for Legislation and its staff, on the one hand, and the Unit for Legal Standardisation and Approximation, with three Senior Officers, on the other. The Unit carries out an initial analysis of all bills prior to the first reading that focuses on the legal and formal aspects of bills, their structure, approximation with EU legislation, and contains recommendations regarding content, structure and legal-linguistic formulations, and remarks on the English and Serbian versions. The Unit is also in charge of dealing with the finalisation of bills after the amendment process. The Committee for Legislation also carries out a compliance assessment with domestic legislation, both in its capacity as a standing committee, and as a functional committee during the committee stage of the legislative process.

The Assembly administration does not, thus far, possess autonomy from the Government when it comes to personnel policy and is subject to the same civil service legislation as the Government administration. Prior to 2010, special regulations were in place that governed employment in the Assembly. More critically, the ceiling of posts in the Assembly is set by the MoF, and recruitments require the prior approval of the MPA. Thus, the start of recruitment procedures and the setting of grades and pay scales can only happen with the Ministry’s explicit authorisation. The dependency of the Assembly administration on ministerial consent in matters of staffing is problematic. More generally, it is worth recalling the comment in the 2012 Feasibility Study for a SAA between the EU and Kosovo that, “The financial and administrative independence of the Assembly from the Government needs to be strengthened. This can be achieved through adopting legislation on the status of civil servants of the Assembly. It is also important to ensure that the draft budget of the Assembly is modified by the Government in consultation with the Assembly before the Government submits the budget proposal to the Assembly for adoption”.

3.3 Key policy processes and instruments

3.3.1 *Managing parliamentary business and interinstitutional relationships*

As noted above, the key responsibility for managing parliamentary business lies with the President of the Assembly and the Presidency. One of their central tasks is to provide for effective timetabling of plenary meetings during the two annual sessions, and to ensure that the time rules governing the legislative process, the budgetary process and oversight and control procedures are adhered to. Timetabling of the individual plenary sittings is done in consultation with the heads of parliamentary groups. The planning of the work schedules of committees is decentralised. Committee chairpersons, working closely with committee staff, are decisive in this respect. Both the Assembly, as a whole, and each committee adopt an annual work plan. To a considerable extent, these work plans are reliant on the annual work plan of the Government which, among other things, sets out the bills to be submitted during the course of the year. For committees, a key question also to be decided is the allocation of committee time for oversight

and control, notably the organisation of field visits, oversight hearings, the consideration of annual reports from the ministries on the implementation of laws and the detailed scrutiny of the implementation of individual laws. In 2011, the Assembly committees considered in depth the implementation of 11 laws; in 2012 this dropped to 7 laws.

Analysis of main challenges

In the writing of this review, it was not possible to draw on data showing the percentage of the Government's annual legislative programme that materialises in the form of bills submitted to the Assembly. Nor was it possible to ascertain the percentage of the Government bills that had not previously been announced in the legislative programme. Thus, it is difficult to gauge the reliability of the legislative programme. The prevailing impression amongst interviewees was that the overall annual legislative workload was predictably high.

However, problems of executive-legislative co-ordination affect the more detailed planning of parliamentary activities. As noted earlier, there is no Government representative present at the meetings of the Presidency, nor are there regular meetings at the level of the Secretary-General. There is little co-ordination amongst the ministries when it comes to the timing of the submission of bills to the Assembly. Thus, in 2011, 143 bills were expected to be submitted to the Assembly, but 49 were not processed within the initially foreseen deadline. As a result, work flows for the standing committees, in particular, can be very uneven. The lack of a key executive interlocutor, such as a Minister for Relations with Parliament, creates problems when it comes to ensuring that parliamentary questions are answered satisfactorily and on time. Thus, in 2012, out of the 160 parliamentary questions submitted for answering by the Prime Minister and ministers, a quarter, 43, remained without reply.

