

**EUROPEAN
INVESTORS
COUNCIL**

White Book 2020

#WeCreateJobs

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White
Book 2020

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List of Acronyms

CBK	Central Bank of Kosovo
CEFTA	Central European Free Trade Agreement
EBRD	European Bank for Reconstruction and Development
EIC	European Investors Council
EUO	European Union Office in Kosovo
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
IMF	International Monetary Fund
MEE	Ministry of Economy and Environment
MF	Ministry of Finance
MH	Ministry of Health
MTI	Ministry of Trade and Industry
MVNO	Mobile Virtual Network Operator
RAEPC	Regulatory Authority of Electronic and Postal Communications
SAA	Stabilization Association Agreement
TAK	Tax Agency of Kosovo
WB	World Bank

Foreword

It is my pleasure to introduce, the White Book 2020 edition published by the European Investors Council. The European Investors Council (EIC), is the main business association representing European Union and EFTA firms in Kosovo, to create more jobs in Kosovo. The main objective of EIC is to make Kosovo a more attractive place to do business while supporting business reforms in line with EU directives and best business practices, which lead to job creation and economic growth for Kosovo.

Given that the European Union remains Kosovo's main trading partner and its main source of foreign direct investment (FDI), and given that Kosovo aspires toward European Union Integration, EIC is ideally positioned as the main partner and interlocutor between the private and public sectors and the main advocate of business reforms that are much needed in Kosovo.

European firms are united under the EIC umbrella to work together and to create a better business environment in Kosovo. Our presence is very important to the Kosovo's economy since we represent a significant portion of the economy through capital investments, job creation and tax contributions to the state budget. In addition, the presence of such reputable firms brings Kosovo numerous benefits while helping Kosovo to be more integrated and recognized at the European and global level.

It goes without saying that FDI plays a significant role in the overall economic development of Kosovo. However, the attraction of investors is not automatic and is not evenly distributed across countries, therefore national policies that support and incentivize FDI inflow are extremely important for Kosovo. Furthermore, the current investors are the best promoters of new investment.

Adoption of efficient and cost effective legislation will significantly contribute more jobs being created and higher economic growth for Kosovo. Our recommendations in the White Book will lead to a reduction of business costs, reduction of risk and uncertainty, and fair competition in the free market economy. Such business reforms will mean increasing profits to the firms thereby increasing investment inflows, job creation, and more tax revenue for the state budget. In addition, reducing the risks which are produced by a poorly drafted legislation and frequently changing government policies will have an impact on the value of capital and the number of investments in the market. And finally, fair competition in the free market economy stimulates the entry of new businesses and creates positive competitive forces in the free market economy for more capital investments and job creation.

Visar Ramajli

Chairman of the Board

European Investors Council

Objectives of the White Book

With the following main objectives, the White Book aims to stimulate a more investor friendly environment in Kosovo and create more business opportunities:

- I. Improvement of investment and business climate** – improvement of the general investment and business development atmosphere is essential into attracting new foreign investors and new capital;
- II. Rule of law** – fight against corruption, equal law enforcement to all parties and independent judicial system contribute to a transparent business environment and stable economic growth;
- III. Identify business barriers** – help business identify barriers and find possible solutions to overcome them through providing support into creating a business friendly regulatory framework;
- IV. Risk reduction** – poorly drafted legislation and frequently changing government policies lead to an increased risk for businesses, which may lead to decline of direct foreign investments in the market;
- V. Fair competition in a free market economy** – stimulates the entry of new businesses and creates positive competitive forces in the free market economy for more capital investments and job creation;
- VI. Improve legal and tax framework** – higher transparency in legislative procedures and more consistent application of tax regulations are important factors for creating a desirable business environment for foreign investors;
- VII. Establish ground communication** – between foreign investors and Kosovo authorities in order to overcome possible challenges and obstacles that investors may face.

Key messages

- I. Foreign direct investment (FDI) is an integral part of an open and effective international economic system and a major catalyst to development.
- II. Foreign direct investment (FDI) attraction is not automatic and is not evenly distributed across countries, therefore national policies that support and incentivize FDI inflow are extremely important.
- III. Current Investors who have invested their capital in Kosovo are the best ambassadors for future FDI attraction therefore it is very important that the government understands their business barriers and eliminates them in a reasonable time frame.
- IV. Attracting foreign investments and encouraging present investors to develop their business are of crucial importance for the long-term growth of Kosovo's economy.
- V. Most FDI flows in Kosovo originate from EU and EFTA countries and as such the European Investors have much to offer in terms of "European Best Business Practices". The dialogue with these investors is of vital importance to the economic development of Kosovo.
- VI. Government should lead and own the reforms in strong partnership with the Local and Foreign Investors.

Purpose of the White Book

The White Book is a comprehensive guide designed to provide an overview of latest developments and proposals for improvement of the investment climate in Kosovo in order to drive economic development and job creation. The concrete recommendations come directly from current investors and are focused on some respective sectors of the economy. All recommendations presented in the White Book aim to achieve a stronger economic growth and better living standards for citizens. EIC considers that current investors who have invested their capital and currently operate in Kosovo are a very important resource to provide inputs regarding business barriers and how to overcome them. In this regard, the main purpose of the White Book is to contribute to a structured and long lasting dialogue and partnership between the private sector and the Government of Kosovo and other relevant authorities in order to keep track of the recommendations and the improvements that have been taking place in Kosovo.

This is the second edition of the White Book introduced in Kosovo by the European Investors Council. The White Book will be published on regular basis with new issues identified and progress or lack of it being marked in a systematic format for further follow up. The implementation of these recommendations will contribute to an overall economic well-being of Kosovo and the raising of living standard since the businesses will be able to prosper and grow and in return creating more jobs for the citizens of Kosovo and more tax revenues for the budget of Kosovo.

Methodology of the White Book

The White Book is a tool that creates a consensus amongst current investors in Kosovo regarding topics that they find relevant in their respective sectors. The goal is to share and discuss the White Book with the key stakeholders namely the government, the European Union in Kosovo and international financial organizations (IFI's), in order to collectively contribute to the improvement of the investment climate in Kosovo.

The process of drafting the White Book is very complex and credible since it involves real cases directly from the private sector which the investors face on daily basis. Furthermore, these issues and recommendations are discussed among the investors and key stakeholders and approved by the board of directors at EIC in order to ensure that these recommendations do not represent individual interests of one firm but rather they reflect the opinion of the entire respective sectors and are in line with European best business practices.

This approach or methodology of writing the White Book gives it precisely its credibility in representing the key barriers and solutions for a better investment climate in Kosovo.

Furthermore, the publication of the White Book will be public and will be discussed at the high level conference in order to clarify even further the positions of all stakeholders and to produce a commitment and a follow up process which will ensure the implementation, at a timely manner, of such valuable recommendations.

The White Book represents the following functions:

- *Comprehensive assessment of the current legislative framework in a number of sectors*
- *A tool to track developments in regulatory framework*
- *Draws attention to the issues to be addressed*
- *Sets practical recommendations for the improvement of business climate*
- *Quantifies progress through measurements of “progress card” in each sector*
- *Supports further economic convergence and EU integration*

Investment Climate in Kosovo

Overview

Kosovo is Europe's youngest country having declared its independence on February 17, 2008. Kosovo is a potential candidate for EU membership and has signed the Stabilization Association Agreement (SAA) with the European Union in 2015, which entered into force on April 2016, opening a new phase in the EU-Kosovo relationship. The agreement maps out a framework for political and economic dialogue and cooperation in several key areas and sectors in which the country is obliged to meet European standards.

The COVID-19 pandemic is a global shock that has not spared the Western Balkans. It represents an unprecedented burden on their economy and health systems. The final extent of its footprint in terms of loss of human lives and damage to the economies is still difficult to assess, but early estimates foresee a drop of between 4 and 6% of Gross Domestic Product in the region. Thousands of citizens are at risk of losing their jobs, and temporary government support measures (unemployment benefits, deferrals/waivers to tax and social security contributions, etc.) have an important fiscal impact.

In Doing Business 2020 Report Kosovo is ranked 57th out of 190 countries, whereas in 2018 Kosovo was ranks 40th. There is small decrease in the Doing Business scoring rate for Kosovo, however, the main reason for Kosovo's fall is that other countries managed to perform better during the past two years. In 2020 Kosovo ranked 12th on starting a business, 15th on getting credit, 37th on registering property, 48th on paying taxes, 31st on trading across borders, 53rd on enforcing contracts, 48th in resolving insolvency, 160th on dealing with construction permits, 128th on protecting minority investors, and 90th on getting electricity.

According to the "Index on Economic Freedom" published by the Heritage Foundation and the Wall Street Journal, Kosovo's economic freedom score is 67.4, making its economy the 53rd freest in the 2020 Index. Its overall score has increased by 0.4 point due to an improvement in the score for property rights. Kosovo is ranked 28th among 45 countries in the Europe region, and its overall score is slightly below the regional average and well above the world average. Kosovo's economy has been climbing in the ranks of the moderately free since the beginning of its Index grading in 2016. GDP growth has likewise been healthy during that period. Although Kosovo's economy continues to progress, economic freedom is still stymied by a lack of economic reforms and private-sector investment that has left unemployment too high and living standards too low. The economy is characterized by extremely limited regional and global economic integration, political instability, corruption, unreliable energy supply, a large informal economy, unresolved property disputes, and a tenuous rule of law. Improvements in economic freedom will depend on the extent to which these problems can be successfully addressed.

Kosovo has continuously outperformed its neighboring countries in economic growth during the past years. Even during 2020 when facing a global pandemic situation, Kosovo is expected to have relatively a softer decrease of annual GDP growth rate according to the International Monetary Fund (IMF) estimates.¹

Despite the fact that the economic growth was stable during the past decade, Kosovo's economy still remains challenged with high level of unemployment at around 26% and even much higher unemployment rate among the youth (49%) due to its low starting position post 1999. Kosovo's Nominal GDP Per Capita is forecasted to be 3,489.16 EUR in December 2020 as reported by International Monetary Fund. It records an increase from the last reported number of 3,731.18 EUR in December 2019. Looking ahead, Kosovo's Nominal GDP Per Capita is projected to stand at 4,925.38 EUR in December 2025.²

When it comes to trade policy, in April 2020, the tariffs were lifted and replaced by gradual trade reciprocity measures, which were subsequently abolished by the new government in June. The positive contribution of trade in services has partly offset Kosovo's trade deficit, but the increasing trade deficit in goods is a matter of concern. Kosovo has not been able to make full use of the trade preferences of the Stabilisation and Association Agreement (SAA) with the EU. The overall volume of trade with the EU increased by 25% in 2019 and reached EUR 1.4 billion. Over the last 10 years, bilateral trade has grown considerably (by 111%) and the EU remains Kosovo's first trading partner, accounting for 47.5% of total trade (33% of total exports and 49% of total imports of goods). Although the overall trade balance is strongly in favour of the EU (reaching a surplus of EUR 1.15 billion in 2019), Kosovo's exports to the EU – though modest in absolute terms – increased by 34% in 2019, i.e. at a faster rate than imports from the EU. However, a clear strategy and measures to improve its deficit on goods is lacking. It remains essential that Kosovo focuses on strengthening competitiveness and improving opportunities for Kosovo producers and exporters by making full use of trade preferences granted under the SAA.³

Foreign Direct Investment (FDI) has been in relative decline since 2015 when it reached €338 million while the structure of FDI stock is primarily focused on real estate and renting. The Foreign Investors operating in Kosovo face significant deficiencies in the business environment, which call for immediate action.⁴

¹ <http://www.imf.org/en/Countries/UVK>

² See <https://www.ceicdata.com/en/indicator/kosovo/forecast-nominal-gdp-per-capita>

³ See: Kosovo 2020 Report – European Commission https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

⁴ See recommendation from EIC members in White Book 2020, www.eic-kos.eu

The COVID-19 pandemic is unlikely to lead to significant permanent changes in investment policies. As of April 2020, the government had enacted several emergency relief measures that did not require legislative changes. These measures are all temporary and focused on maintaining employment levels and helping businesses maintain liquidity. As such, they do not affect the broader investment policy environment.

