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Kosovo

PPP Units and Related Institutional Framework



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June 2014

* This designation is without prejudice to positions on Kosovo's status, and is in line with the United Nations Security Council Resolution 1244/99 and the International Court of Justice Opinion on the Kosovo declaration of independence.

Context for this Publication

This publication has been prepared as part of European PPP Expertise Centre's work on "PPP Units and Related Institutional Frameworks" and contributes to the Western Balkans Investment Framework's initiative on "PPP Institutional Strengthening in the Western Balkans". It responds to the need to understand the institutional structures that support PPPs in the countries of the Western Balkans.

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This publication has been prepared to contribute to and stimulate discussions on public-private partnerships (PPPs) as well as to foster the diffusion of best practices in this area.

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1. Introduction

The history of PPPs in Kosovo is relatively recent. The first law to regulate private finance in public infrastructure **was the Law on the Procedure for the Award of Concessions that came into force in October 2005**. This law was mainly used by municipalities to implement concession projects that focused primarily on real estate and land concessions.

Given Kosovo's need for substantial public infrastructure investment across various economic sectors to provide efficient and quality public services, the Government of Kosovo has sought to promote the development of PPPs. Government support for the implementation of PPP projects was evidenced through **the PPP Policy Directive approved in July 2008**.¹ The Directive also required public authorities to implement PPP projects only through competitive, fair and transparent procedures.

This political support also prompted the Ministry of Finance to engage in the preparation of a new PPP law which was prepared in compliance with UNCITRAL², EBRD guidelines as well as EU Directives and international best practice. This law was prepared with technical assistance provided by United States Agency for International Development (USAID). As a result, **the Law on PPP and Concessions in Infrastructure and Procedures for their Award was voted and came into effect in August 2009** (No.03/L-090). The first PPP project to be implemented in accordance with this law was the design-build-finance-operate-transfer contract of the Pristina International Airport. This project is now in its operating phase.

The Government of Kosovo's effort to further harmonise the country's legislative framework with the European Union's policies on public procurement prompted revisions of the PPP law in 2011. **In December 2011, the Law on Public Private Partnership (No. 04/L-045) was voted and came into effect.**

¹ Through decision Nr.11/25, see www.pppkosova.org/?cid=2,81

² The United Nations Commission on International Trade Law (UNCITRAL) was established by the United Nations General Assembly by its Resolution 2205 (XXI) of 17 December 1966 "to promote the progressive harmonization and unification of international trade law".

Table 1 – Key developments in the PPP framework in Kosovo

Oct. 2005	Law on Procedures for the Award of Concessions
Mar. 2008	Law on Public Financial Management and Accountability
Jul. 2008	Government Policy Directive
2008	Establishment of the Central PPP Department
Aug. 2009	Law on PPP and Concessions in Infrastructure and Procedure for their Award
Dec. 2011	Law on Public Private Partnership
Nov. 2011	Directive on Procedures for the Review and Approval of PPP Projects
Nov. 2011	Directive on Project Management Teams
Nov. 2011	Directive on the Review and Approval of Municipal PPP
Mar. 2012	Directive on Publications of PPP Notices

2. The PPP Market

The main PPP projects that have reached financial close to date took place in the transport sector.

The most important project closed is the “Adem Jashari” Pristina International Airport (2011). It involves a 20-year design-build-finance-operate-transfer agreement under which the private partner agreed to build a new terminal building, air-traffic control facilities, a new apron and associated facilities. This project led to a foreign direct investment in Kosovo of over EUR 100 million, the largest single foreign investment since the country’s declaration of independence. This investment will allow Pristina International Airport to accommodate over 2 million passengers a year. In exchange for the right to run the concession, the private partner will pay an annual concession fee of about 40% on average of the annual gross revenues of the airport over 20 years.

