



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

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

**Implementation of Kosovo Assembly Laws by
the Executive Branch of the Provisional
Institutions of Self-Government**

Review Period: Laws Promulgated in 2002-2003

January 2005

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Abbreviations

AI.....	Administrative Instruction
EAR.....	European Agency for Reconstruction
EU.....	European Union
HLO.....	Head of Legal Office
HRRoL.....	OSCE Department of Human Rights and Rule of Law
JIAS.....	Kosovo Joint Interim Administrative Structure
KCA.....	Kosovo Cadastre Agency
KCB.....	Kosovo Consolidated Budget
MAFRD.....	Ministry of Agriculture, Forests and Rural Development
MCYS.....	Ministry of Culture, Youth and Sport
MESP.....	Ministry of Environment and Spatial Planning
MEST.....	Ministry of Education, Science and Technology
MFE.....	Ministry of Finance and Economy
MH.....	Ministry of Health
MLSW.....	Ministry of Labour and Social Welfare
MPS.....	Ministry of Public Services
MTC.....	Ministry of Transport and Communications
NDI.....	National Democratic Institute
NGO.....	Non-Governmental Organization
OPM.....	Office of Prime Minister
OSCE.....	Organization for Security and Cooperation in Europe
PISG.....	Provisional Institutions of Self-Government
RoLS.....	Rule of Law Section
SRSR.....	Special Representative of the Secretary-General
UN SCR.....	United Nations Security Council Resolution
UNMIK.....	United Nations Interim Administration Mission in Kosovo

Executive Summary

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

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

The report presents relevant background information in Section 1, followed in Section 2 by a general outline on subsidiary legislation, a short introduction to the executive branch of the PISG, as well as the categories of subsidiary acts issued by the executive branch. Section 3 of the report contains a chronological overview of Kosovo Assembly laws and an assessment of their implementation. Subsequently, in Section 4 there is a summary of the main findings and recommendations.

The report makes a general assessment that the implementation of Kosovo Assembly laws has started with certain delay, after which most of the responsible institutions have managed gradually to overcome the initial difficulties and currently have achieved considerable success in the implementation process. The main reasons for the delay include: a shortage of sufficient resources in the legal offices of the ministries, as well as concentration on drafting of new legislation instead of implementing the laws already in force.

The report reveals important deficiencies in the existing regulation of subsidiary acts and in the practices of their issuance. The major deficiencies include a lack of definition of the types of subsidiary acts issued by the Government; use of inconsistent terminology on subsidiary acts in the Assembly laws; deviation from the legally established categories and issuance of new types of subsidiary act; insufficient definition of the boundaries of social relations regulated by each subsidiary acts; as well as failure to publish the subsidiary acts.

The report recommends, in the first place, the strengthening of the accountability of the executive branch of the PISG. This could be achieved by the establishment of an oversight mechanism for the implementation of Kosovo Assembly laws within the Office of the Prime Minister and by increased periodic parliamentary oversight over the activities of the executive branch. The report recommends also a precise regulation of the types of normative acts in Kosovo, the hierarchy among them, and the organs responsible for their issuance with the adoption of a Law on Normative Acts.

The international community, including aid organisations, should continue to support the PISG in preparing draft laws, as necessary. Such assistance should not, however, stop once a law is approved by the Kosovo Assembly, but should continue at the implementation stage. This approach would ensure the continuous development of the rule of law in Kosovo.

Section I: Background

A. The Mandate of the Rule of Law Section

The Rule of Law Section (RoLS) implements the mandate of the Department of Human Rights and Rule of Law (HRRoL) – to promote the development of institutions that ensure that human rights and rule of law principles are respected – in two separate yet complementary ways. First, the RoLS aims to develop the structures of the legal community of Kosovo while building the capacity of its members. Second, the RoLS monitors, analyses, and reports on the rule of law situation in general, and in particular the work of the judiciary, the administration of the judicial system, the legal professional community, and various institutions of the PISG, and identifies problems indicative of systematic weakness. A major aspect of monitoring and reporting is the development of concrete strategies and recommendations to address problems identified.

B. The Aim and Scope of this Report

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

The primary aim of this report is to establish to what extent laws passed by the Kosovo Assembly are being properly implemented. The report also looks at the development of the legal framework necessary for setting the organisational structure of the institutions envisaged by the laws. The reports aims to verify such issues as: whether the PISG follow a uniform approach when implementing laws; the hierarchy of the subsidiary acts envisaged by the Kosovo Assembly laws and adopted by the PISG; whether the subsidiary acts are accessible to the public in the official languages. The report does not address the issue of implementation of Kosovo Assembly laws at the municipal level. The scope of the report encompasses the implementation of the Kosovo Assembly laws promulgated in the period of 2002-2003. UNMIK Regulations and Administrative Directions do not fall within the scope of this report. The report is orientated towards the general public, the PISG, UNMIK, international organisations with interests in Kosovo's legal development, and legal non-governmental organisations.

C. Methodology

The findings presented in this report are the result of a two-stage approach: an initial research phase followed by a monitoring phase. The first Kosovo Assembly laws were promulgated in 2002. Following the scope of the report, 28 Kosovo Assembly laws were identified for further research.¹ The research was concentrated on determining which subsidiary acts need to be drafted to implement the laws; who is responsible for adoption of these acts; and what organisational units need to be set up in order to have functioning institutions. The initial findings were summarised in a matrix. The matrix was organised chronologically, starting

¹ See Annex A for the full list of the laws falling within the scope of this report.

with the laws promulgated in 2002 and finishing with the laws promulgated at the end of 2003. For each law a separate table was created. The research was performed by a team of five Rule of Law Officers. As a result, a matrix including provisions of 24 Kosovo Assembly laws was created as a working tool for carrying out this project.²

The second phase of the project included conducting interviews with officials from the institutions responsible for the implementation of the Kosovo Assembly laws – usually the Heads of Legal Offices (HLO). During the second phase the 24 identified laws were grouped with respect to the PISG bodies responsible for their implementation. As a result ten main institutions were identified. The representatives from these institutions were contacted and meetings took place within the period July – November 2004. For each PISG institution a separate matrix was created reflecting only the legal provisions falling within the responsibility of that institution. This matrix was translated and delivered in advance to the respective interlocutor. During the meetings the matrix served as a tool for verifying which provisions of the law have been implemented by which subsidiary acts.

The report presents in the next section a general outline on subsidiary legislation, a short introduction to the executive branch of the PISG, as well as the categories of subsidiary acts issued by the executive branch. Section 3 of the report contains an overview of the Kosovo Assembly laws, promulgated in the period 2002-2004, followed by a presentation of the obligations of the PISG under the respective law and assessment of the implementation of these obligations. Finally, Section 4 summarises the main findings, followed by recommendations.

Section II: Subsidiary Legislation

A. Background

Throughout the twentieth century the amount of legislation that is enacted by the parliaments in European countries has grown substantially. Increasingly the parliaments themselves do not have the time or the expertise to consider detailed legislative rules on the administration of various matters and have thus delegated authority for the making of rules and other instruments on such matters to ministers. The authority is conferred by the law of parliament to which the subsidiary (delegated) legislation relates. The law is then referred to as the parent or enabling act. In most cases the law sets out the skeleton of its subject, providing a broad framework. The finer detail of its operation is set out in rules and instructions and other instruments and becomes subsidiary legislation made under it.

Subsidiary legislation takes effect and has authority as if it were part of the enabling (parent) act, i.e., it has statutory force. It is a means by which experts in the subject covered by a law can formulate an authoritative set of measures that allow for practical application of the parent act. This is done without the need for the parliament itself to consider the detail of a technical matter on which it may not have any specific expertise. The parliament cannot foresee every eventuality, which needs to be covered by a piece of legislation when it is originally enacted. Provided that the authority conferred by the parent act is sufficient, subsidiary legislation can deal with problems, loopholes or the necessity for updated information as and when they arise by addressing them in hierarchically defined categories of subsidiary acts. Generally speaking, it is possible to make subsidiary legislation more quickly than to enact primary legislation. Subsidiary legislation itself may be withdrawn or amended if it proves impracticable or circumstances change. From time to time, the original legislation may be consolidated together with any amendments to be produced as a piece of replacement legislation.

² The assessment revealed that four laws do not contain provisions envisaging the adoption of subsidiary legislation for their implementation.

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

B. The Executive Branch of the PISG

The Government of Kosovo, along with the Assembly, the President, and the Courts, is a provisional institution for self-government.³ The first stage of establishing self-governance in Kosovo started with the adoption of UNMIK/REG/2000/1 On the Kosovo Joint Interim Administrative Structure (JIAS). The main principles governing this structure were: that Kosovo political forces and UNMIK shared the administrative management; that all administrative decisions were in conformity with the applicable law in Kosovo; and that all communities were fairly represented.