As such, they do not affect the broader investment policy environment. The government also announced a package of economic recovery measures, but as of April 2020, it was still working on finalizing the package including adoption of the Law on Economic Recovery.

Many international financial institutions have forecasted economic growth rates in Kosovo to fall from a pre-pandemic projection of four percent positive growth to a post-pandemic contraction of up to five percent. This includes the IMF (-5 percent), World Bank (-4.5 percent) and European Bank for Reconstruction and Development (-4.5 percent).

Kosovo economy dependency on internal demand and foreign Remittances

Kosovo, has a very high trade deficit. In recent years Kosovo has experienced a large increase in export of services and as a result has a positive trade balance in the services sector with positive coverage. This is obviously a positive development and has provided employment opportunity to Kosovars in IT, Call Centers, and similar businesses.

However, the negative balance in the balance of goods is still very significant and has only 11% coverage. The overall GDP of the country is reduced significantly due to large net negative trade balance of exports which show only 50.7% coverage.

Therefore the Government must engage further in proactive and policy driven activity to encourage economic development, with the aim to convert the current model which is based on internal demand, to an economic model which is export driven supplementing the current internal demand economy and government capital investments as key drivers of the economic output of Kosovo.

The Government must encourage positive legal and economic climate, for local and foreign investors in order to increase its attractiveness as an investment hub for the goods production and therefore further reduce the negative goods trade balance of exports of Kosovo.

Telecommunication sector

Progress card - outstanding recommendations

No.	Recommendation	Introduced in the WB	No progress	Some progress	Significant progress
1	Decrease of annual regulatory fees for usage of frequencies	2018	x		
2	Implementation of procurement law on telecommunication market	2018	x		
3	The Competition Authority should review the operator's complaint and the terms of contracts and service in the market situation	2018	x		
4	Fight against illegal operators and copyright issues on fixed market	2018	x		
5	Removal of illegal taxation by municipalities and hindrances for expanding mobile network	2018	x		

Key elements of the telecom sector

The Regulatory Authority of Electronic and Postal Communications (RAEPC) reported the total number of fixed Broadband internet users (Q3, 2019 with 352,659) and mobile internet 3G/4G users (Q3, 2019 with 1.29 million user), representing 118.7 percent penetration rate on fixed broadband internet and 71.6 percent penetration rate on mobile internet.

Fixed market in Kosovo has grown a lot, especially from 2014 as it can be seen from regulatory data, and it has reached over 100% of households in 2019. Three main companies offer fixed services in Kosovo market such as: IPKO, Kujtesa, and Artmotion which covers over 75% with its fixed service Kosovo's market, while IPKO and Telekom of Kosova (Vala) provide mobile internet (3G and 4G) service. The mobile telecoms market in Kosovo is mainly ruled by two mobile network operators (Vala and IPKO). A third operator MTS entered the market in December 2016 with limited and temporary license as local subsidiary of Telekom Serbia. In addition, before July 2019 there were two MVNOs, Z-Mobile operating on Vala's network, and D3 operating on IPKO's network. Zmobile as of July 2019 is not anymore operational since Telecom of Kosovo officially terminated the contract with Z Mobile. In the past 5 years the mobile market in Kosovo has shrunk by almost 23.7%, with revenues falling from EUR 141.5 million in 2014 to less than EUR 108.0 million in 2018. Kosovo's telecommunications services are one of the least expensive in the region and have similar quality voice services in comparison with other providers in the region. RAEPC data indicates mobile telephony penetration in Kosovo is over 115.7 percent (Q3, 2019), covering over 100 percent of inhabited places and 94 percent of Kosovo's territory.

Key elements of the telecom sector

Kosovo has obtained new country code (+383) in 2017. While IPKO has completed all phase of implementation of the country code and migration of all IPKO mobile phone users was done on June 1st, 2019, the state owned operator, on the other side, has failed to finish this process even today.

On the other side, the sector of digital television services is regulated by the Independent Media Commission, which, so far has licensed around 37 network operators that distribute digital television services in Kosovo. While it has started to work on documents long time ago, the Independent Media Commission (IMC) has not yet initiated the transition of TV broadcasting from analog to digital. Such transition would open the door to new opportunities, but it doesn't seem to be happening in the near future.

Opportunities

Mobile network operators are committed to improving their 4G services so there will be opportunities for provision of related infrastructure while starting to assess opportunities for 5G in the near future.

It should also be reported that RAEPC, after constant pressure from the operators has finally, in 2019, evaluated the frequency spectrum and thus decreased the prices for acquiring such spectrum. While the authorization for usage of 1800MHz and 900 MHz have been extended for additional period of 20 years, operators, in order to provide better services in existing and future technologies will need more resources, therefore, the decrease of prices was needed for a normal function of telecommunication sector.

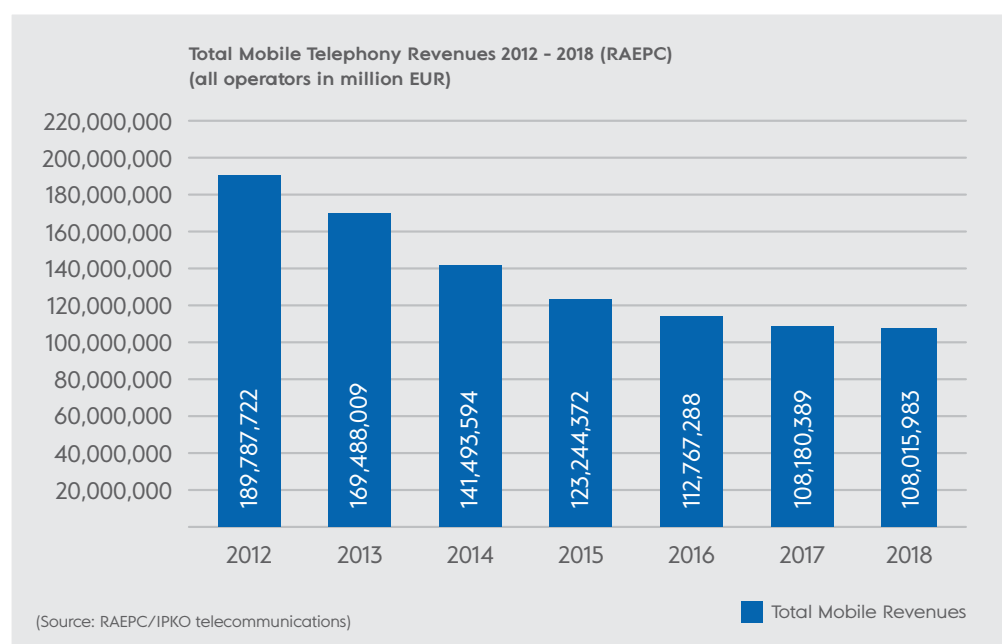
Challenges

Telecommunication market in Kosovo is becoming even more challenging and trends are changing. The major recent changes on the market occurred on the fix segment where competitors became extremely competitive (introducing new packages with very cheap prices, higher speed, enriching TV content including sport events), furthermore, penetration of small ISPs and illegal operators which lead to direct pressure on pricing strategy. The fixed market is mainly prepaid and with constant problems of copyright breaches on the broadcasting rights. There is infrastructure competition with many operators since they can easily spread infrastructure on power distribution poles. Smaller operators and lately many illegal OTT IPTV providers are delivering online channels without any copyrights for retransmission. Regulatory authority (Independent Media Commission) is not playing its role on fighting such illegal operations, while prosecution and investigators request material proofs which cannot always be obtained in such cases. In addition to above, there are regulatory hindrances from the part of IMC, which are making the operation in the market even more difficult (change of must carry obligation by IMC, explained further in the next section).

At the same time, on mobile part, Western Balkan & Albania roaming agreements, high penetration of WiFi networks and the use of free WiFi, Viber and other OTT applications for telephony and messaging is in higher level than in other markets, leading decline in terms of the revenues. The mobile market is predominantly prepaid (90 percent) and has been severely affected by a very high adoption of free online applications as well as the widely available free WiFi access. All these factors have contributed to a very substantial decrease in voice and SMS services in international and national traffic, while the take up of mobile data is by contrast proceeding very slowly. While operators need to invest in mobile data in order to keep up with the market developments, they continuously face market challenges described above and also regulatory challenges. Main regulatory challenges are excessive annual regulatory fees for usage of frequencies, numbering and supervision of the market imposed by RAEPC, wrong interpretation of Law on Public Procurement by PPRC, difficulties with permits to roll out the network, bizarre and illegal municipal taxes, etc. (explained in details in the next section, together with recommendations on market improvements).

In general, Kosovo mobile market is under huge pressure because operator's revenues have decreased for 36% from 2013 to 2018. According to RAPEC reports, overall mobile revenues in 2018 decreased to as low as 108 million euros.⁵

Table 1: *Kosovo mobile revenue (in million Euro)*



Main issues identified

⁵ <http://www.arkep-rks.org/?cid=1,162>

- **Excessively high regulatory costs excessive annual regulatory fees**

While RAEPC has evaluated and thus decreased the price for frequency spectrum in 2019, which was essential for normal functioning of the market, the annual fees for usage of the same frequencies, also annual fee for usage of numbering and the one for supervision of the market remain very high. When comparing with EU and regional countries, Kosovo remains as one of the countries with highest annual regulatory fees, as annual spectrum costs represent 15.5% of operators' mobile revenue, which is three times higher than the average for all international markets (4.4%). Effective spectrum pricing policy must balance a number of competing objectives, as this directly impacts operator's returns on investments, distorting investment decisions, and also imposes financial constraints on operators. Therefore, we consider that such enormous annual regulatory cost can reduce network investment and lead to higher consumer prices. A decrease of such regulatory fees for 73% is requested in October 2019, however, so far no decision was made on this regard. Moreover, the invoice for 2020 was issued with old/existing prices.

- **Proper implementation of procurement law in the telecommunication sector**

The relevant institutions responsible for public procurement in Kosovo, namely, Public Procurement Regulatory Commission (PPRC) and Procurement Review Body (PRB) are considering Telekom of Kosovo as public authority or administration and not as publicly owned company, which it is. Such interpretation from both these institutions came as a result of a legal opinion on application of article 9.4 of the LPP, which foresees that if a service is available from another public authority, the public authority intending to buy such good or service should make sure that such service or goods are not available from another public authority. By this interpretation, Kosovo Telekom is defined as public authority. Such definition was adopted by PPRC in 2016, and since 2017 it is being applied also by PRB, therefore allowing the direct granting of all state institutions' contracts' to Telecom Kosovo without using open tender procedures. Based on above interpretation, State institutions can directly grant contracts for telecommunication services to Kosovo Telekom without open tender procedures. Based on this interpretation, private operators are now not able to compete on the large market of state institutions, losing some clients (municipalities, ministries) which in the past had conducted tenders and granted contracts to private operators.