At the municipal level, the first transport project to reach financial close was the Peja Urban Transport project in 2012. Other local projects have been implemented mainly in real estate and as land concessions. Many have not however been formally registered as PPPs as under the previous PPP law municipal projects were not subject to the approval of the PPPC prior to tendering.³

³ Municipal PPP projects did not need to have a PPPC approval, except if they need financial support from the state: www.pppkosovo.org

The list below shows current PPP transactions in the country as well as upcoming projects:

Table 2 – Current and future PPP projects in Kosovo

Transaction	Type	Size (range)	Status
Pristina International Airport	Concession (20 years)	EUR 100 million	Implementation/operation
Peja Urban Transport	Concession (10 years)	EUR 2 - 5 million	Implementation/operation
Suhareka Waste Management	Concession (10 years)	EUR 2 - 5 million	Award stage
Rt 7 Motorway Service Areas	Concession (20 years)	-	Draft tender documents submitted
Pristina Underground Parking	Concession (30 years)	EUR 5 - 10 million	Preparation for re-tendering
Gjilan Urban Bus	Concession (10 years)	-	Feasibility study
Pristina Urban Bus	Concession (10 years)	EUR 10 - 50 million	Feasibility study
Viti Green Market	Concession (30 years)	Under EUR 1 million	Feasibility study
Lipjan City Square	Concession (5 years)	EUR 5 - 10 million	Feasibility study
Gjilan School Support Facility	Concession (10 years)	Under EUR 1 million	Transaction design stage
Mitrovica Business Park	Concession	EUR 2 - 5 million	Under planning / EC support
Prizren Commercial Center	Concession	-	Prospective
Prizren Cemetery	Concession	-	Prospective
Route 7 O&M	Concession	-	Prospective

It is worth noting that, to date, the main difficulties encountered by central and local authorities bringing projects to a close in Kosovo have been in final contract negotiations and reaching financial close.

3. The PPP Unit

3.1. History

The first law foreseeing the establishment of a PPP unit in Kosovo was the Law on Public Financial Management and Accountability. From the beginning, the ambition has been to establish a PPP unit that would have an advisory function and serve as a centre of expertise, responsible for evaluating and providing assistance to the Minister of Finance and contracting authorities on proposed PPP projects. As a result, a **PPP unit was set up within the Ministry of Finance in 2008** with the assistance of USAID.

With the new law on PPPs, the PPP unit was turned into a Central PPP Department (CPPP), a higher organisational position within the government.

3.2. Tasks

The CPPP acts as a **technical secretariat to the PPP Committee (PPC)** whose remits are described in Section 4.1. Practically, the CPPP performs the following tasks:

- provides technical assistance, advice and support to procuring authorities and the PPC on all matters relating to PPPs;
- makes recommendations regarding the PPP legal, regulatory, institutional and policy framework;
- develops procedures and standards based on best international practice;
- reviews and issues opinions regarding the viability of proposed projects and makes recommendations to the PPC and procuring authorities;
- disseminates information regarding the PPP initiatives and individual projects;
- interacts with stakeholders and provides public education campaigns on PPPs; and
- co-ordinates activities relating to PPPs in all economic sectors.

For the purpose of fulfilling its responsibilities, the CPPP can:

- require that procuring authorities provide details of projects being proposed, prepared for tendering, tendered, negotiated and implemented;
- issue standards and recommended practice and procedures on PPPs;
- prepare and disseminate information and guidance on PPPs;
- submit proposals to the PPC for the strengthening of the legislative, regulatory, institutional and policy framework for PPPs;
- coordinate technical assistance on PPPs, including specific PPP projects, provided to procuring authorities;

- assess project proposals, tenders, contracts and set-ups for contract management;
- monitor and issue opinions regarding the compliance of a contracting authority and its private partner with the terms of a specific PPP agreement;
- issue technical opinions to the PPC and procuring authorities;
- regularly evaluate the performance and impact of PPP as a procurement tool by scrutinising existing PPP projects;
- assess whether a PPP project requires financial support from the Ministry of Finance or other resources beyond those of the procuring authority; and
- participate in the development, implementation and management of funds or other instruments aimed at funding the development and implementation of PPP projects.

3.3. Coverage

The CPPPD is competent for all types of PPPs (i.e. availability-pay and user-pay), all sectors and all types of procuring authorities at national and sub-national levels.