The next stage was marked by the promulgation of UNMIK/REG/2001/9 On a Constitutional Framework for Provisional Self-Government in Kosovo. Section 9.3.1 of this Regulation provides for a creation of a Government that is vested with the executive authority and is responsible for the implementation of the laws. The Government consists of a Prime Minister and Ministers.⁴ The Prime Minister is elected by a majority of the members of the Kosovo Assembly upon a proposal from the President of Kosovo.⁵ The Constitutional Framework foresees that ministries and other executive agencies shall be established as are necessary to carry out functions within the competence of the Government.⁶ The representation of members from the minority communities is also ensured.⁷ All official documents of the Government shall be printed in both the Albanian and Serbian languages.⁸

Finally, UNMIK/REG/2001/19, as amended, On the Executive Branch of the PISG sets out the legal framework for the Government. It defines among others the functions of the Prime Minister and the Ministers; creates the organisational structure of the ministries; and introduces general principals of civil service. The annexes to the Regulation entail description of the specific duties within the scope of the ministries’ activities.⁹

C. Subsidiary Acts Issued by the Executive Branch of the PISG

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

³ See Section 1.5 of UNMIK/REG/2001/9 On a Constitutional Framework for Provisional Self-Government in Kosovo.

⁴ Ibid. See Section 9.3.4.

⁵ Ibid. See Section 9.3.12.

⁶ Ibid. See Section 9.3.3.

⁷ Ibid. See Section 9.3.4.

⁸ Ibid. See Section 9.3.17.

⁹ Further detail related to the legal framework of the executive branch of the PISG could be found in the following documents: UNMIK/REG/2001/36 On the Kosovo Civil Service; UNMIK/REG/2002/5 amending UNMIK/REG/2001/19 On the Executive Branch of the PISG in Kosovo, establishing the Ministry of Health (Annex I) and the Ministry of Environment and Spatial Planning (Annex II). See also UNMIK/AD/2002/10 implementing UNMIK/REG/2001/19 On the Executive Branch of the PISG in Kosovo; and UNMIK/AD/2002/11 implementing UNMIK/REG/2001/19 On the Executive Branch of the PISG in Kosovo.

A precise definition of the acts issued by the ministers is found in Section 1.3 (d) of UNMIK/REG/2001/19 On the Executive Branch of the PISG: each Minister shall, in accordance with policies set by the Government, issue *decisions* and *administrative instructions* in order to regulate the activities of the ministry in general or its particular fields of activity. It must be noted that there is no legal act in force in Kosovo, which contains a definition of the types of acts to be issued by the Government, and none of the abovementioned legal provisions specifies what is the relationship in terms of hierarchy between the administrative instructions and decisions, issued by the Ministers, as well as, which groups of social relations should be regulated by these two types of subsidiary acts.

Section III: Implementation of Kosovo Assembly Laws

This section presents findings related to the implementation of the Kosovo Assembly laws promulgated within the period 2002-2003. Each law is introduced with a short description about the purposes for its adoption, followed by a list of obligations for the implementing institution and the accomplished results. The laws appear in a chronological order based on the time of their promulgation.

A. Kosovo Assembly Laws Promulgated in 2002

Law No. 2002/1 on the Methodology for Setting the Level of Basic Pension in Kosovo, and Determining the Commencement Date for Provision of Basic Pensions

This Law¹⁰ sets 1 July 2002 as a commencement date for provision of basic pensions in Kosovo. The initial rate of the basic pension is set at 28 Euro per month. Further the Law stipulates that the level of the basic pension shall be determined by the value of the minimum-calorie food basket. The Law does not envisage any specific obligations for the PISG. Section 3 of the Law contains a general instruction that the Ministry of Finance and Economy (MFE) and the Ministry of Labour and Social Welfare (MLSW) “may issue decisions, administrative instructions and rules on any matters pertaining to their respective functions attributed to them under this Law and UNMIK/REG/2001/35.” In the process of implementation of this Law the MLSW has issued so far Administrative Instruction (AI) No. 7/2004 on the Level of Allocation of Basic Pension in Kosovo for Year 2004; and AI No. 6/2003 on the Establishment of the Department for Pension Administration. These two subsidiary acts have laid down the necessary organisational and legal framework for the implementation of the Law.

Law No. 2002/2 on Primary and Secondary Education in Kosovo and Law No. 2002/3 on the Higher Education in Kosovo

The Law on Primary and Secondary Education in Kosovo¹¹ and the Law on Higher Education in Kosovo¹² form the basic legal framework for the educational process in Kosovo. The provisions of the former are applicable towards all public and private primary, lower secondary and upper secondary education in schools and training establishments in Kosovo unless otherwise specifically stated. The purpose of the latter is to regulate higher education in Kosovo. The objectives of higher education are to establish, develop, protect and transmit knowledge through teaching, scientific work and research, and to provide opportunities for all inhabitants of Kosovo with the ability to benefit from such education throughout their lives.

¹⁰ Promulgated by UNMIK/REG/2002/15.

¹¹ Promulgated by UNMIK/REG/2002/19.

¹² Promulgated by UNMIK/REG/2003/14.

The Ministry of Education, Science and Technology (MEST) has the major obligation for the implementation of both laws.¹³ The MEST has established a priority-based approach for the accomplishment of this task. According to representatives of the MEST high priority is given to subsidiary acts related to the equality of the languages in the educational process. The MEST provided the OSCE with information on 68 AIs adopted within the period 2002-2004. Examples of these include: AI No. 4/2004 on the Establishment of a Council for Review of Teachers' Training, AI No. 5/2002 on the Additional Payment for School Staff, AI No. 19/2002 on Procedures for Selecting School Directors, and so forth.

The adoption of 68 AIs does not exhaust all obligations for the MEST under these Laws. For example, the MEST has issued so far only AIs on the curriculum of the second, seventh, ninth, tenth and eleventh grades. According to its duty imposed by Section 17.1 of the Law on Higher Education in Kosovo, the MEST has to adopt an administrative instruction for the methodology to be used for the allocation of funds for teaching and research in the public interest, but this has not been fulfilled. The MEST did not keep the envisaged deadline of 31 December 2003 for the issuance of a subsidiary act regulating the learning of the Albanian language by pupils whose mother tongue is different from Albanian, but adopted AI No. 8/2004 on Teaching Non-Native Tongue only in 2004.¹⁴ However, overall it could be assessed that the MEST has made a sound progress in regulating with subsidiary acts such an important area as education in Kosovo.

Law No. 2002/5 on the Establishment of an Immovable Property Rights Register

This Law¹⁵ establishes the Immovable Property Rights Registry as a mechanism that recognizes and enforces the validity of the rights to immovable property in Kosovo on the basis of the applicable law. Accordingly, the Kosovo Cadastre Agency (KCA) is foreseen as the institution which is authorised to perform the overall administration of the Registry in compliance with the applicable law provisions. The KCA has drafted, and the Minister of Public Services has signed on 31 March 2004 the AI No. 3/2004 on the Implementation of the Law on the Establishment of an Immovable Property Rights Register. The AI defines the role of the KCA and the Municipal Cadastral Offices in the process of registration. It establishes the legal basis for the registration of an immovable property right, the application and review process for registration, the form and content of the Register, and so forth.

The KCA plans to establish the immovable property rights register in two phases. The first phase will consist of creating entries regarding property rights in a hard copy. To this extent, the relevant hard copies have been printed out and two representatives from each municipality in Kosovo were trained by the KCA. The second phase will consist of transforming the existing data on immovable property rights into a digital format. In September 2004 the process of transformation of the collected data should have started in five municipalities. The KCA has an ambitious plan to finish the whole process of recording immovable property rights within the next six months. Thus, the implementation of the Law on Establishment of an Immovable Property Rights Register can be estimated to be moving forward with considerably fast pace.¹⁶

B. Kosovo Assembly Laws Promulgated in 2003

Law No. 2002/6 on External Trade Activity

¹³ See Section 4.1 of the Law on Higher Education in Kosovo and Section 3.1 of the Law on Primary and Secondary Education in Kosovo.

¹⁴ The deadline is set in Section 12.3 of the Law on Primary and Secondary Education in Kosovo.

¹⁵ Promulgated by UNMIK/REG/2002/22.

¹⁶ As of 12 July 2004, the KCA has not accomplished its obligation under Section 1.3 of the Law to determine the level of fees to be charged by the Municipal Cadastre Offices for the services of registration of immovable property rights.

The purpose of the Law on External Trade Activity¹⁷ is to ensure that the rules regulating the conduct of trade and commercial activity between Kosovo and areas outside Kosovo are consistent with best international practices and the requirements of the World Trade Organization and the European Union (EU). This Law applies to all public authorities and public enterprises as well as to legal persons engaged in trade and commercial activity within, or having economic effects within, the territory of Kosovo.