While the interpretation explained above has resulted in serious distortion of the competition, private telecom operators have initiated cases in front of Competition Authority in 2017 and are expecting the decision on this matter. In addition to that, all decisions of the PRB were sent to relevant courts and in two cases the court established that there was breach of Law on Public Procurement. However, courts are acting very slowly while private operators are being damaged heavily, for a period of 4 years now.

- **Discrimination in implementation of the country code by mobile operators**

IPKO and Kosovo Telecom have started the process of migration to new country code +383 in accordance with the Decision **No. 935**, dated 23.02.2017, which determined the date 01 June 2018, as the deadline for implementation of the new code +383 and termination of the codes (+386 and 381) for receiving calls and 31 December 2018 as the deadline for full implementation of the MCC code: 221. Consequently, mobile and fix telephony operators as of March 2017 have opened range 383 for national, on-net and off-net calls between operators, and as well as for international calls.

However, based on the operators' request, RAEPC has several times postponed the date of implementation, by finally deciding, with the Decision No. 1263, dated 02.11.2018, to extend the deadline for implementation of E.164: +383 until 15 January 2019, by warning operators that in case of not meeting this deadline, the monetary sanction in the amount of € 10,000 (ten thousand euros) on monthly basis, until full implementation of code 383 and termination of previous codes. On 19.12.2018 RAEPC took decision by which it has set 30 September 2019 as the latest date of full implementation of the codes E 164:221 and Q. 708 (ISPC designated by RAEPC).

Since IPKO could not complete the implementation of code E.164:+383 as obliged by RAEPC's Decision No. 1263 (which was 15 January 2019), leaving out of implementation of an insignificant element, that did not have any significant importance in the whole process, IPKO was charged with payment of the economic sanction, in the amount of € 10,000.00 (ten thousand euro), which was paid on monthly basis, from February 2019 to June 2019, in the total amount of € 50,000.00 (fifty thousand euro). During the period that IPKO has been paying the sanction, it has been working hard to implement RAEPC decision **No. 1281**, which set 30 September 2019 as the latest date of implementation of the codes E 164:221 and Q. 708, meaning the full implementation of country code +383. This means that during this period IPKO has been going under declines in income/material loss consisting of lost profit, as consequence of not completing all testing and launching services with operators that generate most of the revenue in IPKO network.

On the other hand, there was being nothing done by Kosovo Telecom, therefore RAEPC on 16.12.2019 took the decision to postpone the deadline of implementation of Country Code by Kosovo Telecom until 31.03.2020. In case of non-compliance with this decision, then RAEPC will apply a symbolic economic sanction in the amount of € 5,000 on monthly basis, until the implementation of code is done. Nevertheless the same decision was appealed by Kosovo Telecom as the same do not possess the signature of Board Director of RAEPC, as foreseen by Law on Electronic Communication in Kosovo.

- **Change of must carry obligation from IMC**

The must carry obligation is regulated by IMC, via its Regulation no. 2016/01 for distribution of audio and audiovisual media services. The same regulation foresees the must carry obligation, based on which, operators are obliged to include on their platforms all licensed televisions that have the status of must carry channel, the list of which is integral part of the same regulation. Based on this Regulation, all cable operators in Kosovo carry around 24 channels which have the status of must carry, without any compensation for any of the parties.

On 24 June 2019, IMC issued Decision Ref 1906/783/ IMC/mf, with the aim of changing the Regulation No. IMC 2016/01, in such way that all televisions that do not transmit through terrestrial license (cable televisions), are exempted from the must carry list, justifying that the rule of must carry obligations made an unequal and discriminatory position to the same televisions, preventing them from regulating the contractual relationship with the operators. By trying to amend a regulation via a decision, the IMC made an illegal precedent, against which operators have complained and requested from IMC to revoke the decision Acknowledging the breach, accordingly to which on 25 July 2019, IMC revoked the Decision dated 24 June 2019.

Nevertheless, IMC on 04.02.2020 has started the public consultation for the regulation, namely the obligation for must carry, has been changed by releasing from the obligation of must carry, cable televisions, and give them the power of negotiation with operators, which can also lead in them removing their channels from platforms, and providing exclusive rights to one cable operator, as some of these cable televisions are owned by businesses that are directly linked with one cable operators which grew substantially in last year and one of the national TV which also grew literally from zero with the help of the cable operators which has the same owner, therefore we consider that there is a potential threat that this TV could be monopolized for only one operator, which clearly represents a potential attempt of audiovisual media providers to intervene in the cable television market, by directly damaging licensed operators, and also market development as a whole.

- **Illegal operators and copyright issues on fixed market**

There are many illegal operators providing IPTV services (hundreds of channels) without any copyrights for Kosovo and without any intervention from the media regulator (IMC).

For almost 10 years now, dozens of complaints have been field at IMC and court, without any result. It has also initiated criminal charges against individuals conducting such illegal activities, and also against board members of the IMC (for abuse of their position) however, no specific results so far, cases are still pending for years.

- **Illegal taxation by municipalities and hindrances for expanding mobile network**

As per Law No. 03/L-040 on Local Self Government, Municipalities decide on their own Regulations on taxes, tariffs and payments. Such Regulation is only approved by the Ministry of Finance prior to its adoption, and it is not checked by any other relevant ministry or authority that also deals with and/or regulates electronic communications services. This has resulted in not having a unique taxing system for all Municipalities of Kosovo, but each Municipality has its own taxing system for different activities within their territory. Most of the taxes applied are illegal, however since there is no monitoring system by any central authority, they still keep applying them.

Some of the illegal taxes applied are: Tax on Immovable property (even though there is a decision of Supreme Court and the Law on Electronic Communications explicitly excludes telecommunication network as taxable); tax for lease of GSM antennas even in cases when located in private lands: annual tax on laying the infrastructure, tax on business activity (even though Kosovan authority regularly report that they have abolished the annual business license fee, while the Municipalities have only changed its naming), and similar.

In addition to above, mobile operators face huge obstacles when expanding its network. Few municipalities have requested consents for non-ionizing radiation for GSM sites, even though such request is not foreseen by the Administrative Instruction no.01/2017 for Municipal Environment Permits. This has caused long delays of the process and additional costs for operators.

Recommendations for market improvement

- **Decrease of annual fees for usage of frequencies, numbering and annual supervision fee imposed by RAEPC**

Annual regulatory fees should be decreased for at least 73 percent. That would enable a more stabilized market conditions for operators to operate in mobile market, especially taking into account the losses in revenue, specified above.

- **Lack of implementation of procurement law on telecommunication market**

PPRC should revise their interpretation of the Law on Public Procurement and all public institutions should start immediately to open tenders for telecommunication services in order to mitigate the loss of the private sector. In meanwhile, the Law, which is in process of being amended, should be done as fast as possible and in clearest way possible in

Recommendations for market improvement

order to avoid such discrimination and damage of private sector. In addition, the Competition Authority should react faster on operators' complaints, since the cases are pending since 2017.

- **No amendment of the must carry obligation**

Based on the fact that so far, the must carry obligation has been fairly regulated by Regulation 2016/01, and there were no issues arising from the same, i.e. all audiovisual media service providers (television) and operators have been equally treated by the same, and as such they have cooperated under the same regulation, we request from IMC to reconsider the Decision amending the Regulation, and the must carry obligation remain regulated as per the Regulation in force.

- **Imposition of same regulatory measures toward incumbent operator on implementation of mobile country code**

Same sanction should be appropriate with the last taking into the account the importance of this project for our state and also to avoid further discrimination and damaging IPKO as we consider that the sentence imposed on Kosovo Telecom is very low considering also the fact that they have not been subject to any requirements from decisions regarding the deadlines set by RAEPC for the country code and continue to fail to implement the same.

- **Illegal operators and copyright issues on fixed market**

IMC, as regulator of audiovisual market, is expected to finally take this situation seriously and address the same by engaging all relevant authorities such as police, prosecution and court.

- **Illegal taxation by municipalities and hindrances for expanding mobile network**

A unique and lawful taxing system should be adopted by all municipalities, avoiding all illegal and unnecessary taxes. The relevant ministries should all cooperate in order to create such unique system. There should be no request that are not foreseen in applicable laws and regulations related to putting mobile antennas.

Banking sector

Progress card - outstanding recommendations

No.	Recommendation	Introduced in the WB	No progress	Some progress	Significant progress
6	Hire more legal officers for different levels of the courts within the justice system, which will help judges to handle the large number of cases. Also, financial sector legal cases should be treated with priority due to direct impact on the economy as a whole.	2018		x	
7	Close remaining gaps in regulation regarding write offs.	2018		x	
8	Bring Kosovo's cadaster system into line with international standards.	2018	x		
9	Respective institutions should fight grey economy, therefore more money will be available for the banking sector which afterwards can be invested	2018	x		
10	Drafting a law which will clearly define the use of electronic signature would help businesses to sign long-distance contracts and speed-up processes.	2018			x
11	The Ministry of Environment and Spatial Planning should define the ownership title of the property owners all over Kosovo.	2018	x		
12	Develop dedicated legislation such as the Law on Capital Markets and a regulatory authority. As we move forward and the market takes off, the need to develop dedicated legislation that would regulate basic market activities is strongly recommended.	2018	x		

Key elements of the banking sector

The banking system in Kosovo is currently well capitalised, liquid and profitable. 10 banks operate in the market with 7 commercial banks (5 subsidiaries of foreign banks and 2 locally owned) and 3 branches of foreign banks with total assets of € 7 billion or 60 per cent of GDP at year end 2019. The banking system is majority foreign-owned, and includes subsidiaries of German (ProCredit), Austrian (Raiffeisen), Slovenian (NLB) and Turkish (TEB) parent banks. System-wide CAR is above 15.9 per cent, liquidity ratio is well above the regulatory minimum and return on equity above 18 per cent. Asset quality is acceptable. NPLs are the lowest in the region and on a downward trend (2.0 per cent at year-end 2019), as a result of stricter lending standards, better enforcement for problem loans and overall expansion of lending by commercial banks. Whilst remittances from the Kosovan diaspora initially slumped in 2009, they have recovered strongly and add some stability to the deposit base.⁶

Key indicators of the banking industry

The banking industry in Kosovo has shown continuous stability and sustainability in providing security and reliability to the citizens of the Republic of Kosovo. The banking industry has recorded positive growth in almost all its key indicators, which shows a sound market of this industry.⁷ The structure of banking sector liabilities is dominated by deposits, which represent more than 80 percent of total liabilities. Deposits at the banking sector have recorded an annual growth of 16.2% percent, amounting at euro 3.9 billion. Deposits in the banking sector consist of household deposits, which participate with a share of 67.61% percent in total deposits, whereas the deposits of private sector enterprises compose 24.67% percent of total deposits at the end of 2019.