3.4. Role of the PPP Unit in the Project Cycle

The CPPPD **may be involved at any stage of the PPP project preparation and implementation cycle.**

3.5. Location and Legal Status

The CPPPD is **a governmental department** located within the Ministry of Finance.

3.6. Organisation Structure and Staffing

Currently there are **seven full time civil servants** working within the CPPPD. Their backgrounds are diverse and include financial, legal, technical and commercial skills strengthened with experience gained from both public and private sectors.

The head of the CPPPD is appointed through a public notice for employment in accordance with the civil servant laws and regulations.

3.7. Funding for the PPP Unit

The CPPPD is **funded by the government of Kosovo.**

3.8. Reporting and Accountability

The CPPP reports to the PPPC. It can be audited by either the internal audit department within the Ministry of Finance or the Auditor General as part of an overall Ministry of Finance audit.

4. Key Entities in the PPP Network

4.1. Public Private Partnerships Committee (PPPC)

The PPPC is a body established to **oversee and coordinate the design and implementation of the PPP policy** in all economic and social sectors.

It consists of five permanent members. By law, the minister of finance is the chairman of PPPC. He/she is legally responsible for steering and coordinating all the PPPC's activities. The four remaining permanent members include the minister of infrastructure, the minister of trade and industry, the minister of economic development and a representative of the prime minister's office. In addition to the permanent members, the PPPC can include some representatives of the public authority carrying out the project. when reviewing a specific PPP project proposal.

The PPPC makes decisions to approve or reject a project as suitable for PPP by majority vote. The minister of finance has a veto right.

The PPPC has by law the following **rights and responsibilities**:

- Development of general PPP policies;
- Development and management of the national PPP programme;
- Issuing implementing regulations and clarifications regarding rules, procedures and standards for PPP projects and project documents that are binding for all public authorities;
- Issuing decisions to public authorities for the purpose of ensuring the proper implementation of laws and regulations related to a PPP projects;
- Review and approval of projects;
- Acting as a contracting authority for specific projects;
- Approval of the economic support to projects;
- Oversight and review of performance compliance and project execution;
- Review and approval of proposed amendments and modifications to agreements;
- Management of a national PPP registry;
- Making decisions relating to the use of funds deriving from PPP appropriations; and
- Making other relevant decisions relating to PPPs.

4.2. Ministry of Finance

In addition to being the head of the PPPC, the ministry of finance is involved in the PPP process through the budget department which plays an important role in the review of a

PPP project proposal. **The budget department is required to assess the budgetary affordability of proposals.**

4.3. Line Ministries

The Ministries of Infrastructure, Trade and Industry and Economic Development have permanent seats in the PPPC and are involved in the definition of PPP policies. Further, **line ministries are the main entities responsible for identifying and implementing potential PPP projects.**

4.4. Audit Bodies

All PPP projects in Kosovo may be audited by the Office of the Auditor General of Kosovo (OAG), the highest institution of economic and financial control in Kosovo. The OAG is an independent institution that reports directly to parliament. A dedicated unit has been established to review PPP projects.

4.5. Procurement Review Body

The Procurement Review Body (PRB)⁴ is **the first appellate body** when an economic operator wishes to challenge the procurement of a PPP. The final decision of the PRB may be reviewed by the Supreme Court.

The PRB reports annually to parliament on its activity.

⁴ See <http://oshp.rks-gov.net/index.php?cid=2,1>

5. Legal Framework

5.1. PPP Law

The Law on Public Private Partnership⁵ (the PPP Law) is **the main legislative act that sets out the policies, procedures and institutional framework for PPPs in Kosovo**. The PPP Law has recently been amended with a view to providing more effective procedures for implementing PPPs.

The PPP Law defines:

- The procedures for the preparation and award of a PPP;
- The content and structure of a PPP agreement; and
- The institutional framework for the management and development of PPPs in Kosovo.

The PPP Law allows for the implementation of PPPs through either contractual or institutional forms. Contractual PPPs can either take the form of an authority-pay contract or a concession:

- **Authority-pay contracts** are defined as those in which (i) a public service or a public infrastructure is provided on behalf of the public authority; (ii) the private partner assumes financial, technical, construction and/or operational risks; (iii) the private partner receives regular payments from the public authority; and
- **Concessions** are defined as contracts similar to the former but in which the public authority receives fees from the private partner for the right to operate the public service or infrastructure.