The research indicates that 21 provisions of this Law envisage that the Government of Kosovo is responsible for the issuance of subsidiary acts in order to regulate different activities within the scope of the Law. While the Law does not contain any deadlines within which the Government must issue such subsidiary acts, so far the Government has not issued any subsidiary act for its implementation. This lack of action leaves several areas unregulated that are important for the overall security situation and for the imposition of the rule of law in Kosovo. For example, Sections 16 and 30 of the Law foresee that the Government shall have the authority to establish a list of goods called an “Import Control List”, and an “Export Control List”, respectively. These lists shall specify the types and/or classes of goods the import/export of which requires a permit. Further, Section 31.1 of the Law obliges the Government to establish, or require one or more designated state authorities to establish, the criteria that must be met by an applicant in order to receive an export permit. Other important steps for the Government to ensure the rule of law are prescribed in Sections 26.1 and 37.1: the Government shall issue subsidiary acts that create border enforcement measures protecting intellectual property rights of legal or natural persons.

The lack of implementation of the Law on External Trade Activity by subsidiary legislation issued by the Government could raise the broader question as to what extent the PISG are ready to take over competences transferred to them by UNMIK, especially in fields where the PISG do not have available the necessary technical expertise. This issue could be addressed by installing a monitoring mechanism for establishing to what extent the competencies transferred to the PISG are being properly assumed. The outcomes of this oversight mechanism could be used to estimate what other capacity building measures might be beneficial for the PISG in the future.

Law No. 2002/7 on Telecommunications

This Law¹⁸ governs telecommunications services and telecommunications service providers in Kosovo, and its aim is to create a transparent legal and regulatory environment that will promote investments and free competition to meet the requirements of all users for telecommunications services. The Law envisages taking into account the Directives and Regulations of the EU and other international telecommunications standards and practices with respect to the promotion of transparent market entry conditions and a competitive marketplace. The Ministry of Transport and Communications (MTC) has fulfilled one of the main requirements of the Law by establishing the Telecommunications Regulatory Authority as a functioning institution.¹⁹

Law No. 2002/8 on Environmental Protection

The purpose of the Law on Environmental Protection²⁰ is to establish a basic legal framework that will provide for an increasingly healthy environment through the gradual introduction of environmental standards of the EU, and ensure that the creation of such an environment is accomplished in a manner that is affordable and consistent with sustainable economic

¹⁷ Promulgated by UNMIK/REG/2003/15.

¹⁸ Promulgated by UNMIK/REG/2003/16.

¹⁹ OMiK was not able to schedule a meeting with the Telecommunications Regulatory Authority to verify to what extent this institution has further implemented the provisions of the Law on Telecommunications.

²⁰ Promulgated by UNMIK/REG/2003/9.

development. This Law establishes the specific authority and obligations of the public authorities responsible for gradually introducing and enforcing such standards, and sets out the rights and obligations of natural and legal persons affected by such activities or interest in promoting a healthy environment in Kosovo.

The Law contains more than 40 provisions that contain reference for issuance of subsidiary acts. The Ministry of Environment and Spatial Planning (MESP) has advanced in its work on the implementation of this Law by bringing to the stage of approval the subsidiary acts envisaged in Section 20.4, Section 20.5, Section 20.6, Section 22.3, Section 43.3, Section 44, and Section 48. The MESP has also fulfilled the requirement set in Section 43.1 of the Law to establish the Environmental Inspectorate as a Department within the Ministry. The MESP has also developed and submitted through the Government to the Assembly for approval the Kosovo Environmental Protection and Sustainable Economic Development Strategy.²¹ Additionally, the MESP has three subsidiary acts in the process of drafting related to obligations under Section 15.1, Section 25.2 and Section 26.2 of the Law.

The MESP has submitted to the Government a draft of a Nature Protection Law. This Law regulates three areas envisaged initially for regulation under the Law on Environmental Protection: protection of valuable natural areas that represent international and national interest (Section 33.1); protection and conservation of nature and sustainable exploitation of natural resources (Section 33.2); and protection of bio-diversity in Kosovo (Section 34.1).

Under the Law on Environmental Protection the Kosovo Assembly has tasked itself to establish an Environmental Protection Advisory Board with the purpose to advise the Assembly and the Government on environmental protection issues.²² The Assembly did not fulfil this self-imposed obligation within its first term. At the same time, the MESP has proven its determination to bring about the laborious process of issuance of subsidiary acts under this Law to a successful end.

Law No. 2002/09 on the Labour Inspectorate of Kosovo

This Law²³ is adopted in recognition of the need for the establishment of a Labour Inspection Authority as an important mechanism to control the implementation of the Essential Labour Law and other labour protection rules. According to the provisions of the Law, the Authority of Labour Inspection shall uniquely apply to all workplaces, irrespective of the applicable legal provisions relating to conditions of work, occupational safety and health protection of all workers in general. The Law does not govern workplaces within UNMIK, and other offices or missions of foreign governments. The Law contains two provisions that foresee explicitly that the MLSW shall enact subsidiary acts. Section 4.3 of the Law sets out the obligation for the MLSW to issue by-laws, which will contain detailed instructions governing when the Chief Labour Inspector can: make written remarks to an employer regarding the irregularities found during the inspection; make decisions about fines laid out in Sections 25.2 and 25.3 of UNMIK/REG/2001/27; justify precisely each specific fine imposed in cases of violation of UNMIK/REG/2001/27; specify which of the fines is reasonable and proportionate to the committed violation.

The Head of the Legal Office (HLO) of the MLSW referred to an opinion from the MFE, according to which the abovementioned by-laws cannot be issued by the MLSW on the grounds that the fines envisaged in UNMIK Regulation 2001/27 are calculated in Deutsche Marks (DM).²⁴ At the same time the HLO informed the OSCE that the MLSW has hired 60

²¹ This obligation stems from the provision of Section 6.1 of the Law on Environmental Protection.

²² See Section 40.1 of the Law on Environmental Protection.

²³ Promulgated by UNMIK/REG/2003/4.

²⁴ See Section 25.2 and Section 25.3 of UNMIK/REG/2001/27 On the Essential Labour Law in Kosovo.

labour inspectors who are deployed at municipal and central level and who cannot implement fully the Law on Labour Inspectorate of Kosovo due to the above-mentioned problem. The HLO recommended the issuance of an amendment to UNMIK/REG/2001/27. The HLO also said that the work on a new Law on Labour Relations is underway and the new law would contribute to solving of such discrepancies.

The importance of conversion of fines has been duly noted by UNMIK and the subject matter has been regulated with several legal acts.²⁵ Section 3.1 of UNMIK/AD/2001/24 addresses the concern expressed by the HLO of the MLSW. This provision provides that from 1 January 2002, any reference in the applicable law for an amount payable in DM shall be replaced with the equivalent amount in Euro at the conversion rate of € = 1.95583 DM. Therefore, the OSCE is of the opinion that the work of the labour inspectors could not be regarded as hindered by provisions where fines are calculated in DM.

Section 5.5 (e) of the Law envisages also an obligation for the MLSW to approve an additional normative act that prescribes concrete health, security and work standards. The HLO made reference to the Law No. 2003/19 On the Occupational Safety, Health and the Working Environment, which has provided for the required standards.²⁶ The HLO confirmed that several subsidiary acts related to the Law on Labour Inspectorate of Kosovo are prepared and their adoption is pending.

Law No. 2003/2 on Public Financial Management and Accountability

Recognising the need to establish budget, capital and operating expenditure, financial management, accounting, budget accountability, and financial reporting systems for public authorities in Kosovo, the Kosovo Assembly through the Law on Public Financial Management and Accountability²⁷ prescribes the powers and duties of the Minister of Finance and Economy related to these matters, and establishes a framework for regulating the revenues of and grants to municipalities in Kosovo. Several provisions of the Law impose on the MFE the obligation to develop the administrative structure for public financial management.²⁸ Currently the following departments are established and functioning within the MFE: Budget Department, Economic Policy Department, Department of Tax Policy and Analysis, Municipal Policy and Budget Department, and Internal Audit Unit.

Apart from establishing functional institutions, the Law foresees in Section 14.1 that the Minister of Finance and Economy may, with the prior approval of the Assembly and the SRSG, establish the terms and conditions governing the investment of public money. The HLO informed the OSCE that a mechanism governing the investment of public money is under development, but there currently exists a fundamental problem involving the collection of money for the Kosovo Consolidated Budget (KCB).