Table 2: *Structure of Assets of the Banking Industry*

Structure of assets of the banking industry (million euro)				
Description	2016	2017	2018	2019
Cash and balances with CBK	457.3	499.4	541.8	622.5
Balances with commercial banks	457.3	499.4	541.8	622.5
Securities	457.3	499.4	541.8	622.5
Loans and leasing	457.3	499.4	541.8	622.5
Fixed assets	457.3	499.4	541.8	622.5
Other assets	457.3	499.4	541.8	622.5
Total assets	3,637.10	3,869.80	4,185.50	4,755.70

Source: CBK – Balance sheet of other depository corporations February 2020)

⁶ European Bank for Reconstruction and Development (EBRD)

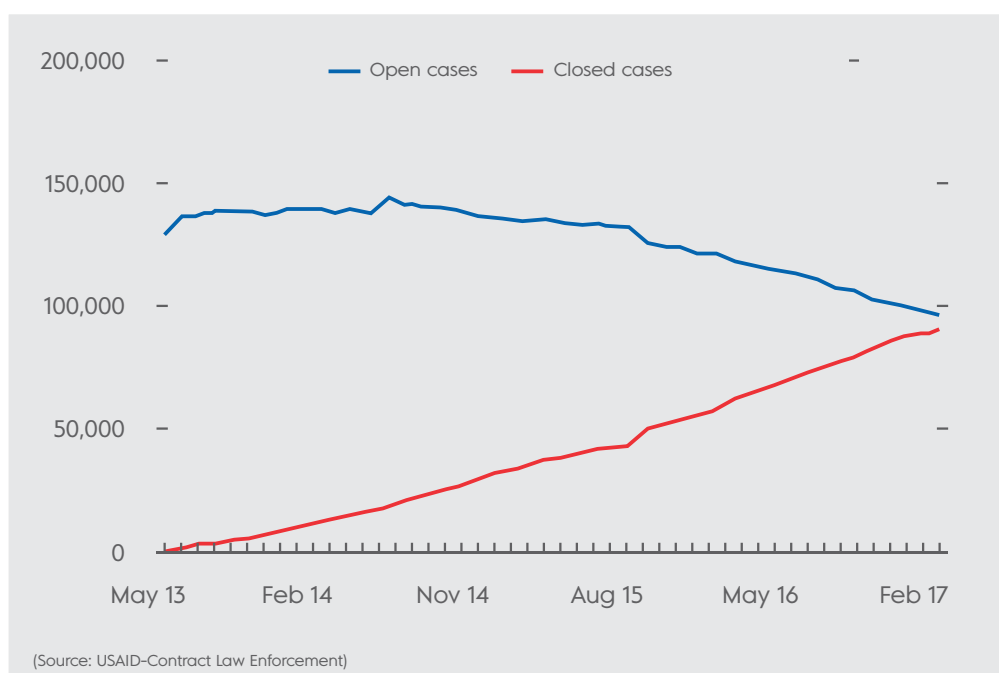
⁷ Kosovo Banking Association

Main issues identified

- **Contract enforcement**

One of the main barriers of the banking sector for doing business is contract enforcement. Based on our internal survey, there are over 7,000 backlogged court cases only for the banking sector left from previous years in Kosovo justice system. It is accounted that these backlogged court cases have a value over 150 million EUR!

Figure 1: Kosovo: Court Backlog Clearance



As the above chart indicates, the private enforcement agents system since its beginning has had a significant role and still continues to play an important part into reduction of court backlogs and eased asset recovery.

- **Reduction of cash transactions**

Based on different publication for Kosovo economy, it is estimated that 30% of Kosovo GDP is informal.⁸ Informal economy is developed mainly through cash transactions which are not reported. Our society is cash based which burdens this issue even more. Bringing this amount of money within the legal system will help to invest this money in the economy.

⁸ European Commission 2018 Kosovo Report – <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

- **Electronic signature**

The usage of electronic signature is not yet formalized within Kosovo, which represents another barrier for doing business in Kosovo.

- **Prevention of legal uncertainty and better implementation of the existing legislation**

Banking sector often has been challenged by different respective institution where laws have been interpreted in arbitrary way where in some cases banks have been asked to implement legislation even on retroactive bases. These cases have created uncertainty on doing business where every public institution can interpret the law in its own way.

- **Glitch over the implementation and interpretation of the new law's/regulations (ad-hoc interpretations)**

The political instability and the associated policy making infrastructure producing ad-hoc decision making on fiscal and other policies represent an obstacle for the investors such as banking system. Implementation of laws and regulations should be aligned with the prevailing conditions of the external environment and the endurance of the existing systems and economic sustainability of introducing new policies. Thus, implementation of EU regulations and best practices should also be followed with the aftermath analyses preparation for capacity building of human resources and IT infrastructure allowing easier implementation and fewer places for ad-hoc decision making which further leads to being the opposite of best practice implementations.

- **Poor efficiency of the court system**

Kosovo's inefficient court system hindered bank lending and economic growth as one of the main challengers of countries prosperity process. Kosovo's courts have a large number of unsolved cases due to low institutional capacity, weak processes. Thus, as creditors could not efficiently obtain and enforce contracts against debtors, the banking system attempted to mitigate such risk by more collateral and higher interest rates, which negatively impacted credit growth throughout the years. The back log of more than 100 thousand cases within the country of 1.8 million inhabitants makes Kosovo the worst amongst the Balkan countries. In the meantime in contradiction with the negative trends of contract enforcement process and all other components of PESTEL analyses relevant for investors the lending rates continued with the decreasing trend due to decrease of a single component that of the cost of funding.

- **Lack of Commercial Court of Kosovo**

Kosovo faces a serious crisis in the ability of its courts to enforce civil judgments because all proceedings for commercial judicial disputes between legal entities are conducted by a Department within Basic Court in Prishtina which consist 4 judges for all court cases at the level of the Republic of Kosovo. A separate Economic Court would be very important in resolving commercial disputes and effectively to handle the workload that would have been placed on them with much higher acceleration on the final decisions.

- **Lack of educated and skilled judges dealing with commercial issues**

There is a need to increase its practical skills training for judges and court staff to handle complex legal issues in the areas of commercial, insolvency, securities or any other commercial issues. The judge's professional knowledge must be kept current on the rapidly evolving business regulatory environment in Kosovo and world trends too.

- **Lack of communication between commercial justice and financial institutions**

Banks cannot be informed on a daily basis by the Department of Economic issues in Pristina within the municipal court of Prishtina, for companies which have declared bankruptcy or have been imitated bankruptcy procedures against them. There is no online database associated with ARBK, CBK and Banks where financial institutions would be notified for the bankruptcy of companies that could potentially be Bank customers.

- **Development of Residential mortgages**

Currently the residential mortgages are at the very low level of developing due to the problems that our citizens are facing on getting the ownership of their properties. Mainly most of the new buildings all over Kosovo have not yet completed the technical acceptance by the respective municipality. Due to this fact, the buyers/citizens can't transfer the ownership of their property. Therefore, the banking sector can't use the advantages that are given by the Central Bank through the regulation for residential mortgages due to the absence of the ownership by the citizens for these properties. In fact, it is almost impossible to issue loans by the banking sector based on the criteria's set out in this regulation.

- **Enabling capital markets in Kosovo**

With exception of government debt, there is currently no established capital market in Kosovo, and no dedicated legislation on tradable securities and related market activities in place. Private debt is able to patch together different currently applicable pieces of legislation, which cover issuance (Law Nr.04/L-093) on Banks, Microfinance Institutions and Non-Bank Financial Institutions, enforcement (Law 04/L-139 on Enforcement) and others. With regard to equity instruments, or financial derivatives there is currently no legislation in place which would regulate their activities. Consequently, there is no venue where trading of such instruments would occur.

In addition, establishment of a regulatory body for capital market activities would ensure coherence of market activities in compliance with applicable law, setup a framework for education and licensing of local market participants to ensure an appropriate level of expertise, and generally providing for a stable and resilient financial system. Provision of legislative reference⁹ would vastly enhance issuers' reliance on diversified sources of financing, whereas investors would gain confidence in the market and attract additional capital to it. Investment banks' interest is to bring together the issuers and investors and thus make earnings, which do not burden their balance sheet.

Special consideration should be given to government tax policy with regard to the capital markets, in particular by avoiding unintended differences between tax regimes across various market instruments. A government policy that attracts foreign capital could include tax allowances for the Diasporas' capital invested in Kosovo, even if no double taxation treaty is in place yet. Open, diversified, liquid, transparent and efficient markets are in the interests of all participants involved in them, as well as to the benefit of end-users.

- **Lack of discipline on financial reporting and appropriate code of corporate governance**

Taking in consideration the level of informal economy in the country being more than 30% of the GDP, it represents an inherent risk for the investors and one of the main opponents of financial reporting discipline. Hence lack of financial reporting discipline as a product of informality leads towards unreliable financial reporting system. Unreliable financial reporting represents one of the main obstacles of real economy on fund raising or availability of sources of capital. As such Kosovo's banking system faces on day to day basis with the obstacle of lack of true and fair financial reporting as the largest investor of the real economy. Along with the discipline in financial reporting, there should be discipline and awareness for tax declaration and payments as well. Also, non-transparency in tax payments has a negative impact on a country's economy.

The existing financial reporting environment prevailing in the country directly impacts on the risk perception and the associated costs to mitigate the risk through alternative means (longer analyses). Thus, the efficiency and effectiveness of the lending process and the risk management process are negatively impacted.

Lack of financial reporting discipline is followed by lack of corporate governance structures of legal entities further contributing negatively on the reliability of financial reporting system. In the meantime it impacts hampering the economic growth of the country. The current credit depth of Kosovo at rate of above 40% percent of the GDP is still below what Kosovo needs to support stronger economic growth. It is presumed that closing the credit gap, credit growth should outperform nominal value of GDP growth for medium term basis in order to reach the expected economic growth.

⁹ For EU bestpractices see: https://ec.europa.eu/info/sites/info/files/171120_-_corporate_-_bonds_-_report_en.pdf

Recommendations for market improvement

- **Establishment of the Commercial Court**

We recommend to establish the Commercial Court in order to significantly reduce this backlog. We recommend also that financial sector cases to be treated with priority since this will have direct impact to Kosovo economy overall.

A unique and lawful taxing system should be adopted by all municipalities, avoiding all illegal and unnecessary taxes. The relevant ministries should all cooperate in order to create such unique system. There should be no request that are not foreseen in applicable laws and regulations related to putting mobile antennas.

- **Regulatory framework**

- o Write-offs: close remaining gaps in regulation incl. for (i) country and transfer risk; (ii) collateral valuation; (iii) pre-set forbearance criteria.
- o Cadastral information: intensify efforts to bring Kosovo's cadaster system into line with international standards (ongoing).

- **Reduction of cash transactions**

Fighting grey economy from the respective institutions will help the Kosovo economy overall as well this means more money for the banking sector which can be invested.

- **Electronic signature**

Drafting a law which will clearly define the use of electronic signature would help the banking sector as well as other businesses to sign long-distance contracts, to speed up the process of doing business, reduce costs and reduce physical archiving of documents and toward a more digital environment.

- **Establish the appeal instance within public institutions**

Better coordination among public institutions when it comes to the enforcement of the law. We recommend that each public institution should have or establish the appeal instance which will have increased independence and is comprised by independent members which are not staff members of the respective institution.

- **Increase judiciary system capacities**

Increasing capacities of the judiciary system (training of judges and court staff about commercial justice in general).

Recommendations for market improvement

- **Receive information on daily basis for bankrupt companies**

Banks should be informed on a daily basis by the Department of Economic issues for companies which have declared bankruptcy or have been initiated bankruptcy procedures against them. An online platform should be created in order for banks to be informed accordingly and in time.

- **Define residential mortgages ownership**

Request to the Ministry of Environment and Spatial Planning to define the ownership title of the property owners all over Kosovo.