The PPP Law obliges authorities to use the restricted procedure when tendering a PPP project. The selection procedure goes through a pre-qualification phase, followed by a request for proposal.

5.2. Public Procurement Law

The Public Procurement Law⁶ was adopted by parliament in August 2011. It regulates:

- The public procurement procedures in the fields of public works, supply and services;
- The institutional framework of the public procurement system; and
- The role of procuring authorities.

⁵ See <http://www.pppkosova.org/?cid=2,82>

⁶ See https://krpp.rks-gov.net/Default.aspx?PID=Legislation&LID=2&PPRCMenu_OpenNode=61

The law allows for **various procurement procedures**: open procedure, restricted procedure, negotiated procedure after publication of contract notice, negotiated procedure without publication of a contract notice, price quotation procedure and the procedure for minimum value contracts. These procedures are applicable to authority-pay PPP contracts.

The law stipulates that the award of a concession contract is governed by the PPP Law.

6. The PPP Project Cycle

This section sets out the PPP project cycle in Kosovo as specified by the current legal framework. An overview of the project cycle is provided in Figure 1 at the end of this section.

6.1. Needs Identification/Project Selection

Procuring authorities (the Authorities) are responsible for carrying out their own investment needs analysis and pre-feasibility study for potential PPP projects. These studies include a systematic Value for Money assessment to determine whether or not PPP is a relevant procurement solution for the proposed project.

Performing a pre-feasibility study is not required by the PPP Law however it is suggested in the PPP guidelines issued by the CPPPD.

6.2. Project Preparation

The Authority manages the project preparation, possibly with the support of external consultants.

This preparation consists in performing a feasibility study and preparing the tender documents which include:

- a Request for Qualification;
- a Request for Proposals; and
- a draft PPP agreement.

As part of the project feasibility study, the PPP guidelines recommend that the Authority performs a market sounding, either through expressions of interest or a private sector survey.

The CPPPD may provide assistance to the Authority during project preparation.

6.3. Project Approval

The Authority is required to submit the feasibility study and the tender documents to the CPPPD for review. Once reviewed, the CPPPD may require further clarification from the Authority or recommend the project for approval by the PPPC.

Once it has received all the necessary project documentation and the CPPPD recommendation, the PPPC may then approve or reject the project.

6.4. Procurement

The responsibility for the selection of the private partner rests with the Authority.

Prospective bidders interact with the Authority through its procurement office.

In order to qualify for the selection proceedings, interested bidders must meet the eligibility criteria defined by the PPP Law and criteria on professional suitability, economic and financial standing and technical and professional capability, as specified in the Request for Qualification.

All pre-selected bidders are invited by the Authority to submit proposals in accordance with Request for Proposals.

Following the evaluation of proposals, the Authority ranks them on the basis of the evaluation criteria and invites the bidder that has achieved the best rating for final negotiation of the agreement. Final negotiations only apply to contractual terms that were stated as negotiable in the Request for Proposals.

Approval of the Final Contract

Following the completion of negotiations and prior to signing the agreement with the preferred bidder, the Authority must submit the final agreement to the PPPC for approval.

The PPPC can reject the proposal if it considers that the agreement differs substantially from the project approved earlier and if the agreement fails to meet affordability and Value for Money requirements. In such cases, the Authority is not allowed to award the agreement. Any agreement awarded without the PPPC's prior approval is legally invalid and is therefore null and void.

Signature of the Contract

The PPP agreement is signed by the authorised representatives of the private partner and the Authority. Signed contracts are registered in the National PPP registry, held by the PPPC.

6.5. Project Implementation

Contract Management

The Authority which has entered into the PPP agreement establishes and maintains a project management team throughout the contract lifespan. The Authority needs to assign qualified and experienced civil servants to the project management team. It can contract-out some functions in accordance with applicable procurement rules.