Section 37 of the Law contains an obligation for the Minister of Finance and Economy to prepare and publish the KCB, as well as explanatory documents thereon, in a comprehensive and publicly understandable form in the languages required for official documents of the Government. To this end the KCB is promulgated and published each year in the UNMIK Official Gazette in the Albanian, English and Serbian languages. Further, Section 55.1 of the Law envisages that each municipality shall appoint a Chief Finance Officer, and shall

²⁵ See UNMIK/REG/1999/4 On the Currency permitted to be used in Kosovo; See also UNMIK/AD/2000/17 implementing UNMIK/REG/1999/4 On the Currency permitted to be used in Kosovo, UNMIK/AD/2001/10 implementing UNMIK/REG/1999/4 On the Currency permitted to be used in Kosovo, UNMIK/AD/1999/2 implementing UNMIK/REG/1999/4 On the Currency permitted to be used in Kosovo, and UNMIK/AD/2001/24 amending UNMIK/AD/1999/2 implementing UNMIK/REG/1999/4 On the Currency permitted to be used in Kosovo.

²⁶ Promulgated by UNMIK/REG/2003/33.

²⁷ Promulgated by UNMIK/REG/2003/17.

²⁸ See Section 4, 5, 6.1, 7, 8, and 9 of the Law on Public Financial Management.

establish a Treasury and Budget Department. According to the HLO, these requirements have also been fulfilled.

It can be assessed that the Legal Office of the MFE has made substantial progress in its work on the implementation of the Law on Public Financial Management and Accountability. By making this statement the OSCE takes into consideration the fact that the Legal Office is currently staffed with only three lawyers who have to cover a complex legal subject matter. The OSCE also acknowledges that the efforts of the Legal Office have been concentrated on drafting new laws within the activities of the MFE. At the same time, the OSCE favours the adoption by the legal offices of a more balanced approach, where the implementation of laws, already in force, receives a similar priority as the drafting of new legislation.

Law No. 2003/3 on Forests in Kosovo

The Assembly of Kosovo adopted the Law on Forests in Kosovo²⁹ for the purpose of protecting and promoting the forests of Kosovo whilst allowing for the co-ordinated and regulated sustainable development of the forests resources. For better implementation of the public policies regarding forests in Kosovo the establishment of several institutions has been envisaged: Kosovo Forest Agency, Forest Restoration Fund and Forest Advisory Board.³⁰ While the Forest Restoration Fund and the Forest Advisory Board are established directly in the Law on Forests, the Ministry of Agriculture, Forests and Rural Development (MAFRD) has set up the Kosovo Forest Agency with the adoption of AI No. 7/2003 on the Establishment, Responsibilities, Duties and Organization of the Kosovo Forest Agency. The MAFRD is in process of hiring a Chief Executive Officer and staff for the Kosovo Forest Agency. Thus, it can be safely said that the legal framework for the administrative bodies necessary for the implementation of the Law on Forests has been established.

The HLO of the MAFRD pointed out that the focus of the Legal Office remains on preparing draft laws, within the competencies of the MAFRD. With respect to implementation of the laws through subsidiary acts, certain priorities are set, but not necessary in the area of forestry. For example, the Legal Office drafted, among others, the following AIs, which were subsequently adopted by the MAFRD: AI No. 3/2002 on Banning the Use and Distribution of Pesticides Harmful for Human Health and Environment and AI No. 9/2003 on Banning the Free Circulation and Marketing of Live Poultry, in order to prevent the spread of contagious diseases.

Law No. 2003/4 on Liquidation and Reorganization of Legal Persons in Bankruptcy

This Law³¹ has been adopted in order to promote the development of a sound, free market economy in Kosovo by ensuring that legal provisions and other legal acts regulating the procedures of liquidation and reorganisation of legal persons in bankruptcy shall be defined and established in conformity with best practices. Within the scope of the Law also fall the rights and duties of the parties participating or affected by bankruptcy proceedings. The Government has been tasked with the responsibility to issue “implementing rules” which would establish bankruptcy procedures and facilitate the implementation of this Law. Some examples of areas to be regulated by “implementing rules” include: the methods of reorganisation of the debtor (Section 52); the procedures for meetings of creditors or of a Creditors’ Committee (Section 26.3); the procedures for determining the administrator’s compensation (Section 19.3); the minimum required information for a proof of claim, the procedures for acceptance of claims, and the creation of the claims register (Section 42.4); sales procedures (Section 60.5); the procedures for paying claims (Section 66.4), and so forth.

²⁹ Promulgated by UNMIK/REG/2003/6.

³⁰ See Sections 7, 8 and 9 of the Law on Forests in Kosovo.

³¹ Promulgated by UNMIK/REG/2003/7.

Section 3 of the Law specifies that these “implementing rules” shall be issued by the Government within 45 days after the promulgation of the Law. The SRSG promulgated the Law on Liquidation and Reorganization of Legal Persons in Bankruptcy on 14 April 2003, therefore, the deadline for the Government to adopt the implementing rules was 1 June 2003. Until now the Government has not issued these rules, and thus, in practice has not implemented the Law.

The President of the Commercial Court in Prishtinë/Priština confirmed that the Commercial Court has not received any subsidiary act issued by the Government. Without such “implementing rules”, the Law on Liquidation and Reorganization of Legal Persons in Bankruptcy is unworkable. The promulgation of this Law has undoubtedly contributed towards the creation of modern legal framework of the economic activities in Kosovo. At the same time two issues should be noted: the short deadline for adoption of subsidiary acts under this Law and the lack of available expertise for drafting the subsidiary acts even after one year from the expiration of the deadline. Therefore, it is recommended that before adoption of laws that require specialised expertise for their implementation, a feasibility study is performed to determine to what extent the legal community in Kosovo is ready to contribute to the implementation of such laws. In case such expertise is not available, the help of foreign experts should be secured in advance. Training the employees of institutions responsible for the applying of the provisions of such laws should also take place. These measures could help to ensure the timely implementation of laws.

Law No. 2003/6 on Libraries

The Law on Libraries³² determines the basic principles and norms of the librarian activity and organisation and maintenance of libraries. The subject matter of the law is all libraries offering public librarian services, independent from their ownership form and other institutional belonging. This law also envisages in various provisions the co-operation between the Ministry of Culture, Youth and Sports (MCYS) and the MEST. Section 11.5 of the Law provides that the MCYS issues regulations for implementation of this Law, in preliminary consultation with the MEST. The acting HLO of the MEST informed that the MEST worked closely with the MCYS on the implementation of projects envisaged by the Law on Libraries.

The HLO of the MCYS has submitted to the OSCE the names of the drafts of subsidiary acts prepared so far for the implementation of the Law. The drafts include: Strategic Plan for National Network Libraries, Regulation on the Registry of Libraries, Regulation on Professional Work and Conditions for its Exercise in Library Activities, Regulation on Professional Titles and for Professional Exams in Library Activities. The HLO stated that all drafts have been prepared in accordance with principles existing in European legislation. The Law imposes a deadline for the issuance of all subsidiary acts: 23 June 2003. The MCYS was not able to keep up with this deadline.

The main priorities of the Legal Office of the MCYS follow a pattern already established in the work of other ministerial legal offices: concentration on drafting of Assembly laws that regulate the activities of the respective ministry. This approach, as well as the staffing problems of the legal offices inevitably has as a result the delay of the implementation of already promulgated laws. More careful planning of the legislative activities by the ministries, by making a realistic estimation of the available resources, could prevent the current overstretch of legal obligations, which remain unfulfilled.

Law No. 2003/7 on Archive Material and Archives

³² Promulgated by UNMIK/REG/2003/19.

The Kosovo Assembly adopted this Law³³ for the purpose of setting up a modern system of archives which will enable an efficient protection and advanced use of archival material. The MCYS is responsible for the implementation of the Law, and has so far issued the following related subsidiary acts: Regulation on Handover of Archive Materials; Regulation on Categorization and Valorisation of Archive Material; and statutes of the archive institutions in Kosovo. The HLO informed the OSCE that the following regulations have been drafted and submitted for signature to the Minister: Regulation on Professional Titles and Professional Exam in Archives Activities, Regulation on Archives and Archive Material, Regulation on the Use of Archive Material, Regulation on Establishment of Archives, Conditions and Criteria, Regulation on Professional Work Related to Archive Activity, Regulation on Administration of Archive Materials.

Section 48 of the Law contains a set of deadlines for the institutional organisation of public archives, specific archives and private-public archives in Kosovo (six months after the Law enters into force); for the adoption of subsidiary acts by the Kosovo Archives Directorate (six months after the establishment of the Directorate); for adoption of statutes and implementation of subsidiary acts by the archive institutions (six months after their establishment). The process of implementing the Law on Archive Material and Archives, though behind the deadlines set in the Law, has started. Currently it cannot be concluded that the institutions envisaged under this Law are created and functioning. Such an assessment could take place in a follow-up of the implementation of this Law.