- **Establish capital markets**

We recommend to create and develop dedicated legislation such as the Law on Capital Markets and a regulatory authority.

As we move forward and the market takes off, the need to develop dedicated legislation that would regulate basic market activities (including debt, equity and money markets) and venues (including over-the-counter, stock market and other securities depository facilities) are strongly recommended. Regarding the regulatory body for capital market, the following steps should be undertaken:

- o Discuss with relevant interest groups
- o Create multi stakeholder task force which builds up feasibility plan of action
- o Come up with a white paper outlining the proposed action plan

- **Increase financial discipline**

Government and relevant state authorities should undertake immediate steps to raise the financial reporting awareness together with tax declaration discipline. Fight against informal economy will provide future stable economic growth for the country.

Insurance Sector

Progress card - outstanding recommendations

No.	Recommendation	Introduced in the WB	No progress	Some progress	Significant progress
13	Stronger inter-institutional coordination to address the issue of non-insured, non-registered vehicles.	2018			x
14	Amending the Law on Red Cross	2018			x
15	Adoption of regulatory measures in the field of insurance sector against companies that not solvent; Premium for MTPL	2018			x
16	Amending the Law on Corporate Income Tax	2018			x

Key elements of the insurance sector

Insurance is a very important component for the financial sector and the wellbeing of the economy. A well regulated insurance industry can significantly contribute to economic development through transfer of risk and mobilisation of savings.

Insurance Industry in Kosovo is currently on a good path to experience a higher level of development namely due to the recent reforms and regulatory measures that have been taken during 2018-2020.

This white paper is a continuation and an update of the white paper published in 2018 and provides a brief overview of the insurance industry as well as recent developments in the sector and recommendations for further improvement and strengthening of the insurance sector.

Main positive developments during 2018 – 2020

During this period much progress has been achieved namely by the regulator Central Bank of Kosovo, the Tax Administration of Kosovo and other governmental and non-governmental bodies in order to improve and strengthen the insurance sector in Kosovo. Below are the main positive reforms or measures taken towards regulating the insurance industry:

- **Law on Red Cross has been declared unconstitutional and void**
(Insurance companies are no longer obligated to pay 1% of premium to the red cross)
- **Law on Corporate Income Tax has been amended**
(Insurance companies are no longer obligated to pay 5% tax on revenues).
- **Regulatory measures have been taken toward companies who were not solvent**
(closed one company and placing under administration other companies as necessary.)
- **Premium for MTPL (obligatory product) has been adjusted to reflect some level of inflation.**
- **Registration Center for vehicles does not register the vehicles without the invoice proof from the insurer on paid premium.**

All of these are positive developments and will place the insurance industry on a path to success and stability.

Regarding the tax legislation changes during 2019, it must be noted that the income tax of the insurance sector in Kosovo was taxed 5% on gross premiums sold, while all other industries profits were taxed 10% of taxable income. From August 2019 the insurance industry will be taxed the same way as other industries, which is considered to have a positive impact in insurance companies. The administrative instruction on implementation of such changes is not published yet, so practical implementation and some potential clarification for problematic topics can be addressed through the administrative instruction.

Main issues Identified

- **Regulatory framework**

The insurance sector is regulated by Central Bank of Kosovo and is an important part of the financial sector. Furthermore, two main indicators reveal that Penetration (Gross Written Premium / GDP – measured at 1.4%-c.a.) and Density (Gross Written Premium / Capita – Measured at EUR 44/capita) are the lowest in the region, while remaining far from the EU average. Market is oversaturated with a high number of companies in the market. Currently there are 11 companies (one has been closed in 2019) competing for 84Milion EUR market in Non-Life segment. This situation has led to a price war among companies in a fight for market share.

These price wars, have pushed a number of companies into insolvency, and some others albeit solvent they are illiquid.

Insurance Law is clear in this aspect, if a company doesn't maintain adequate capital level, they have to either inject fresh capital, or license must be taken and they shall be liquidated. The regulator is already taking all necessary measures in this regard and enforcing the law since the situation poses a significant Systemic Risk, since if one company is liquidated, the outstanding liabilities toward policyholders are transferred to other remaining companies in the market.

The situation presents significant risk to the industry (systemic risk within the sector), since if/(when) these companies will be liquidated, the outstanding insurance liabilities from these companies will be transferred to Compensation Fund, which in turn shall be financed from the insurers remaining in the market. This might in turn, push even more insurers into insolvency given the weak capital adequacy position of some companies.

In the face of solvent insurers, this situation presented double punishment, first they have to compete in the market with the insolvent companies and second, they might have to pay their claims later on.

- **Unregistered vehicles**

Although official data do not exist, it is estimated that there are more than 40 thousand (c.a) unregistered and uninsured vehicles that actively participate in traffic. Having a Third Party Liability Insurance and registration of the vehicle is mandatory by law. The non-implementation of this law has a significant negative impact on the Insurance industry. These are the two main ways in which the non-implementation of the law damages the industry:

- a) Registering these vehicles would increase the premium written by insurers for 5-6 Mil per year and also implementing the law.
- b) Further to being deprived from this income, insurers have to pay the claims coming from these vehicles, as the victims of traffic accidents caused by uninsured vehicles must be compensated by Compensation Fund and Compensation Fund is financed by insurers. On yearly basis, industry pays 3.5-4 Mil EUR claims for uninsured vehicles.
- c) At the same time, the state budget experiences losses in taxes as well, the losses being estimated at 3 - 3.5 Mil (c.a).
- d) Further than financial losses, this issue has social consequences as these vehicles do not pass technical inspections, and pose higher risk to participants in traffic.

e) Currently there are no sanctionary measures in cases where the owner of the vehicle does not register the vehicle. Even if the owner goes at a later date to register the vehicle, there are no penalties. The idea behind “not placing penalties for unregistered vehicles” was due to the thinking that the matter would become worse in cases when owners have high penalties this would in turn lead them to keep their vehicles unregistered even longer.

f) Currently another barrier to registering the vehicles is the municipality requirements. Owners cannot register their vehicle at the Registration Center in cases when they have unfinished financial obligations namely the property tax. In these cases, they cannot receive the ecological tax and hence cannot register their vehicle. However, this is not the case in all municipalities namely exists in Prishtina and a few other municipalities.

Recommendations for market improvement

- **Enforce the regulatory framework**

CBK must continue further with implementing / enforcing the legislation which is in force by:

- o Implementing / enforcing Solvency1 measures;
- o Initiate liquidation process for companies that cannot / do not want to add capital;
- o Implementing “soft” regulation on Corporate Governance;
- o Increasing the conditions for granting licenses to new insurance companies.

- **Address issues regarding unregistered vehicles**

Sanctionary measures to be added to legislation for vehicles that are not registered and stronger inter-institutional coordination is required to address the issue of non-insured, non-registered vehicles.

Solutions are in the legal provisions of the existing laws:

- o Law No. 04/L-018 On Compulsory Motor Liability Insurance
- o Law No. 05/L-132 On Vehicles
- o Law No. 05/L-088 On Road Traffic Provisions

Mining and minerals Sector

Progress card - outstanding recommendations

No.	Recommendation	Introduced in the WB	No progress	Some progress	Significant progress
17	Harmonization of inconsistencies or contradictions between different local legislation regarding the time restrictions on use of agricultural land.	2018		x	
18	Mining projects should be harmonized with spatial, urban and municipal development plans, however, in case of any contradiction between them, the mining strategy must take precedence over any spatial and urban planning documents.	2018	x		

Key elements of mining and minerals sector

Right from the beginning when dealing with Mining and minerals sector, key issues that were identified with the White Book 2018 remain unsolved and no relevant progress has been recorded.

In 2010 the Assembly of Kosovo adopted the Mining Law, the main objective of which was to establish the much needed order in the mining sector and offer investors clarity and predictability with respect to their investments. The Mining Law was introduced as a special law with a superseding effect over all laws and/or subsidiary legal instruments that are inconsistent with it. As it will be elaborated in greater detail below, the superseding effect of the Mining Law was not limited solely to the narrow field of mines and minerals but included also any and all other fields of law that have an impact in the mining sector.

In light of the ambiguities that were prevalent in the mining sector at the time of its adoption, the Mining Law provides for an explicit provision repealing conflicting provisions. Namely, the repealing effect of Article 88 of the Mining Law is twofold: (a) firstly, this legal provision repeals existing legislation that governed the mining sector prior to its adoption, i.e. UNMIK Regulation No. 2005/2 on "The Establishment of the Independent Commission for Mines and Minerals" and, inter alia, UNMIK Regulation 2005/3 on "Mines and Minerals in Kosovo"; and (b) secondly, and more importantly, Article 88 of the Mining Law establishes that the Mining Law shall "prevail over and supersede any provision or aspect of any other law of Kosovo that is inconsistent or in conflict therewith." The latter element of Article 88 of the Mining Law is quite broad and applies to any legislative instruments, whether laws of subsidiary legal instruments, which related to or have an impact in the mining sector.

The repealing effect of the Mining Law is based on two general principles of legal interpretation. Namely, in addition to the principle of *lex specialis derogate legi generali*, under which the Mining Law as a special law repeals all laws of general nature, the Mining Law also takes precedence over prior laws by virtue of being a latter law. Indeed, based on the principle of *lex posterior derogate legi priori*, the Mining Law takes precedence over the Law on Agricultural Land and Administrative Instruction on the Change of Use of Agricultural Land, both of which predate the Mining Law. Consequently, the inconsistencies between the Mining Law and the other legal instruments impacting the mining sector do not require any amendments or further legislative work. On the contrary, these inconsistencies can easily be removed with the appropriate application of the aforementioned principles of interpretation.

Main problems identified

- **Differences between Mining Law and other legal instruments**

Inconsistencies exist between the Mining Law and other legal and subsidiary legal instruments governing and/or impacting the mining sector in Kosovo.

Without prejudice to the fact that there may be more inconsistencies between the Mining Law and other legal and subsidiary legal instruments governing and/or impacting the mining sector, in this section we shall expose certain inconsistencies on the requirement to secure surface rights for exploration and exploitation activities, provided for by Article 31 of the Mining Law, as they relate to the limitations on the size and the duration of leases for forest land foreseen by Article 13.7 and Article 13.8 of the Administrative Instruction on the Change of Use of Agricultural Land. In this respect, it should be noted that Article 21 of the Mining Law provides that an exploration license for construction materials can be granted for a period of two (2) years, which can be extended for another two (2) year period. With respect to the surface over which exploration license can be granted, the aforementioned provision provides that the exploration license cannot be granted for a surface that exceeds fifty (50) hectares.

On the other side, with regard to exploitation licenses, Article 30 of the Mining Law provides that an exploitation license can be granted for a period of twenty-five years (25), which can be renewed once. It is important to note that Article 30 of the Mining Law does not foresee any restrictions on the size of the area in which exploitation is conducted. Namely, paragraph 1.2 of Article 30 of the Mining Law provides that the exploitation license “shall apply to such area as may be required for the concerned mineral resource.” It is evident that the aforementioned provisions of the Mining Law aim to accommodate investments based on the characteristics of the minerals that are sought to be exploited. This explains why – while for exploration purposes the size is limited – for exploitation activities the size of the mining area is based on the concerned mineral.