3.3.2 Legislation

The main rules governing the legislative process are contained in the Constitution and the Assembly's RoP. These rules specify both the institutions involved and the processes to be followed. The rules are clear and well understood by the legislators. The parliamentary legislative process normally encompasses two readings. In cases where a bill does not receive the sufficient number of votes for its adoption in the second reading, a third reading may take place upon the request of the sponsor of the bill.

As is customary in parliamentary systems, the legislative calendar is dominated by Government bills. In 2012, in addition to 15 bills carried over from 2011, the Assembly dealt with 70 Government bills, compared to just 4 bills submitted by committees and 3 bills sponsored by Deputies. In 2012, 69 bills became law. It is interesting that seven bills were returned to the Government for redrafting, up from two bills in 2011.

Analysis of main challenges

The practice of parliamentary scrutiny of bills cannot be understood without reference to the state of the legal system in Kosovo. It is generally recognised that many important elements of the legal system still need to be put in place. Unlike in the legal systems of fully consolidated democracies, where law making is often dominated by amendments to existing legislation, in Kosovo there is an emphasis on the adoption of genuinely new laws. Moreover, the adoption of this legislation is often foreseen as the result of international commitments entered into by the Government. This means that parliamentary influence on both substantive legislative priorities and legislative timetables is severely constrained.

Parliamentary influence is further restricted by the fact that executive-legislative co-operation during the pre-parliamentary stages of the legislative process seems largely absent. There is no tradition of involving experts from the majority parliamentary groups informally in the drafting of bills by the ministries. Thus, Deputies can only try to exert influence once a bill has been submitted to the Assembly.

Notwithstanding these systemic limitations to the impact of the Assembly on the content and timing of legislation, the Assembly is certainly taking its legislative role seriously, and devotes a considerable part

of its resources to the scrutiny of legislation. Bills are first considered by the relevant functional committee and a “vote in principle” is then taken in the plenary on whether to proceed. If a decision is taken to proceed in principle, the bill is then examined both by the relevant functional committee and the relevant standing committees. The functional committee may take up to three months for the consideration of a bill. Two standing committees – the Committee for Legislation and the Committee for EI – also examine all bills, and the two other standing committees – for Budget and Finance, and for Rights, Interests of Communities and Returns – will consider the bill if it falls into their sphere of responsibilities.

Committees establish working groups of between three and five Deputies to examine bills and the number of meetings of working groups is high (see Figure 9 above). These working group meetings are usually attended by representatives of the ministry sponsoring the bill. Ministers typically attend the committee meeting at which the recommendations of the working groups are discussed. During the second reading of the bill, all amendments proposed are voted upon individually, including those of the lead functional committee, other committees, parliamentary groups, the Government and the Deputies. The fact that bills are invariably considered by more than one committee, and often by three or four, combined with extensive opportunities for proposing amendments to Government bills, encourages detailed legislative scrutiny.

The number of proposed amendments is considerable, with 1 254 in 2011 and 1 002 in 2012. Between January and June 2013, a total of 781 amendments were proposed to 38 bills that were under consideration. Of the amendments proposed, approximately 98% are approved. Final voting on individual amendments and the bill as a whole takes place at the same plenary session. As a result, it can be very difficult to deal with potential discrepancies or even contradictions between amendments.

The Assembly’s RoP allows for consultation with those having affected interests and also permits the engagement of external experts. Committee agendas are made public well in advance of committee meetings. A manual to aid the use of external expertise in committees was produced in late 2011. Committees conducted 68 public hearings in 2011. In 2012, this number dropped to 37. This decline indicates time pressures in the legislative process, but also points to strains on the organisational capacities of committees. Standing committees have an annual budget of EUR 10 000 each to pay outside expert consultants. The equivalent figure in the case of functional committees is EUR 5 000 each. At least as regards legislation intensive committees, these figures are low, so that committees have repeatedly turned to external donors to finance expert advice.