Law No. 2003/9 on Farmers Cooperatives

The Law³⁴ is adopted in order to regulate the work of farmers' cooperatives for the benefit of agricultural development and to increase the productivity of the work of the farmers. The Law envisages one specific obligation for the MAFRD: Section 2.3 requires the MAFRD to regulate the statutes of the co-operatives. The MAFRD has implemented this requirement by issuing AI No. 6/2004 on the Format and Content of the Statutes and Registration Requirements for Farmers' Cooperatives. Additionally the MAFRD has issued AI No. 9/2004 on the Management and Voting Procedures in the Farmers Cooperatives and AI No. 10/2004 on the Federation of the Farmers Cooperatives of Kosovo. Thus, it is assessed that the MAFRD has fulfilled its obligation to create a subsidiary legal framework for the implementation of the Law.

Law No. 2003/10 on Artificial Fertilizers

The purpose of this Law³⁵ is to assure the maintenance of the quality of the artificial fertilizers in Kosovo by establishing rules for the protection of producers and consumers of artificial fertilizers and regulating the system of artificial fertilizers in Kosovo.

In adherence with the provision of Section 17.1 of the Law, which provides for the MAFRD to issue AIs and decisions for the implementation of the Law, the MAFRD issued AI No. 2/2004 on the Conditions for Licensing the Importers for Selling and Storage of Artificial Fertilizers, and assigned one staff member for the implementation of this AI. The MAFRD has other particular obligations under this Law, i.e. to establish two institutions, the Artificial Fertilizers Regulatory Service and the Kosovo Artificial Fertilizers Advisory Board.³⁶ As of October 2004 the MAFRD has not yet issued the subsidiary acts for the foundation of these institutions. Section 6.1 of the Law contains another obligation for the MAFRD – to issue an AI on the employment of inspectors and analysts that administer and implement this Law. This AI has not yet been issued by the MAFRD.

³³ Promulgated by UNMIK/REG/2003/20.

³⁴ Promulgated by UNMIK/REG/2003/21.

³⁵ Promulgated by UNMIK/REG/2003/22.

³⁶ See Section 3.1 and Section 3.2 of the Law on Artificial Fertilizers.

The Government of Kosovo has also implementing duties under this Law. Section 4.5 of the Law foresees that the Government shall prescribe with a “special” administrative instruction the registration fee for a certificate of registration, which anyone intending to sell or offer for sale artificial fertilizers in Kosovo should obtain. The Government has not issued such an AI. Thus, it could be concluded that the MAFRD and the Government have not implemented the provisions in the Law envisaging issuance of particular subsidiary acts.

Law No. 2003/11 on Roads

This Law³⁷ is adopted for the purpose of promoting the development of a modern system of roads in Kosovo. The aim of the Law is to ensure that the regulation of construction, protection, maintenance, management, financing and supervision of roads shall be developed and enforced in full accordance with the best international standards. The Law regulates the legal status of public roads, measures for protection of roads, financing, and supervision of public roads.

The implementation of the Law depends on the existence of functioning administrative structures. Section 8.3 of the Law envisages the creation of a Directorate of Roads and a Department of Road Infrastructure. According to the HLO of the MTC both administrative structures have been established. In September 2003 the MTC adopted AI No. 4/2003 on the Directorate of Roads, which specifies the functions of the Directorate and sets up the internal organisational units. The Department of Road Infrastructure has also been established.

Further, the Law foresees in Section 7.3 that the MTC shall issue a subsidiary act on the categorization of roads. According to the HLO this obligation is not yet fulfilled due to the fact that new types of roads could be introduced in Kosovo. It shall be noted that the provision of Section 7.3 of the Law is quite explicit and requires the issuance of a subsidiary act on the categorisation of the types of roads that are already specified in Section 4 of the Law.³⁸

Under the provision of Section 15 of the Law the MTC shall issue rules on technical standards for construction and reconstruction of public roads. The HLO stated that the MTC is working with experts from the EU on drafting such rules that will incorporate the standards envisaged in the European legislation. Further, the HLO stated that the MTC is in compliance with the obligation under Section 19.5 of the Law to cooperate with the MESP for the development of rules for an environmental impact assessment.

The Directorate of Roads has taken the initiative to draft rules on weights and dimensions of vehicles using public roads, which is an obligation under Section 24 of the Law. The Directorate of Roads received assistance from the European Agency for Reconstruction (EAR) and has submitted already a draft of an AI for signature by the Minister. Additionally, the Directorate of Roads has issued AI No. 5/2004 on Setting Road Tariffs and Use of Land Belonging to the Main and Regional Roads, thus fulfilling the requirement for issuance of subsidiary legislation under Sections 28.2- 28.4 of the Law.

According to the HLO, with respect to the provision of Section 30.1 of the Law, which foresees the possibility for introduction of fees for the use of public roads, the MTC does not currently consider imposing such fees. As for the obligation under Section 30.3 of the Law to establish the categories of vehicles and the fees applicable to each category, the HLO stated that an Administrative Direction is drafted with the help of the World Bank and in cooperation with the MFE, incorporating the European standards in this field. As a whole, it is safe to conclude that the MTC has made substantial progress in the implementations of this

³⁷ Promulgated by UNMIK/REG/2003/24.

³⁸ Section 4 of the Law on Roads defines the following types of public roads: a) Main Roads; b) Regional Roads; c) Local Roads; and d) Residential Roads.

Law by adopting subsidiary acts. Of course, it remains as a duty for all institutions in Kosovo to start enforcing their provisions.

Law 2003/12 on Access to Official Documents

The Kosovo Assembly adopted the Law on Access to Official Documents³⁹ for the purpose of enabling residents of Kosovo to participate more closely in the decision making process of public institutions and guaranteeing that the public institutions enjoy greater legitimacy, transparency, and are more effective and accountable.

Several provisions of the Law on Access to Official Documents envisage measures that should be undertaken in order to implement it. These provisions refer to two addressees, the Government and the institutions.⁴⁰ For example, Section 4.3 provides that the Government shall draft a list of documents which shall be treated as sensitive documents; Section 17.1 foresees that the Government shall adopt adequate rules and procedures regarding the classification of sensitive documents sixty days after the Law enters in force; Section 16.2 establishes that the Office of the Prime Minister (OPM) at the latest by 31 July 2004, and every year thereafter, shall publish a report and file a copy with the Assembly of Kosovo, on the implementation of this Law.

The provision of Section 10.3 of the Law contains an obligation for the institutions to take immediately the necessary measures to establish a register that shall be operational by 1 January 2004. Such a register should contain the names of documents that are housed by the institution and their respective locations; Section 8.1 of the Law envisages that sensitive documents are documents originating from the institutions classified in accordance with the rules of the institution concerned, which protect essential interests of the PISG. These rules should be made public.⁴¹

In the course of preparing this report, the OSCE discussed the implementation of the Law on Access to Official Documents with representatives of the legal offices of the following institutions: OPM; MLSW; MESP; Ministry of Public Services (MPS); MAFRD; MEST; MCYS; MTC; MFE; Ministry of Health (MH); and KCA.

First, it was assessed that the deadlines envisaged in the Law are not met. For example, the OPM did not publish a report by 31 July 2004 on the implementation of the Law, and none of the above mentioned institutions have a register, which should have been operational by 1 January 2004. Also, the Government has not yet adopted rules and procedures regarding the classification of sensitive documents, as it should have done by 5 January 2004. Second, the Government has not fulfilled its obligation under Section 4.3 of the Law to draft the list of documents, which shall be treated as sensitive.

There have already been projects designed to assist the PISG structures in implementing the Law. The National Democratic Institute (NDI) Kosovo conducted, in February 2004, training on the Law for members of the Kosovo Assembly, ministry officials, and representatives of municipalities.⁴² NDI Kosovo also prepared, in co-operation with the OSCE Assembly Support Initiative, a manual for the implementation of the Law, which contains explanation of the text of each section of the Law. The manual also contains several model applications that can serve as examples when filing a request for access to official documents.

³⁹ Promulgated by UNMIK/REG/2003/32.

⁴⁰ According to the National Democratic Institute Kosovo “institutions” shall be interpreted broadly to include all PISG organs and agencies, Kosovo Trust Agency, municipal organs and agencies, as well as independent bodies and offices listed under Chapter 11 of the Constitutional Framework.

⁴¹ See Section 8.5 of UNMIK/REG/2003/32.

⁴² See Cadle, P. *Freedom of Information Training*, Assembly Support Initiative Newsletter No. 11, May 2004, p. 23.