Notwithstanding the aforementioned provisions, Article 13.7 and Article 13.8 of the Administrative Instruction for the Change of Use of Agricultural Land limit to five (5) hectares the area for the provisional change of use of agricultural for mining activities. The limitation pertaining to the surface area, which has been introduced by a subsidiary legal instrument, is not only in contradiction with the Mining Law but also has no legal basis in the Law on Agricultural Land. Namely, Article 11.7 of the Law on Agricultural Land provides in explicit terms that the provisional change of use of agricultural land for mining purposes can be done only for superficial quarries that are larger than 0.5 hectares. As it is evident, this legal provision establishes the minimum surface area threshold for considering the change of the use of agricultural land for mining purposes. Such a minimum threshold indicates that change of use of agricultural land is not allowed for small mining projects. This could be explained by the fact that the economic and social benefits caused by a mining project conducted in a surface area of less than 0.5 hectares do not outweigh the detrimental impacts caused to agricultural land by it.

Having said the above, it is also important to note that the Law on Agricultural Land does not foresee any limitations for the maximum surface area of agricultural land the designation of which can be changed. This is due to the fact that such a maximum threshold is not foreseen even by Article 30 of the Mining Law given that - as noted above - the ultimate size of the mine depends on the mineral that is sought to be exploited.

In light of the above, the restrictions on the surface area for the change of use of agricultural land, which are foreseen by Article 13.8 of the Administrative Instructions on the Change of Use of Agricultural Land, not only have no legal basis in the Law on Agriculture but are in contradiction with Article 21 and Article 30 of the Mining Law. Indeed, it should be noted that the change of use of agricultural land foreseen by Article 11.7 of the Law on Agricultural Land and Article 13.7 and Article 13.8 of the Administrative Instructions on the Change of Use of Agricultural Land, govern change of use of agricultural land for mining purposes. In light of this and based on the interpretation methodology described under section 1 of this opinion, the surface area limitations for the change of use of agricultural land, provided by Article 13.8 of the Administrative Instructions on the Change of Use of Agricultural Land, has been superseded by the surface restrictions, and the lack thereof, for exploration and exploitation purposes, provided under Article 21 and Article 30 of the Mining Law, respectively.

- **Custom and VAT exemption for imported cement**

On top of the above, another issue has been recently raised in mining and mineral sector. Cement produced abroad and imported in Kosovo can be exempted from custom duties and VAT, when it is to be used as “raw material” for further processing purposes, i.e. for the production of concrete or mortars. This means that local cement producers are suffering damages because they are charging VAT to their local end customers, whilst same customers can import cement

from abroad at less prices because of their exemption of VAT. It is evident that this creates an uneven and unfair playground which does not provide for equal treatment of business players and negatively affect local producers. Of course this does not refer only to cement, but to all products that fall into this “raw material category” and are produced both locally and abroad. The issue is also discussed under Taxation section of this paper where also relevant recommendations are given.

- **Legal status of mining strategy**

The Mining Law has also established the legal basis for the adoption of the Mining Strategy, which is defined as the “framework document which defines long-term policies of the mining sector.” While Article 73 of the Mining Law does not stipulate the precise legal status of the Mining Strategy, paragraphs 3 and 4 of this legal provision provide some guidance as to the status of this document and its effect on other laws that impact the mining sector. Namely, paragraph 3 of Article 73 of the Mining Law provides that “during the preparation and implementation of spatial and urban plans, all public authorities shall take full account of and comply with the Mining Strategy promulgated by the Assembly.

Such Mining Strategy shall prevail over any inconsistent spatial or urban plan.” The term “Public Authority”, as used in Article 73.3 of the Mining Law is defined by Article 1.52 of the Mining Law as “any governmental executive authority, public body, ministry, department, agency, or other such authority that exercises executive, legislative, regulatory, public administrative or judicial powers. The term “public authority” shall also include any otherwise private organization or establishment to that extent it exercises any of the aforementioned powers pursuant to a grant of authority under a normative or sub normative act or pursuant to a delegation of authority from another Public Authority.”

In addition to the above, paragraph 4 of Article 73 of the Mining Law provides that no Public Authority shall approve any spatial or urban plan without the consent of the Ministry of Economic Development. According to this legal provision, the Ministry of Economic Development shall approve such spatial and urban plans only after getting the consent of the Independent Commission on Mines and Minerals that such spatial and urban plans have no detrimental impact on the Mining Strategy. On the basis of the above, it is clear that the Mining Strategy not only takes precedence over the all spatial and urban plans adopted by any public authorities but that such public authorities cannot adopt spatial and urban plans without getting the confirmation from the Ministry of Economic Development that such plans are not in contradiction with the Mining Strategy of Kosovo.

Recommendations for market improvement

- **Harmonization between relevant mining legislation**

There must be harmonization of the inconsistencies or contradictions regarding the time restrictions on use of agricultural land provided by Article 11.9 of the Law on Agricultural Land. It should be noted that the five (5) year limitation is in direct contradiction with Article 30 of the Mining Law, which provides that the exploitation license can be granted for a period of twenty-five (25) years, which can be renewed once. Since the purpose of the change of use of agricultural land, foreseen under Article 11.7 of the Law on Agricultural Land is to facilitate exploitation of minerals that are located beneath such land, the time period of such temporary change of use must be in line with the maximum duration of an exploitation license, as foreseen under Article 30 of the Mining Law. Indeed, given that the purpose for the change of use of the agricultural land is facilitation of mining activities, the term of the provisional use must accommodate its intended re-designation. Consequently, Article 30 of the Mining Law takes precedence when determining the maximum duration of the provisional change of use of agricultural land for mining purposes.

In light of this and based on the interpretation methodology described under section 1 of this opinion, the time period limitation for the change of use of agricultural land provided by Article 11.9 of the Law on Agricultural Land has been superseded by the restrictions provided under Article 21 and Article 30 of the Mining Law, respectively.

- **Legal status of mining strategy**

The Mining Strategy must take precedence over any spatial and urban planning documents that are in contradiction with it. On the basis of this, it can be argued that the Mining Strategy has made obsolete the Regulation No. 01/2011 on the “Treatment of Communities in the Mining Sector”, as amended, the main purpose of which is to ensure that the mining project is in line with spatial, urban and municipal development plans.

Petroleum Industry

Progress card - outstanding recommendations

No.	Recommendation	Introduced in the WB	No progress	Some progress	Significant progress
19	There must be a set percentage that is recognized as a loss in petroleum sector (evaporation) which must be reflected into the law rather than regulated by administrative instructions.	2018	x		
20	Have clear criteria and pre-requisites for obtaining an import license with minimum petroleum tank farm facilities rather than petrol stations. Additionally, petroleum products imported should be placed first inside tank farms and can be released to the market only after being tested for quality and quantity. Tank farms should also be available for inspection at any time.	2018	x		

Key elements of petroleum industry

Petroleum market in Kosovo even today remains dependent on imports. There are currently nine (9) major import companies in Kosovo who have storage plants (farm tanks) to store large quantities and 600 Operational Petrol Stations. Kosovo is a 360 million Liter Market in White Products such as Diesel and Unleaded fuel. Kosovo has no domestic oil supply and no pipelines. There are no refineries in Kosovo while most of the regional countries (Western Balkans) do have refineries. The petroleum industry is facing high duties and taxes such as the high excise tax which makes petroleum products less competitive. The main law governing the oil sector in Kosovo is the Law no. 2004/5 on Trade with Petroleum and Petroleum Products enforced in 2004, amended by Law nr. 03/L-138 enforced in 2009. The Law applies to the wholesale and retail supply, transport, and storage of petroleum and petroleum products. The petroleum market structure is controlled by the Ministry of Trade and Industry through the Division for petroleum market regulation within Department for petroleum market regulation and strategic goods.

It is worth noting that unlike the European Union and its Member States, the petroleum industry in Kosovo is facing some practices which question not only the reliability of Safety Stock in case of emergency but also making it more difficult to control quality and quantity imported to Kosovo at any given time.

Main problems identified

- **Customs Duties and VAT on Non-Received Goods (Evaporation of Petroleum)**

Due to the nature of the products, every time that petroleum products are transported or even stored a portion of the products may evaporate. This is an internationally recognized fact and practice. Therefore, no excise duty should be charged on product volumes that are never received and by extension, never sold. The solution is to charge customs duties and VAT only on volumes or quantities of products that are actually received and can be used for business purposes, and to not charge indirect taxes on quantities or volumes of products that are never used or sold by businesses. This issue is of crucial importance that must be corrected accordingly so as to ensure the fair and correct tax treatment of the sector.

On the other hand, the Law on Value Added Tax No. 05/L-037 through Articles 22 and 23 sets out the provisions according to which when this tax becomes chargeable. Article 22 specifies that "the moment of the occurrence of the obligation occurs and the VAT becomes chargeable when the goods and services are supplied", whereas Article 23, paragraph 2.3 states that in the case of the importation of goods the "Applicable provisions regulating customs duties apply to the moment of loading and the moment when VAT becomes chargeable for imported goods which are not subject to customs duties in Kosovo". This means that any treatment that a product will have in terms of customs duties in case of customs clearance, this treatment will apply to VAT, whether it is for final products or for raw materials that may affect all value chain.

As explained above, while the Customs and Excise Code provides for cases of losses during transport and storage in customs warehouses, and despite the fact that Article 22 of the Law on VAT provides for tax to be applied only to goods supplied, in practice there are frequent complaints from companies that losses incurred during transport, production or storage as a result of evaporation, destruction or alienation are not recognized by customs or tax officials and are therefore liable to pay customs duties and taxes on goods they have never had released for free circulation. This also applies when companies can verify through sufficient documentation that the product in question has evaporated or broken during any of these processes as a result of its specifications.

- **Discriminatory treatment among petrol importers**

Unequal treatment is observed between wholesalers and retailers as both are eligible for obtaining an import license. The existence of too many Import Licenses of Petroleum Products in Kosovo are diminishing the importance of existing tank farms investments in this country. Today, it is physically impossible to control all the trucks that enter Kosovo on a daily basis. Wholesalers have tank farm installations (where quantity and quality can be checked, registered and certified at any time, while retailers are owners of petrol stations, with limited storage capacity.

Quantity: Importers are obliged to keep at all times an emergency stock – a fraction of their own storage capacity. Retail importers however, are allowed to import for other / third retailers while keeping as an emergency stock only the volume corresponding to their own installation. On the other hand, Wholesalers receive the goods at their Tank Farm which are equipped with measuring systems that give exact evidence and must keep emergency stock based on their enlarged capacities at all times.

Moreover, it is practically impossible to control all retailers (numerous trucks and destinations) as this would require a great deal of resources allocated to this purpose.

Quality: Wholesalers could easily be controlled for the Fuel Quality at any given time if it stored inside the Tank Farm. As for the retail importers, quality controls are only at random since practically impossible to control every truck that enters Kosovo and going to multiple destinations which may not even be their own petrol station.

- **Lack of Requirements for Compulsory Stocks (COS)**

Security of Energy Supply in Kosovo is where there is constantly an increasing demand while Kosovo remains fully reliant on imports. The Compulsory Oil Stock (COS) should be implemented with the purpose to secure the society with sufficient energy supplies also in periods with restricted or limited supplies. The 90 days COS capacity should be implemented by the end of 2020.

- **Practices in the European Union**

The issue of product breakdown, loss and evaporation is regulated in the European Union through Regulation no. 952/2013 on the Customs Code of the Union and through the Directive 2008 / 118 / EC on General Rules on Excise. Article 124 of the Customs Code specifies cases where the customs debt is annulled, inter alia, paragraph 1, item g) provides for cases when *"The disappearance of products or the non-fulfillment of the obligations arising from the legislation is the result of total destruction or irrevocable loss of products as a result of the nature of the products or unforeseeable force majeure or as a result of instructions from the customs authority; for the purposes of this paragraph, products shall be considered irrevocably lost when they are no longer usable by any individual"*.