Renegotiation and Dispute Resolution

If the Authority wishes to exercise its right to terminate the PPP agreement early, such a decision must be first approved by the PPPC.

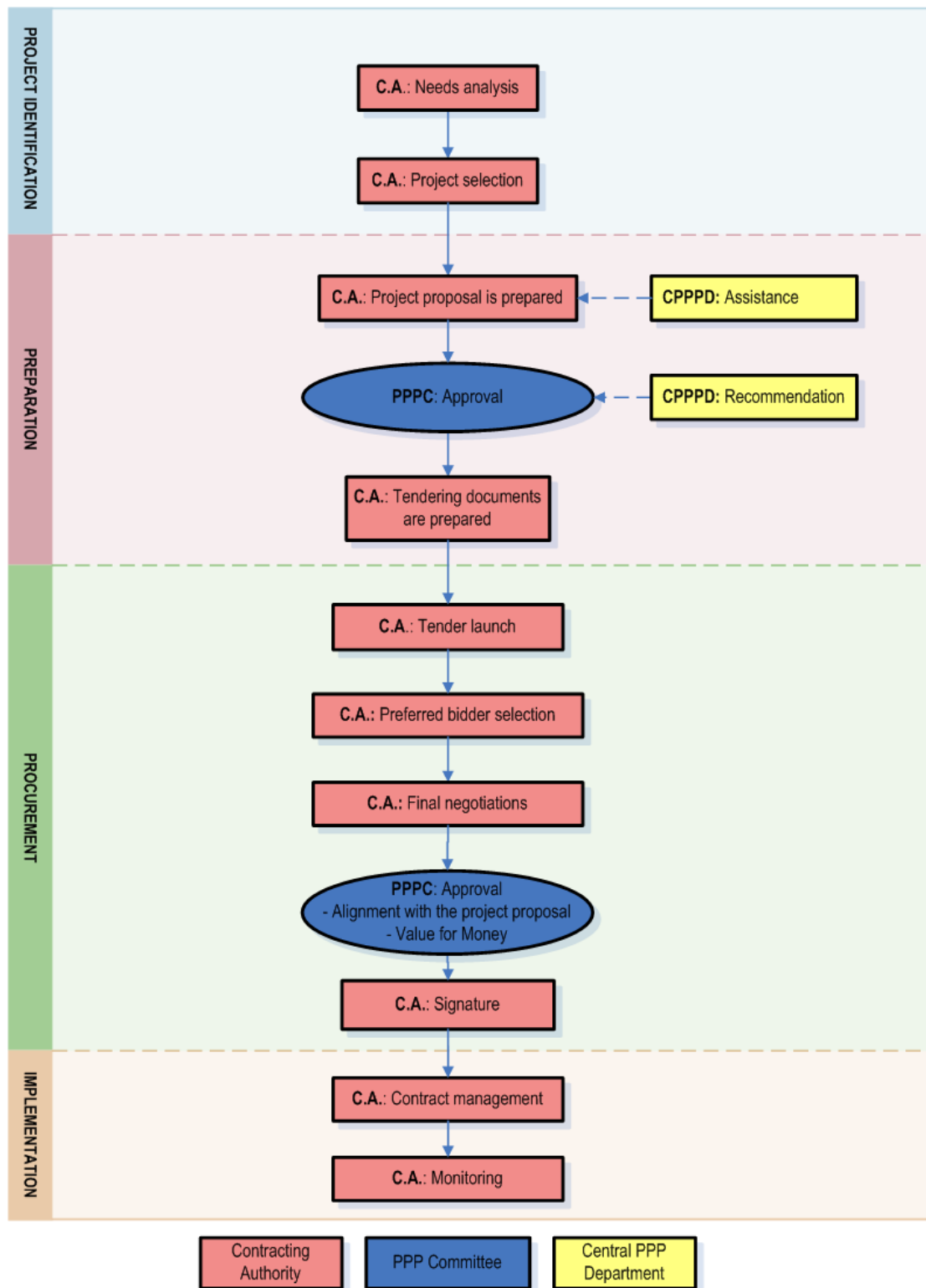
The parties to the contract are free to agree on the applicable law and the mechanisms for the settlement of disputes which may arise during the project execution phase. In case the applicable law has not been determined by the parties, the contract will be governed by the Kosovar law.