The OSCE encourages such initiatives. It remains for the PISG structures to put the lessons into practice. As a next step the Kosovo Assembly could request from the Government a report on the implementation of the Law on Access to Official Documents, as per section 16.2 of the Law, and thus ensure that the PISG at central level comply with their obligation under this Law.

Law No. 2003/14 on Spatial Planning

This Law⁴³ is adopted for the purpose of ensuring rational spatial planning and development, achieving balance between development and preservation of open space and protection of the environment, and bringing the spatial planning regime of Kosovo into consistency with European and international standards. For the implementation of this Law, the MESP foresees the adoption of 17 subsidiary acts. The MESP started this process with the adoption of AI No. 4/2004 on Establishing the Council for Spatial Planning; AI No. 5/2004 on the Regulation of Supervision and Fines; AI No. 24/2003 on the Establishment of Spatial Planning Institute; AI No. 29/2003 on the Basic Elements in the Scope of the Spatial Plan of Kosovo; AI No. 33/2003 on the Basic Elements of the Municipal Development Plan; and AI No. 34/2003 on the Basic Elements of the Urban Development Plan.

The MESP looks at the creation of a Spatial Plan of Kosovo and Spatial Plans for Special Areas as very important for the future of Kosovo projects to be accomplished in several steps.⁴⁴ As of December 2004, the MESP has completed the initial, preparatory phases of the project. The MESP has also prepared the Municipal Development Plan, which was subsequently approved by the Minister.⁴⁵

Section 34 of the Law envisages a deadline of one year from the date the Law enters into force for the adoption of all subsidiary acts. This deadline has not been met by the MESP. At the same time, this deadline may not be viewed as reasonable due to the complex coordination among many institutions necessary for the drafting of the subsidiary acts. Unjustifiably rigid deadlines established in Assembly laws can be counter-productive.

Law No. 2003/15 on Social Assistance Scheme

The Kosovo Assembly has adopted the Law on Social Assistance Scheme⁴⁶ for the purpose of providing a social safety net within the broader context of the social protection system in Kosovo and for alleviating poverty by providing social assistance to poor and vulnerable families. The MLSW has issued so far two categories of subsidiary acts: regulations and administrative instructions. For the implementation of this Law the MLSW has already adopted AI No. 8/2004 on Verifying the Financial Status of Families Applying for Social Assistance, and AI No. 5/2003 on the Reorganization of the Institute for Social Policy. The Law also envisages the regulation with subsidiary acts, among others, of the following activities: the procedures for the submission of applications for Social Assistance (Section 6.3); the frequency by which the designated authorities shall require evidence of the family's action to find work (Section 7.2); the procedure for the work of the Doctors Commission and the procedures, criteria and methodology for assessment and review of the level type of disability (Section 6.2).⁴⁷ The MLSW has incorporated implementation of all provisions of the Law that require adoption of subsidiary acts into one act: Regulation No. 2003/XX on the

⁴³ Promulgated by UNMIK/REG/2003/30.

⁴⁴ This is an obligation for the MESP stemming from Section 10.1 of the Law on Spatial Planning.

⁴⁵ The preparation of the Municipal Development Plan is in compliance with Section 13.3 of the Law on Spatial Planning.

⁴⁶ Promulgated by UNMIK/REG/2003/28.

⁴⁷ See Section 5.4, 5.8, 6.2, 6.3, 7.2, 9.3, 10.1, and 12.1 of the Law on Social Assistance Scheme for a complete list of the particular subsidiary acts to be implemented by the MLSW.

Implementation of the Social Scheme in Kosovo. By following this approach the MLSW believes that the needs of the beneficiaries of the Law have been served in a better way.

Law No. 2003/18 on Postal Services

The purpose of this Law⁴⁸ is to ensure the provision of universal postal services on the whole territory of Kosovo and to protect consumer interests. The Law aims at encouraging free and effective competition for offering of postal services and the continuation of quality service improvement. A further goal of the Law is to ensure full secrecy of correspondence for service users. The MTC has established the public mail operator and is in process of drafting subsidiary legislation for the implementation of the Law as provided for in Sections 10.3, 17.4, 18.2, 20.2 and 30.1 of the Law.

Law No. 2003/19 on Occupational Safety, Health and the Working Environment

The objective of the Law on Occupational Safety, Health and the Working Environment⁴⁹ is to prevent occupational injuries and diseases at the workplace and to protect the working environment. Under this Law, the MLSW has one specific implementing obligation – to define measures for occupational safety, health and working environment against electric power in a subsidiary act.⁵⁰ The MLSW has adopted Regulation 1/2004 on Sanitary and Technical Security Measures at Work, and Regulation 2/2004 on the Evaluation of the Dangers in the Working Environment, implementing this requirement.

Law No. 2003/20 on Pesticides

The main purpose of the Law on Pesticides⁵¹ is to regulate the manufacture, import, export, distribution, sale and use of pesticides in Kosovo. The MAFRD has started the initial implementation of the Law by issuing AI No. 2004/1 on the Establishment of Terms for Licensing Pesticide Importers to Trade and Store Pesticides. Further subsidiary acts referred in Sections 2.2, 4.1, 14.4 and 19.1 need to be adopted.

Law No. 2003/22 on the Sanitary Inspectorate of Kosovo

The Assembly of Kosovo adopted this Law⁵² with the aim of establishing legal grounds for the regulation and advancement of food quality control, the implementation of measures for fighting and eliminating contagious diseases. This Law sets out: the structure, functions, rights and duties of the Sanitary Inspectorate as well as the authority on appointment to a post in the Sanitary Inspectorate. The MH has implemented this Law with the adoption of AI 20/2004 on the Kosovo Sanitary Inspectorate.

Law No. 2003/23 on Disability Pensions in Kosovo

This Law⁵³ is adopted for the purpose of providing a social safety net within the broader context of the social protection system in Kosovo and alleviating poverty by providing disability pensions to those who are unable to work and to provide for themselves. The MLSW has so far adopted the following subsidiary acts implementing this Law: AI No. 2/2003 on the Presentation of Information on Disability Persons and Underage in Public Media; AI No. 9/2004 on the Application Procedures for Disability Pension; AI No. 6/2003 on the Establishment of Department of Pension Administration; AI No. 13/2004 on the Payments Administration of the Disability Pension Scheme; and AI No. 10/2004 on the Hiring Criteria and Payments of Professional Experts. The HLO of the MLSW pointed out that the work on the remaining AIs would continue. It could be concluded that the

⁴⁸ Promulgated by UNMIK/REG/2003/37.

⁴⁹ Promulgated by UNMIK/REG/2003/33.

⁵⁰ See Section 11.2 of the Law on Occupational Safety, Health and the Working Environment.

⁵¹ Promulgated by UNMIK/REG/2003/35.

⁵² Promulgated by UNMIK/REG/2003/39.

⁵³ Promulgated by UNMIK/REG/2003/40.

aforementioned subsidiary acts set the foundation for the implementation of the Law on Disability Pensions in Kosovo.

Section IV: Findings and Recommendations

A. General Assessment

As a general assessment on the implementation by the executive branch of the PISG of the Kosovo Assembly laws promulgated within the period 2002-2003, the OSCE finds that the process of drafting and the adoption of subsidiary acts has started with certain delay, after which many institutions have managed gradually to overcome the initial difficulties and currently have achieved considerable success in the implementation process. At the same time, most of the ministries were not able to comply with the deadlines envisaged for adoption of subsidiary legislation. One reason for this is the priority given by ministries on preparing new draft laws within their respective fields of activities to be presented to the Assembly, another is the lack of sufficient resources in the legal offices. The process of establishment of institutions envisaged by the promulgated laws has started successfully. These institutions such as the Sanitary Inspectorate, KCA, and Kosovo Forest Agency should strive to achieve uniform practices in the application of the respective laws.

B. Lack of Hierarchy between Normative Acts

UNMIK/REG/2001/19 On the Executive Branch of the PISG specifies only two categories of subsidiary acts that could be issued by the ministers: decisions and administrative instructions.⁵⁴ At the same time many of the laws passed by the Kosovo Assembly within the period 2002-2003 make a reference not only to these two categories of subsidiary acts, but also to rules, implementing rules, regulations, directives, and guidelines.⁵⁵ The MLSW issues, for example, regulations and administrative instructions in the process of the implementation of the primary legislation.

Additionally, some provisions of Kosovo Assembly laws lack precise definitions of the category of the subsidiary act that should regulate the respective subject matter. For example, Section 7 of the Law on the Labour Inspectorate of Kosovo provides that the MLSW “may issue *other legal provisions* in connection with the implementation of this Law”. The Law on Environmental Protection foresees in Section 31.1 that “the Ministry shall *issue provisions* which regulate permitted noise limit levels in the living Environment [...]”.