Additionally, paragraph 4 of the same article states that "The provisions in force regarding standard rates of non-taxable loss as a result of the nature of the products shall be applicable where the person concerned cannot establish that the true loss exceeds that calculated by applying standard rates for the products in question".

On the other hand, the aforementioned directive states that Member States have the right to set specific conditions to establish the losses incurred as a result of the nature of the products, whether in transport or in processing processes. However, paragraph 5 of Article 7 – Time and place of loading [with customs duties] clearly states that Member States must draw up rules and publish conditions when the loss of products will be acceptable.

Regarding tax treatment, Directive 2006/112 / EC on the Common System of Value Added Tax states that "Except in certain cases, the moment of the occurrence of the liability occurs and the tax becomes chargeable at the time of the supply of goods or services. The relevant provision in Kosovo's legislation is in full compliance with this provision of the European directive. However, as explained above, the practices so far do not indicate the proper implementation of this or other provisions elaborated in the following paragraphs.

Recommendations for market improvement

- **Eliminate custom duties and VAT on evaporated petroleum**

The following steps are necessary to be undertaken in order to address this issue:

- o Harmonizing Kosovo's legislation on petroleum sector with the EU Standards;
- o Implement measure 6 of the fiscal package 2.0 without any further delay;
- o In practical terms there must be a set percentage that is recognized as a loss and this must be reflected into the law rather than regulated by administrative instructions.

- **There should be no discrimination between petroleum importers**

In order to minimize and eliminate entirely the discrimination between petroleum importers in the market, the following steps should be taken:

- o Have clear criteria and pre-requisites for obtaining an Import License with Minimum Petroleum Tank Farm Facilities (as example 2 million liters storage capacity for each product), not Petrol Stations;
- o All petroleum products imported should be placed first inside the tank farms of importers and after being tested for quality and quantity then to be released to the market. Also tank farms should be available at all times for inspection. Thus our request to minimize the import licenses to only those who use their tank farms;
- o Ensure safety stock based on "sales" instead of "tank capacities".
- o All discriminatory rules and procedures should be eliminated.

Pharmaceutical Sector

Progress card - outstanding recommendations

No.	Recommendation	Introduced in the WB	No progress	Some progress	Significant progress
21	Ministry of Health should regulate the referential pricing of medical products in Kosovo. Best practices should be taken into account and not only take the lowest referential price.	2018	x		
22	During the procurement procedures, Ministry of Health should be able to negotiate directly with the producers in order to get the maximum rebates and benefitions for its patients.	2018	x		
23	The health legal framework must be completed and harmonized with EU legislation; transparency and predictability of business and legal security are the basic pre-requisites for the sustainable functioning of the pharmaceutical industry in Kosovo. Representatives of the pharmaceutical industry should to be included in the legislative processes.	2018		x	

Key elements of the market

PA properly functioning pharmaceutical sector can make a big difference to the quality of people's lives and has a significant economic effect. The Kosovo Medicines Agency (KMA), in combination with Kosovo Customs, controls the importation of pharmaceutical products and medical devices. A valid import license is required for the importation of these products. However, before obtaining an import license companies should obtain marketing authorization. The marketing authorization and importation of pharmaceutical products and medical devices is regulated by the Law on Medical products and Equipment, No. 04/L-190 and other relevant legal norms. The Kosovo Medicines Agency (KMA) is responsible for protecting people's health by providing quality and guaranteed medical products and equipment, and services related to medical products and devices through the licensing of professional companies and individuals.

Kosovo spends around 3% of GDP on health sector which is a very low amount compared with the regional countries which average around 6% of their GDP and while in the EU countries this

percentage exceeds 10%. In addition, Kosovo lacks a public health insurance system and as a result patients do not get reimbursed for the purchase of pharmaceuticals unless they have private health insurance.

Kosovo pharmaceutical market is primarily represented by the pharmaceutical distributors (namely wholesalers and retail pharmacies) as well as suppliers such as manufacturers. Currently there is only one pharmaceutical manufacturer in Kosovo, TrepHarm. Kosovo pharmaceutical manufacturers face difficulties in exporting and only cover about 5%-10% of the market therefore there is a considerable trade deficit with respect to import – export.

Kosovo is far better in crude birth and death rates than its neighbors with crude birth rate at 15.7% (while in the region they are as low as 8.7% in Bosnia and Herzegovina) and crude death rate at 5% (while in the region they go up to 14.6% in Serbia). Analysis of the health status of the population shows that the number of deaths in 2011 in Kosovo, was 421.9 deaths per 100,000 inhabitants. In comparison with European countries, this number is very compared to European countries who have 813 deaths per 100,000 inhabitants (2012 data). The health status analysis of the population shows the degree of illness in Kosovo is the lowest with a total of 422 cases per 100,000 inhabitants in 2011 compared to the EU with 663 cases per 100,000 inhabitants.

The health system in Kosovo

Kosovo health system is relatively new bearing in mind the fact that Kosovo has only recently, in the last decade, begun to function as an independent country. In the former Yugoslavia the health system was relatively well organized, advanced and comparable with health-systems of other developed European countries.

Based on the available data, it is shown that the pharmaceutical market in Kosovo is largely covered by the import-foreign pharmaceutical companies which almost completely cover it, and the participation of local companies is around less 5%; although data of the two companies claim that they cover 10-20% of the market as we have mentioned above. Serious competitors and key players in the market are the pharmaceutical companies of the former Yugoslavia, which dominate the pharmaceutical market in Kosovo. However, other foreign companies should not be overlooked because they are also largely penetrating in the pharmaceutical market. The key players of pharmaceutical market are competitors from the territory of the former Yugoslavia as Krka and Lek-Sandoz from Slovenia, Pliva, DietPharma, Apipharma & MdpH from Croatia, Alkaloid and Fitopharm & Medi from Macedonia, Hemofarm and Zdravlje from Serbia, Bosnaljek of Bosnia and Herzegovina, as well as some world known companies from the wider circle (Roche, BerlinChemie, Aventis, Sanofi, Dade Behring, Beti-Fickinson, Menarini, Bayern Shering, B. Braun, Chem & Ursa, Theis Pharmamed, Nobel, GSK, etc.). We can say that Roche, Krka, Pliva and Alkaloid cover 30% of the pharmaceutical market in Kosovo.¹⁰

¹⁰ Ezar, P. and Zori, O. (2007). Organising for Network health care: towards future organizational models. Network health care Journal of medical Marketing.

Kosovo public healthcare sector employs 14,617 people. Out of it 6,231 work at the primary level across 38 municipalities, 7,228 work at secondary (7 regional hospitals) and tertiary level (University Clinical Center in Prishtina) and 1,158 work for the Ministry of Health.

Overall public budget covering all the healthcare system in 2020 is EUR 233 million. Out of this budget, 35 million Euro or approximately 15% goes for pharmaceutical prog and ind equipment. Overall pharmaceutical market is approximately 70 million Euro.

Positive Developments

In cooperation with World Health Organization the Ministry of Health has set "ceiling" pricing for each medical product. The Administrative Instruction for price regulation of medical products and appliances applies only to medical products and equipment that are part of the "Essential List". The Essential List is a "register" of drugs, compiled by the state, which are mandatory for MH to buy. In addition to the Essential List this year will be drafted the List of Refundable Medicines. This list will initially have about ten products that are mainly for chronic diseases (i.e. Cardiovascular, Lung and Cancer) for which Kosovars have higher mortality. The list has not yet been finalized, it is planned that by the end of this year the products from this list will be taken free of charge by Kosovar patients in pharmacies.

Another positive development is the publication of the administrative instruction on regulation of prices for medicinal products and medical devices in 2019. This publications sets and fixes the maximum purchase price (price ceiling) for medicinal products on the List of Essential Medicines, the fixed price for reimbursement by the Health Insurance Fund, and the wholesale and retail fixed price of medicinal products which are sold through entities licensed for Wholesale and Retail Distribution of Medicinal Products in the Republic of Kosovo.

Main problems identified

- **Referential pricing system**

This system would enable to compare local prices with those of several countries chosen and to impose a pricing ceiling to pharmaceutical distributors. Creation of such a system avoids the misuse of the healthcare system, like increasing prices without justification. It can as well regulate margins of the pharmaceutical distributors.

- **Procurement law**

If aiming a qualitative healthcare system, the lowest price is not always a solution. Healthcare professionals shall be involved more when choosing the right solutions and not the procurement officers. These right solutions might sometimes differ from the lowest price and healthcare professionals shall be entitled to choose such if justified as for the benefit of the patients.

- **Healthcare spending**

Kosovo currently spends around 3% of the GDP for its healthcare system. It is the lowest in Balkan and Europe and among the lowest in the world.

- **Regular supply of medications and the essential list**

International companies present in Kosovo are the major contributors to regular drug supply and the leading providers of access to modern therapies.

Regulatory

International Pharmaceutical Companies are facing difficulties in registration procedures and cannot benefit from simplified registration procedures, which are valid for companies coming from EMA and/or USA.

- **Lack of national health insurance programme**

In theory, Kosovo provides free healthcare. However, most patients have to pay for their medication. Many treatments are unavailable, or only received after long waiting periods. The government has acknowledged these problems and is planning to reform the system. The centerpiece of the reform is the introduction of compulsory health insurance for all. In spring 2014, the parliament passed relevant legislation for a complete overhaul of the country's public health system but the same system is not put into action yet.

- **Healthcare spending out of the country**

There circulates a number that approx. 150 mio EUR per year is spent from Kosovars for healthcare services out of the country (predominantly in Macedonia, Turkey and Albania). This leads to the conclusion that there is a huge lack of services even in a private health care sector. Roche Comments (to add this to the text above in red): Ministry of Health allocates a yearly budget for patient's treatments outside of Kosovo, which amounts to approximately 6 million euro. However, in 2019 they spent 10 million euro mainly for Pediatric, Orthopedic and Ophthalmology patients for treatments outside of Kosovo.

Non-prescription medical sales in the pharmacies

Today in the Kosovo pharmacies almost everything can be purchased without a prescription. Due to uncontrolled usage of medicines, Kosovo has the highest usage rate of antibiotics in Europe.

Recommendations for market improvement

- **Create and implement an effective referential pricing system**

MoH has already identified this issue and is currently drafting an administrative instruction, which will regulate the referential pricing. It is important that MoH doesn't do the same mistake as MoH of Albania, by taking the lowest price of the referential countries and enabling a negative incentive to the well-established pharmaceutical companies.

- **Direct negotiations by the MoH during the procurement process**

Different tools may be used to assess criteria for including drugs in reimbursement list like MCDA (Multiple Criteria Decision Analysis), which assesses outcomes that matters to patients, physicians and payers. Ministry of Health should be able to negotiate directly with the producers in order to get the maximum benefits for its patients. Countries in the region (like neighboring Albania and Montenegro) have already closed the so-called "Managed Entry Agreements" with different producers, enabling them broader access to innovative treatment through direct negotiations. For example, Albania implemented this by adopting an administrative instruction from the government, which enables Ministry of Health to enter into direct negotiations with the producers.