Monitoring

The Authority is responsible for monitoring the implementation of the PPP agreement and ensuring the compliance of the private partner's activity with its terms.

The Authority reports regularly to the CPPPD on the implementation of the PPP agreement. After having performed its review, the CPPPD submits a report to the PPPC.

Figure 1: Outline PPP Project Cycle



ANNEX 1 – PPP Unit Overview

1. General structure of the Central PPP Department

Location within government	Ministry of Finance
Reporting and accountability	PPP Committee
Part of general procurement unit	N/A
Sectors	All economic sectors
Coverage	National and local
Funding	Government
User Fees	No
Success-based fees	No
EU funding	None
Staffing	7
Secondments	None
Public private mix	No
Difficulties in attracting staff with PPP expertise	Yes
Difficulties in retaining staff	No

2. Operational framework for the PPP Unit

Project Planning	
Involvement in identification/planning	No
Develop business case/feasibility study	No
Assess feasibility	Yes
Approve ⁷ /qualify as PPP	Yes
If so, is this binding?	Yes
Provide recommendations to approval bodies	N/a
Assist in finding advisers	No
Sit on steering/oversight committee for the project	No
Sit on project team/group	No

Procurement Process	
Act as procuring authority for the project	No
Approve tender documentation	No
Sit on steering/oversight committee for the project	No
Sit on project team/group	No
Involvement in contract negotiation	No
Bid evaluation	No
Bid approval	No
Involvement in post-preferred bidder negotiations	No
Involvement in financial closing (e.g. closure of the swap)	No
Approve the final contract	No
Sign the final PPP contract	No
Approve the financing documentation	No

Project Implementation	
Approve renegotiation during construction	Yes
Approve renegotiation during operations	Yes
Payment oversight	No
Contract management	No
Monitor project implementation	Yes

Market Development	
Determine and share best practice (e.g. guidance material, lessons learned)	Yes, lead
Develop PPP policy	Yes, support
Develop standard documentation (e.g. RFPs, PPP contracts)	No
Promotion of PPPs (e.g. market awareness)	Yes, lead
Training	Yes, lead
Database development and management	Yes, lead

⁷ Where approval is different to opinion: an approval requirement means that, without approval, a project cannot continue, an opinion on the other hand is a recommendation which is non-binding for the Authority.

ANNEX 2 – Macroeconomic Indicators


The World Bank classifies Kosovo as a lower-middle income country. In 2013, its GDP was \$5.149 billion with GDP per capita reaching \$2,836. Kosovo has a population of 1.8 million and a population density of 159 inhabitants per km².