Several Kosovo Assembly laws make an attempt to introduce a systematical approach towards the issuance of subsidiary acts by including definitions of the categories of subsidiary acts, through which the respective law shall be implemented. For example, Section 2 (s) of the Law on Environmental Protection foresees that “subsidiary normative act” shall mean an

⁵⁴ See Section 1.3 (d) UNMIK/REG/2001/19 On the Executive Branch of the Provisional Institutions of Self-Government.

⁵⁵ For example: Section 3 of the Law on the Methodology for Setting the Level of Basic Pension in Kosovo, and Determining the Commencement Date for Provision of Basic Pensions provides that “the Ministry of Finance and Economy and the Ministry of Labour and Social Welfare may issue decisions, administrative instructions and rules on any matters pertaining to their respective functions attributed to them under this Law and UNMIK/REG/2001/35.” Section 2 of the Law on Spatial Planning contains the following definition: ““Special Act” means an administrative instruction, guideline, directive or administrative decision issued by the Ministry or other respective executive agency identified in this Law”. Section 3 of the Law on Liquidation and Reorganization of Legal Persons in Bankruptcy foresees that “within forty-five days of this law's promulgation, the Government of Kosovo shall issue implementing rules”. Finally, Section 7.1(c) of Law on Forest in Kosovo envisages that “the rights, obligations and responsibilities of the branch offices of the Kosovo Forest Agency in the municipalities shall be regulated with a special regulation issued by the Ministry for Agriculture, Forest and Rural Development”.

administrative direction, administrative instruction or any other act having normative force in Kosovo that has been promulgated by a public authority pursuant to a specific grant of authority provided by a normative act. The text of Section 2 leaves no doubt that this definition shall apply only to the Law on Environmental Protection. Another example can be found in the Law on Liquidation and Reorganization of Legal Persons in Bankruptcy, which uses the term “implementing rules”.⁵⁶ According to Section 2 of the Law “implementing rules” mean rules, issued by the Government, to establish bankruptcy procedures under this Law and to facilitate the implementation of this Law.

The topic of the categories of subsidiary acts issued by the executive branch would not be complete without mentioning the acts of the Government as a collective body. Section 1.3 (d) of UNMIK/REG/2001/19 On the Executive Branch of the Provisional Institutions of Self-Government provides that in accordance with policies set by the Government, the ministers issue *decisions* and *administrative instructions* in order to regulate the activities of the Ministry in general or its particular fields of activity. One issue, which has been overlooked in UNMIK Regulation 2001/19, is the categories of subsidiary acts that could be issued by the Government as a collective body. It could be interpreted, based on analogy from Section 1.3 (d) of UNMIK/REG/2001/19, that the Government could issue decisions and administrative instructions. On the other hand, some Kosovo Assembly laws, adopted in the period 2002-2003, develop this interpretation by adding other categories of subsidiary acts. For example, Section 2 (t) of the Law on Environmental Protection provides that “When, by this law the Government has the authority to approve acts, they should be Administrative Directions, Administrative Instructions or other acts that the Government is authorised to issue pursuant to this law, other laws or UNMIK Regulations.” Further, Section 3 of the Law on Liquidation and Reorganization of Legal Persons in Bankruptcy provides that the Government shall issue “implementing rules”.

The aforementioned examples show that the approach to define the categories of subsidiary acts within each law, though helpful for the implementation of an individual law, creates legal uncertainty in applying the whole body of law. The presence of different categories and definitions of subsidiary acts in various laws creates confusion with respect to their hierarchy and uniformity. Among the aforesaid examples there are several provisions that foresee regulations and directions as a category of subsidiary act, issued by the executive branch of the PISG.⁵⁷ This could lead to additional confusion as to the relations between UNMIK Regulations and administrative directions and the regulations and directions of the executive branch of the PISG. Therefore there is a need to address the subject of hierarchy between normative acts in general, including the different categories of subsidiary acts issued by the executive branch of the PISG, as well as to define precisely the social relations, which fall within the regulation of each category of normative acts, in order to ensure the existence of legal certainty.

C. Special Subsidiary Acts

The OSCE is concerned with the frequent use of the term “special” subsidiary act by the Kosovo Assembly. The Law on Forests in Kosovo uses the following terminology: in Article 7.1 (a) “special rules”; in Article 7.1 (c) “special regulation”; in Article 22.1 “special legislation”. Similar provisions could be found in the Sections 4.10, 32.7, and 37.2 of the Law on Libraries, and in the Section 4.5 of the Law on Artificial Fertilizers. A variation of this terminology is the use of the term “specific rules” in Article 10.4 of the Law on Telecommunications.

⁵⁶ See Section 2 of the Law on Liquidation and Reorganization of Legal Persons in Bankruptcy. Note that the Albanian text of this provision uses the term “Rregullat e përmbarimit” and the Serbian version uses the term “Правила извршења”.

⁵⁷ See for example Section 7.1(c) of the Law on Forest in Kosovo and Section 2 of the Law on Spatial Planning.

All of the abovementioned laws use terminology which could lead to misunderstanding regarding the nature of the acts in question. Other laws adopt a different approach. For example, Article 2 of the Law on Spatial Planning contains the following definition: “Special Act” means an administrative instruction, guideline, directive or administrative decision issued by the Ministry or other respective executive agency identified in this Law. Subsequently, Article 2 (t) of the Law on Environmental Protection contains also a detailed definition of the term “specific act”.

However, even the inclusion of a precise definition of a “special act” cannot justify the creation of this new legal terminology. When reading carefully the definition of a “special act” in Article 2 of the Law on Spatial Planning it is difficult to establish what the difference is, if any, between an administrative instruction issued as a special act, under this Law, and an administrative instruction issued for the implementation of another Kosovo Assembly law. Further, none of the laws provide explanation what is exactly the special or specific nature of the subsidiary acts issued thereunder. The lack of criteria explicitly establishing the objective of the special subsidiary acts, and as consequence the deviation from uniformity among the subsidiary acts of the PISG, raises concerns that this practice could lead to creation of legal uncertainty. Therefore, the OSCE recommends to the Kosovo Assembly to harmonize the use of terminology referring to subsidiary legislation in the Assembly laws.

D. Lack of Publication of Normative Acts

The process of publication of subsidiary acts by the PISG is at an unsatisfactory level. The institutions from the executive branch have not undertaken the necessary measures to ensure that the inhabitants of Kosovo are informed about the subsidiary legislation adopted by them through publication of those acts. A notable exception is the MAFRD which has published a compilation of the primary and subsidiary legislation relevant to its activities in the Albanian, English, and Serbian languages and is maintaining an updated webpage with information on its mandate and adopted legislation.

The expected promulgation of the Law 2004/46 on the Official Gazette of Kosovo would help to overcome the substantial backlog of subsidiary acts that have not been published. This Law would also address the long outstanding issue of publication of Assembly laws.⁵⁸ Section 5 of this Law stipulates that the Government shall create the Office for Administration of the Official Gazette of Kosovo. The OSCE recommends to the executive branch to undertake without delay all steps to ensure the publication and dissemination of the adopted subsidiary legislation.

E. Legal Offices within the Executive Branch

The legal offices in the ministries face many challenges. Currently it is not unusual for legal offices with only 3-5 staff members to be confronted with tasks that require more capacity. Thus, it cannot be avoided that subsidiary acts are drafted in some cases even after one year from the expiration of the envisaged deadline. Therefore, it is recommended that before adoption of laws that require specialized expertise for their implementation, a feasibility study is performed by the responsible legal office to determine to what extent the institutions in Kosovo are able to contribute to the implementation of such laws. Also additional training of the administration responsible for applying the provisions of such laws should take place. These measures could ensure the timely and effective implementation of laws.

⁵⁸ The Law establishes the Official Gazette of Kosovo as the official publication of the PISG, in which official documents of the PISG shall be published. Section 2 of the Law envisages the publishing of the following documents: laws adopted by the Kosovo Assembly and promulgated by the SRS; resolutions adopted by the Kosovo Assembly; secondary and other legislation issued by the Government and Ministers; and agreements of international character.

Finally, the donor community could also play an important role in the implementation process by providing the needed expertise in advance. It is highly desirable that in cases where laws are sponsored by the donor community, legal assistance is presented in one package, which includes assistance in the preparation of draft subsidiary legislation in addition to draft laws.

F. Recommendations

To address the concerns related to the process of implementation of Kosovo Assembly laws by the executive branch of the PISG, the OSCE makes the following recommendations.