The short period of time – only 10 days – available to the standing committees on Budget and Finance, Legislation, Rights, Interests of Communities and Returns, and EI to consider amendments proposed by functional committees is problematic. In cases where there is a high number of amendments proposed, the standing committees find it difficult to carry out a proper assessment of the budgetary, legal and integration related aspects of amendments.

3.3.3 Budgeting

The main powers and responsibilities of the Assembly in matters relating to the state budget are laid down at the level of the Constitution, the Law on Public Financial Management and Accountability and the Assembly’s RoP. It is useful here to distinguish between the annual procedures for the adoption of the state budget, the consideration of the budgetary impact of bills, and the Assembly’s role in oversight and control regarding the execution of the budget. In line with the terms of reference of this review, the focus is on the latter two issues.

Whilst ultimate parliamentary authority in matters relating to the budget and public finances rests in the plenary, it is the Committee for Budget and Finance where most of the detailed work takes place. As a standing committee, this committee considers all bills with budgetary implications. As a functional committee, it reviews legislation relating to budgeting, finance and fiscal policy. The committee also

considers the unaudited reports of the public agencies that report to it. There is a separate Committee on Oversight of Public Finances that oversees the legality of public expenditure and works closely with the Office of the Auditor General.

In considering legislation with budgetary implications as a standing committee, the Budget and Finance Committee operates under the same time rules that apply to other standing committees in the legislative process, i.e. it is asked to report on the bill within 10 days during the review stage for the detailed consideration of bills prior to the second reading. If, during this stage, other committees suggest amendments with budgetary implications, the Budget and Finance Committee is required to respond within five days. If the Committee serves as a functional committee, it has 15 days for reaching a position on the adoption or non-adoption of the bill in principle, and, after the conclusion of the first reading, two months to present a report with recommendations to the plenary (the Committee may ask the Assembly to grant up to one month's extension).

Analysis of main challenges

Like other committees, the Budget and Finance Committee establishes working groups for the consideration of bills, with between three and five Deputies. Participants in the process criticise the budgetary impact statements provided by the Government with draft bills as being at times incomplete and superficial, so that the working groups have to perform their tasks within a very short time in the case of standing committee matters, and on the basis of weak information. The working groups are served by the administrative committee staff. Prior to the meetings, committee staff prepare preliminary assessments on potentially problematic issues and, according to participants in the process, it is also committee personnel who formulate the bulk of suggested amendments. In the past few years, the committee administration benefitted from assistance by various international donors to upgrade its capacities.

Regarding oversight and control, the Budget and Finance Committee plays a subsidiary role compared to the Committee on Oversight of Public Finances. It receives the unaudited financial reports of agencies and independent institutions. Committee staff provide preliminary analyses on this basis. It is not unusual for reports to be returned to the institutions with the request for further information.

There are at least two issues worth highlighting when it comes to the Assembly's role in budget related policy making. First, its capacity for the scrutiny of bills is critically dependent on the quality of the budgetary and financial information accompanying bills that is provided by the Government. The Budget and Finance Committee does not have at its disposal the personnel or financial resources to carry out systematic assessments of budgetary impacts. It is, by necessity, largely confined to checking the quality of the information furnished by the executive.

Second, as regards its oversight role, it is not clear whether the current practice of considering unaudited reports, whilst the Committee on Oversight of Public Finances deals with audit reports, is optimal.

3.3.4 Oversight and control

Compared to legislative work, the Assembly's activities in executive oversight and control are of a more limited scale. The chief instruments available include: parliamentary questions, interpellations leading to debates, examinations of the implementation of individual laws, and the consideration of reports from executive bodies (for further details see Manual "Oversight Function of Parliamentary Committees", 2012). The range of oversight and control instruments available is quite limited and no intensive use is made of them (see Figure 11).