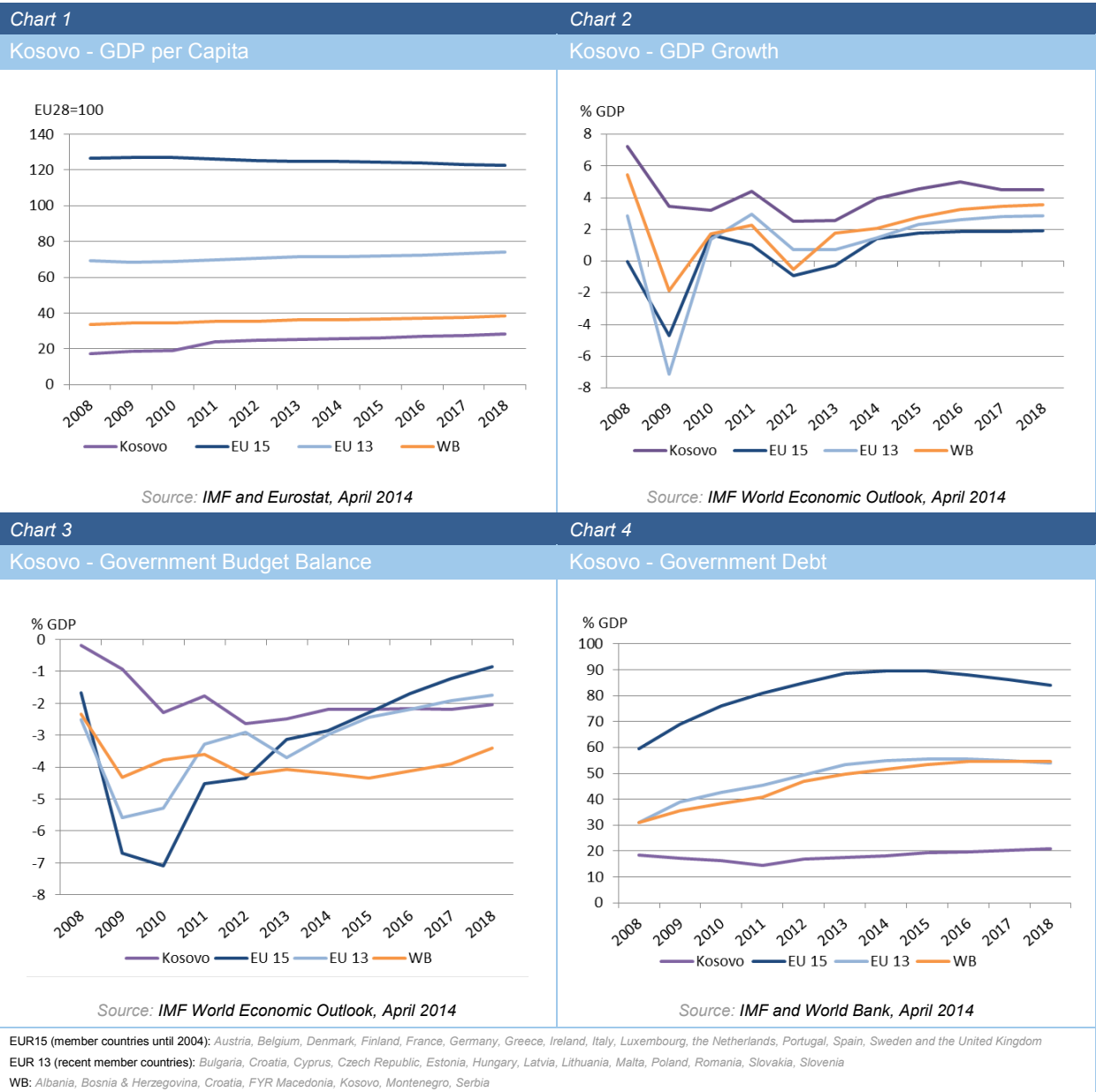
Chart 1 below shows GDP per capita expressed as a percentage of the average for the EU28 group. The IMF forecast shows an increasing trend, although the level of GDP per capita still remains below the average for the Region.

GDP growth in Kosovo was higher than the average for the countries in the Region as well as for EU countries. Even though the global economic crisis did affect the GDP, the economy of Kosovo did not experience a recession (Chart 2).

The Kosovar public deficit reached its peak in 2012 (-2.7%) and the IMF's estimates for the forthcoming period are positive (Chart 3).

The level of Government debt is considerably lower than other economies in the Region and EU countries. This, with the positive deficit estimation, could leave Kosovo space for increased infrastructure investments in coming years (Chart 4).

Kosovo Kosovës	
	Capital: Pristina Population: 1.734 mil - growth: -% - density: 159/km2
Macroeconomic and fiscal indicators	
GDP:	(Nominal, 2013, IMF estimate)
- total:	5.149 \$ bil
- per capita:	2,836 \$
Real GDP growth:	2.1
Government Budget (% of GDP)	(07/2011, EIU estimate)
- revenue:	26.5
- expenditure:	28.9
- balance:	-2.4
Rankings	
WB Doing Business 2013 rank:	86
- change in rank since 2012:	+12





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For information:

EPEC Secretariat

☎ +352 4379-22022
☎ +352 4379-65499
✉ epec@eib.org



98-100, boulevard Konrad Adenauer
L-2950 Luxembourg
☎ +352 4379-1
☎ +352 437704
www.eib.org/epec