- An oversight mechanism for the implementation of Kosovo Assembly laws should be established within the OPM with an administrative instruction issued by the Government. Focal points should be designated in each institution within the executive branch. After the promulgation of a Kosovo Assembly law, the legal office of the implementing institution should identify the subsidiary acts to be issued and prepare a timetable/matrix for the accomplishment of this task. This information should be then submitted to the OPM within a month after the law is promulgated. The legal office of the implementing institution should issue a quarterly report to the OPM on the progress of implementation of the primary legislation within its respective field of activities.
- The Kosovo Assembly should consider establishing periodic parliamentary oversight over the activities of the executive branch to ensure increased governmental accountability in the field of implementation of Assembly laws. The OPM should issue an annual report to the Assembly on the implementation process of primary legislation as part of this oversight.
- The Government should draft and the Kosovo Assembly should pass a Law on Normative Acts. The law should define the types and hierarchy of normative acts in Kosovo and the sphere of social relations regulated by them.
- The capacity of the legal offices within the executive branch should be strengthened. This could take the form of increasing the number of staff members employed in the legal offices, as well as providing additional training in their respective fields.
- The legal offices at the various ministries should adopt in their work a more balanced approach, where the implementation of laws, already in force, receives a similar priority as the drafting of new legislation.
- The international community should continue to support the PISG in preparing draft laws, as necessary. Such assistance should not, however, stop once a law is approved by the Assembly, but should continue through the implementation stage.
- The institutions of the executive branch should take intermediate actions, pending the promulgation of the Law on Official Gazette of Kosovo, to publish and make available to the public their respective subsidiary acts.
- The institutions in Kosovo should comply with the provisions of the Law on Access to Official Documents. This Law has special importance because it enables inhabitants of Kosovo to participate more closely in the decision making process of public institutions and guarantees that public institutions enjoy greater legitimacy and transparency. The proper implementation of this law could ensure the accountability of the public institutions and provide access to their subsidiary legislation.

- UNMIK should establish a monitoring mechanism to determine the extent to which the competencies it transfers to the PISG are being properly assumed. The outcomes of this oversight mechanism could be used to estimate what other capacity building measures might be beneficial for the PISG.

Annex A: Kosovo Assembly Laws

- UNMIK Regulation No. 2002/15 On the Promulgation of a Law adopted by the Assembly of Kosovo on the Methodology for Setting the Level of Basic Pension in Kosovo, and Determining the Commencement Date for Provision of Basic Pensions (Law No. 2002/1)
- UNMIK Regulation No. 2002/19 On the Promulgating of a Law Adopted by the Assembly of Kosovo on Primary and Secondary Education in Kosovo (Law No. 2002/2)
- UNMIK Regulation No. 2002/22 On the Promulgation of the Law Adopted by the Assembly of Kosovo on the Establishment of an Immovable Property Rights Register (Law No. 2002/5)
- UNMIK Regulation No. 2003/4 On the Promulgation of the Law adopted by the Assembly of Kosovo on the Labour Inspectorate of Kosovo (Law No. 2002/09)
- UNMIK Regulation No. 2003/6 On the Promulgation of the Law Adopted by the Assembly of Kosovo on Forest in Kosovo (Law No. 2003/3)
- UNMIK Regulation No. 2003/7 On the Promulgation of a Law Adopted by the Assembly of Kosovo on Liquidation and Reorganization of Legal Persons in Bankruptcy (Law No. 2003/4)
- UNMIK Regulation No. 2003/09 On the Promulgation of the Law adopted by the Assembly of Kosovo on the Environmental Protection (Law No. 2002/8)
- UNMIK Regulation No. 2003/14 On the Promulgation of a Law adopted by the Assembly of Kosovo On the Higher Education in Kosovo (Law No. 2002/3)
- UNMIK Regulation No. 2003/15 On the Promulgation of a Law adopted by the Assembly of Kosovo on External Trade Activity (Law No. 2002/6)
- UNMIK Regulation No.2003/16 On the Promulgation of a Law adopted by the Assembly of Kosovo on Telecommunications (Law No. 2002/7)
- UNMIK Regulation No. 2003/17 On the Promulgation of a Law adopted by the Assembly of Kosovo on Public Financial Management and Accountability (Law. No. 2003/2)
- UNMIK Regulation No. 2003/19 On the Promulgation of a Law Adopted by the Assembly of Kosovo on Libraries (Law No. 2003/6)
- UNMIK Regulation No. 2003/20 On the Promulgation of a Law Adopted by the Assembly of Kosovo on Archive Material and Archives (Law No. 2003/7)
- UNMIK Regulation No. 2003/21 On the Promulgation of a Law Adopted by the Assembly of Kosovo on Farmers Cooperatives (Law No. 2003/9)
- UNMIK Regulation No. 2003/22 On the Promulgation of the Law adopted by the Assembly of Kosovo on Artificial Fertilizers (Law No. 2003/10)

- UNMIK Regulation No. 2003/24 On the Promulgation of the Law adopted by the Assembly of Kosovo on Roads (Law No. 2003/11)
- UNMIK Regulation No. 2003/28 On the Promulgation of a Law adopted by the Assembly of Kosovo On the Social Assistance Scheme (Law No. 2003/15)
- UNMIK Regulation No. 2003/30 On the Promulgation of a Law adopted by the Assembly of Kosovo On Spatial Planning (Law No. 2003/14)
- UNMIK Regulation No. 2003/32 On the Promulgation of the Law Adopted by the Assembly of Kosovo on Access to Official Documents (Law No. 2003/12)
- UNMIK Regulation No. 2003/33 On the Promulgation of the Law Adopted by the Assembly of Kosovo on Occupational Safety, Health and the Working Environment (Law No. 2003/19)
- UNMIK Regulation No. 2003/35 On the Promulgation of the Law Adopted by the Assembly of Kosovo on Pesticides (Law No. 2003/20)
- UNMIK Regulation No 2003/37 On the Promulgation of the Law on Postal Services Adopted by the Assembly of Kosovo (Law No. 2003/18)
- UNMIK Regulation No 2003/39 On the Promulgation of the Law on the Sanitary Inspectorate of Kosovo Adopted by the Assembly of Kosovo (Law No. 2003/22)
- UNMIK Regulation No. 2003/40 On the Promulgation of the Law on Disability Pensions in Kosovo adopted by the Assembly of Kosovo (Law No. 2003/23)

Annex B: Sample from the Table on the Implementation of Kosovo Assembly Laws

- Regulation No. 2003/21 On the Promulgation of a Law Adopted by the Assembly of Kosovo on Farmers Cooperatives (Law No. 2003/9)

Subsidiary legislation required	Result
Registration Section 2.3 The Ministry shall issue administrative instructions specifying the format and content of Statutes to be used by a Cooperative.	<ul style="list-style-type: none"> • Administrative Instruction No. 6/2004 On the Format and Content of the Statutes and Registration Requirements for Farmers' Cooperatives.
Administrative Instructions Section 22.1 The Ministry shall have the power to promulgate administrative instructions for the implementation of this Law.	<ul style="list-style-type: none"> • Administrative Instruction No. 9/2004 On the Management and Voting Procedures in the Farmers Cooperatives. • Administrative Instruction No. 10/2004 On the Federation of the Farmers Cooperatives of Kosovo.

- Regulation No. 2003/33 On the Promulgation of the Law Adopted by the Assembly of Kosovo on Occupational Safety, Health and the Working Environment (Law No. 2003/19)

Subsidiary legislation required	Result
Electrical hazards. Section 11.2 Measures for occupational safety, health and working environment against electric power shall be defined by secondary legislation on the basis of this law.	<ul style="list-style-type: none"> • Draft
Section 16. MLSW and other competent authorities in fields of occupational safety, health and working environment, shall issue regulations and other sub-legal acts.	<ul style="list-style-type: none"> • Regulation 1/2004 on Sanitary and Technical Security Measures at Work. • Regulation 2/2004 on the Evaluation of the Dangers in the Working Environment.

- Regulation No. 2002/22 On the Promulgation of the Law Adopted by the Assembly of Kosovo on the Establishment of an Immovable Property Rights Register (Law No. 2002/5)

Subsidiary legislation required	Result
Section 1.2 The Kosovo Cadastral Agency (hereinafter the "KCA") shall have the authority for the overall administration of the Register in compliance with the provisions of the Applicable Law. The Municipal Cadastral Offices (hereinafter the "MCO") shall record immovable property rights in the register under the authority of the KCA and in compliance with the provisions of the	<ul style="list-style-type: none"> • Administrative Instruction No. 3/2004 On the Implementation of the Law on the Establishment of an Immovable Property Rights Register

present law and administrative guidelines issued by the KCA.	
Section 1.3 KCA shall determine the level of fees to be charged by the MCO's for the services of registration of immovable property rights	<ul style="list-style-type: none"> • Draft
Section 8 Implementation The Ministry of Public Services will issue Administrative Instructions on the application of this Law.	<ul style="list-style-type: none"> • See above