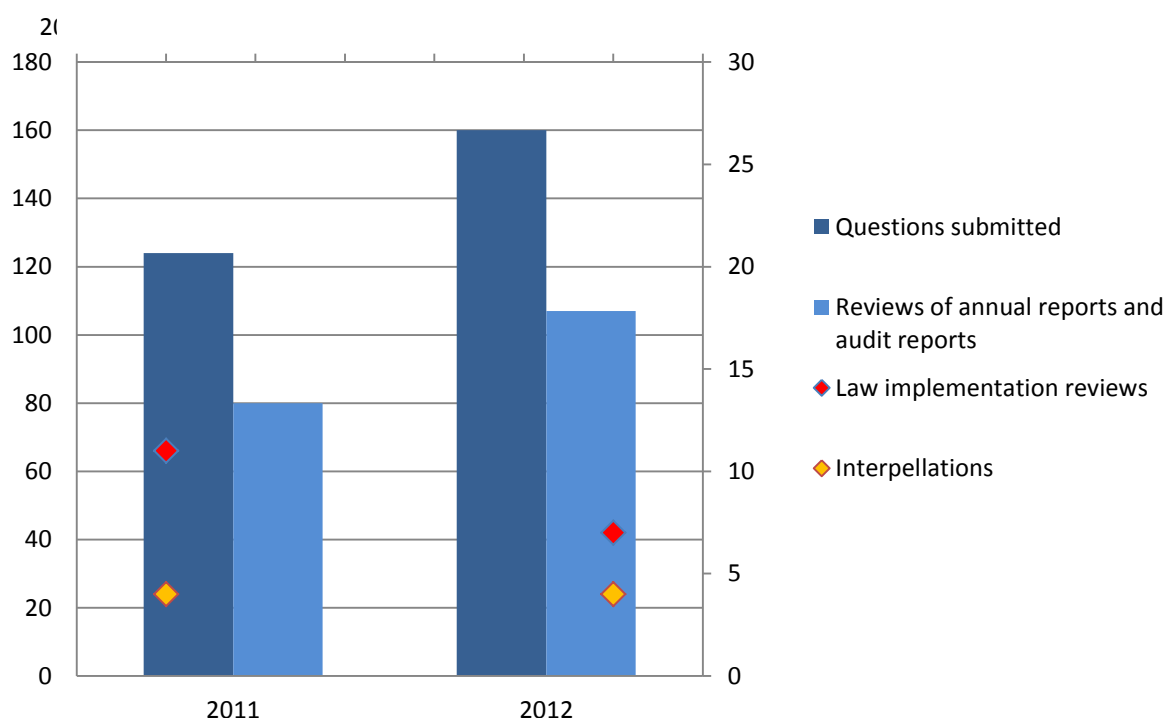
Analysis of main challenges

Parliamentary questions to the Prime Minister and ministers for oral answers during question time are regulated in Article 45 of the RoP. They must be submitted in writing at least 48 hours in advance, are then posed orally in no more than two minutes, and the answer must take no more than three minutes.

A Deputy is not allowed more than two such questions per plenary session. It is evident from these regulations that oral questions can do no more than raise very specific issues, rather than allow for a systematic questioning of the Executive. There was a modest increase in the number of parliamentary questions from 124 in 2011 to 160 in 2012. It is also possible to table questions for written answers (Article 46, RoP), but this instrument is hardly ever used.

Motions of interpellation allow groups of at least six Deputies to request a debate on issues concerning the work of the Government or an individual ministry. The RoP (Article 44) require the Prime Minister or ministers to respond to the issues raised, and time is made available in the plenary to present the proposers' concern, for the executive to respond, and for other Deputies to join the debate. Although the interpellation seems a suitable instrument for executive oversight, only four motions of interpellations were debated in 2011 and 2012 each.

Figure 11: Scrutiny activities of the Assembly 2011-2012



Source: Activity reports of the Assembly of Kosovo, 2011 and 2012.