Procurement should differentiate lots for biologics in tenders due to the specific manufacturing and production process generic concept of substitution of biologic medicines cannot be applied. Separation of different tender parts has clinical role as well in order to enable traceability of the medicine used. Neighbouring Countries (i.e. Macedonia and Albania) have already implemented these process in place!

Increase healthcare spending

In order to reach the next lowest country in the region, Kosovo should at least double its spending in the healthcare system. Increasing healthcare spending is a must for increasing healthcare quality.

- **Enforce the national health insurance program**

The compulsory health insurance platform should be implemented as soon as possible, so we recommend the Government to give special attention to this topic and find recourses to put in force the already approved law on health insurance.

- **Decrease healthcare spending out of the country**

This money should be kept in the country by increasing healthcare services in the public and private sector. Public sector should include a co-payment possibilities for enhanced healthcare services.

Recommendations for market improvement

- **Harmonize the local legislation with best EU practices**

The legal framework must be completed and harmonized with EU legislation; transparency and predictability of business and legal security are the basic prerequisites for the sustainable functioning of the pharmaceutical industry in Kosovo. Representatives of the pharmaceutical industry should to be included in the legislative process.

Kosovo's health budget must be financially consolidated and increased; ensuring continued growth of the budget for medicines at double rate compared to the rate of GDP growth and the health needs of the insured in the Republic of Kosovo. Make the budget more transparent to increase business predictability and safety of investment in the health and pharmaceutical sector.

A well-established healthcare system requires a functional and efficient link between its three underlying pillars: manufacturers, wholesalers and healthcare institutions (public and private).

Increase the digitization of health services countrywide and create the necessary environment for data sharing and analysis (ex. Finalize the process of implementing electronic medical record, e-prescription and tele-medicine).

Introduce the basic elements of personalized healthcare (real world data and value-based healthcare).

Incentivize the private sector to participate more actively in the healthcare sector. Introduce policies that will serve to decentralize hospital services in order to release the burden of hospitals, shorten patient overloads and offer services directly to the homes of patients.

Taxation

Key tax elements

The taxation section is introduced for the first time in this edition of the white book. In this section some of the most important general taxation issues are identified and discussed. Tax treatments and issues presented in this paper are mainly focused to Corporate Income Tax (CIT) and Value Added Tax (VAT). Addressing the below mentioned issues and recommendations will bring considerable benefits to the economy of Kosovo, so the discussed topics are expected to have impact in a wide range of sectors within the economy.

The Tax Administration of Kosovo (TAK) is the enforcement agency that is responsible for implementing all types of tax legislations. At the same time, the TAK is responsible also for collecting the following government central taxes:

- Value Added Tax (VAT);
- Personal Income Tax (PIT);
- Corporate Income Tax (CIT);
- Withholding Tax;
- Pension Contributions;
- Issuance of Licenses for Game of Chance.

Main tax issues identified

- **Lack of specialized industry tax inspectors**

The Tax Administration of Kosovo (TAK) should start segregating and creating several special units of tax inspectors who will do tax audits in specific and more complex industries. Currently tax inspectors do not have the appropriate expertise to do the accurate tax audits in some specific and complex industries. The segregation of units or task forces within the TAK will increase the efficiency of tax audits in quality and time efficiency. Lack of such expertise by tax inspectors has resulted in poor resource allocation by the TAK and a lot of troubles for businesses, such as time consuming with unnecessary appeal and court procedures. Inspectors do not have specific information and knowledge for relevant industries and industry specific factors are not taken in consideration, mainly due to the fact that even the law does not take into account such factors.

- **Obligation to pay assessed taxes in tax appeals procedures upfront**

In addition to the very slow handling of judicial cases, an additional impediment to all other sectors in Kosovo, is the legal requirement to pay taxes assessed in tax audit procedures upfront, regardless of whether the taxpayer appeals the assessment or not. This requirement also covers any administrative penalties, penalties for late payment and interest on late payment that must be paid up front prior to initiating appeals procedures, which may also be followed up with a lawsuit in court proceedings if the taxpayer is dissatisfied with the decision of the appeals department within the TAK.

In practice, there have been many cases where the TAK has been ordered by the appeals decision to refund taxpayers after appeals procedures, several months or even years after the payment has already been made by taxpayers. In a few other cases, the TAK was ordered to refund taxpayers after a successful lawsuit in courts several years after the taxpayers had already made the payment of taxes, penalties and interest.

In light of the above, the current practice foreseen in the existing Law on Tax Administration and Procedures No. 03/L-222 is not efficient in that it may unfairly deprive businesses of valuable liquidity even before they have exhausted all their means within the TAK of proving they are not guilty of breaching tax legislation. An alternative to this practice would be to require taxpayers that wish to pursue tax appeals procedures to offer a bank guarantee covering the tax assessment. This practice is enshrined in some tax legislations and if implemented in Kosovo would offer taxpayers a way of maintaining their liquidity until all means of proving their innocence within the tax administration are exhausted.

- **Custom and VAT exemption for imported raw materials**

Materials produced abroad and imported in Kosovo can be exempted from custom duties and VAT, when it is to be used as "raw material" for further processing purposes. This means that local producers are suffering damages because they are charging VAT to their local end customers, whilst same customers can import raw materials from abroad at less prices because of their exemption of VAT. It is evident that this creates an uneven and unfair playground which does not provide for equal treatment of business players and negatively affect local producers.

It is noted that the Ministry of Finance has acknowledged the problem and a relevant law amendment was drafted during summer of 2019, providing also to local producers exemption of VAT in cases which their product was used for further process, but this amendment has not been adopted yet in the Assembly.

- **Tax treatment of losses in specific weight or material quantity of business goods for Corporate Income Tax and Value Added Tax purposes**

With respect to determining taxable income, the Law on Corporate Income Tax No. 06/L-105 under Article 9, which regulates disallowed expenses, specifies that the following expenses will be disallowed, we quote paragraph 1.9 “losses in specific weight or material, damages, remains, surpluses, destruction or breakings during production, transport, storing, and displaying, beyond the norms set out with relevant legal and sub-legal acts.” The application of this provision has been very problematic not only for the petroleum industry, but for also other industries including the production and energy sectors, especially so because no sub-legal acts have been issued. Although the CIT Law has been amended only recently, this provision has been carried over without any changes from the prior Law on Corporate Income Tax No. 05/L-029, and as such the treatment of losses in specific weight or material quantity of business goods due to evaporation, transportation or the production process remains subject to different interpretations.

Specifically, in the absence of relevant regulation in sub-legal acts, it remains unclear as to whether the business losses should be treated entirely as disallowed expenses or whether they should be allowed as fully tax deductible. Considering that the provision prescribes that losses will be disallowed beyond the norms set out with sub-legal acts, and considering that no norms are set out with sub-legal acts, this matter is open to debate and is a cause for considerable uncertainty as losses may be significantly large in some sectors of the economy so as to threaten the viability of whole sectors.

The same issue stands also from the Value Added Tax (VAT) perspective. VAT should only be charged volumes or quantities of products that are actually received and can be used for business purposes, not charged on quantities or volumes of products that are never used or sold by businesses. So, the TAK should not charge VAT on losses in specific weight or material quantity of business goods.

In light of the above, it is of crucial importance that the government addresses this issue by setting out the norms beyond which losses in specific weight or material quantity of business goods due to evaporation, transportation or the production process will be disallowed. In so doing, the regulation will provide the norms up to which losses will be allowed as tax deductible.

Recommendations for market improvement

- **Segregate and develop tax inspectors into specific industries**

We recommend the TAK to have special inspectors for several industries, including banking sector. This way the efficiency of tax audits will be much higher and will minimize misconceptions between parties and potential lawsuits.

- **Change the methodology of paying assessed amounts in tax audits where tax appeals procedures are applied**

In terms of tax appeals procedures, the Law on Tax Administration and Procedures No. 03/L-222 should be amended to allow taxpayers the option of providing a bank guarantee instead of paying the assessed amount in tax audits, where the taxpayer pursues tax appeals procedures.

- **Fair treatment of raw materials whether they are produced locally or not**

Raw material produced by local producers should have fair and even treatment as raw material imported from outside Kosovo regarding VAT. Raw materials that are exempted from VAT in import should also be exempted from VAT if they are produced by local producers. Law amendments proposed should be approved and finalized as soon as possible.

- **Regulate the CIT and VAT treatment of business losses (losses in specific weight)**

In order to regulate this issue, we recommend issuing a clear guidance on norms beyond which losses will be treated as disallowed expenses for CIT and VAT purposes. Additionally, it is recommended to include specific norms for specific sectors that may be affected in greater part by losses such as the petroleum, production and energy sectors.

Additionally, we recommend the set percentage that is recognized as a loss and to be reflected into the law rather than regulated by administrative instructions.

Conclusions

Being the second publication of this nature, the White Book 2020 has focused only on seven sectors namely telecommunications, banking, insurance, mining, petroleum, pharmaceutical and taxation sectors. In the upcoming years these sectors will expand even further to encompass even more important issues.

The main objective of the White Book is to deepend the dialogue with the authorities and to draw attention to the precise and concrete problems in the market place and hence the improvement of the investment climate. A good investment climate in Kosovo means there will be more jobs created, more taxes to the state budget, higher standard of living and well-being of citizens, a transfer of know-how to the youth of Kosovo and an overall benefit to the society as a whole, not just firms.

Through successful investments, Kosovo can attract more foreign direct investors who will work with local investors and partners to expand on trade and exports as well as other areas of the service sector. Such improvements on the investment climate can only be positive for the country as a whole. The Government and relevant authorities must work with such investors and such recommendations without any hesitation to implement such recommendations as fast as possible.

The sectors which have been addressed in this White Book represent very important issues that have been discussed now by EIC for a number of years. The White Book will keep track, monitor and measure future progress on the key areas which have been raised. It is intended to serve as a follow up tool as well in ensuring that the Government takes ownership of these issues which have been raised.

There have been some progress in recommendations presented in last edition of White Book, especially the insurance sector has benefited the most with completion of various important recommendations. However, even that there is progress made, there is a lot to be done and there are a number of topics and recommendations that have not shown any progress since 2018.

We remain hopeful that this effort of the European Investors in Kosovo and its partners will be only the beginning of a very structured approach to problem solving and opportunity creation for the future of Kosovo. We invite the Government and relevant authorities to take ownership in resolving such outstanding business barriers and to make Kosovo more attractive for doing business.

Acknowledgements

The White Book 2020 was prepared by joint efforts of numerous EIC member companies and their staff who put much effort in sharing with us the key issues of the market in each respective sector. Without such important, first hand data, this publication would not be possible.

We also express our gratitude especially to the European Commission, European Bank for Reconstruction and Development and Deloitte Kosova for their support with White Book 2020.

A special thank you goes to Mr. Javier Menendez Bonilla DG Near European Commission, Mrs. Marta Brites DG Near European Commission, Mr. Vadim Deleu EU Office in Kosovo, Mr. Neil Taylor Head of EBRD in Kosovo as well as Mrs. Afrorë Rudi CEO of Deloitte Kosova, for their special contribution.

Key Supporters of the White Book



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Ministry of Finance

Ministry of Trade and Industry

Regulatory Authority of Electronic and Postal Communications

United Nations Development Programme – Human Development Report 2016

World Bank Doing Business Report 2018

"We Create Jobs"

IMPRESSUM

White Book 2020

Publisher:

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Design & Layout:

ADS D-Line & VM3

Print:

ADS D-Line & VM3

EUROPEAN
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White Book 2020