In addition to the oversight and control mechanisms employed at the level of the plenary, committees also play a role in holding the Executive to account. The terms of reference of parliamentary committees establish that they oversee the application of legislation falling within their respective spheres of competence. The Assembly has adopted a practice under Article 73 of the RoP whereby each committee should, in principle, aim to carry out an examination of the implementation of at least one major law per year. The relevant decisions are taken as part of the discussions held on the annual committee work plans. In 2011, 11 such examinations were carried out, and 7 were conducted in 2012. The provision applies to both standing committees and functional committees. Thus, for example, the Budget and Finance Committee intends to carry out two reviews in 2013, one on the Public Procurement Law and one on the Law on Fortune Games.

The Assembly receives regular reports from budgetary organisations and independent institutions that operate within their sphere of competence. These reports are first discussed in committee and their review in the plenary is opened by a presentation from a committee rapporteur.

It is notable that the Assembly does not make use of the Investigative Committees, as provided for in Article 71 of the RoP. Such committees can be established “where the Assembly identifies an issue of special importance” and wishes “to summon any official it deems necessary to testify in front of the committee”.

3.3.5 EU integration

Parliamentary responsibility for matters relating to EI is concentrated in the standing Committee for European Integration. It reviews and supervises the process of harmonisation of laws enacted by the Assembly with the legislation of the EU. In practice, this means that all bills considered must be submitted to the committee which assesses the compatibility of bills with the *acquis*. The committee is also tasked with maintaining close working ties with the EU institutions, EU Member States and other actors relevant to the furtherance of Kosovo’s integration process, and for monitoring and supervising the implementation of relevant agreements. The committee also deals with Kosovo’s relationship with the Council of Europe. In addition to the working plan of the Committee, the Assembly as a whole adopts annual “Parliamentary Action Plans for European Integration”, as well as regular progress reports on the implementation of these annual action plans. The Assembly receives six monthly reports from the Government on integration related developments.

Analysis of main challenges

Whilst it is evident that the Assembly attaches central importance to EI in its workings, there are several issues relating to the operation of the Committee for EI and interinstitutional relationships that merit further scrutiny. First, under the RoP, the Committee, as a standing committee, is only given 10 days to check for the compliance of bills with European legislation and agreements and the obligations arising out of Council of Europe membership. Participants in the process criticise that the declarations of compliance accompanying Government bills cannot always be relied upon and that no proper tables of compliance are provided. In practice, the compatibility checks of bills – and also amendments introduced during the legislative process – fall to two of the total of four committee staff. As a consequence, in an area where attention to legislative details is essential, time pressures are especially severe.

Given the overall scarcity of resources in the Assembly, including legal expertise, it seems justified to look again at the division of labour amongst the Committee for Legislation and the Committee for EI and their respective personnel, as well as the Unit for Legal Harmonisation and Approximation. Both committees and their staff engage primarily in the scrutiny of compliance, with domestic and European law respectively, as does the Unit. There seems at least an obvious case for concentrating these legal checks into a single body served by an enlarged administrative support structure that incorporates the above Unit.

In addition, an artificial division appears to exist between the political responsibilities of the Committee for European Integration, on the one hand, and the Committee on Foreign Affairs, on the other, given the overriding importance of the European frameworks for co-operation in Kosovo’s foreign relations. This division at the level of the Assembly mirrors the organisational division between the Ministry of EI and the MFA at the level of the Government.

As noted above, there is, as yet, no comprehensive legal framework governing the powers and responsibilities of the Assembly in the EU integration process. In addition, the EI Committee’s role is principally geared towards review and co-ordination rather than the initiation and formulation of political initiatives, and towards sustaining a critical dialogue with the Government and the President in the integration process. In particular, at present, the EI Committee and the Assembly as a whole are largely bystanders in the negotiations with the EU. Thus far, there has been no requirement for the Assembly’s approval of the mandates of SAA negotiations and no discussion of commitments taken by the Government prior to their adoption.

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⁵² This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and with the ICJ opinion on the Kosovo declaration of independence.